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**ACT 14/2014, DATED 24TH JULY,
ON MARITIME NAVIGATION**

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"El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 del Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación."

ACT 14/2014, DATED 24TH JULY, ON MARITIME NAVIGATION

PHILIP VI

KING OF SPAIN

To all whom the presents shall come: greetings.

Be it known: That the *Cortes* have approved and I have granted My Royal Assent to the following Act:

PREAMBLE

I

The Maritime Navigation Act brings about an ample reform of Spanish Maritime Law considering all its aspects. It is a renewal that does not seek mere updating and compilation, but, rather, also addresses the indispensable co-ordination thereof with International Maritime Law, whilst adapting it to the present practice of sea transport.

This Act allows the existing contradictions between the different international conventions in force in Spain and the disperse provisions governing the matter to be overcome, the leading text of which still consists of Book III of the Code of Commerce of 1885. At the same time, it puts an end to the shortcomings that have been detected in recent years with regard to multiple national interests whose protection shall be reinforced. That is the case of navigational safety, protection of the environment and the underwater cultural heritage, use of the territorial seas, combating pollution, Spanish interests in fishing matters, borders and immigration, or combating smuggling.

The Act regulates the framework for activities inherent to maritime traffic, comprised of the actual geographic setting and the physical spaces that make it possible, as well as instruments and vehicles, guaranteeing the necessary coherence between Spanish Law and the different international conventions in matters of Maritime Law. That wide scope involves this Act

including practically all aspects of navigation, both of Public as well as Private Law.

II

The Preliminary Title is in line with the most modern outlook of Maritime Law, in which Article 2 records the rule of interpretation of the Act pursuant to the international conventions in force in Spain. This objective of uniformity implies the aim to put an end to the much-criticised dual provisions that exist in such matters in many fields in which, on one hand, Spain has ratified different international conventions and, on the other, we have domestic legislation that, in many cases, does not comply with these. This also explains the legislative technique used, based on referral to the conventions in force in each matter, reserving to the Act the role of providing content to the room that such international treaties leave to the States.

III

Title I is mainly inspired by the United Nations Convention on the Law of the Sea (UNCLOS), approved on 10th December 1982 at Montego Bay. Title I is structured in six Chapters that formulate the basic and systematic rules for policing navigation, which is completed by the provisions on matters of State ports and the merchant navy. These provisions are effective with regard to Spanish and foreign ships that sail, or stop any of our waters. Application of the regime of police navigation is mainly pursuant to a territorial criterion, without prejudice to respect for the powers of the flag nation, which has led International Law to configure the concepts of coastal State and the State governing the port. The field of application of this Title I is defined both in territorial terms - within the Spanish maritime areas that the Act governs for all ships - as well as that known as flag law - to which Spanish ships are subject, wherever they may sail -. Chapter VI records the specialities recognised for ships of foreign States.

The regime of stopping in inland maritime waters and ports is governed by the principle of sovereignty of the coastal state, around which the judicial and administrative powers are articulated for all the ships that are not State vessels.

IV

Title II commences the regulation of the legal status of the ship, defining it as a vessel intended for navigation, which also covers transitory static

situations, such as shipbuilding, mooring, ashore or being broken up. This notion thus excludes naval artefacts - characterised by remaining afloat or at a fixed place or location in the waters - and fixed platforms - all structures or installations liable to perform operating operations with maritime natural resources, or be assigned to other activities, located on the seabed, anchored or resting thereon-. In addition to the note inherent to the mobility that characterises the ship, there is its capacity to transport individuals or goods for all purposes. That thus does away with distinctions of public or private, civil or military ships, merchant navy or recreational, sporting or scientific vessels. When their size exceeds twenty- four metres, or when they lack a full deck, they shall be classified as a “boat” and the smaller ones may have the regulatory status of “minor units”.

Naval artefacts, characterised both by being able to float, as well as not being intended to sail, are distinguished from fixed works or constructions that, although they are able to fully or partially maintain themselves by floating, are considered immovable goods pursuant to the Spanish Civil Code (such as the case of so-called artificial islands, that are rigidly fixed to the bed of the waters, or port facilities). The additional requisite of artefacts to be able to accommodate individuals or things does not cover the concept of buoys, beacons and other small floating artefacts, generally used for safety of navigation or signalling fisheries. The characteristic of permanence inherent to artefacts is precisely the attribute that justifies a substantive and registry regime that does not always coincide with that of ships.

Material transformations of ships and vessels and the legal changes arising from their participation in business traffic make it necessary to identify them and for there to be a public record of the relations, they undergo in their condition as moveable assets of significant economic value. Their recordable nature makes their mortgaging legally possible, without detracting from their classification as a moveable asset. And situations of shared ownership (co-ownership of the ship) are recognised so that, in cases of a common property not being put to business use, it shall be directly subject to the general regime, without any other speciality than that recorded in the Act itself to regulate pre-emptive acquisition rights (in particular, the novel regulation of the right to first refusal).

Publicity is crucial in trade of assets and this is carried out through inscription on the Register of Moveable Assets (Ships Section), which shall be co-ordinated with the Register of Ships and Shipping Companies. Both have a different function assigned. The Register of Moveable Assets shall have the legal effects inherent to material publicity of the ownership

and encumbrances, vis-à-vis the typically administrative scope of the Register of Ships and Shipping Companies.

The provisions on acquisition of property articulate the legal regime of shipbuilding and sale contracts, without a mandatory character. Shipbuilding contracts regulate the main subject of conveyance of ownership and risks according to the most widespread trading practices. The sale contract maintains the traditional maritime concept with regard to the risk of sale, contrary to the civil one, with special attention being paid to interference in the sale of the ship that might arise from contracts for use that are in force. In that regard, good faith imposes duties of information in favour of the buyer of the ship, upon whom the Act imposes subrogation regarding charter and lease contracts, which would not arise if that were not the case. Notwithstanding this, such omission would generate the relevant liability both in relation to the buyer as well as to the other parties to the use contracts.

The figures of bottomry or *nauticum foenus* are definitively dispensed with, to establish maritime credit on a simplified system of liens, reducing them to those that are internationally accepted by the Convention on maritime liens and mortgages of 1993, including extension of guarantee for salary credits of doubtful origin to all ships managed by the same firm.

V

An identical modernising purpose is inherent to the renewal Title III performs of the regime of subjects of navigation, beginning with the figure of the shipping company, which does not exclude, but does displace that of the ship owner to a second plane. The difference between the owner and the shipping company allows distinction between simple co-ownership of the ship and true naval joint ownership. Common business operation under a majority regime allows the relation to be classified as something other than co-ownership with those involved acting as true ship-operators and shipping companies.

The idea that a person cannot be a ship-owner without possession of the ship and without it being used in navigation, and that in order to be such a person need not perform a business activity, is important because it has legal consequences. This is the case because all shipping companies (whether an owner or not) may register on the Register of Moveable Assets; but only the party whose ship sails for trading purposes is an entrepreneur and thus entitled to access to the Business Registry. On the other hand, the Act conserves the concept of the shipping company -

already recorded in the State Ports and Merchant Navy legislation - limiting it to those dedicated to operating merchant navy ships (excluding those dedicated to fishing). When they also have possession, they shall also be ship-operators.

Pursuant to these provisions, the ship-operator is the first party with an interest in registering as such on the relevant registers. Likewise, the owner of a ship who is not directly involved in navigation shall not wish to bear the consequences and liabilities arising from a use that is totally unrelated to him. Due to this, the Act entitles a simple owner to request inscription of the party that really possesses and uses the ship as the ship-operator. It is exclusively the remit of the ship-operator to bear liability for acts and omissions by the ship's crew and the obligations contracted by its master. The rule has very few exceptions, mainly arising from international provisions. Within the scope of sports or recreational navigation, the person registered as owner on the Register of Moveable Assets or the Register of Ships and Shipping Companies is considered, *ex lege* as the ship-operator, without the possibility of proof to the contrary.

The Act also co-ordinates the administrative and mercantile provisions applicable to seafarers with the right to work, under internal crew regime. That regulation is complemented, on one hand, by the terms set forth in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW, 78/95 (merchant navy) and the International Convention with the same name for seafarers on fishing ships (STCW-F/95), that contain the international regime of what the Act calls "On qualifications, certification and inspection" and, on the other hand, the regime of minimum safety crew, subject to regulation both in the International Convention for Safety of Life at Sea (SOLAS 74/88), as well as the Maritime Labour Convention 2006 by the International Labour Organization (MLC 2006), all in force in Spain.

The crew is mentioned in the ample sense, construed as the set of all the individuals taken aboard under a recruitment contract. That legal concept provides the precise definition, for a specific ship, of the more generic "seafarers" or "mariners" provided in said MLC 2006.

The professional liberty of the master of the ship to make autonomous decisions regarding safety and protection of the environment is guaranteed. To that end, there is a concise, clear statement of the power he holds to act in the interest of the ship, with active and passive legitimation to appear in all the judicial proceedings and administrative actions that require his presence arising from judicial relations arising due to navigation or

operation of the ship. The liability of the ship-operator for unlawful acts by the master with regard to third parties is clarified (both whether of contractual or tortious nature), regulating the “sea protest” as an instrument of evidence exempt of formalism, that binds the master to leave a record in the Ship’s Log of the events that have arisen during travel and to then certify them unilaterally in the protest.

VI

In Title IV, regulation of the liability of the carrier for damage and breakage of the goods carried maintains the regime in force, contained in the Hague-Visby Rules ratified by Spain and by most maritime countries. According to the OECD, these Rules now regulate 95 per cent of worldwide sea trade. The regimes of liability of the carrier have been unified, as applicable to carriage by sea under the - Spanish or international - bill of lading regime, and on the different charter modes. This regime has the status of mandatory law (that may not be dispensed with by the parties, to the benefit of the holder of the right to the goods) in carriage contracted under bill of lading regime, as it is a sector where the capacity of negotiation of the users of the service is more limited. When there is a charter policy, the legal regime shall be dispensable, due to the position of equality between charterers and ship-operators. Thus, the exoneration or limitation of liability clauses they agree may be valid. The Act has been taken into account the last conventions on this matter, especially those known as the Rotterdam Rules, thus foreseeing subsequent amendments to the Articles of the Act when the latter shall come into force.

The solutions set forth in the text do not vary from usual practice, so chartering is configured as a carriage agreement. Autonomous chartering continues to fulfil the model of transport provided by one party to benefit another, who pays for such, moving from origin to destination and ensuring the move ordered. The unified standard contract considered by the Act is in keeping with the provision of specialities when these are necessary, as is the case of travel charter, time charter and carriage of goods under bill of lading. That legal model does not include chartering ships for other purposes (cable laying, oceanographic research, icebreaking), cases in which only the relevant laws that are indispensable and adequate shall apply (those concerning making the ship available and its use, chartering and early termination).

The Act also regulates the contracts for passage, towing (in its double mode of handling towing and transport towing), ship lease (either bare hull, crewed, fitted), the discipline of which is articulated according to the

most balanced solutions of the form law, and nautical lease, commonly known as charter, that has its own particular features.

VII

Title V pertains to so-called ancillary navigation contracts, which include the patterns trading experience has given rise to. This is the case of the forms by the Baltic and International Maritime Council (BIMCO) for naval management contracts, or the international rules (Convention on the Liability of Operators of Transport Terminals in International Trade, done at Vienna on 19th April 1991, that has been signed, but not is yet ratified by Spain). The attention concentrates on definition of the regime of own responsibility of the business models of commission or agency, as prototypes of contracts to manage third party interests.

Naval management provides the owners aid in business, nautical, labour and insurance matters. In the event of the manager not stating the name of its ship-operator or shipping company when entering into contracts, he shall be held jointly liable with it, although such liability may be limited. Such limitation is also possible in the port handling contract. Its speciality lies in the non-disposable nature of the system of liability established to benefit the users of loading and unloading companies or transport terminals. When providing their services, these are subject to responding for presumed fault, although in compensation they are also recognised a withholding right while not paid what they are owed. In the case of the shipping agent, the central idea of the regulation is that the party that does not collect the freight for itself may not be held liable as carrier either, although authorised to sign the bills of lading. On the other hand, if the shipping agent conceals the name of the shipping company, it shall be held jointly and severally liable with it.

Pilotage, configured as an advisory service, imposes interactive liaison with the master (who has the ultimate responsibility) and with the crew itself. Due to this, the pilot shall be considered exclusively to blame for aspects that solely depend on him, such as imprecision or omission of the necessary advice or the lack of due technical support. On the contrary, the master shall be to blame for lack of, or defective following of the correct and appropriately received instructions, as well as being unable to identify insufficient instructions (that he shall supplement) or rejecting erroneous ones (that he shall be bound to correct). Given the frequency of coinciding blame, the ship-operator is subject to bear own damage and shall be bound to compensate damage to third parties, the Act clarifying that all the subjects to blame (ship-operator, master, pilot) shall be jointly and severally

liable, without prejudice to be right reimbursed that each person may be entitled to in the internal distribution of such fault.

VIII

Title VI, regulating navigation accidents, begins with the subject of collision, the regime of which refers to the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, done at Brussels on 23rd September 1910. It thus establishes the liability for proven fault, exclusion of force majeure and classification of effective blame - that shall never cover the contractual relations between the parties to a labour, passage or charter contract - when such blame has a shared nature. For better protection of third parties, the Act declares the joint and several liability of both ship-operators. In order to address other doubts regarding interpretation declared in our recent Case Law, the scope of application of this special regulation is to cover the criminal or administrative proceedings requiring an asset based liability as subsidiary to the criminal or disciplinary, as substantive regulation of such matters is not to vary due to the simple fact of the liability being demanded by one procedural channel or another.

The York and Antwerp rules are followed in matters of common claims, which constitute a practical, simple, effective regulation. To the extent that these Rules are not self-sufficient, other matters are regulated, such as the right to withholding of the effects that shall contribute, or the prescription of actions. Liquidation of such common claims shall be performed by a private liquidator appointed by the ship-operator; although a procedure has been provided for cases in which an agreement is not achieved by the parties concerned over this point.

The Act refers to the International Convention on Salvage, done at London on 28th April 1989, to regulate the same matter. The civil jurisdiction shall hear the relevant claims, except if the parties agree to submit to an administrative maritime arbitration system due to it being salvage of goods abandoned at sea and of unknown ownership. Articulation of an all-encompassing concept of salvage and authorisation of the master and the ship-operator to enter into agreements in that regard, are major technical improvements, which accommodate intervention by the Maritime Authorities in salvage operations in order to assure protection of the environment. Recognition of a withholding right for the salvor, notwithstanding resorting to a possible preventive seizure of the ship and the goods salvaged, is another novelty.

Shipwreck or sinking of ships is regulated for the purposes of determining the status of the goods affected, the property rights thereto, and the regime of extractions that are subject to the relevant administrative authorisation. A regime is also sought for maritime pollution that imposes a quasi-objective liability of the ship-operator or the owner of the artefact that causes the pollution, in addition to demanding the relevant mandatory insurance, pursuant to the applicable international conventions to which the Act refers, especially the International Convention on Civil Liability for Oil Pollution Damage 1992 (Civil Liability Convention, 1992) and the International Convention on Civil Liability for Bunker Oil Pollution (BUNKER, 2001). Thus, extensive application of the international principles is achieved in cases of pollution damage other than that specifically considered in the uniform laws in force.

Likewise, Spain's membership of the European Community involves higher standards in matters of liability for maritime pollution. This leads to the cases regulated in this Title to be fully subject to the environmental principles included in Article 191 of the Treaty on the Functioning of the European Union, which involves greater quality in the building and maintenance of ships to hinder pollution processes, and attributing liability to the party that causes such pollution according to the principles of "prevention at source" and "the polluter pays".

IX

Title VII, which concerns limitation of liability, simplifies the previous - domestic and international - regimes, which are fairly confusing. It does so based on the Convention on Limitation of Liability for Maritime Claims, done at London on 19th November 1976 (LLMC), amended by the Protocol of 1996, the regime of which is completed in this Title. The so-called scale or tariff system now followed does not give rise to the significant difficulties in the implementation thereof and provides greater legal security.

With the exception of naval artefacts and fixed platforms, limitation of liability is a right that may be invoked in any proceedings. Its grounds are objective (as it refers to certain credits alone) and it does not generate presumption of liability when claiming. Shipping companies may claim it, opting for the overall amount under that title, or the specific ones to which they may be entitled due to contracts to use the ship (as a carrier of merchandise or to transport passengers) or due to other specific clauses. Credits liable to cover the limitation are defined positively and negatively in this Title, establishing the maximum sums and main rules to exercise such right, substituting that of pro-rata assignment in the event of different

creditors claiming simultaneously, in order to provide absolute preference to credits held by public authorities related to damage to maritime or port property. The articulation of the limitation fund that shall ensure the effectiveness of that regulation acts to conclude the discipline.

X

In treatment of maritime insurance, as set forth in Title VIII, the Anglo-Saxon type models of policies and clauses have been followed for practical reasons, although under conceptual moulds more in keeping with our legal tradition. The preferentially disposable nature of its rules, required by European Union Law on Major Risk Insurance, is due to the comparable position of strength enjoyed by both parties to the contract. With regard to its scope of application, such insurance covers inherent damage from maritime navigation, always assuming the contract to be entered into by the party that holds the interest and, in hull insurance, it also considers the insured value recorded in the policy to be estimated. On the other hand, the validity of multiple insurance does not depend on it being arranged by a same taker and in relation to co-insurance; the Act clearly establishes full procedural legitimation of the principal or party that opens the policy to take active or passive action on behalf of all the co-insurers.

The risks underwritten are limited by specific clause. Except in the case of agreement to the contrary, these do not cover extraordinary events (war and similar), nor inherent flaw, ordinary wear (with some specific features for ship insurance) and gross negligence of the insured (wilful misconduct is never covered and, to these ends, gross negligence of the insured includes that of servants on land, whose remit it is to maintain the object insured). Specific rules apply to insurance contracts entered into regarding good or bad news, as well as those taken after conclusion of the risk or when the claim has already arisen, the Act making their validity depend on the subjective state of knowledge of all the foregoing that the parties had.

The taker has the duty of providing an exact declaration, while the insurer's remit is to compensate the damage caused, being able to settle the claim by the double means of claims proceeding or the system of abandonment that the Act allows to perform by agreeing non-conveyance of the object insured or its remains to the insurance company. The settlement may be performed judicially by means of claims adjusters.

In the treatment of the unique branches of maritime insurance, the Act includes the novelty of insurance coverage of civil liability of the ship-operator, pursuant to the Insurance Contracts Act and that is also articulated,

as a supplementary discipline in cases in which this Maritime Navigation Act imposes mandatory insurance contracts that enjoy their own specific regime, which arises in cases of civil liability for pollution and for harm to passengers.

The Act sanctions, with non-disposable status, direct action by the party damaged against the insurer to demand that it fulfils the obligation to compensate. The insurer may oppose such claims with limitation of liability (for maritime credits under Title VII) or even limitation of debt that of the carrier of individuals or things) that the insured may have risen on its part, against the damaged party claiming.

XI

On the basis of the rules of Act 1/2000, dated 7th January, on Civil Procedure, Title IX of the Act concerns the “procedural specialities”.

Chapter I contains what are known as specialities of jurisdiction and power that, based on the preferential application in this matter of the rules contained in the international conventions and in the provisions of the European Union, aims to avoid abuse detected, declaring the nullity of clauses of submission to a foreign jurisdiction or arbitration abroad, contained in ship use contracts or in ancillary navigation contracts, when these have not been negotiated individually and separately.

Chapter II contains the regime of arrest of ships, which refers to the International Convention on Arrests of Ships, done at Geneva on 12th March 1999, the rules of which it now completes. Effective arrest of the ship is assured (through the Harbour Master), without the need to accredit the maritime credit, nor the hazard of procedural delay and urgency (that is assumed), referring in all non-specific matters to the Civil Procedure Act. The competent jurisdiction to decree the arrest shall be, at the choice of the claimant, that of the port where the ship is moored, that where its arrival is awaited, or that of the Court with competence to hear the main claim.

According to the criteria of not reiterating in the Act what is already foreseen in the international conventions, this regulation of Chapter II is limited to completing the procedural specialities. Amongst these, setting the criteria that shall be used by a Court to determine the amount of the guarantee that shall be demanded to decree the arrest, which shall be at least 15 per cent of the amount of the maritime credit, may be emphasised.

Chapter III regulates, based on the regime of the Convention on Maritime Liens and Mortgages of 1993, forcible sale of the ship, either by judicial or administrative means, this being articulated as a sort of “purge” with regard to all the encumbrances that may befall it. It is based on an adequate system of publicity and notifications - that in the case of bearer mortgages and liens held by an unknown holder are only possible in favour of those who have notified the existence of the credit - before proceeding to disposal. Pursuant to the Civil Procedure Act, the sale may be managed directly by a specialist with knowledge of the market, dispensing with an auction. When limitation is invoked, the relevant fund shall be established in parallel.

Chapter IV regulates the procedure to limit the liability for maritime credits, a matter that lacked regulation under our laws until now.

XII

Updating the general regime applicable to maritime traffic also allows Title X to update voluntary jurisdiction proceedings, eliminating those that have lost their reason to exist, as is the case of the authorisation to unload the ship, the obligations arising from the maritime transport contract or opening hatches. That clarification is based on a new conception that includes only proceeding entrusted to the Courts under voluntary jurisdiction.

Sea protest and travel incidents, liquidation of general average, deposit and sale of goods and baggage in maritime transport and disposal of altered or damaged commercial paper are the only ones that are maintained. In addition, as a novelty, a new procedure is introduced, regarding missing, stolen or destroyed bills of lading. Process and resolution of such is assigned to Notaries Public and it shall henceforth be called Public Certification of Maritime Law Proceedings.

XIII

Lastly, the final provisions aim to attend to the needs of harmonisation with other provisions of the new Maritime Navigation Act, as is the case with matters of consumption, electronic contracts, warships or protection of historic ships as part of the cultural heritage of Spain. To that end, there is also amendment of Act 1/2000, dated 7th January, on Civil Procedure and the Consolidated Text of the State Ports and Merchant Navy Act, approved by Royal Legislative Decree 2/2011, dated 5th September. Moreover, future amendments are foreseen that may be required when the Rotterdam Rules come into force, or to attend to other specific matters for better implementation of the new provisions.

Index

Preliminary Title. General provisions. Articles 1 to 3.

Title I. On administrative organisation of navigation. Articles 4 to 55.

Chapter I. On the scope of application of policing provisions. Articles 4 to 6.

Chapter II. On the regime of presence in maritime inshore waters and in port. Articles 7 to 18.

Chapter III. On the general regime of maritime navigation. Articles 19 to 36.

Chapter IV. On the right of innocent passage through the territorial sea. Articles 37 to 47.

Chapter V. On the right to pursue and inspect. Articles 48 and 49.

Chapter VI. On ships of foreign States. Articles 50 to 55.

Title II. On vehicles for navigation. Articles 56 to 144.

Chapter I. On ships, vessels and naval artefacts. Articles 56 to 64.

Chapter II. On registration and documentation of ships. Articles 65 to 87.

Section 1. On inscription in the Ships Section at the Register of Moveable Assets. Articles 67 to 77.

Section 2. On documentation of Spanish ships. Articles 78 to 87.

Chapter III. On the nationality of ships. Articles 88 to 96.

Chapter IV. On the safety of ships and classification companies. Articles 97 to 107.

Chapter V. On shipbuilding contracts. Articles 108 to 116.

Chapter VI. On sale. Articles 117 to 121.

Chapter VII. On encumbrances on the ship. Articles 122 to 144.

Section 1. On maritime liens. Articles 122 to 125.

Section 2. On ship mortgages. Articles 126 to 144.

Title III. On the subjects of navigation. Articles 145 to 187.

Chapter I. On the shipbuilder. Articles 145 to 149.

Chapter II. On ship co-ownership. Articles 150 to 155.

Chapter III. On the crew. Articles 156 to 187.

- Section 1. On qualifications, certification and inspection. Articles 165 to 170.
- Section 2. On the Master. Articles 171 to 187.
- Title IV. On contracts for use of ships. Articles 188 to 313
 - Chapter I. On ship lease contracts. Articles 188 to 202.
 - Chapter II. On charter parties. Articles 203 to 286.
 - Section 1. General provisions. Articles 203 to 210.
 - Section 2. On the obligations of the carrier. Articles 211 to 228.
 - Section 3. On the duties of the charterer. Articles 229 to 238.
 - Section 4. On laytime and delays. Articles 239 to 245.
 - Section 5. On the bill of lading. Articles 246 to 266.
 - Section 6. On the multimodal transport document. Article 267.
 - Section 7. On sea waybills. Articles 268 to 271.
 - Section 8. On early termination of the contract. Articles 272 to 276.
 - Section 9. On liability of the carrier for loss, damage or delay. Articles 277 to 285.
 - Section 10. On expiry. Article 286.
 - Chapter III. On the passage contract. Articles 287 to 300.
 - Chapter IV. On towing contracts. Articles 301 to 306.
 - Chapter V. On nautical lease contracts. Articles 307 to 313.
- Title V. On ancillary navigation contracts. Articles 314 to 338.
 - Chapter I. On naval management contracts. Articles 314 to 318.
 - Chapter II. On shipping agency contracts. Articles 319 to 324.
 - Chapter III. On pilot contracts. Articles 325 to 328.
 - Chapter IV. On port handling contracts. Articles 329 to 338.
- Title VI. On navigation accidents. Articles 339 to 391.
 - Chapter I. On collision. Articles 339 to 346.
 - Chapter II. On the general average. Articles 347 to 356.
 - Chapter III. On salvage. Articles 357 to 368.
 - Chapter IV. On shipwrecked or sunken goods. Articles 369 to 383.
 - Section 1. On property rights. Articles 373 to 375.
 - Section 2. On the extraction regime. Articles 376 to 383.
 - Chapter V. On civil liability for pollution. Articles 384 to 391.
- Title VII. On limitation of liability. Articles 392 to 405.
 - Chapter I. General provisions. Articles 392 to 395.
 - Chapter II. On limitable credits. Articles 396 to 397.

Chapter III. On the maximum sums of compensation. Articles 398 to 402.

Chapter IV. On the limitation fund. Articles 403 to 405.

Title VIII. On maritime insurance contracts. Articles 406 to 467.

Chapter I. General provisions. Articles 406 to 407.

Chapter II. On provisions common to different types of maritime insurance. Articles 408 to 438.

Section 1. On the interests insured. Articles 408 to 412.

Section 2. On insured value, on multiple insurance and co-insurance. Articles 413 to 416.

Section 3. On the risks of navigation. Articles 417 to 420.

Section 4. On conclusion of the contract and duties of the party contracting. Articles 421 to 428.

Section 5. On compensation. Articles 429 to 437.

Section 6. On expiry. Article 438.

Chapter III. On the special provisions of some kinds of insurance. Articles 439 to 467.

Section 1. On ship insurance. Articles 439 to 452.

Section 2. On insurance of goods. Articles 453 to 462.

Section 3. On civil liability insurance. Articles 463 to 467.

Title IX. Procedural specialities. Articles 468 to 500.

Chapter I. On specialities of jurisdiction and competence. Articles 468 to 469.

Chapter II. On arrest of ships. Articles 470 to 479.

Chapter III. On forcible sale of ships. Articles 480 to 486.

Chapter IV. On the procedure to limit liability for maritime credits. Articles 487 to 500.

Title X. Public certification of certain Maritime Law proceedings. Articles 501 to 523.

Chapter I. General provisions. Articles 501 to 503.

Chapter II. On sea protests and travel incidents. Articles 504 to 505.

Chapter III. On liquidation of the general average. Articles 506 to 511.

Chapter IV. On deposit and sale of merchandise and baggage in maritime carriage. Articles 512 to 515.

Chapter V. On files of loss, theft or destruction of the bill of lading. Articles 516 to 522.

Chapter VI. On disposal of altered or damaged commercial paper. Articles 523 to 524.

Additional Provision one. Updating amounts and alternative guarantee mechanisms.

Additional Provision two. Competent bodies to determine the awards and remunerations for salvage and towing.

Additional Provision three. Electronic contracts.

Additional Provision four. Actions of the consolidated text of the General Act for Defence of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, dated 16th November.

Additional Provision five. Alternative systems for resolution of conflicts with consumers.

Additional Provision six. Spanish warships.

Additional Provision seven. Continental Shelf.

Additional Provision eight. Historic ships and replicas.

Additional Provision nine. Special provisions in matters of air navigation.

Additional Provision ten. Notarial and registry fees.

Transitional Provision one. Salvage, towing, finding and extraction proceedings.

Transitional Provision two. Tonnage based shipping companies regime.

Sole Repeal Provision. Repeal of provisions.

Final Provision one. Rotterdam Rules.

Final Provision two. Reform of Act 1/2000, dated 7th January, on Civil Procedure.

Final Provision three. Amendment of the Consolidated Text of the State Ports and Merchant Navy Act, approved by Royal Legislative Decree 2/2011, dated 5th September.

Final Provision four. Amendment of Act 14/2000, dated 29th December, on tax, administrative and social measures.

Final Provision five. Amendment of Section one of the health services rate "Healthcare Rights in Sea and Air Traffic", addendum to Decree 474/1960, dated 10th March, that convalidates fees for healthcare services.

Final Provision six. Competence titles.

Final Provision seven. Clause regarding Gibraltar.

Final Provision eight. Section on Ships on the Register of Moveable Assets and Registration of Ships and Shipping Companies.

Final Provision nine. Authorisation of the Government.

Final Provision ten. Authorisation of the Government to amend Title II of Act 60/1962, dated 24th December, on the regime of rescue, salvage, towing, findings and extraction at sea.

Final Provision eleven. Referral of the Bill to Parliament.

Final Provision twelve. Entry into Force

PRELIMINARY TITLE

GENERAL PROVISIONS

Article 1. *Object and scope of application.*

1. The object of this Act is to regulate the legal situations and relations arising from maritime navigation.

2. In addition to that performed in offshore sea waters, maritime navigation is also considered to include that which takes place on the waters of rivers, canals, lakes or natural or artificial reservoirs when these are accessible by ship from the sea, but only within tidal waters, as well as the navigable reaches of rivers up to where ports of general interest exist.

3. Outside the cases considered in the preceding Section, navigation within inland waters shall be governed by the regulatory legislation for the public water domain and by the other applicable provisions.

Article 2. *Sources and interpretation.*

1. This Act shall be applied as long as it does not oppose the terms set forth in the international treaties in force in Spain and the legal provisions of the European Union that regulate the same matters.

Under supplementary terms, the complementary laws, regulations, practices, and customs related to maritime navigation shall apply. Failing all that, and where resorting to analogy is impossible, Spanish Civil Law shall apply.

2. In all cases, for interpretation of the provisions of this Act, the provisions contained in the international treaties in force in Spain and the convenience of promoting uniform regulation of the matters it forms shall apply.

Article 3. *Navigation by State and war ships*

1. The provisions of this Act shall not apply to ships and vessels of a State, including warships, except if established otherwise.

2. State ships and vessels are those assigned to National Defence and others that are owned or used by the public authorities, as long as these exclusively provide services of a non- business nature.

3. Warships are State ships assigned to the Armed Forces that bear the external distinctive markers of warships of their nationality and that are under the command of an officer duly commissioned by the Government of that State, whose name is registered in the ranks of officers, or in an equivalent document, and whose crew is subject to the discipline of the regular Armed Forces.

TITLE I

ON ADMINISTRATIVE ORGANISATION OF NAVIGATION

CHAPTER I

ON THE SCOPE OF APPLICATION OF POLICING REGULATIONS

Article 4. *Spatial scope of application.*

1. The provisions for policing navigation contained in this Title shall be applicable to all ships within the maritime areas over which Spain exercises sovereignty, sovereign rights or jurisdiction.

2. The terms foreseen in the preceding Section shall be construed to be without prejudice to the powers that may be held by other States pursuant to the applicable treaties, as well as the terms established in this Act for warships and others belonging to a State.

Article 5. *Application to Spanish ships.*

1. Spanish ships shall be subject to the provisions of this Title regardless of the place where they are located and without prejudice to the powers that, pursuant to the applicable treaties, are the remit of other coastal States or that of the port.

2. With the exception of warships, this Title shall be applicable to ships of the Spanish State, without prejudice to the existing exceptions and specialities, or those that may be established by the implementing regulations, in particular with regard to the terms set forth in Articles 7, 8, 10, 16 and 17, or others that might arise from correct performance of the powers assigned to public security or surveillance and repression of unlawful activities.

Article 6. *Application to vessels and naval artefacts.*

1. The provisions of this Title that refer to ships shall also be construed to apply to naval artefacts to the extent that these are in keeping with their nature and activity.
2. Except for specific provision to the contrary, those provisions shall be construed to also apply to vessels.
3. The implementing regulations shall govern the specialities in this field applicable to sports or recreational ships and vessels, as well as others that require such due to their specific functions.

CHAPTER II
ON THE REGIME OF PRESENCE IN MARITIME
INSHORE WATERS AND IN PORT

Article 7. *Entry to port.*

1. All ships may enter the Spanish ports open to national and international maritime navigation, subject in all cases to the specifications contained in this Act and the others of port legislation, safety, customs, borders and immigration, police, health, the environment and fishing, as well as the operating conditions established.
2. Entry of ships to Spanish ports may be prohibited or conditioned for emergency reasons or specific risks to public health, safety of navigation, protection of traffic and the port facilities, repression of illegal fishing or environmental sustainability, according to the terms foreseen in the applicable provisions.
3. Authorisation to enter port shall be granted by the Port Authorities, at the request of the ship-operators, shipping companies, masters or shipping agents, and it shall also be subject to compliance with the legislation and other provisions to which the above Sections referred.

Article 8. *Closing ports.*

1. It is the remit of the relevant Port Authority, pursuant to the provisions in force, to order temporary closure of ports and terminals to navigation by ships, with a prior report by the Maritime Captainty, as well as to adopt the

necessary measures to ensure those decisions receive due international publicity.

2. The Maritime Authorities may provisionally propose prohibition of navigation in ports and their access channels, as well as entry or exit of ships, when so advised by the weather or water conditions, when there are obstacles to navigation, or when there are reasons of protection, emergency, public security, and environmental or public security reasons.

3. That proposal to prohibit may also be formulated or conditioned with regard to ships that, due to being severely not seaworthy, may be a hazard to the safety of persons, property or the environment.

Article 9. *Forced docking.*

1. Notwithstanding the terms set forth in Articles 186 and 187, in the case of forced docking, the ship-operator, master or shipping agent shall notify the Maritime Authorities of the cause, and it shall verify the reasons that justify it and state the formalities and special requisites that, if appropriate, must be fulfilled in such cases.

2. The Maritime Authorities may impose requisites and conditions to enter ports or places of shelter for ships that may potentially pollute, in order to guarantee the security of persons, sea traffic, the environment and assets.

3. The implementing regulations shall detail the criteria, cases, procedures and other particulars required to implement the terms foreseen in this Article.

Article 10. *General regime for visiting and mooring.*

1. The regime for visiting and mooring ships in ports and loading and unloading terminals for merchandise and baggage, for boarding and landing passengers and vehicles, shall be governed by the terms foreseen in the port legislation and, where not foreseen therein, by the provisions of this Act and the other applicable laws and regulations.

2. All foreign ships shall have a shipping agent in Spanish ports, except for recreational vessels, that may be represented directly by the owner or master. The same obligation to have a shipping agent may be established by the implementing regulations for Spanish ships.

Article 11. Stowaways.

1. The master of any ship heading for a Spanish port shall inform the Maritime Authorities enough time in advance of the presence of stowaways aboard. He shall also adopt the appropriate measures to maintain them aboard under fit conditions until arrival in port and, if appropriate, shall proceed according to the provisions in matters of border controls and immigration, to deliver them to the competent authorities.

2. In the event of landing the stowaways due to their situation on the ship being inhumane or degrading, or due to them requiring medical or humanitarian aid, or for their repatriation by the competent authorities, the ship-operator and the shipping agent acting for the ship that has transported them shall be jointly and severally bound to pay the cost of their maintenance, accommodation, legal assistance and interpreter, and repatriation by the competent authorities. In order to guarantee fulfilment of that obligation, the Maritime Authorities may order provision of a sufficient guarantee under the threat of arresting the ship in port.

3. The terms set forth in this Article shall be construed to be without prejudice to the criminal or administrative liabilities that might be incurred by the masters or other members of the crew when there is connivance in boarding stowaways, or when the measures stated in Section 1 have not been adopted.

Article 12. Jurisdiction over foreign ships.

1. Except for the terms foreseen for State ships, the civil and criminal jurisdiction of the Spanish Courts shall extend to all foreign ships while they remain in Spanish ports or other internal waters.

2. To that end, the judicial authority may order the appropriate diligences to be performed aboard, as well as boarding and searching the ship, including its cabins, with no further requisite than notification to the Consul of the flag state as soon as possible.

3. The jurisdiction of the Spanish Courts shall exist even after the foreign ships have left the interior waters and are on passage through the territorial sea, as well as when they are detained outside it when exercising the right of pursuit.

Article 13. *Nuclear propelled ships.*

Without prejudice to the immunity applicable to State ships, the regime of navigation and entry to and mooring in port of nuclear propelled ships shall be governed by the terms set forth in Act 25/1964, of 29th April, on nuclear energy, and by the applicable international treaties.

Article 14. *Ships that transport radioactive substances.*

1. Ships that transport substances involving radioactive or nuclear risks may enter the interior waters and visit open ports according to the technical and operational specifications that may be established by the Government.
2. In particular, before the ship enters the port service zone, the competent bodies of the Administration shall carry out verification of the ship's safety documents, control by dosimeter and others that may be appropriate to protect the environment, and such complementary controls may be performed while the ship is moored in port.
3. If, as a consequence of control, or for any other reason, it is determined that the ship remaining in port may have hazardous effects, the services of the Maritime Authorities shall order the ship to abandon the interior waters within a specific term.

Article 15. *Ships that transport hazardous goods.*

1. Handling and carriage of hazardous goods shall comply with the specifications contained in the applicable international instruments on the matter, including the mandatory codes of the International Maritime Organisation.
2. The implementing regulations shall determine the special conditions for entry and stay in ports by ships transporting such goods, as well as their admission, handling and storage, both on board as well as on land.

Article 16. *Rafting, mooring and anchoring inactive ships.*

1. The Port Authority shall authorise, pursuant to the safety conditions determined by the Maritime Authorities, rafting, mooring or temporary anchorage of inactive ships, assigning the place, period and other conditions to remain, as long as this does not hinder the safety of navigation and port operations, or constitute a hazard to people, assets or the environment.

2. In any event, the Maritime Authorities shall establish the safety crew and may demand a sufficient guarantee to cover damages or losses that might arise during the time of rafting, mooring or anchorage and, where appropriate, the necessary expenses for individuals to subsist on board.

The Maritime Authorities shall also exercise the functions that are the remit of the Port Authority outside the port waters.

3. Should the ship constitute a hazard at any time, the provisions for State ports and the merchant navy, on removal of shipwrecked or sunken ships shall apply.

Article 17. *Use of radio-electronic appliances on board.*

Use by ships of radio-navigation or radio-communication appliances while remaining in internal waters and ports shall be subject to fulfilment of the implementing regulations handed down.

Article 18. *Ship dispatch.*

1. In order to set sail or, in general, to commence navigation, all ships require prior authorisation to depart, that shall be granted by the Maritime Authorities and shall be called “dispatch”, without prejudice to the required prior authorisations that shall be granted to other authorities and in cases of self-dispatch by the master and other modes foreseen by the implementing regulations.

2. Dispatch shall be granted, at the request of the ship-operator, master or shipping agent, as long as the General Declaration is lodged and the ship has the rest of its required documentation and certificates in order. The dispatch may only be refused for a reason pursuant to statute or to the implementing regulations, by Court order or on application by a competent authority.

3. The implementing regulations shall regulate the ship dispatch regime.

4. The implementing regulations shall establish a simplified regime for recreational ships and vessels, for ships dedicated exclusively to navigation in internal waters and for those that cover short and high rotation routes.

CHAPTER III
ON THE GENERAL REGIME OF MARITIME
NAVIGATION

Article 19. *General regime of navigation in the Spanish maritime areas.*

Navigation in the Spanish maritime areas, either for passage, or to enter or exit the ports or terminals on the Spanish coast, shall comply with the provisions of the United Nations Convention on the Law of the Sea, signed in Montego Bay on 10th December 1982, and in all cases shall respect the restrictions and requisites established in this Act and, where appropriate, pursuant to the laws on safety, defence, customs, health, border controls and immigration.

Article 20. *Exceptions to the general regime of navigation in Spanish maritime areas.*

1. The Maritime Authorities may condition, restrict or prohibit navigation in certain spaces in the Spanish maritime areas, for reasons of maritime safety or protection, in particular in cases of naval exercises and operations by the Armed Forces, or whenever passage of foreign ships through the territorial seas is not innocent.

The measures foreseen in the preceding Paragraph may also be adopted for reasons of conservation of the marine biodiversity or the underwater cultural heritage, when the competent authorities have so required pursuant to the laws in force, subject to the procedures contained in the international conventions.

2. Such measures may also be adopted by the competent Ministries, without discrimination of flag and with regard to certain categories of ships, when this is necessary to prevent performance of unlawful activities or conducting any prohibited trade.

3. The implementing regulations may also establish limitations or restrictions on underwater activities that, for conservation of the marine biodiversity or the underwater cultural heritage to prevent the carrying out of unlawful activities.

Article 21. *Stopping and anchoring.*

1. The right to navigation shall not include that of stopping or anchoring outside the service areas of ports, except in cases of force majeure, when

specifically authorised by the Maritime Authorities, or in the case of ships and vessels dedicated specifically to recreation that stop for such a purpose in bays or bathing spots, as long as these are not marked and this does not endanger the safety of life at sea or navigation.

2. Ships bound to stop or anchor in the case of danger or force majeure shall immediately notify the nearest Maritime Authorities by any means.

Article 22. *Flying the flag and submarines.*

1. Ships that sail in the Spanish maritime areas shall fly the flag of a sole State and bear their name and port of enrolment. They shall also bear their flag hoisted in a duly visible place when sailing in interior waters and when moored in a Spanish port or terminal.

2. Foreign ships, except warships, shall fly the Spanish flag beside their own, pursuant to international maritime practice.

3. Foreign submarines and other submergible vehicles shall sail on the surface and with their flag deployed when sailing through internal waters and the Spanish territorial seas.

Foreign submarines proceeding while submerged shall be called on and, where appropriate, obliged to surface. In the case of impediment due to failure, they shall be bound to state this by all possible means.

4. The implementing regulations may establish exemptions to the obligation for vessels to display their markings, name and flag.

Article 23. *Special regime for navigation in the contiguous zone.*

1. In the contiguous zone, the Spanish State shall exercise control over foreign ships to prevent breaches of the customs, tax, health and border control and immigration laws that may be committed in Spanish territory and in the territorial waters, as well as the Spanish criminal and administrative jurisdiction, to penalise those who commit offences against such laws.

2. Unauthorised extraction of archaeological and historic objects found on the seabed or subsoil of water in the contiguous zone shall be considered a breach of the laws and regulations referred to in the preceding Section, as well as of the provisions on underwater cultural heritage.

Article 24. *Navigation by fishing ships.*

1. Navigation by Spanish fishing ships shall be subject, in addition to the general terms of this Act, to the special specifications established in the fishing laws.

2. Except where specifically authorised by the competent Authorities and without prejudice to the provisions contained in European Union Law and in the applicable treaties, it is hereby prohibited for foreign ships to fish in Spanish interior waters, and in the territorial seas. Any fishing activities carried by those ships in the territorial seas shall not be considered innocent passage.

3. The Government shall ensure that when foreign ships exercise their rights and fulfil their duties in the exclusive economic zone they duly take into account the rights of the Spanish State and fulfil the provisions of this Act and those of the fishing legislation, that comply with European Union and International Law.

4. Except if authorised by the Fishing Authorities, foreign ships on passage through the Spanish maritime areas may not have their fishing nets deployed or ready for immediate operation.

Article 25. *Navigation by research ships.*

1. Performing scientific research activities from foreign ships within the Spanish maritime areas, as well as those performed by foreign entities on board Spanish ships in those zones, is subject to authorisation from the competent Authority, pursuant to the procedure foreseen in the implementing regulations.

2. In all cases, the authorisation shall be on condition that the research be performed for exclusively peaceful ends and that the results thereof are reported, contribute to the progress of knowledge of the marine environment and that does not involve danger to the safety of navigation or the environment, nor hinders exercise of the sovereign and State rights.

3. Unauthorised research is not included in the right of innocent passage through the territorial sea.

Article 26. *Cessation of research activities.*

The administrative authorising, by reasoned resolution, may order suspension or cessation of research activities due to breach of the

conditions established in the authorisation granted at any time and without the right to any compensation whatsoever for the researchers.

Article 27. *Rules of course, steering and navigation in an ice zone.*

1. All ships, without exception, shall adjust their navigation to fulfilment of the rules of lights, signals, course and steering contained in the applicable provisions, in particular in the international provisions to prevent collision at sea.

2. The master of any ship that has been informed of the presence of ice on his course or near to him shall be bound, during the night, to sail at a moderate speed, or to modify his course away from the hazardous zone.

Article 28. *Publicity of hazards and aids to navigation.*

1. The competent administration shall be responsible for establishment and maintenance of maritime signalling, as well as broadcasting periodic nautical radio warnings of transitory circumstances that amount to an imminent hazard to navigation.

2. The Ministry of Defence shall be responsible for preparation of nautical charts and complementary publications (Sailing Directions), for publishing all information on the different aids for navigation systems (Lighthouse and Fog Signals and Radio-signal Book), as well as maintaining these up to date during the periodic publication of Notices to Mariners.

Article 29. *Notices by masters.*

1. The masters of the ships are bound to inform the Maritime Authorities of failures or deficiencies noted in the maritime signals and in other aids to navigation, as well as provide warnings of ice or shipwrecks sighted on their journey and that might amount to an immediate hazard to navigation.

2. The masters shall also issue warnings in the event of them encountering extraordinary storms and any other causes that might be a hazard to navigation.

Article 30. *Organisation systems and maritime traffic systems.*

1. In the interest of safety of navigation and pursuant to the applicable international regulations, the Government shall establish the procedure to appoint, replace or suppress systems for maritime traffic organisation and

mandatory notification for ships and the maritime traffic systems, within the Spanish maritime areas.

2. Use of such systems shall be mandatory for all ships once they have obtained the international approval and publication that may be necessary as appropriate.

3. In any event, use of the maritime traffic systems may only be mandatory when located in internal waters or in the territorial sea and, in the event of approval by the International Maritime Organisation, within the exclusive economic zone.

Article 31. *Special rules for naval artefacts and fixed platforms.*

1. The location of naval artefacts and fixed artificial platforms or structures in the Spanish navigation zones shall be duly marked according to the directions given by the port State.

2. Safety of navigation zones shall be established around such artefacts or platforms in a radius that shall not exceed five hundred metres from their exterior edge, although they may go further when complying with international provisions that may be applicable if appropriate.

3. In the event of such installations being in port waters, the Port Authorities shall exercise such functions.

Article 32. *Plans for preparation and to combat pollution.*

The Maritime Authorities shall establish a national plan for preparation and to combat maritime pollution to deal promptly and effectively with contamination events by petrol or other noxious or potentially harmful substances.

Article 33. *Obligation to notify acts of pollution.*

1. The masters of Spanish ships shall notify the Spanish Maritime Authorities and the competent authority of the nearest coastal State without delay of all pollution events by petrol, or by noxious or potentially hazardous substances, that come to their knowledge during navigation, pursuant to the procedures set out in the implementing regulations.

2. The same obligation shall affect the masters of foreign ships navigating the Spanish maritime areas.

Article 34. *International collaboration.*

1. Without prejudice to the terms set forth in the applicable specific treaties, when the Spanish Maritime Authorities are required by another coastal State in whose waters acts of pollution have taken place, they shall collaborate with the authorities of that State when this is possible and reasonable.

2. The assistance may consist of participation in operations to combat pollution or in intervention in proceedings to investigate the claim and in inspection of the documents, or of the ship supposedly responsible for the pollution, when it is in port or in the Spanish internal waters. Such assistance shall also be provided at the request of the flag State.

3. When there is a real danger of pollution of the Spanish maritime areas, which may spread to the waters of another State, the latter shall immediately be informed.

4. The collaboration foreseen in the preceding Sections may be subjected to the principle of reciprocity in all cases.

Article 35. *Special measures to be adopted in the contiguous zone.*

1. Whenever a competent Public Administration has knowledge that a foreign ship located in the contiguous zone has breached, is breaching or intends to breach the laws and regulations referred to in Article 23, it shall be entitled to intercept it, to request information or perform the appropriate inspection.

2. Where necessary, other necessary and proportional measures may be adopted to prevent or penalise the offence, including arrest and escorting it to port.

Article 36. *Undue detention and compensation.*

1. The Maritime Authorities shall do everything possible to prevent ships suffering unnecessary detention or delay due to measures taken as foreseen in this Chapter.

2. The unnecessary arrest or delay to which the preceding Paragraph refers shall bind the Administration responsible to measures to compensate the damages and losses that may be proven.

CHAPTER IV
ON THE RIGHT OF INNOCENT PASSAGE THROUGH
THE TERRITORIAL SEA

Article 37. *Right of innocent passage.*

1. Navigation through territorial sea by all foreign ships, including State ones, shall be subject to the regime of innocent passage.

Navigation through the Straits of Gibraltar shall be governed by the terms set forth in Part III of the United Nations Convention on the Law of the Sea of 1982.

2. To that end, passage shall be swift and uninterrupted, without threatening peace, public order or the safety of Spain.

3. Stopping and anchoring during passage shall be performed pursuant to the terms foreseen in Article 18 of the United Nations Convention on the Law of the Sea and Article 21 of this Act.

Article 38. *Compliance with laws and regulations.*

Ships that exercise the right of innocent passage through the territorial sea shall be bound to abide by the United Nations Convention on the Law of the Sea, as well as by the provisions of this Act and other laws and regulations on navigation, border controls and immigration, customs, health and others of public security, as well as those related to protection of the marine environment and the underwater cultural heritage.

Article 39. *Prohibitions.*

1. In addition to the cases foreseen in the United Nations Convention on the Law of the Sea and other applicable international conventions and, except if authorised by the Maritime Authorities, passage of foreign ships through the territorial seas shall not be considered innocent and shall be prohibited when performing marine scientific research, underwater activities, as well as those that may damage underwater cables and pipes, or installations and equipment serving navigation, research, measurement of the environment, or exploitation of marine resources.

2. Passage of foreign ships through the territorial seas shall not be considered innocent when they perform any act of intentional and severe pollution.

Nor shall passage of ships be deemed innocent when their state of failure or seaworthiness amount to a serious threat of causing severe damage to the environment.

3. Except in the event of failure, or of search and rescue operations, the following are hereby prohibited; use of ancillary vessels; issue of sound or light signals that are not foreseen in the rules and regulations on maritime safety and signalling and to prevent collisions, and any other activities that are not directly related to the passage.

4. The above prohibitions shall also be applicable in internal waters, pursuant to the terms foreseen in the provisions applicable thereto.

Article 40. *Ships that involve special risks.*

1. Ships that transport radioactive or other hazardous or noxious substances shall have documents on board and observe the special precautionary measures foreseen for these in the applicable treaties.

2. Such ships shall pass through the lanes, devices and systems established according to the terms set forth in Article 30 and following the special navigation instructions that, if appropriate, may be issued by the Maritime Authorities.

Article 41. *Encumbrance of foreign ships.*

Foreign ships shall only be bound to pay the services they have been provided during their passage through the territorial seas. According to the terms foreseen in port legislation, it shall be deemed that all ships passing through the territorial sea use the maritime signalling service.

Article 42. *Suspension of innocent passage.*

1. In order to defend the general interest and, in particular, to safeguard safety of navigation, the Government may temporarily suspend innocent passage through certain areas of the territorial sea but without discrimination of flags.

2. The Government shall ensure that adoption of such measures obtains due international publicity.

Article 43. *Exercise of the civil jurisdiction.*

1. Foreign ships that pass through the territorial sea cannot be detained or re-routed to exercise civil jurisdiction regarding the individuals located on board thereof.

2. Injunctive or enforcement measures may be taken with regard to such ships when these have stopped or have voluntarily anchored during passage through the territorial sea, as well as with regard to those sailing through the territorial sea after having left the internal waters of the State.

3. Such measures may also be adopted with regard to ships on lateral passage, but only due to obligations acquired and for liabilities that may have been incurred during such passage.

Article 44. *Exercise of the criminal jurisdiction.*

The Spanish criminal jurisdiction in relation to foreign ships that are in the Spanish territorial seas shall be governed by the terms established in the Organic Act on the Judiciary and the applicable treaties and, especially, in Section 1 of Article 27 of the United Nations Convention on the Law of the Sea of 1982.

The foregoing does not affect the possibility of the competent Spanish jurisdictional bodies ordering detentions or performing investigations on board a foreign ship, in relation to an offence committed on board that ship during its passage, as long as it passes through the territorial sea from internal waters.

Article 45. *Intervention at the request of the master or Consul.*

The competent Spanish jurisdictional bodies may proceed to order detentions or perform investigations in relation to offences committed on board a foreign ship at the request of the master of the ship or the diplomatic or Consular representative of the flag State.

Article 46. *Notification to a diplomatic agent.*

1. The competent Court shall notify a diplomatic or Consular representative of the flag State, if possible, of the commencement of all diligences and actions carried out to exercise the criminal jurisdiction.

2. Such notification shall also be served when the criminal investigation commences at the request of the master of the ship and by virtue of the terms set forth in the preceding Article.

Article 47. *Over-flight by foreign aircraft.*

By virtue of the terms set forth in the treaties or conventions with other States, or by means of special permission, innocent transit of foreign aircraft may be authorised through the air space over above the internal waters and territorial seas.

CHAPTER V
ON THE RIGHT TO PURSUE AND INSPECT

Article 48. *Exercise of the right to pursue and inspect.*

The rights to pursue and inspect shall be exercised for the reasons and in the manner established in the United Nations Convention on the Law of the Sea and other applicable international conventions.

Article 49. *Escort to a Spanish port.*

Pursuant to the provisions of this Chapter, the ship, vessel or artefact detained may be escorted to the nearest Spanish port, for the purposes of performing the relevant investigation to ascertain the facts, impose penalties and demand the relevant liabilities that may be appropriate.

CHAPTER VI
ON SHIPS OF FOREIGN STATES

Article 50. *Immunity.*

With the exceptions foreseen under International Law and in this Act, foreign State ships shall enjoy immunity, only being subject to the jurisdiction of their flag State.

Article 51. *Navigation through interior waters and entering port.*

1. Foreign warships may enter maritime interior waters and visit open ports with prior authorisation, in each case, of the Ministry of Defence, that shall be processed through the diplomatic channels pursuant to the provisions set forth in the treaties entered into by Spain, without prejudice

to being subject to the specifications contained in this Act and in other laws on ports. In the case of other State ships, authorisation from the Maritime Authorities shall suffice, that shall be secured on a case-by-case basis and prior to arrival of the ship. The mooring or anchoring place shall be agreed with the relevant Port Authority.

2. An exception is made to the authorisations foreseen in the preceding Section in the case of failure, bad weather or another urgent, decisive cause regarding the need for forced docking for safety reasons. In these cases, the master or commander of the ship shall report, without delay and by all possible means, to the nearest body of the Maritime Authorities or of the Navy, if it is a warship, and it shall follow its instructions until the relevant authorisation by diplomatic channels is processed.

3. In cases in which State ships or submarines that involve nuclear risks are involved, the provisions contained in Articles 13 and 14 shall apply.

Article 52. *Activities that are prohibited in the territorial sea.*

Passage of foreign State ships through the territorial sea shall not be considered innocent when it involves performance of manoeuvres or other exercises with weapons of any kind; to collect intelligence by electromagnetic means or to launch, receive or board any kind of aircraft or military devices.

Article 53. *State submarines.*

In the territorial sea and in the interior waters, foreign State submarines shall fulfil the terms foreseen in Article 22, except if they are duly authorised to participate in military exercises or manoeuvres.

Article 54. *Measures regarding foreign State ships.*

1. Foreign warships that are in Spanish internal waters and territorial sea and that infringe the provisions of this Act shall be required by the Navy to desist from their behaviour and, where appropriate, be forced to leave such waters without delay.

2. The flag State of the foreign ship shall be responsible for any loss or damage that is a consequence of breach of the Spanish laws and regulations, especially those related to passage through the territorial sea and mooring in ports and other internal maritime waters.

Article 55. *Special provisions.*

The Government shall regulate navigation, admission and stay by foreign State ships in the Spanish maritime areas, taking into account the provisions of this Act and of International Law.

TITLE II

ON VEHICLES FOR NAVIGATION

CHAPTER I

ON SHIPS, VESSELS AND NAVAL ARTEFACTS

Article 56. *Ship.*

A ship is defined as any vehicle with the structure and capacity to sail on the sea to transport individuals or things, which has a full deck and a length equal to or greater than twenty- four metres.

Article 57. *Vessel.*

A vessel is defined as any vehicle that lacks a full deck and has a length under twenty- four metres, as long as, in one case and another, it is not classified by the implementing regulations as a minor unit according to its characteristics of propulsion or use.

Article 58. *Naval artefact.*

1. A naval artefact is defined as any floating construction with capacity and structure to house individuals or things, the specific purpose hereof is not navigation, but rather to remain in a fixed place on the waters.

2. Naval artefact status shall also be given to a ship that has lost its condition as such due to having been moored, beached or anchored at a fixed place and assigned, permanently, to activities other than navigation.

Article 59. *Fixed platform.*

1. A fixed platform is defined any structure or installation that is liable to perform operations to extract marine natural resources, or to be assigned to any other activities, located on the seabed, anchored or resting thereon.

2. Due to it being permanently attached to the bottom of the waters, the fixed platform is considered as an immoveable asset pursuant to the Spanish Civil Code.

Article 60. *Nature and identification of a ship.*

1. Ships are a recordable moveable asset, comprised of integral components and fittings.

2. Integral components are the elements that constitute the structure of the ship, so they cannot be separated from it without detracting from the entity itself.

3. Fittings refer to the elements assigned to serve the ship permanently, but that are not integrated in its structure.

4. A ship conserves its identity even when its integral components or fittings are successively substituted.

5. A ship is identified by its name, licence, International Maritime Organisation (IMO) number, flag, gauge and any other data that the implementing regulations may determine.

Article 61. *Accessories.*

Accessories are the consumable elements assigned to the ship on a temporary basis.

Article 62. *Legal transactions and rights to a ship.*

1. Legal transactions related to a ship, the property thereof and other rights that befall it shall include its integral components and fittings, but not the accessories thereof, except if otherwise agreed.

2. Notwithstanding this, it does not include belongings registered at the Register of Moveable Assets, on behalf of a third party, or the property of which has been acquired by the latter on a prior date to that of the relevant legal transaction or act that generates the encumbrance.

Article 63. *Acquisition of a ship.*

1. Acquisition of the ship, vessel or naval artefact shall be recorded in a written document and, in order to take effect with regard to third parties it

shall be registered in the Ships Section at the Register of Moveable Assets, by virtue of the documents foreseen in Article 73.

2. Ownership of the ship shall also be acquired by possession in good faith, continued over three years, with a duly registered and just title. When any of these requisites are missing, ten years of continued possession shall be required.

Article 64. *Co-ownership of vehicles for navigation.*

Ordinary co-ownership of a ship, vessel, naval artefact or fixed platform shall be governed by the general provisions of Spanish Civil Law, except in a case of naval co-ownership of ships and vessels that shall be governed by the terms set forth in Chapter II of Title III.

CHAPTER II

ON REGISTRATION AND DOCUMENTATION OF SHIPS

Article 65. *Registration and enrolment.*

1. Ownership and encumbrance of ships, vessels and naval artefacts shall be registered in the Ships Section at the Register of Moveable Assets, in order to provide security in their legal relations.

2. Enrolment of the ship or vessel lies with the Maritime Authorities through the Register of Ships and Shipping Companies and it is designed to maintain identification and administrative control of Spanish ships and vessels. The Register of Ships and Shipping Companies and the Special Register of Ships and Shipping Companies shall be governed by the terms established in this Act and in the State Ports and Merchant Navy Act, as well as the relevant implementing regulations.

Article 66. *Co-ordination between Registers.*

1. The entries performed at the Ships Section at the Register of Moveable Assets shall be co-ordinated with annotations that are made on the entry sheet of the Register of Ships and Shipping Companies by notifications that shall be issued directly in the manner determined by the implementing regulations.

2. The holders of both Registers shall only have power to issue certificates of the content that is inherent to the respective entries under their charge,

but not those recorded by communications arising from mandatory co-ordination between both bodies. Notwithstanding this, if an application is submitted to a body for certification regarding particulars held at the other, it shall admit the application and demand the competent Register to issue it, in order for the applicant to be able to obtain all the formal publicity regarding the ship from a sole body.

Section 1. On inscription in the Ships Section at the Register of Moveable Assets

Article 67. *Applicable legislation.*

The Register of Moveable Assets, in the Ships Section, shall be governed by the terms of this Act, its implementing regulations and other complementary provisions, and in all matters not foreseen therein, by the Mortgage Act and implementing regulations, which shall govern everything applicable thereto under supplementary terms.

Article 68. *Competence.*

- 1.** The Register of Moveable Assets, Ships Section, shall be kept pursuant to the orders of the Ministry of Justice, under the charge of a Land and Business Registrar and located in the towns determined in the registry districts.
- 2.** The first inscription of the ships shall be performed at the Registry assigned in the district of the place where it was enrolled and, for ships under construction, in that of the district where they are built.
- 3.** A change in registration of the ship shall not necessarily involve inscription thereof with another Register different from that where it is registered.

Article 69. *Recordable assets.*

- 1.** It is mandatory for ships, vessels and naval artefacts under the Spanish flag to be registered at the Register of Moveable Assets.
- 2.** However, it shall be discretionary to register publicly owned ships, vessels and artefacts.

Registration of recreational or sports ships and vessels shall also be discretionary. The guarantee rights, reservation of ownership and

prohibitions on disposals, financial leases, and other recordable encumbrances imposed on these may only be opposable before third parties if registered at the Register of Moveable Assets, in which case they shall be registered without any further requisites than those foreseen to establish the guarantee concerned. Enrolment at the Register of Moveable Assets of recreational ships and vessels that are arrested or subject to judicial or administrative seizure shall be performed by virtue of the same judicial or administrative resolution that decrees the arrest or prohibition on disposal.

Pursuant to the implementing regulations, the obligation to register on the Ships Section at the Register of Moveable Assets may be waived with regard to certain vessels and artefacts that are already enrolled or registered on other lists or registers.

3. Ships under construction may be registered in any case, but their inscription shall be mandatory when they are to be mortgaged pursuant to the terms foreseen in this Act. To these ends, the Ships Section at the Register of Moveable Assets shall keep a special book to register acts and contracts regarding ships under construction until, once the construction is over, these are transferred to the built Ships Book in the manner to be determined by the implementing regulations.

Article 70. *Object.*

1. The Ships Section at the Register of Moveable Assets shall be kept by the real folio system.

2. The object of the Register is inscription or annotation of acts and contracts related to ownership and other in rem rights with reference to ships. It shall also register or annotate the constitution, amendment and cancellation of encumbrances or limitations on disposal, judicial or administrative arrests that befall ships or vessels, leases and other legal situations that are determined by the implementing regulations or that are foreseen in international conventions or special provisions.

Article 71. *Inscription and closure.*

1. The first inscription of each ship on the Register shall be of ownership and it shall be performed by virtue of the certification of the entry sheet issued by the Register of Ships and Shipping Companies, accompanied by the title of acquisition, that shall be recorded on any of the documents stated in Article 73, except in the case of recreational or sporting ships and

vessels that are mass produced, or ships from countries whose laws do not require such documentation.

2. In order to be able to register or have any other act, transaction or judicial or administrative resolution annotated at the Registry with regard to the ship, it shall be necessary for the person who grants it, or that against which it is addressed to have its right previously registered.

3. Except if the Registry has charges in force, the real folio of the ship shall be cancelled by means of a closure diligence after the last inscription, performed by virtue of the notification by the Register of Ships and Shipping Companies that records the removal of the ship.

4. The implementing regulations shall regulate the registry specialities for situations of temporary change of flag.

Article 72. *Formal publicity.*

1. The Ships Section at the Register of Moveable Assets is public. Any person may obtain information on the content of its entries in the manner determined by the implementing regulations.

2. The ownership and existence or freedom of charges or encumbrances of ships may only be accredited to the detriment of a third party by means of certification by the registrar, except as set forth in this Act for maritime liens.

3. Simultaneous to returning the titles registered, the registrar shall issue a certification of ownership and charges in a separate document.

Article 73. *Principle of public deeds.*

1. The inscription on the Register shall be performed by virtue of a public deed, policy under notarial intervention, definitive judicial resolution or administrative document issued by an officer with sufficient powers by virtue of his office.

2. A Spanish Notary Public or Consul of Spain abroad who authorises a public deed or intervenes in a policy regarding ships, vessels or naval artefacts shall obtain the appropriate information from the Ships Section at the Register of Moveable Assets on the status of ownership and charges, and this shall be presented by him, directly or by testimonial, in the manner and by the means that are established by regulation.

Article 74. *Principle of legality.*

The registrars shall act under their responsibility to classify the legality of the extrinsic forms of documents of all kinds by virtue of which the inscription is requested, as well as the capacity and legitimation of all those who granted or signed them and the validity of the content of such documents, from what arises therein and from the registration entries.

Article 75. *Principle of legitimation.*

The content of the Registry is presumed to be exact and valid. The entries at the Registry are under the safeguard of the Courts and produce full effects until a judicial declaration of their incorrectness or nullity is not registered.

Article 76. *Principle of public registry evidentiary value.*

An inscription does not convalidate acts or contracts that are null and void pursuant to the laws. A declaration of incorrectness or nullity shall not affect the rights of third parties that fulfil the requisites established in Article 34 of the Mortgage Act.

Article 77. *Principle of non-opposition.*

Acts subject to inscription that are not duly registered or annotated shall not be to the detriment of third parties in good faith.

Section 2. On documentation of Spanish ships

Article 78. *Documentation of Spanish ships.*

1. In addition to certificates and documents related to safety of navigation, combating maritime pollution, exterior health, customs regime and others that are relevant to Spanish laws and the international conventions to which Spain is a party, all Spanish ships that shall carry the Registration Certificate, Certificate of Seaworthiness, Dispatch and Crew List, Captain's Log and Engine Room Log, on board and, where appropriate, the Ship's Log and the Insurance Certificates on board, without prejudice to the existing exceptions and specialities, or those that may be established in the implementing regulations with regard to State ships and other specific categories of vessels.

2. The documents stated in the preceding Section shall comply with the models that are approved by the Maritime Authorities.

3. The implementing regulations shall establish a simplified regime of documentation for recreational or sports ships and vessels.

Article 79. *Certificate of Registration.*

The Certificate of Registration shall literally record the content of the entry recorded on the relevant sheet and it shall be renewed every time any amendment takes place. The Registration Certificate proves that the ship is legally registered in Spain and it shall be produced at the request of the competent authorities of the Spanish Maritime Authorities, of the coastal State or the Port State.

Article 80. *Certificate of Seaworthiness.*

The Certificate of Seaworthiness shall certify the Spanish nationality of the ship and that it has been authorised to sail the seas flying the Spanish flag. It shall also certify the identity of the master, or the person to whom command of the ship has been granted.

Article 81. *Dispatch and Crew List.*

1. The Dispatch and Crew List shall evidence the route the ship is covering, as well as the fact that it has set off with prior fulfilment of all the legal and regulatory requisites for dispatch.

2. The List shall also state the identity, nationality, place on board, qualifications, skills certification and dates of enrolment and release of all the members of the crew, in addition to the specialities foreseen by the implementing regulations to attend to the kind of navigation.

Article 82. *Captain's Log.*

In addition to the circumstances established in other laws and regulations, the Captain's Log shall report all relevant incidents that occur on each voyage. In particular, it shall record the acts by the master when performing public duties.

Article 83. *Ship's Log.*

On ships where two or more bridge officers are enrolled, a book called a Ship's Log shall also be kept, in which the duty watchmen shall record all nautical and weather incidents that arise during navigation.

Article 84. *Engine Room Log.*

The Engine Room Log shall record the operating, maintenance, failures, repairs regime and, in general, all incidents that refer to operation of the machines and other elements and installations that are the competence of the engine room.

Article 85. *How the books are to be kept.*

1. The Captain's Logs and the Engine Room and Ship's logs shall be kept numbered, signed and sealed, sheet by sheet, by an official of the Maritime Authorities and they shall not contain annotations between the lines, erasures or amendments. The entries shall be successive and dated, signed by the master for the Captain's Log, by the Watch Officers in the Ship's Log and by the Head Engineer in the Engine Room Log.

2. The implementing regulations may establish a regime of keeping the books on computer media, or other techniques of a similar nature.

Article 86. *Keeping the books.*

1. The books referred to in the preceding Article shall be kept for one year from the last entry made, notwithstanding any change of name, enrolment, ownership or flag of the ship.

2. In cases of changes of ownership or flag, the books shall be deposited at the offices of the Maritime Authorities of the last port of enrolment.

Article 87. *Publicity of the books.*

The master shall issue a certified copy of the relevant entries in the Captain's Log to all persons who allege a legitimate interest. In the case of refusal, the party concerned may address the Maritime Captaincy of the zone where the ship is located, or that of its enrolment, in order to oblige the master or ship-operator to issue and deliver the copy requested through it. The Captaincy shall process that application except if the applicant patently lacks a legitimate interest.

CHAPTER III
ON THE NATIONALITY OF SHIPS

Article 88. *Ship registration.*

Registration is the act that grants the right to fly the Spanish flag. All ships registered on the Register of Ships and Shipping Companies shall fly the flag of Spain.

The conditions to grant registration are governed by the terms set forth in the provisions of the Merchant Navy.

Article 89. *Navigation under the Spanish flag.*

Navigation under the Spanish flag shall take place once the Registration Certificate is obtained. A provisional permit may be issued for the time required for the ship acquired abroad to be able to complete the necessary voyages to reach a Spanish port.

Article 90. *Effects of registration.*

Ships that are duly licensed and registered in Spain shall have Spanish nationality for all purposes.

Article 91. *Prohibition of double nationality and double registration.*

1. Notwithstanding cases of temporary registration considered pursuant to this Act, a ship may not be simultaneously registered on the Register of Ships and Shipping Companies and on the shipping register of another State or States.

2. Ships registered in Spain shall only fly the Spanish flag and may not change this except by the procedure established for being struck off pursuant to the relevant provisions.

Article 92. *Loss of original nationality.*

1. A ship shall not receive a provisional permit or registration until the authority of the former foreign register has evidenced that it has been struck off by issuing the relevant certificate.

2. However, inscription may be performed or the provisional permit may be issued when the original registering authority has issued a certificate evidencing that the ship shall be struck off that register at the very moment and on the same date as the new registration is performed.

Article 93. *Regime of in rem guarantees in the case of definitive change of flag.*

1. Except as set forth in Article 484, striking the ship off from the Register of Ships and Shipping Companies for definitive registration abroad shall not be permitted unless all the mortgages and other charges and

encumbrances registered in the Ships Section at the Register of Moveable Assets have previously been cancelled, or a record has been made at that same Register of a written consent being granted by all the holders of such mortgages, charges or encumbrances.

2. Likewise, acquisition of Spanish registration shall be subject to consent by all the holders of registered encumbrances that have not been cancelled at the register of origin.

Article 94. *Temporary change of flag.*

1. Spanish ships leased by a resident outside of Spain may be authorised to temporarily register in the State of residence of the lessee for the term of the lease agreement.

2. Reciprocally, foreign ships taken on lease by residents in Spain may be authorised to fly the Spanish flag for the time the agreement remains in force.

3. The regime of temporary change of registration foreseen in this Act shall also be applicable to agreements other than those of lease that entail temporary possession of the ship.

Article 95. *Commencement and conclusion of temporary registration.*

1. In the event of temporary registration of ships in Spain, the Register of Ships and Shipping Companies shall not perform a temporary annotation on the entry sheet until it has ascertained suspension of the nationality and right to fly the flag on the register of origin.

2. The Maritime Authorities shall notify the previous flag State of the moment when the temporary registration in Spain ceases.

Article 96. *Regime of in rem guarantees in the case of temporary change of flag.*

1. No temporary change of flag shall be authorised for ships registered in Spain until they have cancelled all the mortgages and other charges and encumbrances registered or until written consent is secured from the holders of such mortgages, charges or encumbrances, pursuant in all cases to Community Law and applicable conventions, in particular the terms set forth in the International Convention on Maritime Liens and Mortgages, done at Geneva, on 6th May 1993.

2. For the purposes set forth in the preceding Section, the Register of Ships and Shipping Companies shall register an annotation on the relevant sheet for the ship, with notification to the Ships Section at the Register of Moveable Assets, stating the State whose flag the ship has been authorised to fly temporarily. It shall also require the authority in charge of the register of the State whose flag the ship has been authorised to fly to record a note of reference that the ship is registered in Spain.

3. Temporarily granting the use of the Spanish flag to foreign ships shall be on condition that the parties concerned lodge certification before the Register of Ships and Shipping Companies, issued by the register of origin, to evidence the existing list of mortgages, charges and encumbrances, as well as consent for a temporary change granted by the relevant creditors.

4. Temporary change of flag shall not affect the specification of the law applicable to the mortgages and other encumbrances registered, that shall continue to be that of the registration the ship had on constituting the mortgage and other charges and encumbrances.

CHAPTER IV ON THE SAFETY OF SHIPS AND CLASSIFICATION COMPANIES

Article 97. *Safety requisites of Spanish ships.*

The safety requisites and those related to prevention of pollution by Spanish ships and vessels shall be determined and controlled according to the nature and purpose of the services provided and the navigation they perform.

Article 98. *Safety control of ships.*

Technical control of the safety requisites and those required to prevent pollution shall be performed by the competent bodies of the Maritime Authorities through the regulatory inspection and control plans and programmes established.

Article 99. *Cost of inspections.*

Inspections of ships or vessels, whatever their nature and purpose, shall be performed at the expense of the ship-operator, except if they prove unwarranted.

Article 100. *Detention of the ship.*

Should the inspections or controls stated in the preceding Articles show the ship or vessel is not seaworthy or does not comply with the safety and contamination provisions, provision of its services or navigation may be suspended, until the ship-operator has corrected the defects.

Article 101. *Issue of safety certificates. Authorised organisations.*

1. The Maritime Authorities shall grant the relevant safety and pollution prevention certificates to Spanish ships and vessels that comply with the conditions foreseen in the applicable laws.
2. The Maritime Authorities may authorise reputable organisations to perform material actions and, where appropriate, to issue or renew the relevant certificates, in the cases and conditions foreseen in the implementing regulations.

Article 102. *Display of the certificates.*

Ship safety and pollution prevention certificates shall be displayed on board, in a properly visible and easily accessible location.

Article 103. *Effect of the certificates.*

1. The certificates issued presuppose the correct state of the ship with regard to its object, except for proof to the contrary.
2. Lack or expiry of the certificates means that the ship shall be prevented from navigation or performing the services for which it is intended, with the exceptions that the implementing regulations may establish in special circumstances.
3. The liability for lack or expiry of the ship's certificates shall lie with the ship-operator and, pursuant to subsidiary terms, with the persons appointed pursuant to the provisions set forth in the International Safety Management Code (ISM).

Article 104. *Inspection of foreign ships.*

The Maritime Authorities shall inspect foreign ships and vessels departing from Spanish ports in the cases foreseen in the international treaties and conventions, in the European Union provisions and, in all cases, when

there are reasonable doubts concerning their seaworthiness or those concerning protection of the marine environment or compliance with the Maritime Labour Convention.

Article 105. *Detention of foreign ships.*

Pursuant to the terms established in the provisions in force, in cases when the inspectors declare the ship or vessel may not sail or perform its service under due conditions of safety of the individuals aboard and for the environment, the Maritime Authorities may prevent its departure, performance of its activity, or adopt the appropriate measures, until correction of the defects found, reporting this to the Consul of the flag State.

Article 106. *Function and responsibility of classification companies.*

1. By means of a classification contract, the classification company certifies that a ship or any of its components or fittings complies with the terms established in the relevant class rules.

2. Classification companies shall be held liable for damages and losses caused to those who contract with them and that are a consequence of lack of diligence by them in inspecting the ship and in issuing the certificate.

3. The liability of classification companies to third parties shall be determined pursuant to Spanish Civil Law, without prejudice to the applicable International and Community Law provisions.

Article 107. *Inspection and certification of naval artefacts.*

The implementing regulations shall determine the specialities regarding the regime of inspection and certification of naval artefacts.

CHAPTER V ON SHIPBUILDING CONTRACTS

Article 108. *Concept and regime.*

1. By means of a shipbuilding contract, one party commissions the other to build a ship, in exchange for a price. All or some of the materials may be contributed by any of the parties to the contract.

2. Except pursuant to the terms foreseen in Section 4 of Article 113, the rules of this Chapter shall only be applicable in the absence of a pact freely agreed by the parties.

3. The rules of this Chapter shall be applicable under supplementary terms to naval repair or refurbishment contracts when their importance justifies such.

Article 109. *Form of the contract.*

The shipbuilding contract shall be formalised in writing and shall be notarised in a public deed when it is to be registered at the Register of Moveable Assets.

Article 110. *Acquisition of ownership.*

1. Ownership of the ship under construction remains with the builder until the moment it is delivered to the principal, except if the parties agree to change this at a subsequent moment.

2. The materials and equipment supplied by the principal are considered its property until the moment they are incorporated to the ship.

Article 111. *Obligation to build.*

Ship construction shall be carried out according to the characteristics agreed in the contract and, where appropriate, the specifications and drawings, and in the event of dispute, the contract shall prevail over the specifications, and the latter over the drawings.

Article 112. *Obligation to deliver and receive.*

1. The ship shall be delivered at the place and on the date agreed, after having completed the sea trials and complying with the other conditions, accompanied by the necessary documents for its dispatch.

2. Delay due to negligence that exceeds thirty days shall give rise to compensation for damages and, if it exceeds one hundred and eighty days, to termination of the contract, if the delay, in both cases, is unreasonable.

3. The principal may refuse to receive the ship in the case of severe breach of the specifications agreed that do not arise, directly or indirectly, from

acts or omissions due to it, notwithstanding its right to exercise the relevant actions.

4. In the case of breach of the obligation of reception, the principal shall be bound to compensate the damages and losses agreed in the contract or, failing that, those that have effectively arisen.

Article 113. *Liability of the shipbuilder.*

1. The shipbuilder shall correct the defects in the ship that are not manifest, or that could not have been reasonably detected during construction, or at the moment of delivery, as long as these are reported within the term of one year thereafter. This obligation shall not cover flaws that are a consequence of bad quality or inadequate design of the materials or elements provided by the principal.

2. When the flaws or defects make the ship inadequate for its normal use, the principal may opt to terminate the contract.

3. The terms set forth in this Article do not exclude the obligation of the builder to compensate damages and losses, if appropriate, except if the contract provides otherwise.

4. The liability established in Section 1 of this Article shall not be liable to exoneration in the case of wilful misconduct or gross negligence of the builder.

Article 114. *Payment of the price.*

1. The price shall be paid at the moment of delivery. If partial payments have been made as the work progresses, the principal may request the builder to issue the relevant certification.

2. In the event of loss of the ship during construction, the builder may not demand payment of the price, unless the destruction is due to the bad quality or inadequacy of the materials or elements supplied by the principal, or if there has been delay in receiving such.

3. If the principal has agreed to establish a guarantee in favour of the builder to cover its obligation to pay the price, breach thereof shall allow the builder to terminate the contract or demand fulfilment thereof and, in both cases, to demand compensation of the damages caused.

Article 115. *Prescription of actions.*

1. Actions arising from breach of the building contract by the builder shall prescribe three years after delivery of the ship.
2. Actions arising from failure to pay the build price shall prescribe three years from the date foreseen in the contract or, failing that, from the moment of delivery.

Article 116. *Vessels and naval artefacts.*

The terms set forth in this Chapter shall be applicable to vessels and naval artefacts.

CHAPTER VI
ON SALE

Article 117. *Object of sale.*

1. Except if otherwise agreed, sale of the ship shall include its component parts and fittings, whether they are aboard or not. It may also include the accessories.
2. To the above ends, the contract shall include a detailed inventory identifying all the elements included in sale of the ship. Should the inventory be lacking or insufficient, the sale shall be deemed to include everything recorded at the Ships Section of the Register of Moveable Assets.

Article 118. *Form, conveyance of ownership and effectiveness before third parties.*

1. The sale contract of the ship shall be recorded in writing.
2. The buyer acquires ownership of the ship by its delivery.
3. In order for this to take effect before third parties, it must be registered on the Register of Moveable Assets, being formalised in a public deed.
4. In cases in which the parties aim to have the contract notarised in a public deed, prior to notarisation thereof, the Notary Public or Consul shall obtain the appropriate information from the Register of Moveable Assets on the status of ownership and charges, in the manner and by the means established by the implementing regulations.

Article 119. *Risks and correction.*

1. Loss and deterioration the ship may suffer before its delivery shall be borne by the seller, except if otherwise agreed. Once the delivery takes place, they shall be borne by the buyer.

2. The seller shall be liable to compensation for eviction and for concealed flaws or defects, as long as these are discovered within the term of three months from material delivery of the ship and if the buyer notifies the seller of such by certifiable means within the term of five days from their discovery.

Article 120. *Expiry.*

The action to correct concealed flaws or defects expires after six months from notification.

Article 121. *Application to other cases.*

While their respective nature allows, the above provisions shall also be applicable to vessels and naval artefacts, as well as any other legal transactions conveying ownership of a ship.

CHAPTER VII
ON ENCUMBRANCES ON THE SHIP

Section 1. On maritime liens

Article 122. *Legal regime of maritime liens.*

1. Maritime liens shall be governed by the terms set forth in the International Convention on Maritime Liens and Mortgages, done at Geneva, on 6th May 1993.

2. Maritime liens encumber the ship without the need for registry publicity, following it in spite of change of ownership, registration or flag, and enjoy preference over mortgages and other registered charges and encumbrances, whatever their date of inscription, without any other credit being able to be placed before such liens, except for those mentioned in Article 486 and the fees that are to be paid to the Maritime Authorities for removal of shipwrecked or sunken ships.

3. This regime shall be applicable to ships, vessels and naval artefacts.

Article 123. *Liens binding the fleet.*

1. When it is not possible to determine the ship on board which a lien has arisen regarding wages and other sums owned to the master and other members of the ship's crew arising from the ship's shipment contract and from Article 4.1.a of the International Convention on Maritime Liens and Mortgages, due to having generated the credits on different ships operated by the same company or same corporate group, the privilege shall cover them all.

2. The maritime lien stated in this Article shall be extinguished with the credit guaranteed and also by the lapse of one year unless, prior to expiry of that term, judicial enforcement proceedings have been initiated against any of the ships on board which the lien credit has arisen, or if these become subject to arrest.

3. The term of one year set in the preceding Section shall begin to elapse from the moment when the ship's shipment contract is terminated between the creditor and the company or corporate group.

Article 124. *Other liens.*

1. In addition to the liens listed in the International Convention on Maritime Liens and Mortgages, a ship may also be subject to other liens recognised pursuant to the Civil Law or special laws, although such liens, whatever the rank of pre-emption they are granted pursuant to the laws that recognise them, shall be classified after mortgages and other registered charges and encumbrances.

2. Likewise, pursuant to the terms foreseen in the European Union provisions, or in the applicable treaties and, failing that, subject to the principle of reciprocity, other liens apart from those foreseen in Article 4 of the International Convention on Maritime Liens and Mortgages may be recognised, encumbering foreign ships pursuant to the law of the country where registered. The classification of such credits shall respect the pre-emptive order established in the preceding Paragraph in all cases.

Article 125. *Exclusion of substitution credits.*

Maritime liens shall not cover either insurance compensation for losses and damages caused to the ship, nor other substitute credits such as those arising from collision, contribution to the general average or any other cause.

Section 2. On ship mortgages

Article 126. *Object of the mortgage.*

1. All ships, vessels and naval artefacts, even those being built, may be subject to a ship mortgage pursuant to the provisions of this Act and the International Convention on Maritime Liens and Mortgages.

2. To the extent allowed by their respective nature, the provisions of this Section shall also be applicable to vessels and naval artefacts.

Article 127. *Effects of the mortgage.*

A ship mortgage directly and immediately encumbers the ship upon which it is imposed, whoever its owner may be, to fulfilment of the obligations for guarantee of which it is constituted.

Article 128. *Constitution of the mortgage.*

In order for ship mortgage to be validly constituted, it may be granted in a public deed or in a private document and it shall be registered on the Register of Moveable Assets.

Article 129. *Means of constitution.*

1. A ship mortgage may be constituted in favour of one or several specific persons, or in favour of whoever is the holder of the credit if constituted to guarantee securities issued nominatively, to the order or to the bearer.

2. A ship mortgage may also be constituted to guarantee current accounts for credit or bills of exchange or other instruments, as established in the mortgage legislation.

Article 130. *Persons authorised to constitute.*

1. A mortgage may only be constituted by owners who have free disposal of their assets or, if they do not have such, by those who are authorised for that purpose pursuant to the law.

2. Those who, pursuant to the preceding Paragraph, have the power to establish a mortgage, may do so themselves or through a proxy who holds a special power of attorney.

3. A mortgage on ships under construction may also be established by the principal if it has specifically been granted that power.

Article 131. *Mortgage on ships under construction.*

In order to be able to register the mortgage on a ship under construction, it is indispensable for a third of the budgeted amount of the total hull value to have been invested in it and for the ownership of the ship to be registered on the Register of Moveable Assets.

Article 132. *Content of the constituting document.*

1. All agreements constituting a ship mortgage shall record:

- a) Creditor, debtor and, where appropriate, non-debtor mortgagor, specifying all the personal particulars required by the mortgage legislation;
- b) The amount of the loan guaranteed by mortgage and of the sums that, if appropriate, shall cover the encumbrance for enforcement costs and expenses, and of the remuneration and delay interest and other expenses;
- c) Maturity date of the capital and payment of the interest;
- d) Description of the ship and all the identifying data foreseen in Section 5 of Article 60, that may be recorded, stating, where appropriate, that the ship is under construction;
- e) The value or appraisal made of the ship and, where appropriate, that may be taken as the auction rate; and the addresses that the debtor and, where appropriate, the non-debtor mortgagor, provide for demands and notifications;
- f) Sums assigned to each ship, in the event of two or more being mortgaged to guarantee a sole loan;
- g) The regulatory circumstances determined in the case of a mortgage to guarantee titles, whatever their denomination;
- h) The other clauses that are established by the parties to the contract on interest, insurance, early maturity, extension and any others deemed convenient.

2. Except if otherwise agreed, a mortgage constituted in favour of a credit that accrues interest shall not be assured to the detriment of a third party,

in addition to the capital, for more than the interest of the last two years elapsed and the matured part of the current annual dues.

It may be agreed that the mortgage assures remuneration interest up to five years and delay interest for an equal term.

Article 133. *Content of the inscription.*

The inscription of the mortgage shall record the circumstances stated in the preceding Article that have transcendence in rem, as well as the others required by the mortgage laws.

Article 134. *Extension of the mortgage.*

1. Notwithstanding the terms set forth in Section 2 of Article 62, the mortgage shall include both the component parts of the ship as well as its fittings, but not its accessories.

2. Except if otherwise agreed specifically, the mortgage also covers the compensations for material damage caused to the ship and not repaired due to collision or other accidents, as well as the contribution to the general average and that of the insurance, both for not repaired damage suffered by the ship, as well as its total loss.

3. Extension may be agreed to cover licences linked to the ship, to the extent and pursuant to the conditions allowed by the provisions that regulate their granting.

4. A ship mortgage shall subsist while not cancelled with regard to each ship, on the total amount thereof, even though the guaranteed obligation is reduced, and on any part thereof that is conserved, even when the remainder has disappeared.

Article 135. *Notification of the mortgage.*

At any time, the mortgage creditor may provide certifiable notification of the existence of the mortgage to the insurer of the ship. When such notification is received, the insurer may not pay out any sum whatsoever to the insured in compensation for loss of the ship or not repaired damage without the specific consent of the mortgage creditor.

Article 136. *Insurance of the ship.*

Should the insurance compensation, in the case of a claim, have been specifically excluded from the mortgage, the debtor shall be free to insure ownership of the ship pursuant to the provisions of this Act, and the creditor its mortgage credit, but without the full amount of the insurance, for both items, ever exceeding the value of the ship insured, except if these refer to different risks.

Should it exceed such and thus it be necessary to proceed to reduce the insurance, the reduction shall first be performed by the owner and then by the mortgage creditor.

Article 137. *Right of preference.*

1. The ship mortgage shall enjoy preference from the moment of inscription at the Register of Moveable Assets. The date of inscription for all effects shall be considered that of the presentation entry, which shall be recorded in the actual inscription.

2. In order to determine preference between two or more inscriptions on a same date related to a same ship, the time of the respective titles being lodged at the Registry shall be taken into account.

Article 138. *Loans for fixed assets.*

1. In order for loans for the purchase of fixed assets to be opposable to third parties, it is necessary for them to be registered or annotated on the Register of Moveable Assets.

2. The annotation shall be governed with regard to titles, circumstances and concurrence of charges or in rem rights registered, by the terms set forth for such credits in the mortgage laws, to the extent applicable to ships.

3. Notwithstanding the terms set forth in the preceding Section, the annotation shall take all the effects of the mortgage without the need to become an inscription and it shall have a term of four years and the extensions established in general terms for preventive annotations.

Article 139. *Withholding right.*

1. Without prejudice to the terms set forth in the preceding Article, the holders of credits arising from construction, repair or reconstruction of a

ship shall enjoy the right to retention such credits are recognised pursuant to Civil Law.

2. This withholding right shall be extinguished when the builder or repairer loses possession of the ship for reasons other than that of preventive or executive arrest thereof.

3. If, at the moment of forcible sale, the ship were to be in possession of the builder or repairer, it shall deliver the buyer possession of the ship, but it may obtain payment of its credit from the proceeds of the sale after payment to the holders of the maritime liens listed in Article 4 of the International Convention on Maritime Liens and Mortgages, and before mortgage loans and other encumbrances registered or annotated.

4. The terms set forth in this Article shall only be applicable with regard to the builder when the ownership of the ship lies with the principal by virtue of an agreement thereon.

Article 140. *Exercise of mortgage rights.*

The ship mortgage creditor may exercise its right against the ship or ships encumbered to its satisfaction in the following cases:

- a) On expiry of the term to return the capital or pay interest, in the manner that may have been agreed;
- b) Should the debtor be declared bankrupt;
- c) Should the ship mortgaged suffer deterioration that makes it definitively not seaworthy;
- d) When there are two or more ships assigned to fulfil a same obligation and loss or deterioration arises that makes either of them definitively not seaworthy, unless otherwise agreed;
- e) On fulfilment of the conditions agreed to terminate the obligation guaranteed, and all those that take the effect of making the capital or interest callable.

Article 141. *Foreclosure of a ship mortgage.*

The action to demand payment of debts guaranteed by a ship mortgage, as well as the rest related to the procedure to be followed and competence to hear such shall be subject to the terms set forth in Chapter V of Title IV

of Book Three of the Civil Procedure Act, notwithstanding the special features established in this Act.

Article 142. *Prescription.*

1. A ship mortgage action prescribes in three years, from the moment when it may be exercised, pursuant to the specifications of this Act.
2. The registry holder of a ship may request cancellation due to expiry of the inscription of mortgage, when six years have elapsed from maturity, if there is no record of renewal, interruption of prescription or exercise of the mortgage action.

Article 143. *Recognition of mortgages on foreign ships.*

Recognition and enforcement by the Spanish Courts of the mortgages and in rem encumbrances constituted on foreign ships shall be subject to fulfilment of the following requisites:

- a) For them to have been constituted and registered on a public register pursuant to the laws of the State in which the ship has been registered;
- b) For such registration, pursuant to the laws of the State of registration of the ship, to be freely available for consultation by the public and it being possible to apply for and obtain statements and copies of the entries or documents recording such from the registry;
- c) For the registration or some of the documents stated in Section b) to specify at least the name and address of the person in favour of whom the mortgage or encumbrance has been constituted, or the fact that the guarantee has been constituted to the bearer, the maximum amount guaranteed, if the laws of the State of registration to established that requisite, or whether that amount were to be specified in the document of establishment of the mortgage or encumbrance, and the date and other circumstances that, pursuant to the laws of the State of registration, determine their specific rank with regard to other registered mortgages and encumbrances.

Article 144. *Supplementary Law.*

In all matters not foreseen in this Chapter, the terms set forth in the Mortgage Act shall apply.

TITLE III
ON THE SUBJECTS OF NAVIGATION

CHAPTER I
ON THE SHIPBUILDER

Article 145. *Concept of ship-operator and shipping company.*

1. A ship-operator is the party that, whether or not it is the owner, has the possession of a ship or vessel, directly, or through its servants, and uses it for navigation in its own name and under its responsibility.

2. A shipping company is deemed as the natural or legal person that, using own or third party merchant ships, carries out the operation thereof, even when that is not its main activity, under any mode permitted in international practice.

3. In the case of co-ownership of a ship, the status of ship-operator shall befall each one of the co-owners, without prejudice to their right to appoint an administrator.

Article 146. *Inscription at the Business Registry.*

A ship-operator that uses the ship for navigation for entrepreneurial purposes shall be registered at the Business Registry.

Article 147. *Inscription on the Register of Moveable Assets.*

1. A non-owner ship-operator may register that status on the Register of Moveable Assets.

2. The relevant document and inscription shall record:

- a) The name or company name of the ship-operator;
- b) The legal title that authorises possession of the ship;
- c) The duration of that legal situation;
- d) Any other requisite that is determined by the implanting regulations.

3. An owner of the ship is entitled to request inscription of the non-owner ship-operator.

Article 148. *Ship-operator assumption.*

1. Except if otherwise recorded or in the case of evidence to the contrary, which shall never be to the detriment of a third party in good faith, an owner registered on the Register of Moveable Assets shall be assumed to be the ship-operator.

2. In the case of ships and vessels dedicated exclusively to sports or recreational navigation, lack of inscription otherwise, shall cause the person recorded as the owner on the Register of Moveable Assets or, failing that, on the Register of Ships and Shipping Companies, to be deemed the ship-operator, without proof to the contrary being admissible.

3. Should the ship not be registered, or the vessel is not registered or enrolled, the ship-operator shall be deemed to be its owner.

Article 149. *Liability of the ship-operator.*

The ship-operator shall be held liable to third parties for acts and omissions by the master and crew of the ship, as well as the obligations contracted by the master pursuant to the terms established in Article 185, without prejudice to his right to limit its liability in the cases established in Title VII.

CHAPTER II
ON SHIP CO-OWNERSHIP

Article 150. *Ship co-ownership.*

Ship co-ownership is deemed as co-ownership of a ship or vessel when its purpose is a business operation, and it shall be governed by the provisions of this Chapter.

Article 151. *Majority powers.*

In order to perform any act or legal transaction of administration, disposal or encumbrance of the ship under co-ownership regime, an agreement by co-owners who represent the majority of the ownership stakes shall suffice. A sole co-owner may hold such a majority.

Article 152. *Minority rights.*

1. All co-owners who have not participated, or who have opposed the decision to sell the ship shall be entitled to demand that it be sold at a public auction.

2. When the failure to participate or opposition concerns the decision to perform any act or legal transaction of administration or disposal, appointment of an administrator or repair work on the ship, the co-owner shall be entitled to severance from joint ownership, transferring his stake to the remaining co-owners who agree to acquire it, at the value set by common agreement and, failing that, by appraisal by an expert appointed by both parties and, failing all the foregoing, by a Court. Should none agree, its sale at public auction may be demanded.

Article 153. *On the administrator of the co-owned ship.*

1. In the event of appointment of one or several administrators, these shall have the legal status of a business representative and shall hold the relevant powers of administration and representation, jointly or jointly and severally, as stated in the appointment.

2. Appointment of an administrator may be recorded on the Register of Moveable Assets.

3. Any limitation or restriction of the powers stated in Paragraph one shall be ineffective before third parties.

Article 154. *Rights to the indivisible stake.*

All joint owners may perform any act of disposal or encumbrance of their stake, except for ship mortgage, that may only befall the total ship and shall require agreement by the majority of the co-owners.

Article 155. *Pre-emptive acquisition right.*

1. In the event of sale of an indivisible stake to a non-co-owner, the other co-owners shall be entitled to pre-emption and retroactive sale, and if more than one decides to exercise such rights, they shall acquire such in proportion to their respective indivisible stake.

2. The pre-emptive right may be exercised within the term of nine calendar days from that following the one of certifiable notification of the decision to sell, the identity of the buyer, the price, terms of payment and the essential conditions of the sale.

3. The retroactive sale right shall be applicable when the sale has been performed without the due prior notification, or under different conditions to those notified; and it may be exercised within the same term as from the

day of acquiring knowledge of the sale already performed and, in all cases, from its inscription on the Register of Moveable Assets.

4. In order to be able to exercise the pre-emption and retroactive sale right, the acquirer or acquirers shall deposit the sale price before a Notary Public, or at the establishment assigned for that purpose.

CHAPTER III ON THE CREW

Article 156. *Concept of crew.*

1. A crew includes the set of individuals employed on board a ship in any of its departments or services, hired either directly by the ship-operator or by third parties.

2. A crew does not include individuals whose work does not form part of the daily activity of the ship and whose main place of work is not on it.

Article 157. *Scope of application.*

1. The provisions of this Chapter shall apply to the members of a crew who serve on Spanish ships used in maritime navigation for business purposes.

2. The provisions of this Chapter shall be applicable in the way determined by the implementing regulations, on ships assigned to other activities, as well as on vessels or naval artefacts, to the extent that they match the nature of the activity, without prejudice to the exceptions and specialities existing with regard to those assigned to the public security service or to surveillance and repression of unlawful activities.

Article 158. *Inscription and documentation.*

1. No Spaniard may be a member of the crew of ships and vessels in the Spanish merchant navy if he has not obtained a Merchant Mariner's Document (MMD) or Seaman's Certificate, except in duly justified cases of urgency.

With regard to foreigners, in order for them to board, they shall hold the national identity card of the mariner that shall be issued by the country of his nationality, or they shall board with a special permit granted to them by the master of the ship.

2. The implementing regulations shall govern the conditions for registration and issue of the Seaman's Certificate, as well as the form and content of such acts and documents.

Article 159. *Boarding and landing.*

1. Boarding or landing personnel of Spanish ships shall be performed with intervention by the Maritime Authorities, performed by the master of the ship at foreign ports, who shall proceed to record the enrolment and release proceedings on the Dispatch and Crew List and in the Seaman's Certificates.

2. The terms foreseen in the preceding Section are deemed to be notwithstanding cases of self-dispatch, foreseen in the implementing regulations, pursuant to the terms established in Article 18.

Article 160. *Classification of the personnel on board.*

Without prejudice to the terms provided in the labour regulations or arbitral awards that may substitute them, the basic categories of maritime personnel are as follows: a) Captain; b) Officers; c) Subalterns. The persons forming those categories shall hold the relevant professional qualifications or specialisation certificates to be able to act as members of the crew of merchant ships as determined by the implementing regulations.

Article 161. *Minimum security provisions.*

1. The number of members of the crew of ships and their conditions of skills and professional training shall be adequate to guarantee the safety of the ship and navigation at all times, as well as to protect the marine environment.

2. The Maritime Authorities shall establish a minimum safety crew for each Spanish ship according to its technical circumstances, navigation and traffic, as well as the regime and organisation of work on board.

3. The Maritime Authorities shall issue a "Minimum Safety Crew Certificate" that shall be carried on board and shown to the authorities of the port the ship visits and when so required.

Article 162. *Nationality of the crews.*

The master and first deck officer of Spanish ships shall have the nationality of a member State of the European Economic Area, except in cases when

the Maritime Authorities specify that such posts shall be covered by Spanish citizens due to such post usually involving the effective exercise of the prerogatives of a public authority, such exercise not representing a very small part of the holder's activities. To these ends, nationals of third States who are relatives of a citizen of the European Union or a national of a member State of the European Economic Area shall have the same status as these, as long as they comply with the requisites established by in the implementing regulations.

At least 50% of the rest of the crew of merchant ships shall be Spanish nationals or of any other member State of the European Economic Area.

Article 163. *Professionals of the fishing sector.*

The terms established in this Chapter are deemed to be without prejudice to rules on fitness, qualification, and accreditation of professional capacity and the Register of Professionals of the Fishing Sector, established in the provisions of the European Union and in the Spanish State laws on sea fishing.

Article 164. *Hiring crews.*

1. No operation to hire ships' crews may give rise to the mariners having to pay any remuneration, directly or indirectly, to any natural or legal person.
2. The agents or representatives of foreign ship-operators who hire national or resident mariners in Spain to serve on foreign ships shall be jointly and severally liable with that ship-operator for fulfilment of the contract entered into. They shall also be bound to arrange a mercantile insurance contract to grant compensation of a similar amount to those established in the Spanish Social Security regime in cases of death, disability due to accident and repatriation. The emigration authorities shall not approve contracts entered into that do not fulfil that requisite.

Section 1. On qualifications, certification and inspection

Article 165. *Qualifications and obligatory certification.*

1. The command and oversight of ships, as well as the duties performed thereon by officers, may only be entrusted to those who have the due professional qualifications that accredit fulfilment of the necessary requisites with regard to age, physical fitness, training and competence,

as required by each department and category pursuant to the terms set forth in the applicable treaties and regulations.

2. In addition to other cases foreseen by the implementing regulations, a special skills qualification must be held by all members of the crew who are to perform duties related to handling cargo on tanker ships dedicated to transport of petroleum or other especially hazardous or polluting substances, or any others related to safety of navigation.

Article 166. *Issue and registration of qualifications and certificates.*

1. It is the remit of the Maritime Authorities to issue, renew, ratify, recognise and control professional qualifications and diplomas, pursuant to the terms established in the implementing regulations and pursuant to the terms foreseen in the applicable international conventions.

2. The Maritime Authorities shall keep a register of all the qualifications and diplomas issued, ratified or recognised. Access and the regime of that publicity shall be determined by the implementing regulations according to the terms established in the treaties.

Article 167. *Obligations of ship-operators.*

1. Ship-operators shall hire crew members from among individuals who have the required qualifications or certificates and who are familiar with the specific duties to be performed on board, as well as the installations, equipment, procedures and characteristics of the ship to which they are assigned.

2. Ship-operators shall also ensure fulfilment of the requisites on minimum safety crews and that the personnel enrolled can co-ordinate their activities in an effective manner in emergencies.

3. Ship-operators shall ensure that the qualifications, diplomas and other relevant documentation of the members of the ships' crew are carried aboard, as well as the texts recording successive changes in the Spanish and international regulations on safety at sea and protection of the maritime environment are also on kept board and available to the master and officers.

4. The Maritime Authorities shall adopt the necessary measures to demand that ship-operators fulfil the obligations foreseen in this Article, in the manner foreseen in the implementing regulations.

Article 168. *Control and inspection of Spanish ships.*

1. The Maritime Authorities inspectors shall verify that the crew members effectively hold the qualifications or diplomas required of them to serve on board, as well as that they are fit to safely perform the watches and other duties related to safety at sea and to combat pollution of the marine environment.

2. The Maritime Authorities shall proceed as appropriate, of their own motion, to dismiss those found not to fulfil the terms set forth in the preceding Paragraph, without that circumstance giving rise to termination of the labour contracts, and, if it is a post on board specified in the Minimum Safety Crew Certificate, they shall be forbidden to leave the ship until relieved by another individual who fulfils the mandatory requisites.

Article 169. *Control of foreign ships in Spanish ports.*

The Maritime Authorities inspectors may act on foreign ships in their capacity as authorities of the port State, pursuant to the applicable provisions.

Article 170. *Detention of foreign ships.*

1. Whenever anomalies are found in the crew qualifications and diplomas that an inspector considers may involve danger to individuals, property or the environment, the Maritime Captainty to which he reports, he shall immediately inform the master of the ship and the Consul, nearest diplomatic representative or Maritime Authorities of the flag country, in writing, in order for the relevant preventive measures to be taken.

2. Pursuant to the terms foreseen in the applicable provisions, the Maritime Authorities shall adopt the necessary measures to prevent the ship sailing until the defects in qualifications or skills have been corrected to the necessary extent to eliminate the hazards stated in the preceding Section.

Section 2. On the Master

Article 171. *Concept, appointment and status.*

From being appointed as such, the master shall command and direct the ship, as well as lead its crew and represent the public authority on board.

Article 172. *Appointment and severance.*

Due to the special relation of confidence, appointment and severance of the master from his office lies with the ship-operator, without prejudice to the appropriate compensations pursuant to the labour laws.

Article 173. *Requisites and replacement in office.*

1. The masters shall hold a professional qualification that evidences his skill, capacity and the necessary conditions to command and direct a ship, as established by the specific laws or regulations.

2. In the event of death, absence, illness or other impediment that the master may suffer during navigation, the command of the ship shall be taken over by the highest-ranking deck officer who, in turn, shall be replaced by the officers from the same department following him in category. In the last instance, command of the ship shall be taken by the officers from the engine department, consecutively by rank.

Article 174. *Duty of obedience to State ships.*

1. Except in cases of duly justified force majeure, the masters of Spanish ships shall obey all orders or instructions given by a Spanish State ship.

2. That duty shall subsist even when the ships are not in the Spanish maritime areas, without prejudice to the powers that, according to International Law, are held by the coastal State or the port State.

Article 175. *Absence of competent authorities abroad.*

In all cases in which, pursuant to the terms set forth in this Act, the master is to appear before a Spanish Consul, and there is none in the place, he shall perform the action before the local authority and, if not possible, before a Notary Public or Public Recorder, notwithstanding its ratification before the first Spanish Consul found in the course of his following stopovers.

Article 176. *Status as a public authority.*

1. The master shall have public authority status on board and shall fulfil and enforce all obligations that the law or regulations impose on him by virtue of his office, especially that maintaining order and safety on board.

2. To that end, the master may adopt as many policing measures as deemed necessary to maintain order on the ship, as well as to guarantee the safety of those who are on board. The members of the crew and other individuals on board shall obey the orders given by the master, without prejudice to their right to make the claims that they may deem appropriate before the competent administrative or judicial authority once the ship reaches port.

Article 177. *Obligation to consign the facts arising.*

1. The master of the ship shall be bound to record the incidents involving individuals on board during navigation, which he deems may constitute a criminal or administrative offence, in the Captain's Log.

2. The entry shall be signed by the master and by the individual concerned or, if the latter refuses, by two witnesses.

3. On reaching port, an authenticated copy of what is set forth in the Captain's Log shall be delivered and, if appropriate, the other evidence and documents, to the Maritime Captainty, if it is a Spanish port or Spanish Consular or diplomatic authority if a foreign port.

Article 178. *Civil registry certificates.*

1. When on board, the master shall have the same duties and powers as a Civil Registry officer with regard to recordable facts and acts that arise during a voyage at sea and that affect the civil status of the individuals on board.

2. The certificates of births or deaths that occur on board during navigation, as well as the marriages held in danger of death, shall be recorded by the master in the Captain's Log, adjusting their content to the terms set forth in the Civil Registry Act.

3. In the case of individuals disappearing during navigation, he shall record the relevant summary information, and the Captain's Log shall record the main circumstances of the disappearance and the search and rescue measures adopted.

Article 179. *Last will and testaments and deaths during navigation.*

1. The master shall authorise maritime last wills and testaments and receive closed testaments in the cases and with the formalities set forth on

this matter in the Spanish Civil Code, leaving a record of this in the Captain's Log. Delivery of a holographic last will and testament shall also be recorded in the same book.

2. When an individual dies on board and should no doctor be enrolled, the master shall issue the death certificate, but he may not do so until twenty-four hours have elapsed from the moment at which, in his reasonable opinion, unequivocal signs of death have appeared. In all cases, the master shall keep an inventory of his papers and belongings, aided by two of the ship's officers and two witnesses, who shall preferably be passengers.

Article 180. *Treatment of corpses.*

1. If, once the death certificate is issued, the ship has not reached port, the master shall proceed to conserve the corpse, adopting the measures required by the circumstances for that purpose. On reaching the first Spanish port, he shall make it available to the external health authorities who, with collaboration by the Maritime Authorities, shall adopt the relevant measures. To the same end, the corpse shall be handed over to the relevant Maritime Authorities, notifying the Spanish Consul, in the event of mooring in a foreign port.

2. Notwithstanding this, if it is not possible to guarantee adequate conservation on board, the master may order burial at sea.

3. A record of burial at sea shall be made in the Captain's Log, stating the date, time and geographic location, the fact of having shrouded and ballasted the corpse according to maritime practice, and the presence of at least two witnesses, who shall be identified and who shall sign the Log.

Article 181. *Delivery of property and documents.*

1. The assets inventoried and the respective inventory, as well as the authenticated copy of the certificates of birth, death, marriage or disappearance of individuals and last wills and testaments granted or received on board shall be delivered to the Maritime Authorities or Consular authority, as appropriate, by the master, at the first port, leaving a record of the circumstances of delivery on the Captain's Log.

2. The entries on these matters that are made by the master in the Captain's Log as a public authority, have the value of a public document.

Article 182. *Technical obligations of the master.*

1. The master shall provide the technical direction for navigation of the ship, undertaking its effective command when he sees fit and, in particular, in the cases foreseen in the following Section and, with regard to his responsibility and authority, the provisions foreseen in the international regulations on management of operational safety of the ship and preventing pollution.

2. The master shall be present on the bridge and undertake direct command of the ship during landings, port arrival and departure manoeuvres and, in general, in all circumstances in which the risks of navigation are notably increased, without prejudice to the necessary rest to maintain his physical faculties.

3. In performing his technical duties, the master shall act with the diligence required from a competent mariner at all times.

Article 183. *Danger, abandoning ship and salvage.*

1. In the event of bad weather or risk of shipwreck, the master shall adopt as many measures as he may believe necessary to ensure the safety of the ship and to save individuals and property, seeking shelter, by forced docking or resorting without delay to issuing a call for rescue, being able to hire one if necessary.

2. The master shall not abandon a ship in danger before having lost all hope of saving it and, once the appropriate measures have been adopted to save individuals, assets and official documents that may be on board.

3. The master shall be bound to take measures to save human lives in danger at sea, as long as he may do so without severe danger to the ship, its crew or passengers, and in all cases shall leave a record of the proceedings in the Captain's Log.

Article 184. *Primacy of the professional criterion.*

1. Neither the ship-operator, nor the fleet operator or any other person with an interest in the ship or its cargo may hinder or restrict the master of the ship from adopting or implementing any decision that, in his professional judgement, may be necessary for the safety of human life at sea and protection of the marine environment.

2. Ship-operators may not dismiss the master or adopt other measures of a penalising kind against him, due to having been forced to disregard instructions in view of the need to act in the most adequate way to safeguard safety, according to the professional criterion inherent to a competent mariner.

Article 185. *Power of representation of the ship-operator.*

1. The master holds the representation of the ship-operator to contract all obligations related to the ordinary needs of the ship on the latter's behalf.

2. The ship-operator shall be bound to fulfil those obligations without it being possible to allege abuse of trust or transgression of the powers granted.

3. This is notwithstanding the liability of the master to the ship-operator for the acts and contracts performed in breach of the specific legitimate instructions the latter has given.

4. The master shall have active and passive legitimation to appear as representative of the ship-operator in all judicial or administrative proceedings related to the ship under his command.

Article 186. *Obligation to notify accidents.*

1. Masters of Spanish ships shall immediately notify, by the fastest means possible, the Maritime Captainty or nearest Consular authority, of all navigation accidents involving the ship or caused by it, of all episodes of pollution caused or observed and any other extraordinary and important novelty that affects the safety of navigation or the marine environment.

2. The master shall also appear before the Maritime Authorities within twenty- four working hours after arrival at the Spanish port, or before the Consul if a foreign port, to make a declaration regarding the events stated in the preceding Paragraph, with transcription of the relevant report from the Captain's Log.

Article 187. *Note of protest at sea.*

1. The master may make a note of protest at sea when events have occurred from which his responsibility. To that end, he shall draft minutes recording the events that have taken place just as recorded in the Captain's Log, adding the comments deemed appropriate.

2. The note of protest shall be kept along with the Log, and an authenticated copy of it shall inexcusably be delivered to all the parties concerned in the events that took place as set forth in Article 87.

TITLE IV

ON CONTRACTS FOR USE OF SHIPS

CHAPTER I

ON SHIP LEASE CONTRACTS

Article 188. *Concept.*

By means of a ship lease agreement, the lessor is bound, in exchange for a set price, to deliver a specific ship to the lessee in order for the latter to use it temporarily according to the terms agreed or, failing that, according to its nature and characteristics.

Article 189. *Form of contract.*

The lease contract of the ship shall be recorded in writing.

Article 190. *Opposition before third parties.*

In order for third parties in good faith not to be able to allege ignorance thereof, a lease contract of a ship shall be registered on the Register of Moveable Assets.

Article 191. *Delivery of the Ship.*

1. The lessor shall be bound to deliver the ship leased and its fittings under the conditions specified in the contract and, in everything not foreseen therein, the adequate ones for the agreed use.

2. The delivery shall take place in the place and within the time set in the contract.

Article 192. *State of seaworthiness on delivery.*

1. Except if otherwise agreed, the lessor shall deliver the ship in a seaworthy condition and shall take charge of the repairs arising from flaws inherent to the ship.

2. The lessor shall be held liable to the lessee for damage caused by defects in seaworthiness; unless it is proven that the flaw could not have been discovered by use of a reasonable diligence.

3. This principle shall have an imperative nature in lease contracts of ships and vessels whose exclusive use is recreational, to practice sports without a lucrative purpose, or non-professional fishing.

Article 193. *Limitations on use of the ship and payment of the price.*

1. The lessee shall be bound to use the ship leased according to the terms established in the agreement and, in all matters not foreseen, according to the technical characteristics of the ship.

2. It shall also be bound to pay the price agreed at the time and in the place agreed.

Article 194. *Obligation to maintain the ship in a seaworthy state.*

1. The lessee shall be bound, during the time the agreement lasts, to maintain the ship in a seaworthy state. It shall also be bound to inform the lessor of damage suffered by the ship that affects or may affect its classification. The lessor may inspect the ship at any time to check its state, without this negatively affecting its normal operation, bearing the cost of the expenses caused.

2. In lease agreements of ships and vessels referred to in Section 3 of Article 192, the lessor shall bear the expense of the necessary repairs to maintain the vessel in a seaworthy state, except those for which the lessee is to blame. Any clause that fully or partially exonerates the lessor of this obligation shall be null and void.

Article 195. *Obligation to return the ship on conclusion of the contract.*

1. The lessee shall be bound to return the ship at the moment established in the agreement. If it is not returned within the term foreseen, it shall compensate the lessor for the damages and losses it may be caused by the delay. Notwithstanding this and unless otherwise agreed, the agreement shall be deemed to be extended for the excess period arising from the duration of the last voyage in progress reasonably ordered by the lessee.

2. The lessee shall return the ship at the place agreed and, if no place was agreed, at the same place where the ship was delivered.

3. The ship shall be returned in the state in which it was delivered to the lessee, except for the normal wear and tear arising from the agreed use.

Article 196. *Effects of disposal of the ship on the lease.*

In the event of disposal of the ship, the acquirer shall be subrogated in the existing lease agreement, as long as this is registered on the Register of Moveable Assets or its existence is effectively known at the moment of the purchase. Otherwise, the contract shall be terminated notwithstanding the right of the lessee to be compensated by the lessor. In any event, the acquirer shall respect the voyage underway at the moment of the conveyance.

Article 197. *Obligation of the lessee to indemnify the lessor.*

The lessee is bound to maintain indemnified the lessor from any charges and rights in favour of third parties that may arise from use of the ship leased.

Article 198. *Interruptions in the use of the ship leased.*

1. Without prejudice to the liability established in Section 2 of Article 192, if the ship could not be used during a period exceeding forty- eight hours arising from inherent flaws, the obligation to pay the price shall cease during the whole period of inactivity.

2. In lease agreements of the ships and vessels referred to in Section 3 of Article 192, that impossibility to use shall entitle the lessee to opt for a price reduction or to terminate the agreement, without the possibility of agreeing otherwise and notwithstanding the compensations for damages and losses to which the lessee might be entitled.

3. When interruption of use of the ship or vessel leased arises due to claims against the lessor, the lessee shall be entitled to compensation for the damages and losses that are a consequence of the withholding.

Article 199. *Sublease of the ship and assignment of the lease.*

1. The lessee may not sublet the ship or assign the agreement to a third party without consent by the lessor.

2. The sublease agreement and assignment of the agreement shall be subject to the terms set forth in Articles 189 and 190.

Article 200. *Obligations of the lessee who subleases.*

1. The lessee who subleases the ship shall remain bound to pay the lease price to the lessor.

2. Should the lessor not obtain payment from lessee, it may take action against the sub-lessee to demand the price of the sublease that has not yet been paid by the lessee.

Article 201. *Effects of the lease assignment agreement.*

Consented assignment of the lease agreement gives rise to severance of the lessee from the agreement and subrogation by the assignee in the legal position the former occupied.

Article 202. *Prescription of actions.*

Actions arising from the ship lease agreement shall prescribe within the term of one year, from the date of termination of the agreement, or return of the ship if later. The term shall only begin to elapse for actions arising from the terms set forth in Article 197 as from when the lessor is bound to bear the charge or right concerned.

CHAPTER II
ON CHARTER PARTIES

Section 1. General provisions

Article 203. *Concept.*

The contract for carriage of goods by sea, also called charter party, binds the carrier, in exchange for a freight, to transport goods by sea and deliver them to the consignee at the port or place of destination.

Article 204. *Charter by term and by voyage.*

1. When the charter refers to the whole or part of the ship's cargo space, it may be arranged by time or voyage. In time charters, the carrier undertakes to perform all the voyages the charterer has ordered during the period

agreed, within the limits agreed. In voyage charters, the carrier undertakes to perform one or several specific voyages.

2. The time charterer undertakes business management of the ship and, unless otherwise agreed, shall bear all the variable operating expenses. In voyage charters, such expenses shall be borne by the carrier, except if otherwise agreed.

3. In the preceding cases, the parties may mutually compel each other to sign a charter party.

Article 205. *Charter for transport of specific merchandise under bill of lading regime.*

A charter party may also refer to carriage of goods determined by their weight, size or class. In that case, the conditions of the contract may be recorded in the bill of lading or other similar document.

Article 206. *Subcharterer.*

The charterer of the ship by time or voyage may, except for specific provision to the contrary in the policy, subrogate a third party in the rights and obligations arising therefrom, without prejudice to continuing to be responsible for fulfilment thereof before the carrier.

Article 207. *Charterer carriage contract.*

The charterer by time or voyage may also enter into charter parties on its own behalf for carriage of specific goods under bill of lading regime with third parties. In that case, the carrier and the charterer shall be held jointly and severally liable to third parties for damages and breakage of the merchandise transported, pursuant to the terms established in Section 9 of this Chapter, without prejudice to the right to reimbursement amongst them as set forth in the charter party.

Article 208. *Bulk contracts.*

The contract may also refer to transport of a set of goods in several ships or on several voyages, in which case the provisions on voyage charter shall apply to each one of those agreed, unless otherwise agreed by the parties.

Article 209. *Multimodal transport.*

Should the transport contract include use of means of transport other than sea, the rules of this Chapter shall apply only to the maritime phase of the transport, the other phases being regulated by the specific regulations thereon, as long as these are imperative.

Article 210. *Contracts for use of the ship for purposes other than carriage of goods.*

In cases where the availability of a ship is contracted for purposes other than carriage of goods, the provisions established for charter parties that refer to availability and use of the ship, as well as to its charter and early termination, shall apply, to the extent that such are compatible with the purpose of the contract entered into.

Section 2. On the obligations of the carrier

Article 211. *Making the ship available.*

The carrier shall make the ship available to the charterer or stevedore in the port and on the date agreed. Should the contract refer to a specific ship, it may not be replaced by another, except for a specific pact authorising this.

Article 212. *Seaworthiness of the ship.*

1. The carrier shall ensure that the ship is in an adequate seaworthy state to receive the cargo on board and to transport it safely to its destination, taking into account the foreseeable circumstances of the voyage planned, its phases and the nature of the cargo contracted.

2. The state of seaworthiness shall exist at the moment the voyage commences, or on each one of the voyages included in the contract. At the moment of receiving cargo on board, the ship shall be at least in a state that makes it able to conserve the goods safely.

3. The carrier shall exercise reasonable diligence to maintain the ship in an adequate state of seaworthiness during the whole time the contract remains in force.

Article 213. *Characteristics of the ship.*

In addition to the terms set forth in the preceding Article with regard to the state of seaworthiness, the ship shall have the conditions set forth in the

contract regarding nationality, classification, speed, consumption, capacity and other characteristics. Should the ship not fulfil any of these, the charterer may demand compensation for the damages caused, except if the breach hinders the intended purpose of the contract, in which case the latter may also terminate the contract.

Article 214. *Failure to make the ship available.*

The charterer may terminate the contract if the ship is not available on the date agreed. It may also claim compensation for the damage suffered if breach thereof is due to the carrier.

Article 215. *Port agreed.*

The ship shall be made available to the charterer or stevedore at the port agreed in the agreement, presuming, except for proof to the contrary, that both parties knew its characteristics on entering into the contract. If the port agreed is impossible to enter or unsafe for the ship, either of the parties may terminate the contract, except if the impossibility or lack of safety is only temporary, in which case they shall be bound to wait a reasonable time to overcome the obstacle.

Article 216. Right to assign the port.

1. Should the charterer have reserved the power to assign the port where the ship is to be made available in the contract, it shall choose a safe port that is accessible to the ship within the appropriate term. Should the port not fulfil those conditions, the carrier may demand assignment of another within the same area in order to fulfil the contract and, if the charterer does not do so, it may terminate the contract, without prejudice to claiming damages for losses. The carrier shall have the same right if the charterer does not assign the chosen port in a timely manner.

2. Should the ship suffer damage as a consequence of entering and remaining in an unsafe port assigned by the charterer, it shall be held liable for such, except if it is proven that the master did not act with the required nautical diligence of a competent master. In time charters, this provision shall be applicable in relation to all the ports the charterer has assigned during the term of the contract.

Article 217. *Dock or loading place.*

1. Unless otherwise agreed, the charterer may assign the dock or loading place the ship shall head for within the port where it is made available, as

long as this is safe and accessible for the ship before, during and after loading. Should such assignment not have been established within a reasonable term, the carrier may keep the ship at anchor while awaiting orders, or head for the usual dock or loading place for the goods concerned, charging the charterer for the time elapsed.

2. In charters to carry goods under bill of lading regime, the power to choose the loading place lies with the carrier, who shall report his choice to the consignor enough time in advance.

3. In the case of damage suffered by the ship as a consequence of lack of safety of the dock or loading place assigned by the charterer, the terms set forth in Section 2 of the preceding Article shall apply.

Article 218. *Loading and stevedore operations.*

1. Except if otherwise agreed, the charterer or stevedore shall place the goods alongside the ship and shall perform the loading and stacking thereof at its expense and risk, with the adequate diligence required by the nature of the merchandise and the voyage planned.

2. The above rules shall not be applicable to charter carriage of specific goods under bill of lading regime, in which the carrier undertakes, except if otherwise agreed, to perform the loading and stacking.

3. Even when it is agreed that the loading and stacking be performed at the expense and risk of the charterer or consignor, the carrier shall be liable for the consequences arising from defective stacking that compromises the safety of the voyage.

Article 219. *Cargo on deck.*

The carrier may board goods on deck as long as the charterer specifically accepts this, or when it is in keeping with the practices or regulations in force.

Article 220. *Undertaking the voyage.*

The carrier shall undertake the voyage and complete it as far as the destination port without undue delay and using the route agreed or, failing that, by the most appropriate according to the circumstances. It shall also provide custody of the goods carried during all the phases of the voyage in

an adequate manner according to their nature and circumstances, and deliver them to the recipient at the final destination place.

Article 221. *Delay in commencing the voyage.*

The carrier shall be liable for damages and losses caused due to unjustified delay in commencing the voyage.

Article 222. *Diversion.*

The carrier shall be liable for damages and losses caused by diversion of the ship from the agreed route or, failing that, from the most appropriate according to the circumstances, should such a diversion not be performed to save human lives or for any other reasonable, justified cause that does not arise from an initial state of the ship not being seaworthy.

Article 223. *Duty of custody.*

The carrier shall be responsible for loss or damages suffered by the merchandise as a consequence of breach of the duty of custody pursuant to the terms set forth in Section 9 of this Chapter.

Article 224. *Putting in due to incapacity of the ship.*

1. If, due to failure of the ship or another cause that disables it to sail, the voyage is interrupted at a port other than that of destination, the carrier shall provide custody for the merchandise while correcting the causes of having to put in. Should the ship be definitively incapacitated or if the delay might severely damage the cargo, the carrier shall provide transport at its expense to the agreed destination. Should the carrier not do so, the goods shall not accrue any freight whatsoever.

2. The terms established in the preceding Paragraph are deemed to be notwithstanding cases of general average and the liability of the carrier for the delay or loss of the goods pursuant to Section 7 of this Chapter, if the cause of not seaworthiness of the ship were due to the carrier.

3. The terms set forth in Section 1 shall not apply to time charters.

Article 225. *Safety of the port.*

1. Should the destination port assigned in the contract not be accessible under safe conditions for the ship, the carrier may head for the nearest

convenient port and demand that delivery of the goods be accepted there. It may not make use of this faculty if the obstacle for access is only temporary, in which case it shall wait until correction within a reasonable time.

2. Should the charterer have reserved the power to assign the destination port in the contract, the provisions of Article 216.1 shall apply.

3. Should the cause of lack of safety exist at the moment of contracting and the destination port and be stated in the contract, the carrier shall bear the expenses arising from unloading at a port other than that agreed, except if the circumstances lead to believe that it did not know the unsafe factors of the port at the moment of entering into the contract.

4. In the cases of Section 1, the carrier shall notify the consignee without delay and, in all cases, the charterer, of the diversion to the nearest port.

Article 226. *Determination of the dock.*

The provisions of the preceding Article shall be applicable to determining the dock or unloading place.

Article 227. *Unstacking and unloading operations.*

1. The charterer or recipient shall unstack and unload the goods without delay at its cost and risk, as well as withdraw them from alongside the ship. The parties may establish diverse specific clauses regarding such operations.

2. The rules of the preceding Section shall not apply to charters to transport specific merchandise under a bill of lading regime, in which the carrier undertakes, except if otherwise agreed, to perform the unstacking and unloading at its expense and risk.

Article 228. *Obligation to deliver.*

The carrier shall deliver the goods carried to the recipient authorised to receive them, without delay and pursuant to the terms agreed. If the recipient does not appear or refuses delivery, the carrier may store the goods until their delivery, at the expense of the consignee, or resort to their judicial deposit.

Section 3. On the duties of the charterer

Article 229. *Delivery of the goods for loading.*

1. The charterer shall place the merchandise alongside the ship for loading, except if another means of delivering the goods for transport has been agreed. If it does not do so, the carrier may terminate the contract once the laytime has elapsed, and also claim compensation for the losses suffered.

2. In charters to carry specific goods under bill of lading regime, the carrier may declare cancellation of the contract if the goods are not delivered within a term that allows them to be boarded during the usual time the ship is in port, as long as it has previously notified the consignor. In such an event, it may also claim compensation for the damages arising from the deadline not being met.

Article 230. *Empty charter.*

The charterer that does not load all the goods contracted shall pay the charter for the amount it has ceased to load, except if the carrier has taken another cargo to make up the capacity of the ship.

Article 231. *Clandestine loading.*

1. No goods of a kind other than that contracted may be loaded, except if it is possible to do so without any damage to the carrier and other consignors. In the latter case, the carrier may demand the freight that would usually be paid for the goods loaded.

2. If different goods are loaded without notifying the carrier, the charterer shall be responsible for all damages and losses that might arise from such to the carrier or other consignors, without prejudice to the obligation to pay the relevant freight. The carrier may unload the goods if this is convenient to prevent severe damages to the ship or the cargo.

Article 232. *Loading hazardous goods.*

1. Hazardous goods may not be loaded without prior declaration of their nature to the carrier, and without its consent to transport such, and in any event they shall be marked and labelled by the consignor pursuant to the rules in force for each class of such goods.

2. Should the charterer load hazardous goods in breach of the terms set forth in the preceding Section, it shall be held liable to the carrier and before the other consignors for all damages and losses caused. Moreover, such goods may be unloaded, destroyed or transformed to make them harmless at any time, as required by the circumstances, without right to compensation.

3. Even in the case of correctly declared loading of hazardous goods, these may be unloaded, destroyed or transformed to make them harmless at any time if they become a real hazard to individuals or property, without right to compensation, unless the carrier is responsible for the situation of danger according to the terms set forth in Section 7, or when it is appropriate to pay these in the general average.

Article 233. *Calculation and accrual of the freight.*

The freight shall be calculated in the manner agreed in the contract and, failing that, according to the following rules:

- a) If the freight is calculated by weight or volume of goods, it shall be set according to the weight or volume declared on the bill of lading, except for wilful misconduct or error;
- b) In time charters, the freight shall be accrued on a daily basis during the whole time the ship is available to the charterer under conditions that allow its effective use.

Article 234. *Freight for lost or damaged goods.*

1. Unless otherwise agreed, a freight shall not accrue on goods lost during the voyage, unless the loss is due to their nature, inherent flaw or defective packaging. If the loss is partial and the freight has been agreed according to the weight or size of the goods, the freight for the lost part shall not be accrued.

2. Damaged goods shall accrue the freight agreed, without their abandonment to the carrier as a means of payment being valid.

Article 235. *Person bound to pay the freight.*

1. The charterer shall be bound to pay the freight under the conditions agreed.

2. Notwithstanding this, it may be agreed that the freight be payable by the recipient of the merchandise, this being recorded on the bill of lading or

consignment note. In this case, the recipient shall be bound to pay the freight if it accepts or withdraws the merchandise at destination. Should the consignee refuse or not withdraw the goods, it shall pay the freight to the party that contracted the carriage. The latter shall also pay the part of the fee that the carrier has not received from the consignee in spite of having exercised the withholding or deposit rights it is granted pursuant to Article 237.

Article 236. *Lien on freight credit.*

The goods transported shall be assigned preferentially to payment of the freight, delays and other expenses arising from their carriage until their delivery and during fifteen days thereafter, except if conveyed to a third party in good faith within the latter term.

Article 237. *Withholding and deposit.*

1. The carrier shall be entitled to withhold the goods carried in its possession until it receives the freight, delays and other expenses arising from such carriage. It may not exercise that right against a consignee other than the charterer, except if the bill of lading or consignment note records the mention that the freight is payable at destination.

2. It may also resort to deposit proceedings and sale of goods and luggage, requesting a Notary Public to sell the goods, with the same limitation with regard to a non-charterer consignee.

Article 238. *Withholding or deposit in time charters.*

In time charters, the carrier may withhold or deposit the goods due to non-payment of freight when these belong to the charterer. Should they be owned by third parties who have hired the charterer to provide carriage, the carrier may only withhold or deposit the goods for the amount of the freight they still owe the charterer.

Section 4. On laytime and delays

Article 239. *Calculation of laytime.*

1. If the contract were to establish a laytime for loading or unloading the goods, this shall be calculated excluding holidays according to the official calendar or practices in the port concerned, except if otherwise agreed. If

a set term is not established, the laytime shall be the usual term according to the conditions of the ship, port and goods.

2. Nor shall the laytime be calculated, except if otherwise agreed, during periods when it is impossible to work, due to fortuitous causes, on the respective loading or unloading operation.

Article 240. *Commencement of laytime calculation.*

Laytime calculation shall commence, except if otherwise agreed, when the ship has reached the dock or loading or unloading place assigned, is ready to perform such operations and when the charterer or person assigned in the contract has received the relevant notification.

Article 241. *Delays arising and their money equivalent.*

1. Once the laytime has ended, without having concluded the loading or unloading operations, the delay time shall automatically begin to be counted.

2. The charterer shall pay the amount set in the contract for the delay time arising. If its amount has not been agreed, a sum shall be paid equal to that which may have been set according to the business practice for ships of similar characteristics, with a similar cargo and voyage.

Article 242. *Duration and calculation of the delay term.*

The duration of the delay term shall be set in the party and, failing that, shall last as many days as the working ones in the laytime. Calculation of the delay shall be by consecutive hours and days, being suspended only when it is impossible to load or unload due to causes arising from operation of the ship.

Article 243. *Subsequent detention of the ship.*

Once the delay period has expired without the loading or unloading having concluded, the carrier may demand compensation of the losses caused due to subsequent detention of the ship without this being subject to the contractual or legal amount set for delays. Notwithstanding this, the carrier may also set sail with the goods loaded up to that moment, or unload them on its account in the most adequate manner, depending on whether the expiry of the delay period took place in the port of loading or unloading. In the first case, it may claim the freight on the relevant empty carriage; in the

second, the expenses arising from unloading not due to it pursuant to the contract.

Article 244. *Independent calculation of the terms.*

Unless otherwise agreed, the laytimes established for loading or unloading in the party shall be calculated independently one from the other.

Article 245. *Payment, lien and prescription.*

The rules on payment, liens and prescription of the freight shall be applicable to delays.

Section 5. On the bill of lading

Sub-Section 1. On the bill of lading in paper format

Article 246. *Obligation of delivery of a bill of lading.*

1. Once the goods are on board the ship, the carrier, the master or the agent to the carrier shall deliver the consignor a bill of lading, evidencing the right to be returned those goods at the destination port.

2. Should a bill of lading have been issued before the goods are on board the ship, the master shall include an apostille on the document, after the loading takes place, stating “boarded”, recording the date and time when the loading is commenced and concluded, or replace the former one with a new bill of lading stating the goods are effectively on board the ship. If a new bill is issued, it shall mention the name of the ship.

Article 247. *Multiple bills.*

Should the consignor request such at the time of delivering the goods, two or more original copies of the bill of lading shall be delivered. In that case, each bill shall record the number of original copies delivered.

Article 248. *Mandatory mentions on the bill of lading.*

1. At the moment of delivery to the consignor, the bill of lading must contain the following mentions:

1st. The name and surname or the company name and address, or the main establishment of the carrier;

2nd. The name and surname or company name and the address or main establishment of the consignor and, if the bill is nominative, those of the consignee;

3rd. The description of the goods provided by the consignor, stating the nature, the identifying marks, number of items and, according to the cases, the quantity or weight, as well as their apparent state. If requested by the consignor, it shall include their value. If the goods are hazardous, that mention shall be recorded in a visible place on the bill of lading;

If the goods are inside containers, loading trays or other similar resources, each container, tray or similar shall be considered as a unit, except for specification to the contrary.

If the goods may be transported on deck, this shall be specifically stated in the bill of lading.

4th. The ports to load and unload goods and, in the case of multi-mode transport, the transport start and end places;

5th. The date of delivery of the goods to the carrier for carriage and, if agreed, the date or deadline for delivery of the goods at the relevant location;

6th. The place of issue of the bill of lading and, if more than one is delivered, the number of original copies.

2. The bill may also contain all the mentions or clauses that may be validly agreed by the consignor and the carrier.

Article 249. *Signing the bill of lading.*

1. The bill of lading shall be signed by the carrier or by the carrier's agent who is acting on its behalf with sufficient powers. If signed by the master of the ship, it shall be presumed to be signed on behalf of the carrier mentioned in the bill.

2. Should the bill of lading not sufficiently identify the person acting as carrier, it shall be deemed to be signed on behalf of the ship-operator.

Article 250. *Bill of lading circulation law.*

1. Bills of lading may be to the bearer, to the order or nominative.

2. Bearer bills of lading shall be transmitted by delivery, those to the order by endorsement, and nominative ones by assignment according to the rules governing assignment of non-endorsable credits.

Article 251. *Effectiveness of conveyance.*

Conveyance of the bill of lading shall take the same effects as delivery of the goods represented, without prejudice to the relevant criminal and civil actions to which the party illegitimately dispossessed of such may be entitled. The acquirer of the bill of lading shall acquire all the rights and actions of the conveyor to the goods, with the exception of agreements regarding jurisdiction and arbitration, which shall require the consent of the acquirer pursuant to the terms stated in Chapter I of Title IX.

Article 252. *Right to delivery of the goods.*

1. The carrier shall deliver the goods to the legitimate holder of the original bill of lading, collecting the bill of lading as proof of physical delivery.

2. In the event of delivery of the goods to a person who is not authorised, the carrier shall be held liable to the legitimate holder of the bill for the value of the goods at the destination port, without the carrier being able to limit the amount of liability.

3. If more than one original of the bill is issued at the request of the consignor, with each recording the number of original copies, the carrier shall comply by delivering on production and collection of any of the original copies, the others being considered as annulled with regard to the carrier.

Article 253. *Enforceable title status.*

A bill of lading shall imply the obligation to deliver the goods entrusted to the carrier for carriage thereof.

Article 254. *Protection of the acquirer in good faith.*

When a person is dispossessed of a bill of lading for any reason, be it a bearer bill, or an endorsable bill, the new holder who has acquired it by an inter vivos transaction pursuant to the law on circulation of the document shall not be obliged to return it if acquired such bill in good faith and without gross negligence. This is notwithstanding the rights and actions of the

legitimate holder against the parties responsible for acts of illegitimate dispossession.

Article 255. *Obligation to pay the freight.*

The carrier may refuse to deliver the goods to the consignee until it is not paid the freight and the delays caused at the port of lading in the following cases:

- a) When this is specifically established in the bill of lading;
- b) When the consignee is the charterer itself, even though not mentioned.

Article 256. *Validity of a bill of lading as evidence.*

1. Except for proof to the contrary, a bill of lading shall certify delivery of the goods by the consignor to the carrier for carriage and their delivery with the characteristics and in the state recorded in the document itself.

2. Proof to the contrary shall not be admissible against a person other than the consignor, including the consignee, that has acquired the bill of lading in good faith and without gross negligence, except if the carrier has stated the relevant reservations on the bill of lading regarding misrepresentation on the declarations the document contains, regarding goods received for carriage or their state.

Article 257. *Reservations for checking.*

1. Should the carrier have noted that the description of the goods, the nature, identifying marks, the number of items and, according to the cases, the quantity or weight declared by the consignor do not match the real state of those received, it shall include a reservation on the bill to record the inexact circumstances detected.

2. Should the carrier have noted that the apparent state of the goods received does not match that described by the consignor; it shall include a reservation to record the real state thereof. Should no reservation be made, the carrier shall be assumed to have received the goods in a proper condition.

Article 258. *Reservations without checking.*

If the carrier has not had adequate means to check the exactness of the declarations by the consignor regarding the nature of the goods, the

identifying marks, number of items and, according to the cases, the quantity or weight, it may include the relevant reservation on the bill to record that it was impossible to check, or what is reasonably considered to be the exact information.

Article 259. *Effectiveness of the reservations.*

Inclusion of one or several reservations on a bill of lading shall deprive the document of validity as proof under the terms of the reservation.

Article 260. *Legal guarantee by the consignor.*

The carrier shall be entitled to action against the consignor to demand compensation for damages and losses caused by inexact declarations regarding the goods delivered for carriage or the state thereof.

Article 261. *Guarantee letters.*

The agreement between consignor and carrier, or unilateral declaration by the former undertaking to compensate the carrier for damages and losses that might be caused by failure to record reservations on the bill of lading regarding the data supplied by the consignor or regarding the apparent state of the goods or the containers, shall be fully valid and effective between the consignor and carrier, except for bad faith in omission of the reservations, in order to be to the detriment of a third party, but they shall not take effect before third parties who may have had the bill conveyed to them.

*Sub-Section 2. On the bills of lading
on electronic media*

Article 262. *Issue.*

1. A bill of lading may be issued on an electronic medium when the consignor and carrier have so agreed in writing before loading the goods on board.

2. The contract between consignor and carrier shall determine the system of issue and circulation of the bill; the system to guarantee the security of the medium and the intangibility of the content; the means to authenticate the holder of the bill; the means to record the delivery of the goods; and the means to evidence loss of validity or effectiveness of the bill.

Article 263. *Substitution of a bill of lading in paper format.*

1. A bill of lading in paper format may be replaced by another on a computer medium, with prior written agreement between the legitimate holder of the bill and the carrier, with the content established in the preceding Article.

2. In implementation of the terms agreed, the legitimate holder of a bill of lading in paper format shall deliver the bill to the carrier. If two or more original copies exist, the delivery shall include all those that have been delivered. Simultaneously, the carrier shall issue the bill of lading on an electronic medium, on which it shall record the fact and date of the substitution, the identity of the legitimate holder and that the bill of lading substituted is void.

Article 264. *Legal regime.*

An electronic bill of lading shall be subject to the same regime and have the same effects as the bill issued in paper format, with no further specialities than those contained in the issue contract.

Article 265. *Substitution of an electronic bill of lading.*

1. An electronic bill of lading may be replaced by a paper format one, with prior written agreement between the legitimate holder of the bill and the carrier.

2. In implementation of the terms agreed, the carrier shall deliver the legitimate holder the bill of lading in paper format, recording the fact and date of substitution of the electronic bill of lading, the identity of the legitimate holder and that the bill of lading replaced is void.

Article 266. *Effects of substitution.*

From the moment of substitution, the bill of lading replaced, whatever the new medium, shall be considered annulled to all legal purposes.

Section 6. On the multimodal transport document

Article 267. *On the multimodal transport document.*

The rules established in this Act for bills of lading shall apply to the transport document delivered by a carrier, or by an agent acting on its behalf with sufficient powers in multimodal or combined transport.

Section 7. On sea waybills

Article 268. *On sea waybills.*

1. Non-negotiable carriage documents and, in particular, sea waybills issued for transport by sea are not securities.

2. Conveyance of such documents does not grant the acquirer a greater right to the goods than that to which the holder was previously entitled.

Article 269. *Mentions on sea waybills.*

Sea waybills shall contain the mentions established for bills of lading, as well as specifically stating their non-negotiable nature.

Article 270. *Validity of sea waybills as proof.*

Sea waybills shall be subject to the same rules of validity of proof as bills of lading, as well as regarding the possibility of including reservations.

Article 271. *Delivery of the goods.*

When the carrier delivers a sea waybill stating the consignee, the latter shall be entitled to delivery of the goods at destination without the need to produce the document.

Section 8. On early termination of the contract

Article 272. *Supposed cases of extinction.*

1. The contract shall be terminated in the following cases:

a) If, before the ship chartered sails, pursuant to Article 211, it were to be lost or definitively unable to sail without any of the parties being to blame. In time charters, the extinction shall take place at any moment when the ship is lost or definitively incapacitated;

b) If the charter is by voyage or related to carriage of goods under the bill of lading regime and these are lost before loading without the charterer or consignor being at fault. In time charters, extinction due to loss of the goods shall not be applicable;

c) If, prior to the ship setting sail, the contractual carriage becomes impossible due to natural events, due to decisions by the authorities or causes beyond the control of the parties;

d) If, prior to the ship-setting sale, an armed conflict breaks out in which the country of the port of loading or unloading is involved.

2. In the preceding cases, the carrier shall proceed, as appropriate, to unload and return the goods loaded. The cost of the operation shall be borne by the charterer.

Article 273. *Temporary impediment.*

The contract shall also be terminated at the request of any of the parties if, prior to commencement of the voyage, an impediment were to arise, beyond the will of either party, that causes such a prolonged delay that the parties could not be expected to wait for it to disappear.

Article 274. *Impediments arising during the voyage.*

If circumstances were to arise during the voyage that make it impossible, unlawful or prohibit its continuation or an armed conflict exists making the ship or cargo subject to risks not considered on entering into the contract, the carrier may put into the most convenient port for the common interest and unload the goods there, requiring the charterer to take charge of them at that place. In that case, the carrier shall be entitled to the freight in proportion to the distance covered. The cost, time and risks the party is subject to in proportion to the total voyage shall be taken into account in order to calculate the partial freight.

Article 275. *Change in destination by the charterer.*

When chartering the full ship by voyage, the charterer may order it to unload at a different port to that agreed, as long as it does not thus expose the ship to higher risks than those foreseen on entering into the contract, paying the total contractual freight and the increased expenses caused.

Article 276. *Sale of the ship.*

1. In the case of sale of the ship before loading the goods commences, the buyer shall not be bound with regard to contracts entered into by the seller, the charter contract being extinguished if it refers to the ship sold, without prejudice to the right of the charterer to compensation from the seller.

2. Should the sale take place once loading has commenced, or when the ship is on a voyage, the buyer shall fulfil the contracts regarding the goods on board, subrogating itself in the rights and obligations of the carrier.

3. Notwithstanding the terms set forth in Section 1, the buyer of the ship shall respect the charters for a term exceeding one year when it knows of their existence at the time of acquiring the ship.

Section 9. On liability of the carrier for loss, damage or delay

Article 277. *Liability regime.*

1. The carrier is liable for all damage or loss of goods, as well as delay in their delivery, caused while they are under custody, according to the provisions foreseen in this Section, which shall imperatively apply to all contracts for carriage by sea.

Contractual clauses that aim directly or indirectly to attenuate or annul such liability to the detriment of the person entitled to receive the goods shall not take effect. However, such clauses, when agreed in the charter policy and if they do not involve exonerating the carrier for wilful misconduct or gross negligence by the carrier, shall be valid exclusively in the relations between it and the charterer, without them being able to oppose them to the consignor if he is a person other than the charterer in any case.

2. Contracts for national or international carriage of goods by sea under the bill of lading regime and liability of the carrier shall be governed by the Convention for the Unification of Certain Rules of Law relating to Bills of Lading, done in Brussels, on 25th August 1924, the protocols that amend it to which Spain is a party and this Act.

Article 278. *Contractual carrier and effective carrier.*

1. The liability established in this Section shall jointly and severally affect both the party that undertakes to perform the transport, as well as the party that effectively performs it with its own resources.

2. In the first case, this shall include transport commission agents, clearing agents and other persons who undertake to the consignor to provide the transport by means of others. It shall also include the charterers of a ship who contract in the manner foreseen in Article 207.

3. The second, in all cases, shall include the ship-operator of the ship carrier.

4. The contractual carrier shall be entitled to be reimbursed by the effective carrier for compensations paid by virtue of the liability upon it established in this Article. The contractual carrier's right to be reimbursed by the effective carrier shall be subject to a prescription term of one year from the moment of paying the compensation.

Article 279. *Temporary period of liability.*

The liability of the carrier for custody and conservation of the goods shall be from the period when it takes charge of them at the port of origin until they are made available to the consignee or person appointed by it at the destination port. In the case of the port laws or regulations forcibly imposing intervention by a firm or body in the operations to deliver the goods to the carrier for carriage, or from the latter to the consignee, the carrier shall not be held liable for the period when the goods are under the custody of such firms or bodies.

Article 280. *Delay in delivery.*

Delay in delivery exists when the goods are not delivered to the destination by the deadline agreed, or failing that, within a reasonable term that may be demanded according to the circumstances of the fact.

Article 281. *Liability for animals transported.*

In the case of transport of live animals, the carrier shall not be held liable for loss, damage or delay arising from the specific risks inherent to such transport, as long as it has acted according to the specific instructions received from the consignor. Notwithstanding this, it shall be held liable if the claimant evidences that the damage, loss or delay are due, fully or partially, to negligence by the carrier or its assistants, employees or independent parties.

Article 282. *Limitation of the liability for loss or damage.*

1. The liability of the carrier for loss or damage of the goods transported shall be limited, except of the bill of lading has declared the real value of such goods, to the figures established in the Convention for the Unification of Certain Rules of Law relating to Bills of Lading and the Protocols that amend it to which Spain is a party.

2. Should containers, cargo trays or other similar means to group goods be used in carriage, any item or unit listed on the bill of lading included

within such a grouping shall be considered as a single item or unit for the purposes of limiting the liability for loss or damage. Should the container or means of grouping have been supplied by the consignor, it shall be considered an additional item to those ends. If the bill of lading does not record the list of the contents, it shall be considered that a sole item exists.

3. The liability regime of the carrier and its limitation shall be applicable to all actions aimed at compensating damage and losses borne, independent of the procedure in which the action is exercised, as well as its grounds, be they contractual or tortious, and both if filed against the carrier as well as against the assistants it may employ to provide the service.

4. The carrier may not avail itself of the right to limit its liability when it is proven that the damage or loss has been caused by itself, intentionally or acting in a reckless manner, and being aware of the likelihood of such loss or damage.

Likewise, the assistants to the carrier may not avail themselves of the right to limit their liability when it is proven that the damage or loss has been caused by themselves, intentionally or acting in a reckless manner, and being aware of the likelihood of such loss or damage.

Article 283. *Limitation of liability for delay.*

1. Liability for delay is limited to a figure equivalent to two and a half times the freight payable for the goods affected by the delay, but it shall not exceed the total amount of the freight that must be paid by virtue of the charter party.

2. In the case of concurrent compensation for breakage and delay, the accumulation of both shall be limited to the figures established to limit liability for loss or damage.

3. The regime of liability of the carrier and its limitation shall be applicable to all actions aimed at compensation for delays experienced, regardless of the procedure in which the action is exercised, as well as their grounds, be they contractual or tortious and both if taken against the carrier as well as against the assistants it may employ to provide the service.

4. The carrier may not avail itself of the right to limit its liability when it is proven that the delay has been caused by itself, intentionally, or acting in a reckless manner, and being aware of the being aware of the likelihood of such a delay.

Likewise, the carrier's assistants may not avail themselves of the right to limit their liability when it is proven that the delay has been caused by itself, intentionally, or acting in a reckless manner, and being aware of the likelihood of such a delay.

Article 284. *Successive carriers.*

1. In the case of transport by successive carriers under a sole title, these shall be jointly and severally liable in the case of loss, damage or delay, unless the bill of lading contains a specific clause that each carrier shall not be held liable for damage arising from the legs covered by any of the other carriers. In that case, only the carrier that undertook the leg of the voyage on which the damage, loss or delay took place shall be held liable.

2. The carrier that compensates damage, loss, or delay as a consequence of the joint and several liability established in the preceding Section shall be entitled to be reimbursed by the carrier on whose leg the damage, loss or delay took place. If it is not possible to determine the leg on which the damage, loss or delay took place on, the compensation shall be shared among the diverse carriers in proportion to the freight accrued by each one.

Article 285. *Notes of Protest.*

1. The consignee shall provide the carrier or its agent a written notice of loss or damage suffered by the goods, describing their nature in general terms, during the working day following their delivery. If the loss or damage is not apparent, the notice may be given within three working days following that of delivery. The notice shall not be necessary when the carrier and consignee have carried out a joint inspection of the state of the goods.

2. The consignee shall provide the carrier or its agent with written notice of the delay in delivery of the goods, describing the damage suffered in general terms, within ten working days following that of delivery.

3. If the notification is omitted or it is given outside the term, it shall be assumed, except for proof to the contrary, that the goods have been delivered just as described in the bill of lading.

Section 10. On prescription

Article 286. *Prescription of actions.*

1. Actions arising from a charter party shall expire within the term of one year.

2. In actions to compensate losses, breakages or delays suffered by the goods, the term shall be counted from delivery of these to the consignee, or from the day on which they should have been delivered.

3. Likewise, the term shall be calculated to claim freight, delays and other transport expenses. However, in time charters, the term shall be counted from the day on which the freight or other fees are due under the policy.

CHAPTER III ON THE PASSAGE CONTRACT

Article 287. *Concept.*

1. By means of a passage contract, the carrier undertakes, in exchange for payment of a price, to transport an individual and, where appropriate, his luggage, by sea.

2. The provisions of this Chapter shall not apply to amicable transport or clandestine passage. Notwithstanding this, it shall apply to free transport provided by a maritime passenger carrier.

Article 288. *Mentions on the passage ticket.*

1. The carrier shall inexcusably extend a passage ticket, which shall contain at least the following mentions:

- a) Place and date of issue;
- b) Name and address of the carrier;
- c) Name of the ship;
- d) Class and number of the cabin or accommodation;
- e) Price of the transport or free nature thereof;
- f) Place of departure and destination;
- g) Date and time of boarding, as well as that of arrival or estimated duration of the voyage;
- h) Summary indication of the route to be followed, as well as the stops foreseen;
- i) The remaining conditions under which the transport shall be performed.

2. For vessels that provide port and regular services inside the zones defined by the maritime authorities, the passage ticket may be replaced by a ticket that shall state the name of the carrier, the service provided and its amount.

Article 289. *Issue of the passage ticket.*

The passage ticket may be issued to the bearer or to a specific individual. In the latter case, it may only be conveyed with the carrier's consent.

Article 290. *State of seaworthiness.*

1. The carrier shall ensure the ship is put into and kept in a state of seaworthiness and duly fitted out, equipped and provisioned to perform the transport agreed and to guarantee the safety and comfort of the passengers on board, according to the conditions that are usual on the type of voyage contracted.

2. The carrier shall provide the passengers the ship at the place and time agreed, as well as the spaces dedicated to those of their class and, where appropriate, the accommodation places acquired by the passengers.

Article 291. *Obligation to perform the voyage.*

The carrier shall commence the voyage and complete it to the destination without unjustified delay and on the route agreed or, should an agreement not exist, by that most appropriate according to the circumstances. Likewise, it shall provide complementary services and medical assistance in the manner established in the regulations or usual practice.

Article 292. *Interruption of the voyage.*

If the voyage is interrupted by failure of the ship before reaching the destination port, the carrier shall bear the maintenance and accommodation expenses of the passengers while the ship is repaired. If the ship is definitively incapacitated or the delay may severely harm the passengers, the carrier shall provide transport to the agreed destination at its expense, notwithstanding the relevant liabilities.

Article 293. *Rights and obligations of the passenger.*

1. The passenger shall be entitled to demand that the carrier fulfils the obligations upon it according to the rules of the European Union;

2. The passenger shall pay the price of the passage, arrive on time for boarding and abide by the rules established to maintain proper order and safety on board.

Article 294. *Duties of the carrier with regard to luggage.*

The carrier shall transport the luggage along with the travellers and included in the price of the tickets, within the limits of weight and volume set by the carrier or usual practice. That exceeding the limits stated shall be subject to special stipulation, with the obligation to previously inform the passenger of these limitations of luggage and cost thereof.

Article 295. *Luggage.*

1. For the purposes of the preceding Article, the luggage shall be considered to include the items or cars transported by the carrier by virtue of the passage contract, excluding those that are under a goods transport contract, or live animals.

2. Cabin luggage is considered exclusively that which the passenger has in the cabin, or in the vehicle transported, or on it, or that he conserves in his possession, custody or control.

3. Hold luggage shall be considered cars and items delivered to the carrier. When the luggage is admitted, the carrier shall record the following data on the ticket or a complementary stub:

- a) Number and weight of the items or vehicles;
- b) Name and seat of the main establishment of the carrier;
- c) Name of the passenger;
- d) Port of departure and destination;
- e) Eventual declared value.
- f) Transport price.

4. The terms set forth in Article 232 shall apply to the luggage, as appropriate.

Article 296. *Lien and withholding right.*

The rights of pre-emption and withholding of the carrier to the hold luggage shall be regulated pursuant to Articles 236 and 237.

Article 297. *Termination of the contract.*

The contract shall be terminated in the following cases:

- a) When the passenger does not board on the date established, in which case the price of the passage shall be forfeited to the carrier, except if the cause of failure to board is the death or illness of the passenger or relatives accompanying him and that is notified without delay, or it has been possible to replace the passenger with another;
- b) When, for a fortuitous reason, the voyage becomes impossible or delayed, in which case the carrier shall refund the price of the passage and being exempt of liability;
- c) For all major amendment of fees, foreseen stopovers, diversion of the ship from the agreed route, accommodation places acquired by the passenger and the comfort conditions agreed, in which case, if the passenger opts for termination, he shall be entitled to reimbursement of the total price of the passage, or the proportional part thereof for the distance still to be covered, and compensation of damage and losses, if the modification is not for justified reasons;
- d) If, prior to commencing the journey or during execution thereof, war were to break out that might expose the ship or passenger to unforeseen risks, in that case both parties may request termination without compensation;
- e) If, once the journey has commenced, the passenger cannot continue for a fortuitous reason, in which case the carrier shall be entitled to the proportional part of the price according to the route covered.

Article 298. *Regime of liability.*

1. The liability of the carrier shall be governed, in all cases, by the International Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13th December 1974 (PYE/PAL), the Protocols that amend it to which Spain is a party, the provisions of the European Union and this Act.
2. The provisions of this Chapter shall imperatively apply to all maritime passage contracts. Contractual clauses that are directly or indirectly aimed at attenuating or avoiding such liability to the detriment of the holder of the right to demand such compensation shall not take effect.

Article 299. *Limitation of liability.*

1. Liability of the carrier is limited to the sums established in the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and Protocols that amend it and are in force in Spain.

2. If the luggage is transported with declared value, accepted by the carrier, the limit to their liability shall match that value.

Article 300. *Mandatory insurance.*

1. The effective carrier that executes transport of a ship transporting more than twelve passengers shall be bound to subscribe mandatory liability insurance for death or bodily harm to the passengers transported, with a limit for each passenger and each accident that is no lower than those established in the conventions and in the provisions of the European Union. The implementing regulations shall govern the details of such mandatory insurance and the certificate it is mandatory for the ships to carry on board.

2. The party damaged shall be entitled to direct action against the insurer up to the limit of the sum insured. The insurer may raise the same objections as those to which the carrier is entitled pursuant to Article 3 of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and, where appropriate, the fact of the accident being fraudulently caused by the insured. In all cases, it may also oppose the limit of liability established in Article 7 of the Convention, even in the event of the insured having lost it pursuant to Article 13 of the Convention.

CHAPTER IV
ON TOWING CONTRACTS

Article 301. *Concept.*

By means of a towing contract, the ship-operator is bound, in exchange for a price, to perform the necessary manoeuvres with the ship to displace another ship, vessel or naval artefact, or to provide its collaboration for manoeuvres by the ship towed or, where appropriate, to accompany or make the ship available.

Article 302. *Transport towing.*

1. When the ship-operator of the tug has undertaken to move the ship or artefact towed, it shall be deemed that, except if specifically

agreed otherwise, management of the manoeuvre lies with the master of the tug. The rules of Chapter II on making the ship available in the charter party shall be applicable if in keeping with the object of the contract.

2. In cases in which the elements towed are delivered to the towing tug, it shall be deemed that it accepts their custody, with the relevant liability.

Article 303. *Manoeuvre tug.*

When the tug contract concerns assistance by the tugboat in manoeuvring the ship towed, it shall be deemed that, except if otherwise agreed, handling the manoeuvre befalls the commander of the ship towed.

Article 304. *Liability for damages.*

1. The ship-operators of each one of the ships shall be held liable for damages caused to the other as a consequence of negligence in fulfilment of the services they are due to provide.

2. Both ship-operators shall be held jointly and severally liable to third parties for the damages caused by the towing train, except to the extent that any of them may prove that such damage is not due to causes for which an element in the towing train is to blame. In any case, the right to be reimbursed shall be applicable against the ship-operators with attention to the respective degree of fault.

Article 305. *Salvage towing.*

When towing services are requested in an extraordinary situation, that do not amount to a case of maritime salvage, without previously having set the conditions of service and price, the ship-operator of the towing ship shall be entitled to an adequate remuneration for the services provided. That remuneration shall include the damages and losses suffered by the ship due to towing, the gains it has ceased to obtain during the towing time and an adequate price for the service. Such remuneration shall not be subject to the success of the operation.

Article 306. *Prescription of the actions.*

Actions arising from a towing contract shall prescribe within the term of one year.

CHAPTER V ON NAUTICAL LEASE CONTRACTS

Article 307. *Concept.*

In a nautical lease contract, the lessor assigns or provides the lessee a ship or vessel, in exchange for a price, for a period of time and exclusively for sporting or recreational purpose.

Article 308. *Modes and applicable regime.*

1. The nautical lease may be bareboat or crewed.
2. Bareboat nautical lease contracts shall be regulated by the provisions of this Chapter, by those applicable to the ship lease contract and the terms freely agreed by the parties.
3. The crewed nautical lease contract shall be regulated by the provisions of this Chapter, by the terms foreseen in Article 210 and the terms freely agreed by the parties.
4. The provisions of this Chapter shall be imperative.

Article 309. *Delay in delivering the ship or vessel.*

1. If arrival on the date agreed by the lessor is delayed in delivering of the ship or vessel, or making it available to the lessee, the lessor shall pay the lessee the sum agreed for that purpose or, failing that, quantity in proportion to the delay caused.
2. Should delay in delivery or making available exceed forty- eight hours, in addition to the compensation referred to in the preceding Section, the lessee may opt to terminate the contract or to extend it for a time equivalent to the delay.

Article 310. *Instructions by the lessor and professional criterion of the master.*

In crewed leases, the master and, where appropriate, the other members of the crew, shall follow the instructions by the lessee with regard to use of the ship within the terms agreed, as long as these do not place safety on board or navigation at risk, in which case the professional criterion of the

master shall prevail, both the lessee and those accompanying being bound to obey the relevant orders and instructions given by him.

Article 311. *Duty to report damage suffered.*

On bareboat lease, the lessee shall inform the lessor, as soon as possible, of any damage or incident that affects or might affect the seaworthiness or safety of the ship or vessel.

Article 312. *Mandatory insurance.*

The lessor is bound to take out mandatory civil liability insurance and maintain it in force for the whole duration of the contract, pursuant to the terms foreseen in the implementing regulations and pursuant to the terms set forth in Article 464.

Article 313. *Prescription.*

Actions arising from a nautical lease contract prescribe within the term of one year, from the termination date of the contract or definitive landing by the lessee and those accompanying him, if later.

TITLE V

ON ANCILLIARY NAVIGATION CONTRACTS

CHAPTER I

ON NAVAL MANAGEMENT CONTRACTS

Article 314. *Concept.*

By means of a naval management contract, a person undertakes, in exchange for remuneration, to manage all or some of the aspects involved in operating the ship on account and on behalf of the ship-operator. Those aspects may concern the business, nautical, labour or insurance management of the ship.

Article 315. *Exercise of the obligations of the manager.*

The manager shall fulfil his obligations with the diligence of an orderly entrepreneur and a loyal representative, protecting the interests of the ship-operator.

Article 316. *The means of action by the manager.*

1. In their relations with third parties, the manager shall declare his condition as proxy to the ship-operator, stating the identity and address of the latter in all contracts into which he enters.

2. Should the manager not enter into contracts pursuant to the terms of the preceding Paragraph, he shall be held jointly and severally liable with the ship-operator for the obligations undertaken on its account.

Article 317. *Applicable regime.*

The relations between the ship-operator and its manager shall be governed by the terms set forth in the management contract and, failing that, by the rules governing agency or business commission agreements, according to whether or not it is an ongoing relationship.

Article 318. *Tortious liability.*

The manager shall respond jointly and severally with the ship-operator for tortious damages and losses caused third parties as a consequence of the his acts or those of his servants, without prejudice to the right of both to limit liability pursuant to the terms established in Title VII of this Act.

CHAPTER II
ON SHIPPING AGENCY CONTRACTS

Article 319. *Concept.*

A shipping agent is deemed as the person on account of whom the ship-operator or the shipping company takes charge of the material and legal formalities required for dispatch and other attentions to the ship in port.

Article 320. *Regime.*

The internal relations between the shipping agent and the ship-operator or shipping company shall be regulated by the legal regime of business commission agreements in the case of an occasional consignment. In the case of on-going or stable agencies, the agency agreement legal regime shall apply. In the latter case, an exclusive agency arrangement may be agreed.

Article 321. *Signing bills of lading.*

The shipping agent may sign bills of lading for the goods loaded on the ship on behalf of the ship-operator or shipping company, in which case it shall record its name and address. If it does not do so, it shall be held liable for the carriage jointly and severally with the ship-operator or shipping company. The same rule shall apply when the shipping agent signs the bills on behalf of the carrier charterer.

Article 322. *Liability for damage to goods.*

The shipping agent shall not be held liable to the carriage consignees for damages or losses of goods or for delay in their delivery. However, it shall be liable to the ship-operator or shipping company for damage caused for its own fault.

Notwithstanding this, the shipping agent shall receive the claims and reservations for loss or damage of the goods issued by the carriage consignee, undertaking to immediately forward these to the ship-operator or shipping company. Claims and reservations notified to the shipping agent shall take the same effects as those made to the ship-operator or shipping company.

Article 323. *Handling tasks.*

When the shipping agent performs port handling tasks of goods, the rules pertaining to such activity shall apply to it.

Article 324. *Acting as a freight forwarder.*

When, in addition to consignment, activities are carried out as a freight forwarder or of another nature, the obligations foreseen for a shipping agent shall be added to those inherent to the specific complementary services undertaken.

CHAPTER III
ON PILOTAGE CONTRACTS

Article 325. *Pilotage contract.*

Under a pilotage contract, an individual called a pilot is bound, in exchange for a price, to advise the master on performing the diverse operations and manoeuvres for safe navigation of ships in port or adjoining waters.

Article 326. *Reciprocal duties.*

1. Master and pilot are bound to jointly plan the ship's manoeuvres and, to that end, to exchange the necessary information for that purpose.
2. Likewise, master and pilot shall collaborate together during execution of the manoeuvres.

Article 327. *Pre-eminence of the master.*

The presence of the pilot on board does not exonerate the watch officer in command from his duties in relation to safety of navigation, nor substitutes the higher authority of the master in everything related to nautical steering and management, without prejudice to the advice by the pilot being embodied in direct handling instructions, or even performing these himself, with specific or tacit consent by the master.

Article 328. *Liability for damage during execution of pilotage.*

1. Damage and accidents caused to the ship or to third parties due to inexactness or omission in advice that the pilot is due to provide the master shall be responsibility of the pilot, without prejudice to the concurrent fault that may be appreciated when the master has committed an error or negligence in following the instructions received.
2. The pilot shall be held liable for damage caused due exclusively due to him.
3. In addition, the master and ship-operator shall be jointly and severally liable for damage caused with shared blame.
4. In the cases established in the preceding Sections, the rules limiting the liability of ship-operators and pilots shall apply.

CHAPTER IV
ON PORT HANDLING CONTRACTS

Article 329. *Applicable concept and regime.*

1. By means of a port handling contract, an operator undertakes, in exchange for a price, to perform all or some of the goods handling operations in port foreseen by this Act or others of a similar nature.

2. The regime of liability of the operator for losses, damage or delay in delivering the goods established in this Chapter may not be contractually amended to the detriment of the party contracting the service.

Article 330. *Obligations.*

1. The contracts to handle goods in port may include the loading, unloading, stacking and unstacking operations on board ships, as well as those of reception, classification, deposit and storage on the dock or port warehouses, and those of transport within the port. Likewise, the operations may include matters that are similar or related to the above. They shall all be executed pursuant to the provisions in force applicable to them.

2. When the port operator acts on account of the consignors or consignees of the goods, it shall make the protests or reports in a due and timely manner regarding their state and condition at the moment they are received from the carrier. It shall be liable for damage caused by omission or untimely submission thereof.

Article 331. *Contracting the operations.*

The port handling operations of the goods may be contracted directly by the consignors or consignees, or by those who have undertaken the obligation to verify these on their behalf.

Article 332. *Documentation.*

1. The port operator may record reception of the goods for handling in a written document, recording their condition and quantity when it is possible to determine them by examination. That written receipt may be substituted, at the will of the operator, by a mere acknowledgement of receipt that is recorded, placing the date and signature of the operator on any document presented to it by the party that delivers the goods, in which these are duly identified.

2. Issue and signing the document proving reception shall be mandatory if requested by the person to whom the goods are delivered. Notwithstanding this, the operator may decide whether to issue the written receipt or to provide a mere acknowledgement of receipt.

3. In the event of not having issued the receipt, or not having provided the relevant acknowledgement of receipt, it shall be assumed that the operator received the goods in apparent good condition, except for proof to the contrary.

Article 333. *Grounds of liability of the port handler.*

1. The port operator shall be liable for all damage, loss of goods or delay in their delivery caused to the goods while they are under its care, if it does not prove this is due to fortuitous causes and that, in order to avoid the effects thereof, the operator or its assistants adopted all the reasonably required measures. The period of liability of the operator shall last from the moment when it took charge of the goods until when it delivered or made them available to the person authorised to receive them.

2. Unless the port operator has been given a written notice of the loss or damage to the goods, describing their nature in general terms, within three working days following delivery, it shall be assumed, except for proof to the contrary, that they have been delivered in the same condition as that described in the reception receipt or, if the receipt has not been issued, in a good condition. The term shall be fifteen calendar days in the case of non-apparent damage.

Article 334. *Limitation of liability.*

1. Without prejudice to the loss of the benefit of limitation of liability of the carrier for loss or damage of the goods foreseen in Article 4.5.e) of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, which shall also be applicable to the port handling operator, the responsibility of that operator due to loss or damage of the goods transported shall be limited according to the following rules:

- a) In cases of loss or damage of goods, this shall be limited to the sum of two special drawing rights as defined by the International Monetary Fund, per kilogram of gross weight;
- b) When loss or damage of one part of the goods affects the value of the other part, the total weight of goods lost or damaged and the goods whose value has been affected shall be taken into account to determine such limit of liability;
- c) In the event of delay in delivery, this shall be limited to a sum equivalent to two and a half times the remuneration that shall be paid to it for its services in regard to the goods that have suffered delay, without exceeding the total amount of remuneration owed for the remittance that forms part of those goods.

2. Under no circumstances shall the responsibility accumulated for loss or damage plus that arising from delay exceed the sum that would be applicable for total loss of the goods in application of Section 1.a).

Article 335. *Application of the regime of liability to the diverse actions.*

The regime of liability of the port handler and its limitations established in the above Articles shall be applicable to any action directed at compensation of damages, losses or delays experienced, notwithstanding the type of procedure in which the action is taken, as well as its grounds, be they contractual or tortious, and both if they are taken against the port handler or against the assistants it may use to provide the service.

Article 336. *Legitimation and actions.*

The liability of the port operator for damages or losses to the goods handled may be demanded, in all cases, by the party that contracted the relevant operations with it. Moreover, the consignee of the goods carried, the handling of which has been undertaken by the carrier, freight forwarder or transport commission agent, shall be entitled to direct action against the operator to claim such liability, without prejudice to also being able to claim such against the carrier, freight forwarder or commission agent.

Article 337. *Prescription of actions.*

Claims for damages, loss or delay of the goods handled shall prescribe two years after they are delivered by the operator responsible. In the case of total loss, that term shall be counted from the day on which they should have been delivered.

Article 338. *Withholding right.*

The port handling operator shall be entitled to withhold the goods in his power until it is not paid the price owed for its services.

TITLE VI

ON NAVIGATION ACCIDENTS

CHAPTER I
ON COLLISION

Article 339. *Legal regime and concept of collision.*

1. Collision shall be regulated by the term set forth in the Convention for the Unification of Certain Rules of Law with respect to Collisions between

Vessels, done at Brussels, on 23rd September 1910, the other conventions on such matters to which Spain is a party, and by the provisions of this Chapter.

2. Collision shall be construed as when ships, vessels or naval artefacts run into each other, causing damage to any of the parties, or to persons or property.

3. The damage that a ship, vessel or naval artefact causes another without contact due to an incorrect manoeuvre in navigation shall also be regulated by the rules set forth in this Chapter.

4. The provisions of this Chapter shall not apply to collisions involving State ships.

Article 340. *Grounds for liability.*

1. The ship-operator in charge of the ship, vessel or naval artefact to blame for the collision shall compensate the damages and losses suffered by the other and by the individuals and things on board thereof, always those caused outside these. In the case of sports or recreational vessels, this obligation shall befall their holder or owner.

2. The causal relation and the blame for the collision shall be proven by the party claiming the compensation.

Article 341. *Collision due to shared blame.*

1. In the case of collision caused by fault shared by both ships, the responsibility of their respective ship-operators shall be classified in proportion to the degree of blame attributed to each ship or, where appropriate, vessel or naval artefact.

2. When the degree of fault may not be established due to the circumstances of the event, or when the failures committed are equivalent, the liability shall be attributed to both ship-operators in equal parts.

Article 342. *Cases of joint and several liability.*

1. Both ship-operators share joint and several liability in cases of collision due to shared blame with regard to damage suffered by third parties, be this personal harm or material damage.

2. The ship-operator that has paid the compensation by virtue of that joint and several liability shall be entitled to be reimbursed against the other ship-operator in proportion to the degree its ship is to blame.

Article 343. *Exceptions that may be opposed in the case of joint and several liability.*

The ship-operator sued in cases of shared blame may validly raise exceptions before third parties that, by extension, could be used by the other ship-operator, especially those arising from contractual title that might exist between them, or those applicable due to limitation of liability.

Article 344. *Requirement of formal requisites.*

1. The right to demand compensation for collusion shall not be subject to fulfilment of any formal requisite, without prejudice to the burden of proving the facts constituting the claim.

2. Notwithstanding this, the parties involved in a collision shall reciprocally facilitate inspection of the damages suffered.

Article 345. *Applicability of the provisions.*

1. The provisions of this Chapter shall apply in all cases to the responsibility for damages arising from collision, notwithstanding the fact of that liability being demanded in civil or criminal Court proceedings, or in administrative proceedings.

2. Such provisions shall not apply to relations between parties bound by a charter party or passage or labour contract, which shall be governed by their specific rules.

Article 346. *Pollution damage arising from a collision.*

Pollution damage arising due to a collision shall be regulated by the terms set forth in Chapter V.

CHAPTER II ON GENERAL AVERAGE

Article 347. *Concept and requisites of the event.*

A general average event arises when, in an intentional, reasonable manner, damage or extraordinary expense is caused for common salvage

of goods committed to a sea voyage when these are all threatened by a danger.

Article 348. *Admissible sacrifices in general average.*

The active assets to which general average is applied shall only allow damage or expenses that are a direct or foreseeable consequence of the circumstances of the failure.

Article 349. *Contribution to general average.*

The damage or expenses caused by the general average shall be borne by the holders of the interests at risk at the moment of the failure, in proportion and within the limit of value salvaged of each one of these.

Article 350. *Absence of formalities.*

Without prejudice to the terms set forth in this Act with regard to the obligations of the master regarding the Captain's Log, the duty to notify a general average is not subject to fulfilment of any formal requisite on board.

Article 351. *Culpable causation of the situation of danger.*

When the situation of danger that justifies the general average event is one for which any of the parties with an interest in the voyage is to blame, all the damages and expenses caused shall be borne by the guilty party, and contribution by innocent parties shall not be appropriate.

Article 352. *Withholding right.*

The ship-operator may withhold the goods transported on board or on land until the parties with an interest in them do not deposit a sufficient guarantee to honour their obligation to contribute. They shall also sign a commitment to compensate the damage, in which the relevant goods and their value are detailed.

Article 353. *Private settlement.*

Private settlement of damages, and except if the title originating such has established something to the contrary, lacks binding force upon the parties concerned, who may dispute it through the relevant judicial proceedings.

Article 354. *Liquidation by public certification file.*

Should private settlement not take place, the claim shall be settled according to the proceedings established in Articles 506 to 511.

Article 355. *Prescription.*

The right to demand contribution to a general average expires one year after conclusion of the voyage on which it took place, it being deemed to end for each batch of goods at the moment of their definitive discharge. That term is interrupted by commencement of a private procedure or public certification for liquidation thereof.

Article 356. *Freedom of pacts.*

1. Those that hold an interest in the voyage may pact freely regarding the rules according to which the liquidation is to be performed. In the event of lack of specification otherwise, the most recent version of the York and Antwerp Rules shall be deemed to apply and, failing the choice of any rules, the provisions established by law shall be applicable.

2. They may also agree the private settlement of a general average by a liquidator appointed by the ship-operator.

CHAPTER III
ON SALVAGE

Article 357. *Legal regime.*

Salvage shall be governed by the International Convention on Salvage, done at London on 28th April 1989, by the Protocols that amend it to which Spain is a party and by the provisions of this Chapter.

Article 358. *Concept.*

1. Salvage is considered any act undertaken to aid or assist a ship, vessel or naval artefact, or to safeguard or recover any other assets that are in danger in any navigable waters, except for continental ones that are not connected the seawater and are not used by seagoing ships.

2. Assistance provided to assets fixed permanent and intentionally to the coast shall not be considered salvage.

3. Any operation whatsoever related to the underwater cultural heritage shall not be considered salvage, as shall be governed by its specific legislation and the international treaties in force to which Spain is a party.

4. Finding and immediate recovery of abandoned assets in the waters or their coasts shall be considered salvage, except if they are a product of the sea or the navigable waters themselves.

Article 359. *Application to State ships.*

1. The rules on salvage shall be applicable to services provided to State ships and vessels as defined in Article 3. However, in these cases, the bounty shall be applied for through the appropriate administrative procedure, without the rules on withholding or arrest of the ships or goods salvaged being applicable.

2. These rules shall also apply to salvage performed by State ships and vessels, in which case the relevant bounty shall be made available to the administration or body they are assigned to, that shall provide for its equitable application.

Article 360. *Salvage ordered or supervised by a public authority.*

The public authorities that order or supervise a salvage, or their officers, shall not be entitled to any bounty whatsoever. However, the salvagers who perform operations ordered or supervised by these shall be entitled to bounty pursuant to the terms provided in this Act.

Article 361. *Salvage contracts.*

1. The parties interested may freely contract the salvage conditions, with no further limit than their inexcusable obligation to act with the necessary diligence to avoid or reduce damage to the environment as much as possible.

2. The master of the ship and the ship-operator shall have power to enter into a salvage contract on behalf of the owner of the goods that are on board.

Article 362. *Right to bounty.*

1. Salvage operations that have had a useful result shall entitle the salvors to a bounty, the amount of which may not exceed the value of the ship and other goods salvaged.

2. Payment of the bounty shall be made for all the interests linked to the ship and the other goods salvaged in proportion to their respective values, without prejudice to the bounty being paid by the operator of the ship salvaged, notwithstanding its right to repetition against the rest of the interests of the goods on board salvaged for their respective contributions, or as appropriate in the case of general average.

In the case of salvage of assets that are not on board, or that have not been transported by a ship, the debtor of the bounty shall be the owner of such property.

3. A bounty shall be owed even if the salvor and the ship salvaged belong to the same owner.

Article 363. *Distribution of the bounty between the ship-operator and crew.*

1. The salvage bounty, excluding the party due to compensate for damages, expenses or losses to the salvor, shall be distributed between the operator of the ship salvaging and its crew in a proportion of one third and two thirds respectively, except if otherwise agreed. Distribution of the part due to the crew among its members shall be performed in proportion to the base wage of each category.

2. The rule established in the preceding Section shall not apply to tugs or those fitted and equipped for salvage, on which the crew rights shall be regulated by the terms established in their respective boarding contracts or collective bargaining agreement.

3. In the case of foreign ships, the above rules of distribution shall apply except if the flag law provides otherwise.

Article 364. *Prohibition on performing salvage.*

Services provided in spite of specific, reasonable prohibition by the ship-operator or the master of the ship assisted, or the owner of any of the goods in danger that are not, or have not been on board the ship, shall not give rise to the right to bounty.

Article 365. *Withholding right.*

1. The salvor shall be entitled to withhold the ship and other goods salvaged under its control, in the port or place to which they have been

taken after conclusion of the salvage operations, while a sufficient guarantee is not constituted in its favour for the amount of the bounty claimed.

2. The ship-operator of the ship salvaged, at the request and expense of the salvor, shall be bound to condition delivery of the goods transported on that ship to constitution by the consignee of a sufficient guarantee to respond for the bounty they may be due. In the case of breach of this obligation, the ship-operator shall be liable for the damages to the salvor arising therefrom.

Article 366. *Foreign ships and cargos with sovereign immunity.*

1. Unless the flag State consents thereto, application of the rules on salvage set forth in this Act shall exclude foreign State ships that, on providing aid, enjoy sovereign immunity pursuant to the generally recognised principles of International Law.

2. It shall also exclude, except for consent by the owner State, the non-commercial goods owned by a foreign State that enjoy the immunity stated in the preceding Section.

Article 367. *Intervention by the Maritime Authorities.*

1. The Maritime Authorities shall in all cases be empowered to intervene in salvage operations performed within the Spanish maritime areas, in order to safeguard the safety of navigation, human life at sea and the environment, against maritime pollution. To that end, the Administration may direct or issue instructions related to the salvage operations that the master, ship-operator or its representative, the consignor and salvor shall necessarily obey.

2. When, as a result of direct action by the Maritime Authorities, bounties or compensation were to fall due, these shall be deposited directly at the Exchequer, and a credit may be generated for performance of activities that have caused such deposit.

When the Administration performs the activities referred to above through private or public entities, it may agree formulas to arrange the said bounties or compensations in the appropriate service provision agreements.

Article 368. *Salvaged goods with unknown owners.*

1. Those that, during navigation or from the coast, were to salvage unattended goods with unknown owners shall be bound to notify the Navy at the first port they put into.

2. The Navy shall instigate proceedings to ascertain whom the legitimate owners are, in the manner established by the implementing regulations, which shall necessarily include notification to the Consul of the flag country, if they are registered ships or vessels. Meanwhile, the salvor may withhold the goods salvaged, adopting the necessary measures for their adequate conservation.

3. Should the owner be located, the competent body of the Navy shall proceed to notify the salvor of its identity, that shall then be entitled to the rights foreseen in Article 8.2.c) of the International Convention on Salvage and in Article 365 hereof, without prejudice to the relevant actions to claim conservation expenses and to obtain the appropriate bounty for the salvage.

4. In the event of the owner not being ascertained within the term of six months from commencement of the administrative proceedings, the Navy shall take the appropriate measures to appraise the goods salvaged. If their value does not exceed € 3,000, the salvor shall become the owner thereof once it has paid the procedural costs. Should their value exceed said amount, the goods shall be sold at public auction and, once the procedural costs are paid, in addition to that amount, the salvor shall receive one third of the price obtained that exceeds € 3,000, plus the expenses it has incurred. The remainder, if any, shall be deposited at the Public Exchequer.

5. The terms foreseen in this Article shall be construed, in any event, to be without prejudice to the terms regarding for goods with prohibited or restricted trade in Article 381, in which case the Navy shall proceed to deal with those goods in the relevant manner established by the applicable laws.

6. The authorities of the ports are bound to facilitate entry and storage of the goods salvaged, notwithstanding which they may charge the legitimate owner for the expenses incurred.

In any event, goods salvaged by publicly- owned ships, fitted and equipped for salvage, shall be exempt of any expenses and charges.

CHAPTER IV ON SHIPWRECKED OR SUNKEN GOODS

Article 369. *Applicable cases and relation to the salvage regime.*

1. The rules of this Chapter shall be applicable to all operations aimed at recovery of shipwrecked ships or other goods located in the bottom of the navigation zones stated in each case, without prejudice that they may be subject to salvage, in which case the relations between the owner and salvor shall be governed by the rules of the preceding Chapter.

2. In all cases, the rules on removal of shipwrecked or sunken ships shall apply.

3. Except for specific provision otherwise in the rules of this Chapter, its rules shall not be applicable to the underwater cultural heritage, which shall be governed by its specific implementing regulations.

Article 370. *Obligation to notify.*

1. Masters and ship-operators of ships that are shipwrecked or sunken within the Spanish maritime areas shall notify the Maritime Authorities of such events pursuant to the terms and to the ends determined by the implementing regulations.

2. The same obligation shall befall the owners of other shipwrecked goods that are not transported on board ships or vessels.

Article 371. *Notification to the owners of accident affected goods.*

The Maritime Authorities shall proceed of their own motion to inform the owners of ships and other damaged property of their location in order that they may adopt the urgent measures convenient to their interests.

Article 372. *Duty to mark and prevent pollution.*

Ship-operators of ships, and the owners of shipwrecked or sunken goods, are bound to immediately perform the marking operations, as well as those to prevent pollution that may be necessary to safeguard Spanish interests. To that end they shall comply with the instructions and orders issued by the Maritime Authorities.

Section 1. On property rights

Article 373. *Conservation of ownership.*

1. Ownership of ships or other shipwrecked or sunken goods shall not be affected by the sole fact of their shipwreck or sinking, thus they shall not be deemed as abandoned unless this is the specific will of their owner.
2. The owners of such goods may also dispose of them and, especially, abandon them to the insurer where appropriate.

Article 374. *Prescription in favour of the State.*

1. The State shall acquire the ownership of any ship or asset that is shipwrecked or sunken in the internal waters or Spanish territorial sea once three years have elapsed since the shipwreck or sinking, except for State ships and vessels.
2. It shall also acquire the ownership of ships or goods that, once the term stated expires, are located in the exclusive economic zone or in the high seas and are owned by Spaniards.

Article 375. *Interruption of the acquisition prescription.*

The prescription term shall be interrupted at the moment of requesting extraction, as long as this is commenced within the term granted for the purpose. It shall elapse once more if the work is suspended or the term granted for such work expires.

Section 2. On the extraction regime

Article 376. *Exploration operations.*

Exploration, tracking and location operations for ships and shipwrecked or sunken goods in internal waters and the Spanish territorial sea shall require authorisation from the Navy, which shall grant such to whoever evidences ownership or, in other cases, discretionally and non-exclusively.

Article 377. *Extraction operations.*

Extraction operations of ships and shipwrecked or sunken goods in internal waters or in the Spanish territorial sea shall require prior authorisation from the Navy, which shall set the terms and conditions to perform them.

The holders of the authorisation shall be bound to report on commencement and conclusion of the operations, as well as to allow inspection and supervision by the Navy.

Article 378. *Holders of the extraction right.*

1. Authorisation of an extraction right may be applied for by owners of ships or shipwrecked or sunken goods, who duly evidence their ownership.
2. If there are several owners, their application shall be made by agreement between them, or with specific renunciation by those who are not interested in extraction thereof.
3. In the case of extraction of ships and goods on board, the initiative of the extraction proceedings shall lie with the owner of the ship.

Article 379. *Extraction contracts.*

The extraction application may be submitted by third parties other than the owner that arranged a salvage contract with it, or any other legally valid class.

Article 380. *Extraction of ships or goods owned by the State.*

When ownership of the ships or goods lies with the State, and if it does not deem direct extraction or use to be appropriate, the Navy may grant this by tender pursuant to the laws on the assets of the Public Administrations.

Article 381. *Extraction of goods from prohibited or restricted trade.*

Extraction of weapons, ammunition, explosives or other military materiel that may affect National Defence, as well as objects belonging to the underwater cultural heritage and other goods whose trade is prohibited or restricted, shall be subject to the applicable special regulations and the regime that is established in such cases in the public authorisation or contract for the relevant extraction thereof.

Article 382. *Shipwrecked or sunken State ships and vessels.*

1. Without prejudice to the terms set forth in Articles 358.4 and 359, regardless of the time at which the loss took place and the place where they may be located, shipwrecked or sunken Spanish State ships and vessels, their remains and their equipment or cargo, appertain to the State

public domain, may not be disposed of, shall not prescribe and may not be seized, enjoying immunity of jurisdiction.

2. Exploration, tracking, location and extraction operations of shipwrecked or sunken Spanish State ships and vessels shall require authorisation from the Navy, which holds full powers for their protection, without prejudice to the terms set forth in the laws on historical and cultural heritage, as appropriate.

3. The remains of foreign warships sunken or shipwrecked in Spanish maritime areas enjoy immunity of jurisdiction pursuant to the terms set forth in Article 50. Notwithstanding this, exploration, tracking, location and extraction operations of these shall be agreed between the competent bodies of the flag State and the Ministry of Defence. In such case, those operations shall be subject to the terms established in the Convention on Protection of the Underwater Cultural Heritage of 2nd November 2001.

Article 383. *Objects belonging to the underwater cultural heritage located beyond the territorial sea.*

1. Regulation and authorisation of activities related to the underwater cultural heritage in the Spanish contiguous zone, as well as authorisation of activities related to underwater cultural heritage in the exclusive economic zone and on the continental platform shall be governed by the terms set forth in the Convention on Protection of the Underwater Cultural Heritage of 2nd November 2001 and other treaties to which Spain is a party, as well as the specific legislation.

2. In all cases, administrative authorisation shall be required to extract archaeological or historic objects located on the seabed of the Spanish contiguous zone. Recovery of such goods without the required authorisation shall be penalised as an offence committed in Spanish territory.

CHAPTER V ON CIVIL LIABILITY FOR POLLUTION

Article 384. *Scope of application.*

Civil liability arising from pollution damage to the Spanish coasts and maritime areas that comes from ships, vessels, naval artefacts and fixed platforms, wherever they may be located, shall be governed by the terms set forth in this Chapter.

Article 385. *Subjects liable.*

1. The ship-operator of the ship or holder of the use or operation of the naval artefact or platform at the moment of the event causing pollution shall be bound to compensate for the pollution damage, notwithstanding its right to be reimbursed by the persons who are to blame for that event.
2. When the event causing pollution involves various ships, their ship-operators shall be jointly and severally bound to compensate the pollution damage, unless this may be reasonably and exclusively attributed to one of the ships.

Article 386. *Grounds for liability.*

1. The ship-operator shall be held liable for pollution damage due to the mere fact of it taking place. Notwithstanding this, it shall be exonerated if it proves that the damage has been caused by unavoidable force majeure, by negligence by any authority that is responsible for maintenance of lights or other aids to navigation, or by another intentional action or omission by a third party, notwithstanding the liability of the latter.
2. Without prejudice to the applicable international conventions, liability shall be demanded on the basis of the principles of caution and preventive action, the principle of correction, preferably right at the source of damage to the environment and the principle that the polluter pays.

Article 387. *Fault of the damaged party.*

Should the ship-operator prove that the pollution damage arose, fully or partially, due to a wilful or negligent action or omission of the person affected, it shall be fully or partially exonerated of its liability to that person.

Article 388. *Scope of the compensation.*

1. Losses or damages caused by pollution off the ship shall be due compensation.
2. The cost of measures reasonably adopted by any person after the claim has taken place in order to prevent or minimise pollution damage shall also be due compensation.

In all cases, the limitation on liability regulated in Title VII of this Act shall apply.

Article 389. *Mandatory insurance.*

1. Civil liability for pollution damage to the coast and navigable waters shall be mandatory, the conditions and minimum coverage of which shall be determined by the implementing regulations.

2. Those harmed by pollution damage shall be entitled to direct action against the insurer for civil liability up to the limit of the sum insured. The insurer may raise the same exceptions as the ship-operator would be entitled to pursuant to Articles 386 and 387 and also that of the pollution being due to an intentional act by the ship-operator itself. Use of the applicable limitation on liability pursuant to the preceding Article may also be made.

Article 390. *Prohibition of navigation.*

1. The Maritime Authorities shall prohibit navigation by ships or vessels and activity with naval artefacts or fixed platforms that do not hold the insurance coverage referred to in the preceding Article.

2. It shall also refuse entry to or departure from Spanish ports, anchorage zones or terminals located in internal maritime waters or the territorial sea, by foreign ships, vessels or artefacts that lack the aforementioned insurance coverage.

Article 391. *Pre-emptive application of international conventions.*

1. The terms set forth in the international conventions to which Spain is a party on matters of civil liability for pollution damage by petrol or by noxious, hazardous or toxic substances, or by ship bunker, shall be preferentially applicable in their respective scope.

2. The terms set forth in this Chapter shall not apply to damage caused by radioactive or nuclear substances, which shall be regulated by the specific provisions thereof.

TITLE VII

ON LIMITATION OF LIABILITY

CHAPTER I

GENERAL PROVISIONS

Article 392. *Right to limit liability.*

The right to limit liability in claims arising from a same accident shall be governed by the terms set forth in the Protocol of 1996 that amends the

Convention on Limitation of Liability for Maritime Claims, done at London on 19th November 1976, with the reservations made by Spain in the Instrument of Adhesion, and in this Title.

Article 393. *Relation to the regime of liability.*

The regime of limitation of liability shall apply independently of whether the liability is demanded in a judicial procedure of a civil, labour or criminal nature, or by administrative means.

Article 394. *Scope of application.*

1. The rules of this Title shall be applied always if any of the holders of the right to limit invokes that right before the competent Spanish judicial or administrative bodies. To that end, the nationality or domicile of the creditors or debtors shall be irrelevant, as well as the flag of the ship with regard to which the right of limitation is invoked.

2. Liabilities related to naval artefacts or fixed platforms built to explore or exploit natural resources on the seabed or subsoil shall not be subject to limitation.

Article 395. *Special limitation regimes.*

1. The terms set forth in this Title are deemed to be without prejudice to the specific rights of limitation set forth in this Act for the sea carrier of goods or passengers within the framework of claims for breaches of the relevant transport contracts.

2. The ship-operator carrier, or the charterer carrier, may opt in any case for specific regime of application stated in the preceding Section, or for the global amount established in this Title.

CHAPTER II
ON LIMITABLE CREDITS

Article 396. *Claims subject to limitation.*

1. The claims listed below shall be subject to limitation:

- a) Claims for death or bodily injuries, or for losses or damage to property, including damage to port works, navigable channels, aids to navigation and other property of the maritime or port domain, that may take place

on board or be directly linked to operation of the ship or to the salvage operations, as well as damages arising from any such causes;

b) Claims related to damages arising from delay in transporting cargo, passengers and their luggage;

c) Claims related to damages arising from breach of non-contractual rights, arising directly from operation of the ship or from salvage operations;

d) Claims promoted by a person other than the one responsible, related to the measures taken in order to avoid or lessen damage with regard to which the party responsible may limit its liability and those subsequently caused by those measures, except when those have been adopted by virtue of a contract arranged by the person responsible.

2. The claims established in Section 1, whatever the cases of liability, shall be subject to limitation of liability notwithstanding the action exercised having a contractual or tortious nature.

Article 397. *Claims excluded from limitation.*

1. The claims listed in Article 3 of the Convention on Limitation of Liability for Maritime Claims shall not be limitable.

2. Nor shall limitation apply to claims by the Maritime Authorities or a Port Authority that are foreseen in the provisions on removal of ships.

CHAPTER III
ON THE MAXIMUM SUMS OF COMPENSATION

Article 398. *General limits.*

Except in the cases foreseen in the following Article, the maximum sum of compensation payable on limitable claims shall be calculated for each accident, progressively, according to the gross tonnage of the ship with regard to which the credits have arisen, pursuant to the terms set forth in Articles 6 to 9 of the Convention on Limitation of Liability for Maritime Claims.

Article 399. *Special limits.*

1. With regard to claims related to death or bodily injuries of passengers on a ship arising in a same accident and notwithstanding its gross tonnage, the

limit to liability shall be the sum foreseen in the international conventions and the provisions of the European Union multiplied by the number of passengers the ship is authorised to transport, pursuant to its certificate. To these ends, the concept of passenger shall be deemed to include individuals who, with the consent of the carrier, are travelling on board accompanied by a vehicle or live animals, by virtue of a goods transport contract.

2. The limits on liability applicable to ships and vessels with a tonnage under 300 tonnes are:

- a) One million special drawing rights for claims related to death or bodily injury;
- b) Five hundred thousand special drawing rights for other limitable claims.

Article 400. *Concurrence of creditors.*

1. The sums obtained pursuant to the terms set forth in the preceding Articles shall form the relevant fund, which shall be distributed among the creditors arising from the same accident, in proportion to the amount of their recognised claims.

2. Notwithstanding this, if the amount dedicated to claims for death or injury does not suffice to settle their full amount, the creditors shall compete for the remainder with the other limitable creditors for collection, with equal rank, from the fund assigned to settle the material credits.

3. In all cases, the Maritime and Port Authorities shall have preference in collection over all the creditors whose claims are not due to death or bodily injury, in the case of claims for damage caused to port works, navigation channels, aids to navigation and, in general, the maritime or port property.

Article 401. *Subrogation.*

The person responsible, its insurer or any third party that has paid out a claim assignable to a limitation fund prior to its distribution, shall subrogate itself in the rights the person compensated would have had to that fund.

Article 402. *Conversion to Spanish currency.*

1. The sums referred to in the preceding Articles shall be converted to euros at the current exchange rate on the date when the relevant limitation fund is constituted.

2. The exchange rate referred to in the preceding paragraph shall be calculated according to the evaluation method effectively applied by the International Monetary Fund to its operations and transactions on the date concerned.

CHAPTER IV ON THE LIMITATION FUND

Article 403. *Condition of the right to limitation.*

1. For valid allegation of the right to limitation before the Spanish jurisdictional bodies, the holder shall constitute the relevant limitation fund, formed by the sums established in that Chapter, along with the legal interest accrued from the date of the accident that gave rise to the liability.

2. A fund may be constituted by depositing the relevant sum or providing a sufficient guarantee in the opinion of the Court.

Article 404. *Destination of the funds and halting other measures.*

1. The duly endowed fund may only be used to settle claims with regard to which limitation of liability may be invoked, even in the case of bankruptcy of the holder of the right to be limited.

2. Once the limitation fund is constituted, the holders of limitable credits shall lack action to pursue any other assets of the debtor, as well as against other debtors related to the same credit.

3. The ships or any other assets belonging to the holder of the right to be limited, that have been arrested or seized to respond for a claim that may be brought against the fund constituted, shall be released by order by the Court that oversaw the constitution thereof.

Article 405. *Procedure and expiry of the right to limit.*

1. To constitute a limitation fund, as well as to distribute it among the different creditors, the procedure regulated in Chapter IV of Title IX of this Act shall apply.

2. The right to constitute a limitation fund shall expire within the term of two years, from the day of lodging the first judicial claim arising from the accident that gives rise to invocation of the right to limit.

TITLE VIII
ON MARITIME INSURANCE CONTRACTS

CHAPTER I
GENERAL PROVISIONS

Article 406. *Scope of application.*

1. Insurance contracts that have the object of compensating damage arising from the risks inherent to maritime navigation shall be subject to this Act.

In the terms not foreseen in this Act, the Insurance Contracts Act shall apply.

2. Mandatory insurance of vessels dedicated to sport or recreation shall be governed by the terms of the Insurance Contracts Act, without agreement to the contrary being admissible.

Article 407. *Non-imperative nature.*

1. Except if specifically provided otherwise, the parties to the contract may freely agree on the conditions of coverage that they shall deem appropriate.

2. Valid entering into a maritime insurance contract shall not require it being subject to any specific form, without prejudice to the terms set forth in Article 421.

CHAPTER II
ON PROVISIONS COMMON TO DIFFERENT TYPES OF
MARITIME INSURANCE

Section 1. On the interests insured

Article 408. *Existence of an insured interest.*

1. The legitimate asset interests exposed to maritime navigation, both present or future, may be subject to insurance. The inexistence of an interest shall determine the nullity of the contract, without prejudice to the terms provided in Article 422.

2. The contractual clauses that establish a presumption of the existence of an interest shall admit proof to the contrary in all cases.

Article 409. *Listing interests.*

Specifically, the following interests may be subject to maritime insurance:

- a) Ships, vessels and naval artefacts, even those under construction or at the ship-breakers;
- b) Charter;
- c) Loading;
- d) The civil liability arising from navigation practices;
- e) Any other legitimate asset interest stated in the risks of maritime navigation.

Article 410. *Interest in the ship.*

Insurance of the ship includes the interest in its component parts, belongings and accessories.

Article 411. *Interest in charter.*

1. Charter insurance covers the price of the transport of goods of passengers, both under performance as well as expected. It also includes the profit for the carrier transporting its own goods.
2. The insurable value of the charter lies in its gross amount.

Article 412. *Holder of the interest.*

The insurance contract is deemed to be arranged on the account of the person who is the holder of the interest at the moment of the claim.

**Section 2. On insured value, on multiple insurance
and co-insurance**

Article 413. *Value of the interest and sum insured.*

1. If, at the moment of the claim taking place, the sum insured is lower to the value of the interest, the insurer shall compensate the damage caused in the same proportion to that in which the interest insured is covered.
2. If the sum insured exceeds the value of the interest insured, any of the parties may demand reduction of the sum and the premium, and the

insurer shall be returned the excess of premiums received. If a claim does arise, the insurer shall compensate the damage effectively caused.

3. When the over-insurance foreseen in the preceding Section is due to bad faith by the taker or the insured, the contract shall be null and void. Notwithstanding this, the insurer in good faith may withhold the premiums already due and those of the current period.

Article 414. *Estimated policy.*

In insurance of ships, vessels and naval artefacts, it shall be presumed that the value declared in the policy or after entering into the contract is a binding estimated value for the parties to the contract, except for fraud on the part of the insured, or when the error is notably superior to the value of the interest.

Article 415. *Multiple insurance.*

1. In the case of several insurance contracts arising regarding the same risk and interest and during an identical period of time, whether subscribed by the same taker or not, in no case may the insured receive compensation for a higher sum than the real amount of the damage. Whilst respecting that limitation, each insurer shall be bound to compensate the damage up to the amount of the sum insured in the respective policy.

In these cases, the taker of the insurance or the insured shall notify each insurer of the other insurance stipulated. If due to fraud that notification were to be omitted and a claim were to arise with over-insurance, the insurers shall not be bound to pay the compensation.

2. The insurer that has paid the compensation may take action against the other insurers to bind them to contribute to cover the claim in proportion to the capital insured pursuant to each contract.

3. Should the total amount of the sums insured notably exceed the value of the interest, any of the parties to the contract may demand reduction of the sum insured and premium, and the insurer shall reimburse the surplus premiums received.

Article 416. *Co-insurance.*

1. When, by means of one or several insurance contracts, related to the same interest, risk and time, there is a distribution of stakes among various

insurers, with prior agreement between them and the taker, each insurer shall be bound to pay the compensation solely in proportion to the respective quota.

The insurer that has paid a higher sum than the relevant one may demand to be reimbursed by the rest of the insurers.

In all cases, the right of the co-insurers to be reimbursed by the first insurer in case of abuse of powers shall subsist.

2. The first insurer of the co-insurance shall have both active and passive legitimation, in and out of Court, for ordinary management of the contract and to make any decision before the insured regarding the claim and its liquidation, as well as to perform the claims against third parties liable for the damage, or to deal with third parties damaged under civil liability insurance, without such actions entailing the joint and several liability of the co-insurers.

3. The co-insurer that holds the largest stake in the insurance shall be considered the first insurer the policy does not specifically declare one.

Section 3. On the risks of navigation

Article 417. *Risks covered.*

The insurer shall compensate the insured, pursuant to the terms set forth in the policy, for damages suffered by the interest insured as a consequence of the risks of navigation.

Article 418. *Exclusion of some risks.*

The insurance coverage excludes the following risks:

- a) War, whether declared or not, civil or international, blockades and seizures that may arise from such;
- b) Capture, arrest or detention by order of any national or foreign authority;
- c) Piracy, mutiny, terrorism and situations of alteration of public order;
- d) Strikes and lockouts;
- e) Atomic or nuclear explosions, radiation and radioactive contamination.

Article 419. *Wilful misconduct and negligence of the insured and its servants.*

1. The insurer shall not be held liable for damage caused to the interest insured in the event of wilful misconduct by the insured, without a clause to the contrary being valid. Nor shall it be liable in cases of gross negligence of the insured but, if the parties were to agree the contrary, at least ten per cent of the damages shall be borne by the insured. That minimum of ten per cent may not be disposed of by the parties.

2. The liability of the insurer for damages caused due to wilful misconduct or gross negligence by the servants of the insured that perform management or direction tasks on which the state of conservation or maintenance of the object insured depends shall be governed by the criteria foreseen in Section 1 for cases of gross negligence of the insured.

3. The insurer shall be held liable for claims arising from wilful misconduct or fault of the other servants of the insured.

Article 420. *Inherent flaws.*

The coverage of damages excludes damages arising from inherent flaws, or the intrinsic nature of the object insured, and those that arise from natural wear and tear.

**Section 4. On conclusion of the contract and duties
of the party contracting**

Article 421. *Proof of the insurance.*

The insurer is bound to deliver to the taker the policy or the document or provisional certificate of coverage. Before these documents are delivered, the contract may be proven by any means that shows acceptance of the coverage by the insurer.

Article 422. *Existence of risk.*

1. The insurance contract entered into after the claim or cessation of the risk is null and void whenever any of the parties knows that circumstance. That circumstance is assumed to be known in the case where the news thereof is publicly known in the place where the contract was entered into, or where the insurer or taker resides.

2. However, if the contract was entered into the basis of good or bad news, it shall only be null and void when it is proven that the taker knew of the loss, or the insurer the cessation of the risk.

Article 423. *Declaration of the risk.*

1. The taker of the insurance shall declare all the circumstances known, or that should reasonably be known to it, that might sensitively influence appreciation of the risk of a cautious insurer, to the insurer before the conclusion of the contract. Should the contract be entered into on account of another person, the duty of declaration shall cover the circumstances known, or that should have been known to that person.

2. During the life of the contract, the taker of the insurance or insured shall notify the insurer, as soon as possible, of all the circumstances that aggravate the risk and that are of such a nature that had they been known to it at the time of formalising the contract, would have caused it not to be formalised, or to be formalised under more onerous conditions.

Article 424. *Effects of inexactness or reluctance.*

1. Incomplete or inexact declaration of the circumstances to which the preceding Article refers entitles the insurer to terminate the contract within the term of one month from knowledge of the reservation or inexactness. The premiums for the current period at the moment of termination shall be forfeited to the insurer, except for wilful misconduct or gross negligence on its part.

2. If the claim arises before the insurer obtains knowledge of the reluctance or inexactness, or prior to the lapse of the term stated in the preceding Section, provision by the insurer shall be reduced in proportion to the difference between the premium agreed and that which would have been applied had the magnitude of the risk been known. However, the insurer shall be waived all compensation in the event of wilful misconduct or gross negligence of the taker or insured.

Article 425. *Payment of the premium.*

1. The taker of the insurance is bound to pay the premium pursuant to the conditions stipulated in the policy or certificate. If periodic premiums are agreed, the first of them shall be called once the contract is signed. The place of payment shall be the domicile of the taker, should a different one not be determined in the policy.

2. Failure to pay the premium or any of the fractions of the premium, or the periodic premiums allows the insurer to terminate the contract or to suspend its effects until it is paid. Termination or suspension shall take place one month after the taker has been required to pay the premium. However, in the case of failure to pay the sole premium, the first instalment of the premium, or one of the periodic premiums, the insurer shall not be held liable for the claims raised prior to payment, although a demand for payment may not yet have been issued.

3. When the insurer has issued a certificate of coverage in goods insurance, it may not raise the objection of failure to pay the premium before the buyer of the goods in good faith to whom that certificate is issued, without a clause to the contrary being valid.

Article 426. *Notification of the claim.*

The insured or taker of the insurance shall notify the insurer or the claims adjuster appointed in the policy that a loss has arisen within the term of seven days, from the moment when it becomes known. Omission or delay in such notice shall give rise to loss of the right to compensation only if there has been wilful misconduct or gross negligence of the insured or taker. In the case of negligence or culpable delay on the omission or late notification of the claim, the insurer shall be entitled to compensation for the damages and losses that may have been caused by such, without a clause that aims to impose a worse situation on the insured being valid.

Article 427. *Duty to avoid or lessen the damage.*

1. The taker of the insurance or the insured and its servants shall apply all reasonable measures within their ability to safeguard or recover the goods insured and, in general, to avoid or decrease the damage arising from the claim.

2. The insurer may intervene in the decision and adoption of such measures, without its conduct prejudging, in any case, acceptance of liability for the claim.

3. Pursuant to the terms set in the contract, the insurer shall respond for the expenses reasonably made by the taker of the insurance, the insured and its servants in fulfilment of the duty established in the first Section of this Article, as well as for the damage caused to the object insured.

Article 428. *Conveyance of the interest insured.*

1. In insurance of ships and naval artefacts, of other interests of the ship-operator or shipping company or for which it is liable, disposal of the ship or change of holder in its nautical management causes termination of the insurance contract, unless the insurer has specifically accepted continuation thereof in writing.

2. In insurance of goods, conveyance of their property shall not be notified to the insurer, and the acquirer shall subrogate itself in the insurance contract.

Section 5. On compensation

Article 429. *Obligation to compensate.*

1. In the case of a claim covered by the insurance contract, the insurer is bound to compensate the insured pursuant to the conditions stipulated in the policy, except in cases of exclusion of liability foreseen pursuant to Article 419.

2. The insured shall be entitled to proof of the existence and scope of the damage.

Article 430. *Amount of the compensation.*

1. Compensation of the insurer shall include the value of material damage to the object insured up to the limit insured and the following complementary coverage:

- a) The amount of the contribution to the general average against the interest insured;
- b) The relevant part of that interest in remuneration for salvage;
- c) The reasonable expenses made by the taker of the insurance, the insured and its servants to decrease the damage.

2. In compensation for the complementary coverage listed in the preceding number, the insurer may also apply the proportional rule where appropriate. The parties, by common agreement, may exclude application of the proportional rule in the policy or after entering into the contract.

Article 431. *Exclusion of replacement.*

The insurer may not be forced to replace or repair the objects insured.

Article 432. Damages and losses excluded.

The compensation excludes:

- a) Damages arising from the claim, such as lateness, delays, stoppage, loss of market, exchange differences, lost profit and, in general, any indirect damage, except those specifically included pursuant to this Act;
- b) The damage and losses caused by the object insured to persons, except if the relevant responsibility is subject to insurance.

Article 433. Actions of failure and abandonment.

1. Adjustment of the claim shall be made for the failure action or abandonment action.
2. The choice of one procedure or another lies with the insured. Notwithstanding this, the right of the insured to abandonment shall only exist in the cases established in Articles 449 and 461.

Article 434. Declaration of abandonment.

1. Declaration of abandonment shall be notified in writing to the insurer. The insured shall state the existence of any other insurance or in rem rights constituted on the items subject to abandonment.
2. Omission of the particulars listed in the preceding Section shall entitle the insurer to suspend payment of the compensation until they are notified to it by the insured.

Article 435. Specific or assumed acceptance of abandonment.

1. Abandonment may not be partial or conditioned and it shall include all the items comprising the interest insured.
2. Acceptance of the abandonment may be specific or assumed. Abandonment shall be deemed to have taken place if the insurer does not reject it within the term of one month from receipt of the declaration.

Article 436. Effects of abandonment.

1. Abandonment accepted by the insurer or, failing that, declared judicially valid, conveys the ownership of the items insured to the insurer. That

transmission is retroactive to the moment when the insurer received the declaration of abandonment. However, the policy may validly agree the right of the insurer to renounce conveyance of the ownership of the items insured or their remains.

2. Acceptance of abandonment by the insurer or, where appropriate, judicial declaration of the validity of the abandonment, shall bind the insurer to payment of the total amount of the sum insured.

Article 437. *Liquidation of the claim and payment of the compensation.*

1. The insurer shall adjust the claim within the term set in the policy, which may not exceed a month from:

a) Specific or presumed acceptance of abandonment or judicial declaration of its validity;

b) Acceptance of the claim by the insurer in cases of adjustment due to failure action. Within the term of one month from when the insured provides proof of the damage and its causes, the insurer shall accept the claim or declare refusal thereof, unless the appraisal procedure requires a longer term to ascertain the causes, or if contribution of subsequent documentation by the insured is necessary to adjust the claim.

2. Once the claim adjustment is performed, the insurer shall pay the compensation within the term of fifteen days from the insured having declared its approval of that settlement. Delay in payment shall require the insurer to pay the legal interest calculated on the amount of the compensation from the moment when the insurer declared its rejection of abandonment or the failure.

3. In the event of discrepancy between the insurer and insured regarding the amount of the compensation, the insured shall be entitled to delivery, within the term of fifteen days from when the insured declares its lack of approval of the sum set by the insurer, without receipt of that sum preventing the insured from filing a judicial claim for the higher amount of compensation it deems it is entitled to.

4. Insured and insurer may agree, before or after the claim, that its adjustment be performed by a claims adjuster appointed by mutual agreement. The liquidation performed thus shall be binding for both parties, except if any of them judicially challenges it within the term of thirty days from notification.

5. Once the compensation has been paid by the insurer, pursuant to the insurance policy, it shall subrogate itself in the relevant rights and actions to which the insured is entitled up to the limit of the compensation, against the party responsible for the loss or for aggravation of its consequences, or both.

The insurer may not exercise the rights in which it subrogated itself to the detriment of the insured. The insured shall respond for damages its acts or omissions might cause the insurer with regard to its right to subrogation.

The insurer shall not be entitled to subrogation against any of the persons whose acts or omissions gave rise to liability of the insured, pursuant to the law, or against the party causing the claim who is, with regard to the insured, a direct or collateral relative up to the third civil degree of blood relationship or adoptive father or son who cohabit with the insured. This provision shall not take effect if the liability arises from wilful misconduct or if the liability is covered by means of an insurance contract. In the latter case, the subrogation shall be limited to its scope pursuant to the terms of said contract.

In the case of concurrence of the insurer and insured before a liable third party, the collection obtained shall be shared by them in proportion to their respective interest.

Exoneration of the liability of the third party causing the damages agreed by the insured or taker with that third party may not be opposed by the insurer, unless such exoneration has been specifically accepted by it, recording this in the insurance policy.

Section 6. On prescription

Article 438. *Prescription.*

The rights arising from an insurance contract prescribe in the term of two years from the moment when they could be exercised.

CHAPTER III ON THE SPECIAL PROVISIONS OF SOME KINDS OF INSURANCE

Section 1. On ship insurance

Article 439. *Time or voyage insurance.*

Ship insurance may be taken either for one voyage, or for several successive ones, or for a specific term.

Article 440. *Commencement and conclusion of the voyage insurance coverage.*

1. If the insurance is contracted for one or several voyages, the liability of the insurer commences at the moment of receiving the cargo on board and ends when unloading has concluded and, in all cases, fifteen days after arrival at the destination port.

2. If the voyage is performed under ballast, the liability of the insurer begins on raising anchor or casting off at the port of departure and ends when the ship anchors or moors at the destination port.

Article 441. *Commencement and end of coverage in time insurance.*

1. Should the insurance be contracted by time the liability of the insurer commences at zero hours on the day following entering into the contract and ends at twenty-four hours on the last day.

2. The timetable in force at the place where the contract was entered into shall be taken into account for the purposes foreseen in the preceding Section.

Article 442. *Extension of the coverage in time insurance.*

1. If at the end of the term agreed, the ship is at sea, in danger, or in a natural port of shelter or stopover, the insurance shall be extended until the moment when it reaches the destination port and the taker of the insurance shall pay the proportional part of the premium for the time of the extension.

2. The policy may establish that, in order for the extension foreseen in the preceding Section to be valid, the insured shall notify the insurer of the circumstances foreseen therein.

Article 443. *Liability for collisions.*

1. Ship insurance covers the civil liability of the ship-operator for damages and losses caused to another ship, vessel or naval artefact, and its cargo in the event of collision. That coverage complements that of damage to the ship itself.

2. The policy may extend the coverage by the insurer of the civil liability of the ship-operator for damages and losses caused by blows to fixed platforms or other works or installations.

Article 444. *Seaworthiness of the ship.*

The insured shall maintain the seaworthiness of the ship, vessel or naval artefact insured during the whole term of the coverage.

Article 445. *Hidden flaws.*

The insurer shall not be held liable for damage to the ship insured as a consequence of a hidden flaw in it. A hidden flaw is construed as one that cannot be discovered using the means reasonably required of a ship-operator.

Article 446. *Subrogation against the members of the crew.*

The insurer may not exercise the rights in which it has subrogated itself, in the event of a claim, against the members of the crew of the ship insured, except if these have caused the claim by wilful misconduct.

Article 447. *Automatic reinstatement of the capital insured.*

The liability of the insurer covers the full sum insured in each claim arising during the term of the contract, without prejudice to the right of the insurer to demand a complement to the agreed premium after each claim.

Article 448. *New for old.*

No new for old deductions shall be performed in compensation of the damage to the ship.

Article 449. *Cases of abandonment.*

The insured may exercise the right to abandonment in the following cases:

- a) Total loss of the ship;
- b) Definitive incapacity to sail or impossibility to repair the ship;
- c) When the amount of the compensations reaches the value of the sum insured in the policy, for the purposes of this calculation, the amount of the contributions to the cargo on the ship in the general average or salvage shall be added to the amount of the compensations;
- d) Loss of the ship in the event of having no news of it for ninety days. The loss shall be deemed to be verified on the last day of the term stated, which shall be counted from the day on which the last news was received.

Article 450. *Term of abandonment.*

1. The declaration of abandonment shall be lodged with the insurer within the term of ninety days from the date of the claim. In the case of letter d) of the preceding Article, the term shall be counted once the ninety days stated therein have elapsed.

2. Once the terms stated in the preceding number have elapsed, the insured may only claim compensation by failure action.

Article 451. *Premiums and reimbursements.*

1. In voyage insurance, the insurer acquires the right to the premium from the beginning of the voyage. In time insurance, the insurer acquires the right to the insurance from when the set term begins to elapse.

2. In any event, all reimbursement of the premium is deemed to be subject to the ship not having been abandoned to the insurer, pursuant to the terms foreseen in Article 449, or there not having been a total loss covered by the contract.

Article 452. *Subsidiary liability.*

The rules of this Section shall apply to charter insurance and other interests of the ship-operator or shipping company when they are compatible with their own nature or consented by the clauses agreed by the parties.

Section 2. On insurance of goods

Article 453. *Non-maritime phases of transport.*

The rules that regulate insurance of goods shall apply both to maritime transport, as well as to the phases of transport performed in other modes, as long as these are accessory to the maritime voyage.

Article 454. *Valuation of the interest.*

1. Subject to the terms agreed by the parties, the insurable value of the goods shall be set considering their original value, increased by that of the expenses of their transport and of customs clearance.

2. The value stated in the preceding Section may be increased by the amount of the profit expected. In order to ensure a margin of profit

exceeding ten per cent of the value of the goods at origin, it shall be necessary to specifically declare this on the policy.

Article 455. *Beginning and end of the coverage.*

Coverage of the goods begins at the moment when they leave the ground for loading on board, and end when they are placed on land at the destination port.

Article 456. *Warehouse to warehouse clause.*

When the insurance contract contains a “warehouse to warehouse” or similar clause, the coverage shall be extended from the moment when the goods leave the warehouse of origin at the place stated in the policy until they reach that of destination at the place stated in the policy.

Article 457. *Goods in transit.*

If the insurance is taken on goods in transit, the coverage commences at zero hours on the day of entering into the contract.

Article 458. *Floating policy.*

1. In insurance contracted by floating policy, the obligation of the insured to apply this to all boarding defined in the policy that takes place during the term it is in force is presumed, as well as automatic coverage of such consignments by the insurer.
2. The policy shall state the maximum sum that the insurer agrees to guarantee for each consignment.

Article 459. *Duty to notify in a floating policy.*

1. A floating policy shall state the term the insured has to notify the insurer of a consignment in progress, it being understood that the term shall be no less than forty- eight hours from the moment of the insured obtaining news of the consignment.
2. Breach of that duty to notify shall release the insurer of its obligation to cover the specific consignment concerned, without prejudice to its right to claim the relevant premium or premiums thereon. The insurer may also terminate the contract although such termination shall not have an effect with regard to consignments notified prior to declaration of termination.

Article 460. *Extension of coverage during the voyage.*

1. The goods insured shall be covered by the policy during the whole voyage, including transfers, loading and unloading operations at ports of transit or arrival and their stay on the dock on in the warehouse, without prejudice to the duty of the insured to notify the insurer of those circumstances at the moment they become known to it, and to pay the premium surcharge that may be due in each case.

2. Changes in the travel or route beyond the will of the insured shall also be covered, maintaining the duty of communication and premium surcharge payments foreseen in the preceding Section.

Article 461. *Cases of abandonment.*

The insured may abandon the goods insured in the following cases:

- a) Total loss of the goods;
- b) Damages, whose amount, plus the cost of reconditioning and re-delivery to destination, covers the value of the goods established in the policy. For the purposes of this calculation, the amount of the repairs and the contributions to cargo of the goods in the general average or salvage shall be aggregated;
- c) Loss of the carrier ship pursuant to Article 449.d);
- d) Loss or not seaworthiness affecting to the ship during the voyage, if the goods could not be re-delivered to destination within a term of ninety days, or on that set in the policy, from the loss or the non-seaworthiness.

Article 462. *Term for abandonment.*

The declaration of abandonment shall be made by the insured within sixty days following that of the circumstances arising as established for each case in the preceding Article. Once that term has elapsed, the insured may only claim compensation through failure action.

Section 3. On civil liability insurance

Article 463. *Scope of the rules.*

The rules governing civil liability insurance shall not only be applied to those of this class, but also to the coverage of risk of certain obligations

arising to compensate third parties included in maritime insurance of another class.

Article 464. *Mandatory insurance.*

Mandatory civil liability insurance required pursuant to this Act shall be regulated, in the first place, by the specific provisions thereof and, failing that, by the terms set forth in this Section.

Article 465. *Obligation of the insurer and direct action.*

The obligation of the insurer to compensate in such insurance exists from the moment of liability of the insured arises before the third party damaged. The latter shall be entitled to direct action against the insurer to demand that it fulfil its obligation. Any contractual clause that alters the terms of this Article shall be void.

Article 466. *Limit of coverage.*

The insurer shall be liable up to the maximum limit of the sum insured for each one of the events causing liability that occur during the term of the contract.

Article 467. *Limitations of liability to compensate.*

The insurer may raise the same exceptions before the party damaged as it may with respect to the insured, and especially the quantitative limits of liability that the latter may enjoy pursuant to the applicable law or the contract from which the liability arises.

TITLE IX

PROCEDURAL SPECIALITIES

CHAPTER I

ON SPECIALITIES OF JURISDICTION AND COMPETENCE

Article 468. *Jurisdiction and arbitration clauses.*

Without prejudice to the terms foreseen in the international conventions in force in Spain and the provisions of the European Union, clauses of

submission to a foreign jurisdiction or arbitration abroad shall be null and void and considered not to be included, as set forth in contracts for use of the ship, or in ancillary navigation contracts, when they have not been negotiated individually and separately.

In particular, insertion of a jurisdiction or arbitration clause in the printed conditions of any of the contracts referred to in the preceding paragraph shall not provide evidence, in itself, of fulfilment of the requisites established therein.

Article 469. *Criteria for attribution of competence.*

1. Except if the parties have validly introduced an exclusive jurisdiction clause or an arbitration clause as established in this Chapter, the criteria foreseen in this Article shall apply.

2. In contracts for use of the ship, the competent Courts, to be chosen by the plaintiff, shall be those of:

- a) The domicile of the defendant;
- b) Place where the contract is entered into;
- c) Port of loading or unloading.

3. In ancillary navigation contracts, the competent Courts, to be chosen by the plaintiff, shall be those of:

- a) The domicile of the defendant;
- b) Place where the contract is entered into;
- c) Place where the services are provided.

4. In order to hear the motion to challenge liquidation of the general average, both that made privately as well as that performed by a Notary Public pursuant to the relevant public certification proceedings, the competent Court shall be that of the place of conclusion of the transport, or the place of arrival of the ship, if the latter is different.

CHAPTER II ON ARREST OF SHIPS

Article 470. *Nature and regulation of the measure.*

1. The injunctive measure of arrest of ships, both Spanish as well as foreign, shall be governed by the International Convention on the Arrest of

Ships, done at Geneva on 12th March 1999, by the terms set forth in this Act and, under supplementary terms, by those established in Act 1/2000, dated 7th January, on Civil Procedure. Such a measure shall necessarily involve immobilisation of the ship in the port where it is located.

2. Under no circumstance may arrest be applied for to assure enforcement of a judgement that has already been handed down, or of an arbitration award already issued.

3. The provisions foreseen in this Chapter are applicable to vessels.

Article 471. Competence.

1. The Court that has objective competence to hear the main claim, or that of the port or place where the ship is located, or that where the ship is expected to arrive, as chosen by the plaintiff that requests adoption of the injunctive measure, shall be competent to decree the arrest of a ship. Notwithstanding this, if the ship does not reach the port expected, the Court of that port shall lose its competence.

2. When arrest of a ship is ordered, if Spanish Court is competent to hear the substantive matter, the measure resolved shall be maintained as long as the suit is filed within the term set by the Court in keeping with the circumstances of the case.

Article 472. Arrest for maritime credits.

1. In addition to decree arrest of a ship for maritime credit as defined in Article 1 of the International Convention on Arrest of Ships, it shall suffice to allege the right or credits claimed, the cause that gives rise to these and that the ship may be arrested.

2. In all cases, the Court shall demand a guarantee for a sufficient sum to respond to the damages, losses and costs that may arise. That guarantee may be of any of the classes recognised by law, including a bank guarantee.

Once that guarantee is established, which shall be at least 15 per cent of the amount of the maritime credit alleged, the Court may review its amount, of its own motion or at the request of a party, according to the carriage and the size of the ship, the cost arising from the ship staying in the port, its market price by day, whether or not it is on a regular line, whether it is loaded or not, as well as its contractual commitments.

Article 473. *Arrest for other credits.*

1. Arrest of Spanish ships that are physically within the Spanish jurisdiction, ordered on application by persons who have their usual residence or main establishment in Spain, or who have acquired the credit concerned by cession or subrogation of such, may be decreed both for the maritime credits as well as for any other rights or credits against the debtor pertaining to the ship or ships whose seizure is requested.

Spanish ships may also be arrested by the competent administrative body pursuant to the terms set forth in the specific provisions applicable.

2. In the arrests to which the preceding Section refers, the immobilisation may be replaced, at the discretion of the competent jurisdictional or administrative body, by an annotation of the measure on the Register of Moveable Assets and, where appropriate, of prohibition on disposal.

3. Arrest of ships flying the flag of a State that is not a party to the International Convention on Arrest of Ships, done at Geneva on 12th March 1999, shall be governed by the provisions of that Convention, notwithstanding it being possible for them to be arrested both for maritime credits as well as for any other credits.

Article 474. *Arrest and a submission to foreign jurisdiction.*

Arrest of a ship shall also be appropriate for the purposes of obtaining a guarantee although, by virtue of the existence of a contract or another document with an arbitration clause, or a jurisdiction clause, the maritime credit for which the arrest is requested shall be subject to a hearing by a foreign jurisdiction or arbitration tribunal.

Article 475. *Ships subject to arrest.*

All ships with regard to which a maritime credit is alleged may be arrested pursuant to the terms and within the scope of the International Convention on Arrest of Ships.

Article 476. *Procedural formalities of the measure of arrest.*

It shall be assumed that arrest of ships arises due to the danger of procedural delay and urgency mentioned in Articles 728, 730.2 and 733.2 of the Civil Procedure Act.

Article 477. *Implementation of the arrest.*

1. Once the arrest has been ordered, the Court shall notify the Harbour Master of the port where the ship is located, or that where it is expected to arrive, by the swiftest means, and he shall adopt the necessary measures to arrest and prohibit departure by the ship. To that end, the Maritime Authorities may withdraw the ship's documentation, as well as obtain collaboration by the Port Authority, by the Security Forces and Corps and public entities dedicated to coastal surveillance, which shall be bound to provide the required collaboration pursuant to their respective powers.

2. The terms set forth in this Chapter do not affect the rights or powers that, pursuant to the applicable administrative legislation and international conventions, are the remit of the public and port administrations, to retain a ship or otherwise prevent it from setting sail within their jurisdiction.

Article 478. *Notification of the arrest.*

Once the arrest is resolved and carried out, and the arrest guaranteed, the master or shipping agent acting for the ship shall be notified, delivering a copy of the suit filed and the order that resolves it.

Article 479. *Jurisdiction on the substantive litigious matter.*

In cases in which according to the terms set forth in Article 7 of the International Convention on Arrest of Ships, the Spanish Courts are not competent to hear the substantive related to a ship arrested in Spain, the Court that performed the arrest shall, of its own motion or at the request of the party, set a term of no less than thirty days, nor exceeding ninety, for the holder of the maritime credit to evidence commencement of proceedings before the competent Court or arbitration tribunal. If the proceedings are not initiated within the term set, on request by the party, the Court shall order release of the ship arrested or cancellation of the guarantee provided.

CHAPTER III
ON FORCIBLE SALE OF SHIPS

Article 480. *Regulation.*

Forcible sale of the ship shall be according to the terms set forth in the Civil Procedure Act, or in the administrative regulations that may be

applicable for auction of moveable assets subject to public registration in all matters not provided in the International Convention on Maritime Liens and Mortgages, done at Geneva on 6th May 1993, and this Act.

Article 481. *Notification of forcible sale.*

Before proceeding to forcible sale of the ship, the competent judicial or administrative authority shall notify that sale:

- a) To the incumbent registrar at the Register of Moveable Assets, as well as to the competent authority in charge of inscription of the ship in the State whose flag it has been temporarily authorised to fly, if appropriate;
- b) To the person registered as the owner of the ship;
- c) To the holders of registered mortgages or encumbrances that have not been established against the carrier;
- d) To all the holders of registered mortgages or encumbrances to the bearer and maritime liens listed pursuant to Article 4 of the International Convention on Maritime Liens and Mortgages, as long as the competent Court or administrative body has received notification of the respective credits.

Article 482. *Term and content of the notification.*

1. The notification to which the preceding Article refers shall be made at least thirty days prior to the date foreseen for forcible sale and it shall state:

- a) The date and place of the forcible sale, as well as the circumstances regarding forcible sale or process leading thereto, which the judicial or administrative authority hearing the proceedings deem to be sufficient to protect the interests of the persons who shall be notified;
- b) Should it not be possible to determine the date and place of the forcible sale with certainty, the approximate date and place foreseen for the forcible sale shall be notified, as well as the particulars stated in the preceding paragraph. Notwithstanding this, when such data become known, the effective date and place of the forcible sale shall be notified at least seven days prior to the date foreseen for the sale.

2. The notification shall be made in writing to the persons concerned who are stated in the preceding Article, if known, through the means established in the Civil Procedure Act or in the administrative regulations, according to whether it is a judicial or administrative sale, respectively, by registered mail or electronic means, or by any other appropriate means that allows a

record of receipt to be secured, even when the person to be notified is domiciled outside of Spain.

Likewise and in cases required by the applicable treaties, the notification shall be made by announcements published in two Spanish national newspapers, and edicts may also be placed in other publications if the judicial or administrative authority proceeding to the forcible sale considers this convenient.

Article 483. *Third parties with a superior right.*

1. Holders of privileged maritime credits may appear and allege the relevant third party claim with a superior right in the manner and to the ends foreseen in Articles 614 to 620 of the Civil Procedure Act.
2. The foregoing shall also apply in any judicial proceedings to enforce a maritime mortgage.
3. Filing by third parties with a superior right in the administrative enforcement proceedings shall be governed by the terms set forth in the specific provisions.

Article 484. *Effects of a forcible sale.*

1. As a consequence of a forcible sale of the ship, all the mortgages and encumbrances registered, except those the buyer may have subrogated itself in with the consent of the creditors, as well as all the liens and charges of any kind that may befall the ship shall be without effect and, where appropriate, their cancellation shall be ordered.
2. The terms set forth in Articles 666, 668.3, 670 and 672 of the Civil Procedure Act on appraisal and declaration of charges and encumbrances shall not apply.

Article 485. *Performance by a specialised individual or firm.*

The terms set forth in Article 641 of the Civil Procedure Act shall apply to judicial sale of ships.

Article 486. *Assignment of the sum obtained from the auction or direct sale of the ship.*

1. The proceeds of the sale shall first be used to pay the procedural costs and expenses arising from the arrest, or for the enforcement and

subsequent sale of the ship. Such costs and expenses include, among others, the expenses of conserving the ship and maintaining the crew, as well as the wages and other sums, and the expenses to which Article 4.1.a) of the International Convention on Maritime Liens and Mortgages refers, accrued from the moment of the arrest, or from commencement of the enforcement.

2. The remainder shall be distributed according to the terms set forth in the International Convention on Maritime Liens and Mortgages. Once all the credits are settled, the balance, if any, shall be delivered to the owner and shall be freely transferable.

CHAPTER IV ON THE PROCEDURE TO LIMIT LIABILITY FOR MARITIME CREDITS

Article 487. *Competence.*

1. The Mercantile Court hearing any limitable claim that has been filed against the holder of the right to limit shall be competent to hear constitution of the liability limitation fund.

2. In the event of intending to invoke the right to limit before Spanish judicial bodies with regard to claims filed before foreign judicial bodies, the terms foreseen in the European Union provisions and relevant treaties shall apply.

Article 488. *Invocation and term of constitution.*

1. All persons who invoke the right to limit the liability claimed in civil proceedings shall commence formalities to constitute a limitation fund within the maximum term of ten days from the invocation.

2. To that end, they shall file an application to constitute the fund, in the manner determined in this Act, before the same Court that hears the claim, which shall be processed in a separate Section to the main suit.

Article 489. *Invocation in other proceedings.*

1. When the limitations are alleged in criminal, contentious-administrative or labour court proceedings, or in administrative proceedings, the application to constitute a fund shall be filed before the Mercantile Court of the same place, being proven by testimonial to the Criminal Court, the

Contentious-Administrative or Labour Court or administrative body within the same term as stated in the preceding Article.

In these cases, the final judgements or resolutions handed down in those proceedings shall not be enforceable other than against the fund regularly constituted.

2. In these cases, the competent Mercantile Court shall process the application according to the terms provided in this Act and, in all matters not foreseen herein, by the verbal trial proceedings.

Article 490. *Content of the application.*

The application to constitute a limitation fund shall be filed in writing signed by a barrister and a solicitor, that shall record the relevant facts regarding the limitation invoked, accompanied by the following documents:

- a) Document that evidences deposit in the account of the Court of the amount of the maximum sum of compensation calculated according to the rules foreseen in Chapter III of Title VII, according to the nature of the claims formulated, increased by their legal interest from the date of the accident until that of constitution. The deposit may be substituted by a sufficient guarantee in favour of the Court granted by a financial institution authorised to operate in Spain;
- b) Certified copy of the tonnage certificate;
- c) Crew list of the ship at the moment of the accident;
- d) In the case of the limitation stated referring to claims for death or injury of passengers, certificate of the maximum number of passengers the ship is authorised to carry;
- e) Certified copy of the certificate of seaworthiness of the ship;
- f) Certificate by the monetary authority on the euro conversion rate of the special drawing right at the moment of constituting the fund;
- g) Document that records calculation of the amount of the limitation;
- h) List of creditors subject to limitation, stating their address, if known, the title claimed and the estimated amount.

Article 491. *Admission and correction.*

1. The Court shall hand down an order admitting the application if the above requisites are fulfilled, granting the applicant, in the contrary case, a term of five days to correct the omissions appreciated.

2. The Court may reject the application if he considers the amount of the fund is wrongly calculated according to the data stated, in which case it shall specify the adequate amount and also grant a term of five days to correct this.

Article 492. *Order of admission or refusal.*

1. In the order on admission to consideration, the Court shall declare constitution of the limitation fund, without prejudice to the motions to challenge that may subsequently be filed.

2. The testimonial of that order shall be a sufficient title to obtain, in any other judicial or administrative proceedings arising from the same accident, the removal of any arrests or other injunctive measures on the ship or other assets owned by the person who holds the right to limit. The same loss of actions shall take place before other debtors with the same credit, on behalf of whom the fund may have been established.

3. Such proceedings shall continue until a judgement is handed down, although their enforcement against the persons who benefit from the limitation shall forcibly be accumulated in the file on integration and distribution of the fund.

4. The order refusing constitution of the fund may be contested on appeal by the applicant.

Article 493. *Appointment of a commissioner-liquidator.*

1. In the order stated in the preceding Article, the Court shall order appointment of a commissioner-liquidator.

2. The parties concerned may object to the commissioner-liquidator invoking the causes established regarding experts in the Civil Procedure Act.

3. The expert appointed shall accept office within the term of three days by appearing before the Court. He shall be entitled, in fees and expenses, to a remuneration equal to one per cent of the fund finally distributed among the creditors, and may request a provision of funds for immediate expenses, which shall be borne by the applicant.

Article 494. *Forming sections and provisional distribution.*

1. The commissioner-liquidator shall form the separate sections. The first shall be dedicated to regulating the statement of liabilities of the fund, the

second shall contain everything related to the statement of assets and the third shall be the section on distribution.

2. The commissioner-liquidator may submit a proposal to the Court, when deemed convenient, for provisional distribution of part of the fund. If the Court were to approve this, the commissioner-liquidator may advance payments, within the limits established in each case, which shall always be to the account of what shall be deemed appropriate according to the definitive distribution.

Article 495. *Publicity in establishing the statements.*

1. Once the order constituting the fund is final, the commissioner-liquidator shall notify all the creditors stated in the writ by the applicant, as well as all those who subsequently appear, of commencement of the proceedings and of their right to declare their credit and to be a party to the proceedings.

2. The order shall be published in the Official Journal of the Business Registry and, if the commissioner-liquidator sees it fit, in other media.

3. The notifications and other incidents regarding creditors, their claims and titles, their respective amount and their integration in the block assets shall be ordered in the first section.

4. The creditors shall be granted a term of thirty days to present their titles and receipts of credit. That term shall be doubled for those resident abroad. The commissioner-liquidator may demand the documentation he considers necessary from each creditor to duly evidence credit.

Article 496. *Order drawing up the statement of liabilities.*

1. The party constituting the fund or the creditors may submit the allegations to the commissioner-liquidator leading to challenging the appropriateness or amount of the credits. They may also allege the inappropriateness of their inclusion in the statement of liabilities.

2. The commissioner-liquidator shall submit a report to the Court with the list of credits admitted in the statement of liabilities and their provisional or final amount, as well as the motions to challenge or allegations received and the reasons to justify his decision. Considering that report, the Court shall decide by order on the composition of the statement of liabilities.

3. A reconsideration request may be filed against the order by the parties concerned, and a remedy of appeal may be filed against the decision thereon before the Provincial High Court.

Article 497. *Order forming the statement of assets.*

1. The section on the statement of assets of the fund shall record the motions to challenge that, where appropriate, the creditors may make regarding the appropriateness of the right to limit the liability or amount and type of fund. Notification of such motions to challenge shall be given to the applicant so allegations may be submitted within the term of twenty days.

2. The motions to challenge shall be filed within the maximum term of three months once each creditor is notified of the proceedings, not being admissible thereafter.

3. Once the latter term has elapsed, whether or not motions to challenge have been filed, the commissioner-liquidator shall submit his report to the Court on the validity and amount of the limitation fund, as well as the motions to challenge filed and the reasons that justify his opinion.

4. Finally, the Court shall issue an order on the appropriateness and amount of the fund, and the same appeals as stated in the preceding Article may be filed.

Article 498. *Complement to the statement of assets.*

Should the proceedings to which the above Article refers establish a different amount of the fund to that already deposited or constituted, the applicant shall make up the latter within the term of ten days, even if that order is appealed. If it does not do so, it shall forfeit its right to limit its liability with the effects foreseen in the following Article.

Article 499. *Termination due to inappropriateness of the limitation.*

If a final resolution were to establish that limitation of liability is inappropriate, the Court shall declare conclusion of the proceedings. Notwithstanding, the bank guarantee or sum deposited shall be withheld for sixty days to assure the claims that are submitted to the competent Court and also to guarantee enforcement of those that have already been filed.

Article 500. *Section and order on distribution.*

1. When the orders approving the statements of assets and liabilities of the fund are final, the commissioner-liquidator shall prepare a proposal for distribution according to the terms foreseen in Title VII of this Act. The creditors shall be notified of the proposal, having a term of twenty days to challenge.

2. Considering the definitive report by the commissioner-liquidator, the Court shall resolve, by order that may be challenged by a request for reconsideration and by appeal.

TITLE X

**PUBLIC CERTIFICATION OF CERTAIN MARITIME LAW
PROCEEDINGS**

CHAPTER I
GENERAL PROVISIONS

Article 501. *Competence.*

Only a Notary Public chosen by the parties concerned shall be competent to hear the proceedings regulated in this Title, pursuant to the provisions of this Act.

Article 502. *Working days and hours.*

All days and hours, without exception, shall be working time in proceedings related to Maritime Law.

Article 503. *Expenses.*

Expenses arising from the proceedings regulated by this Title shall be borne by the applicant.

Expenses of experts shall be borne by the party proposing such proof.

CHAPTER II
ON SEA PROTESTS REGARDING VOYAGE INCIDENTS

Article 504. *Proof of incidents.*

1. In cases in which the applicable laws require the master to report incidents on the voyage on arriving at the destination port, he shall do so

before the Maritime Captaincy, according to the terms set forth in the Act and, if it is a foreign country, before the Spanish Consul.

These proceedings may also be used to prove the incidents when the master deems this convenient.

2. Within the term of twenty- four hours from arrival at the destination port, the master shall deliver a copy of the relevant report from the Captain's Log and of the minutes in which he recorded the incidents that took place, as well as, where appropriate, a copy of the incident protest note performed at a port of arrival prior to that of destination. He shall also deliver a copy of the note of protest to all the parties concerned, who are known, of the events that have occurred and, where appropriate, shall inexcusably deliver an authenticated copy in the case foreseen in Article 187.

Article 505. *Expert appraisal.*

1. At the initiative of the parties concerned, the Notary Public shall proceed to examine the ship and the goods transported, as well as order appraisal of the damage caused.

In order to perform the preceding diligences, the Notary Public shall receive a declaration from the parties signing the certificate or certificates issued, the parties concerned and shipping agents, if they reside or are represented in that place.

2. The appraisal of the damage shall be performed by an appraiser appointed by common agreement by the master and the parties concerned or shipping agents and, failing an agreement, by the Notary Public.

CHAPTER III
ON LIQUIDATION OF THE GENERAL AVERAGE

Article 506. *Object of the file and legitimation.*

In the event of the parties with an interest in a maritime voyage not reaching an agreement on private settlement of the general average, any of them may refer to a Notary Public to request the proceedings regulated below.

Article 507. *Application and summoning the parties concerned.*

1. The writ of application of the general average settlement application shall state a list of particulars of the facts that have occurred, of the

expenses and damages caused and documents that evidence the request, as well as a list naming the parties holding an interest therein.

2. Once the application is admitted, the Notary Public shall notify all the parties with an interest in the maritime voyage, in the ship or in the cargo, informing them of their right to intervene in the proceedings.

Article 508. *Appointment and intervention by the liquidator.*

1. The Notary Public shall appoint a liquidator in order to perform the liquidation.

2. The Notary Public shall appoint the liquidator within a reasonable term to prepare the liquidation, which shall be established according to the difficulties of the case and may not exceed four months, except for a justified cause, at the request of the liquidator himself.

All the parties concerned shall be bound to provide the liquidator appointed the required collaboration in order to obtain information and documentation.

3. When liquidation of the general average is submitted by the liquidator, or his negative finding regarding the appropriateness of liquidation, the Notary Public shall notify this to the parties concerned, who may state their approval or challenge it within the thirty days following.

Article 509. *Motions to challenge.*

Once the approvals or the motions to challenge are received, the Notary Public shall notify the liquidator, who shall be bound, within the term of thirty days, to issue a reasoned finding on their appropriateness and, where appropriate, suggest the amendments he proposes to the original liquidation.

Article 510. *Approval of the liquidation and appeal.*

1. Considering the writs by the parties concerned and the finding by the liquidator, the Notary Public shall hand down a reasoned resolution approving, amending or rejecting the liquidation.

2. The resolution may be appealed with suspension effects before the competent Mercantile Court. In that case, when the appeal is admitted, the Court Clerk shall appoint a new liquidator to perform the liquidation in the manner and within the terms stated in Article 508. Once the motions to

challenge are received from the parties concerned, or the thirty-day term has elapsed from them being informed of the liquidation, the Court Clerk shall call a hearing to be held with the formalities of verbal trial.

Article 511. Enforcement.

The final resolution shall be a sufficient title to dispatch enforcement against the parties concerned who do not pay the contribution stated in the decision within the term of fifteen days, as well as against those who guaranteed their obligation, within the limits of the guarantee provided.

CHAPTER IV
ON DEPOSIT AND SALE OF MERCHANDISE AND
LUGGAGE IN MARITIME CARRIAGE

Article 512. Scope of application and legitimation.

The provisions set forth in this Chapter shall apply when the law applicable to the charter contract entitles the carrier to request deposit and sale of goods or luggage carried in cases of the consignee not paying the freight, the passage or expenses related with such carriage, or not appearing to withdraw the goods carried, as well as when the carriage cannot be concluded due to a fortuitous circumstance arising during the voyage, that makes its continuation impossible, illegal or prohibited.

Article 513. Application.

1. The application for deposit and sale shall clearly state the following particulars:

- a) Carriage concerned, with a copy of the bill of lading or title of passage;
- b) Identity of the consignee if known;
- c) Charter, passage or expenses claimed;
- d) Description of the kind or quantity of goods for which deposit is requested, with their approximate appraisal;
- e) Grounds for the application, whether for non- payment or failure to withdraw the goods.

2. The party applying for such a deposit shall propose the individuals or entities referred to in Article 626 of the Civil Procedure Act.

3. Should the impediment to conclude the carriage be due to a fortuitous circumstance arising during the journey, which makes its continuation impossible, illegal or prohibited, indisputable evidence of the relevant event shall be provided.

Article 514. Procedure.

1. When the application is admitted to consideration, the Notary Public shall require immediate payment to the consignee of the goods or luggage recorded in the title submitted. If it is not nominative, the demand shall not be made, except if so requested in the application, appointing a specific person for the purpose.

2. Should the consignee not be found, or the party required does not pay or grant a sufficient guarantee of payment in the act of demand or within forty-eight hours thereafter, the Notary Public shall order deposit of the goods or luggage.

3. Once the deposit is performed and the custodian named, the Notary Public shall order the appraisal and sale by a specialised individual or firm or at public auction, to the ends stated.

Sale of the items deposited shall also be appropriate when a risk of deterioration arises, or when, due to their conditions or other circumstances, the conservation or custody expenses are disproportionate.

4. The proceeds of the sale shall first be used to pay the expenses of deposit and the auction, and the remainder shall be delivered to the applicant to pay for the charter or expenses claimed, and up to that limit.

Article 515. Opposition to payment.

1. Should the owner of the goods or luggage oppose payment in the certificate of demand, or within the following forty-eight hours, the remainder shall be deposited awaiting the relevant trial. In that case, the holder shall file a suit or otherwise commence judicial or arbitration proceedings before the competent Court within the term of twenty days if filed before a Spanish Court, or thirty days if filed before a foreign Court, in both cases as of declaring opposition.

Should the suit not be lodged within the term established, the Notary Public may proceed to deliver the remainder to the applicant according to the terms established in Section 4 of the preceding Article.

2. When the deposit is avoided, or is lifted by the consignee providing a sufficient guarantee, it shall file its suit within the term established in the preceding Section, which shall be counted from constitution thereof. If not, the Notary Public shall order payment of the sum claimed against the guarantee established.

CHAPTER V ON PROCEEDINGS REGARDING LOSS, THEFT OR DESTRUCTION OF THE BILL OF LADING

Article 516. *Competent Notary Public.*

The Notary Public practising in the place of the destination set in the bill of lading for delivery of the goods shall be competent to hear the proceedings regulated in this Chapter.

Article 517. *Demand by the holder dispossessed.*

1. In cases of loss, theft or destruction of a bill of lading, the holder dispossessed thereof shall appear before the competent Notary Public, requiring him to call on the carrier not to deliver the goods to a third party for annulment of the title and to recognise him ownership of the missing bill of lading.

2. The holder dispossessed may perform all the acts required for conservation of its right. It may also receive goods from the carrier once they have reached the destination, as long as a guarantee is provided before the Notary Public for an amount equivalent to the value of the goods received.

Article 518. *Content of the demand.*

The demand issued by the holder dispossessed to the Notary Public shall state the mentions of the bill of lading referred to in Article 248, as well as the circumstances by which it became the holder and those regarding the dispossession. It shall also attach all the elements of proof it has and propose the others that may justify the grounds for its right.

Article 519. *Conveyance of the demand and allegations.*

Once the demand is admitted, the Notary Public shall notify the carrier by certificate, requiring it that, if any third party appears to claim the goods, it

proceeds to withhold these and notify the Notary Public of the circumstances of presentation. The same notification shall be made to the consignor and, where appropriate, endorsers, when these are different persons to the holder and with known addresses. They may all make the allegations they deem appropriate before the Notary Public.

Article 520. *Publication of the demand and setting aside.*

1. Once the Notary Public has made the enquiries requested and those deemed appropriate regarding the truth of the facts and regarding the right of the holder dispossessed, within the term stated in the preceding Article, he shall immediately proceed to publish the demand received, in the relevant Section of the Official State Gazette, setting a term of one month, from the date of publication, for the holder of the title to be able to appear and file opposition.

2. If, on the basis of the enquiries performed or the allegations made by the parties concerned, the demand were to be found to be manifestly without grounds, the Notary Public may close the proceedings without performing the publication, leaving the terms demanded of the carrier without effect and proceeding, where appropriate, to return the guarantee to the person making the demand when the goods have been returned.

3. Should a third party appear to claim the goods and evidence its rights by documentary means, the carrier shall notify the Notary Public of that circumstance. The Notary Public shall attach that claim to the proceedings, with the documentary justification, and the proceedings shall be suspended for two months, without the Notary Public being able to authorise the certificate of annulment of the bill of lading that has been stolen or is missing. Should two months elapse without the third party proving that a suit has been filed in Court to exercise its claim, the Notary Public shall continue with the proceedings.

In the event of a third party proving that it has filed a suit, the Notary Public shall declare the end of the proceedings without authorising the annulment.

Article 521. *Annulment of the bill of lading.*

When one month has elapsed from publication of the demand without anybody contradicting it, the Notary Public shall act by certificate of notoriety to record annulment of the title and shall recognise the person demanding its ownership.

Once annulment of the bill of lading is declared, it shall not take any effect whatsoever and the holder dispossessed, whose right has been recognised, may when appropriate, withdraw the guarantee provided, or demand that the carrier immediately deliver the goods, on payment of the deposit expenses accrued.

Article 522. *Impossibility to claim actions for damages and losses based on the bill of lading.*

The terms established in this Chapter shall be construed to be without prejudice to those set forth in Article 254.

CHAPTER VI ON DISPOSAL OF ALTERED OR DAMAGED GOODS

Article 523. *Scope of application.*

If the items comprising the cargo of a ship are found to be altered, damaged or in danger of imminent damage, and if the person in charge of conserving the goods under his custody has not been able to obtain instructions from their owner, it shall request a Notary Public to authorise their sale by public auction or by a specialised individual or firm.

Article 524. *Appraisal value. Sale of the goods.*

When the application is submitted, that shall state the number and class of the items that are to be sold, the Notary Public shall appoint an appraiser to inspect the goods.

Once the state of the goods is certified by an appraisal report, if the Notary Public considers this necessary, he shall order the goods stated to be valued and sold by a specialised individual or firm or at public auction. The price obtained shall first be used to attend to payment of the expenses of the Notary Public and appraiser, and the remainder shall be delivered to the holder of the goods.

Additional Provision one. *Updating amounts and alternative guarantee mechanisms.*

1. The Government is hereby authorised to review the amounts of the maximum sums of compensation established in Article 399.2, in order to maintain their coverage.

2. Reviews of the amounts of the conventions to which the rules of responsibility of Articles 282, 283, 299, 334 and 398 refer shall only be appropriate by virtue of amendments made in the applicable international treaties.

3. The Government may establish the cases in which alternative guarantee mechanisms may be established to substitute the mandatory insurance foreseen in Articles 300, 389 and 464.

Additional Provision two. *Competent bodies to determine the awards and remunerations for salvage and towing.*

The competent bodies of the Navy that shall hear actions regarding salvage bounties and remuneration for salvage towing are the Maritime Arbitration Council and the Maritime Arbitration Auditors.

Their composition, legal regime, territorial scope and other particulars required for their operation shall be established in the implementing regulations.

The parties with an interest in such proceedings may opt to resort to said bodies of the Navy or to the ordinary civil jurisdiction.

If an agreement is not reached between the parties concerned, the ordinary civil jurisdiction shall prevail, which shall be substantiated according to the ordinary declaratory or verbal proceedings foreseen in the Civil Procedure Act, as appropriate according to the sum claimed.

Additional Provision three. *Electronic contracts.*

1. With regard to use of computer, electronic and telematic techniques to formalise the contracts this Act mentions, and the notifications related to these, the terms set forth in Act 34/2002, of 11th July, on Services of the Information Society and Electronic Commerce, in Act 59/2003, of 19th December, on electronic signatures, in this Act and in European Union Law, shall apply.

2. The parties may agree at any time to change the medium used for the contractual documentation. In that case, they shall include a warning of the change thus performed on all subsequent documentation as well as, where appropriate, the duration of that change.

Additional Provision four. *Actions of the consolidated text of the General Act for Defence of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, dated 16th November.*

Exercise of the actions foreseen in this Act for sale contracts pursuant to Chapter VI of Title II, shall be incompatible with the exercise of the actions arising from lack of conformity of the asset with the contract foreseen in Title V of Book Two of the consolidated text of the General Act for Defence of Consumers and Users and other complementary laws.

Additional Provision five. *Alternative systems for resolution of conflicts with consumers.*

With regard to the contracts regulated pursuant to this Act in which one of the parties is a consumer, by virtue of the terms set forth in the consolidated text of the General Act for Defence of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, dated 16th November, the parties to the contract may submit their disputes voluntarily to the consumer arbitration system, or to other systems for extrajudicial dispute resolution that are recorded on the list published by the European Commission on such systems and that comply with the principles established by the consumer laws.

Additional Provision six. *Spanish warships.*

Pursuant to the terms set forth in Article 3.3, commanders of Spanish warships belong to the Navy.

The Ministry of Defence shall regulate the official list of Navy ships.

Additional Provision seven. *Continental shelf.*

The sovereign rights to the Spanish continental shelf and its extensions beyond the limit of two hundred nautical miles shall be governed by the terms set forth in the United Nations Convention on the Law of the Sea, signed in Montego Bay, on 10th December 1982, in the remaining international treaties to which Spain is a party, and in the provisions of Domestic Law that may be handed down pursuant to such international agreements.

Additional Provision eight. *Historical ships and replicas.*

1. Historical ships and vessels are unique reproductions that may be registered and use the flag subject to a special register pursuant to the

terms set out in the implementing regulations handed down by the Government. Those regulations shall also establish a simplified regime of certification and inspection to which such ships and vessels shall be subject.

2. The ships and vessels included in the General Inventory of Moveable Assets of the Spanish Historical Heritage or declared assets of cultural interest and that have a special interest due to having belonged to any relevant character or having had a part in any event of historical importance, in addition to being included on the register stated in the preceding Section, shall enjoy a special regime of tax nature and exemption from port fees pursuant to the terms of the implementing regulations determined by the Government according to the instruments for furtherance and protection recognised in the laws on historic assets.

Additional Provision nine. *Special provisions in matters of air navigation.*

1. This Act shall not be applicable to aircraft that are in the water, nor personnel and means assigned to their activity, that shall be subject, to all ends, to the regime established in the aeronautical laws and international treaties on the matter. All the foregoing, without prejudice of compliance by the aircraft of the terms indicated in the International Convention for Safety of Life at Sea (SOLAS 74/78) and the Convention on the International Regulations to Prevent Collisions (COLREG-72) in everything that is applicable, when they are in the water.

2. In the maritime spaces under Spanish sovereignty, with prior agreement with the Maritime Authorities, the Ministries of Development or Defence, as appropriate, may establish reserved zones exclusively for air navigation. These zones shall be governed by the terms foreseen in the aeronautical legislation, as well as in the maritime provisions on safety at sea and combating pollution, being under the control of the civil or military aviation authorities, with regard to landing on or taking off from the sea and control of the aircraft. The signalling of such zones, if necessary, shall comply with the criteria of the International Association of Marine Aids to Navigation and Lighthouse Authorities.

3. The implementing regulations shall establish the necessary provisions to regulate co-ordination with the competent Maritime Authorities on aircraft traffic outside the zones reserved for air navigation, regarding marine aids in these areas, that shall be performed following the criteria of the International Association of Marine Aids to Navigation and Lighthouse

Authorities, and use of radio-communication systems, as well as the requisites established by the flight crews of those aircraft.

Additional Provision ten. *Notarial and registry fees.*

The Government shall approve the relevant tariffs for intervention by the Notaries Public and Land and Business Registrars for inscription of ships, vessels and naval artefacts in the Ships Section at the Register of Moveable Assets.

Transitional Provision one. *Salvage, towing, finding and extraction proceedings in process.*

Administrative proceedings in relation to aid, salvage, towing, finding and extraction of maritime extractions that are in process when this Act comes into force shall continue to be governed, until full completion by the provisions of Act 60/1962, dated 24th December, regulating aids, salvage, towing, finding and maritime extractions.

Until constitution of the Maritime Arbitration Council and the Maritime Arbitration Auditors, the Central Maritime Tribunal and the Permanent Maritime Courts shall continue to perform their present duties, pursuant to the terms established in Act 60/1962, dated 24th December, that regulates aids, salvage, towing, finding and maritime extractions.

Transitional Provision two. *Tonnage based shipping companies regime.*

For the purposes of application of the regime of shipping companies according to the tonnage regulated in Chapter XVII of Title VII of the consolidated text of the Corporation Tax Act, approved by Royal Legislative Decree 4/2004, of 5th March, the definitions and other concepts established in this Act shall be applicable to the applications presented as of it coming into force.

Sole Repeal Provision. *Repeal of legal provisions*

On the entry into force of this Act, all provisions of equal or lower rank that oppose it are hereby repealed and, in any case, the following ones:

- a) Articles 2131 to 2161 and 2168 to 2174 of the Civil Procedure Act of 1881;
- b) Paragraph one of Article 561 of the Criminal Procedure Act of 1882;

- c) Book III and Articles 19.3, 951 to 954 of the Code of Commerce, approved by the Royal Decree of 22nd August 1885;
- d) The Act of 22nd December of 1949, on unification of rules for bills of lading on merchant ships;
- e) The Ship Mortgage Act, of 21st August 1893;
- f) Act 60/1962, dated 24th December, on aid, salvage, towing, findings and maritime extractions, except for the provisions of Title II, which shall remain in force with the rank of regulations;
- g) Final Provision twenty- six of Act 1/2000, of 1st January, on Civil Procedure;
- h) Articles 261 and 262, and letter f) of Article 263 of the Consolidated Text of the State Ports and Merchant Navy Act, approved by Royal Legislative Decree 2/2011, dated 5th September;
- i) Transitional Provision ten of Act 27/1992, of 24th November, on State Ports and the Merchant Navy.

Final Provision one. *Rotterdam Rules.*

In the event of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, signed on 23rd September 2009 (Rotterdam Rules) comes into force, the Government shall submit to Parliament a bill to introduce the necessary amendments to this Act.

Final Provision two. *Reform of Act 1/2000, dated 7th January, on Civil Procedure.*

One. Section 2 of Article 681 of Act on Civil Procedure shall henceforth be drafted as follows:

“2. When payment of debts guaranteed by the ship mortgage is claimed, the terms set forth in the preceding Section may only be exercised in the cases described in Article 140.a) and e) of the Maritime Navigation Act.

In the cases indicated in Letters c) and d) of the Article, the action may be exercised with a prior record of the real situation of the ship by certification issued by the competent administration and, in the case of Letter b), it shall be necessary for a testimonial of the execution to be presented that records declaration of bankruptcy.”

Two. Section 3 of Article 685 of the Civil Procedure Act shall henceforth be drafted as follows:

“3. For the purposes of the procedure regulated in this Chapter, the private document of constitution of the ship mortgage registered on the Register of Moveable Assets pursuant to the terms set forth in Article 128 of the Maritime Navigation Act shall be considered a sufficient title to dispatch enforcement.”

Final Provision three. *Amendment of the Consolidated Text of the State Ports and Merchant Navy Act, approved by Royal Legislative Decree 2/2011, dated 5th September.*

The following amendments are made in the Consolidated Text of the State Ports and Merchant Navy Act, approved by Royal Legislative Decree 2/2011, dated 5th September:

One. Amendment of Letter j) of Article 26, which shall henceforth be drafted as follows:

“j) To control the port environment, compliance of the provisions that affect admission, manipulation and storage of hazardous goods, like the safety and protection systems for terrorist and antisocial actions, against fires and emergency prevention and control pursuant to the terms established in the provisions on civil protection, and combating pollution of the sea without prejudice to the relevant powers of other bodies of the Public Administrations, as well as collaborating with the competent Administrations on civil protection, prevention and extinction of fires and salvage.”

Two. Amendment of Section 3 of Article 62 that shall henceforth be drafted as follows:

“3. The Port Authorities shall be the competent bodies for prevention and control of emergencies due to contamination of the service zone of the ports that they manage, as well as cleaning and control of the pollution caused.”

Three. Amendment of Letter f) of Article 106 that shall henceforth be drafted as follows:

“f) The usual cleaning service of the common zones of earth and water. This service does not include cleaning furniture and esplanades as a consequence of goods deposits and handling.”

Four. Amendment of Letter b) of Article 263, which shall henceforth be drafted as follows:

“b) Those related to saving human life at sea, as well as cleaning maritime waters and combating pollution of the marine environment, in the zones where Spain exercises sovereignty, sovereign rights or jurisdiction, adopting the measures that might be necessary and, in particular, those stated in Letter d) of Article 310.2 of this Act and pursuant to the terms it is attributed by the plans and programmes foreseen in Article 264, without prejudice to the powers attributed to the Autonomous Communities in cases of effluent released from land.”

Five. A new Section 10 is added to Article 265, which shall henceforth be drafted as follows:

“10. In all investigation proceedings, the rights of the mariners shall be respected without exceptions, pursuant to the Directives on fair treatment of seafarers in the event of an accident at sea.”

Six. Amendment of Letter g) of Article 266.4, which shall henceforth be drafted as follows:

“g) And, in general, all those functions related to navigation, safety at sea, maritime salvage and combating pollution of the marine environment in waters located in zones in which Spain exercises sovereignty, sovereign rights or jurisdiction, except in cases of pollution that arise in the service zone of the ports, that is the remit of the Port Authorities, with whom who shall have a special duty of collaboration in these cases.”

Seven. A new Additional Provision thirty-four is added:

“Additional Provision thirty- four. Fee for issue of the Insurance Certificate or another financial guarantee related to civil liability of the carrier of passengers by sea in case of accident.

1. The taxable item of the fee consists of provision of the services of issuing the certificate of insurance or other financial guarantee related to the civil liability arising from damages to passengers at sea in the event of an accident.

2. Accrual of the fee shall arise at the moment when the application for the service is submitted, which shall not be processed without the relevant payment having been made.

3. The payers of the fee shall be the natural or legal persons that requested the provision of services that constitutes the taxable item.

4. The amount of the fee is €120.00. This amount may be amended by the General State Budget Act.

5. Payment of the fee shall be made in cash, at a deposit entity authorised by the Ministry of Finance and Public Administrations, and the General Regulations on Collection of Fees approved by Royal Decree 939/2005, dated 29th July, shall be applicable.

6. Management of the fee shall be performed by the Directorate-General of the Merchant Navy of the Ministry for Development.”

Eight. A new Additional Provision thirty-five is hereby added:

“Additional Provision thirty- five. Updating the sums of the fees.

The sums of the fees regulated in Title IV of Book Two of this Act may be amended by the General State Budget Act.”

Final Provision four. *Amendment of Act 14/2000, dated 29th December, on tax, administrative and social measures.*

Amendment of Section five of Article 12 of Act 14/2000, dated 29th December, on tax, administrative and social measures, that shall henceforth be drafted as follows:

“Five. Payment of the fee shall be performed by depositing cash at the deposit entity authorised by the Ministry of Finance and Public Administrations, either as self-liquidation, or according to the liquidation that shall be presented by the Administration, and the terms set forth in the General Regulations on Collection of Fees, approved by Royal Decree 939/2005, dated 29th July, shall be applicable.

The fee to be paid for provision of the services or activities listed in numbers 15, 17, 18, 31, 36 and 41 of Section Seven of this Article shall be subject to self-liquidation by the taxpayer.

Payment of the fee is an indispensable requisite for delivery of the relevant certificate.

The amount of the fee may be amended by the General State Budget Act.”

Final Provision five. *Amendment of Section One of the health services rate “Healthcare Rights in Sea and Air Traffic” addendum to Decree 474/1960, dated 10th March, that convalidates fees for healthcare services.*

Section One of the health services rate “Healthcare Rights in Sea and Air Traffic”, addendum to Decree 474/1960, dated 10th March, is hereby amended, it shall henceforth be called “Healthcare Rights in Maritime Traffic”, and be drafted as follows:

“Concepts:

1. Issuance of Certificates of Health Control on Board or Certificates of Exemption of Health Control on Board:

Gross tonnes	Inspection during working hours	Inspection outside working hours *
	— Euros	— Euros
Up to 500 T	89.68	134.52
From 501 to 3,000 T	176.77	265.15
From 3,001 to 10,000 T	231.94	347.91
More than 10,000 T	287.11	430.66

* When the activity is performed as convenient to the applicant, outside the working hours established, there shall be a 50% increase on the initial rate.

2. Issuance of an extension to the Certificate of Health on board: € 11.14.

3. Issuance of a Certificate of Health recognised by the Flag State:

- Up to 100 T: € 50.47
- From 101 to 1,000 T: € 70.07
- From 1,001 to 1,500 T: € 89.68
- From 1,501 to 2,000 T: € 109.3
- From 2,001 to 4,000 T: € 128.89
- More than 4,000 T: € 148.49.

4. Inspection of the first aid kits on the ships for passengers and recreational vessels:

- Type A and B: € 22.60
- C and number 4: € 16.93.”

Final Provision six. *Competence titles.*

This Act is handed down pursuant to the terms set forth in Article 149.1.6. and 20 of the Spanish Constitution, that assigns to the State exclusive competence on mercantile, procedural and merchant navy legislation.

Final Provision seven. *Clause regarding Gibraltar.*

This legal text may not be construed as a recognition of any rights or situations related to the maritime areas of Gibraltar, which are not included in Article 10 of the Treaty of Utrecht, dated 13th July 1713, between the Kingdoms of Spain and Great Britain.

Final Provision eight. *Ships Section at the Register of Moveable Assets and Registration of Ships and Shipping Companies.*

1. The Government, at the joint proposal of the Ministries of Justice and Development, within the scope of their respective powers, shall hand down the necessary provisions for implementation and application of the provisions foreseen in this Act on the Register of Moveable Assets and the Register of Ships and Shipping Companies, as well as for the co-ordination between them.

2. The Government shall ensure, by means of implementing regulations, at the proposal of the Ministries of Development and Agriculture, Food and the Environment, within the scope of their respective powers, co-ordination of the Register of Ships and Shipping Companies and the Census of the Operating Fishing Fleet.

Final Provision nine. *Authorisation to the Government.*

1. The Government is hereby authorised so that, within the term of three years, it may proceed to the consolidation in a sole text, and under the Title “Maritime Navigation Code”, of the laws that regulate the maritime institutions, regularising, clarifying and harmonising this Act, with the consolidated text of the State Ports and Merchant Navy Act, approved by Royal Legislative Decree 2/2011, dated 5th September, and with all the agreements and international treaties in the sphere of Law of the Sea that may come into force in Spain prior to completing the consolidation.

2. The Government is hereby also authorised to hand down as many implementing regulations as may be necessary for due execution and fulfilment of the terms set forth in this Act.

Final Provision ten. *Authorisation to the Government to amend Title II of Act 60/1962, dated 24th December, on the regime of rescue, salvage, towing, findings and extraction at sea.*

1. Within the eighteen months following this Act coming into force, the Government shall proceed to amend the provisions with regulatory rank contained in Title II of Act 60/1962, dated 24th December, on the regime of rescue, salvage, towing, findings and extraction at sea, in order to recompose the present structure of the Central Maritime Tribunal, the Permanent Maritime Courts and the other bodies foreseen therein, assigning them organic and functionally to the Maritime Administration.

2. Within the same term established in the preceding Section, the Government, through the Ministry of Justice, and having heard the General Council of the Judiciary, shall prepare a study on the feasibility of attributing objective competence to the National High Court to hear all matters of special transcendence and seriousness, in order to submit to the jurisdiction thereto the matters stated, and any others related to maritime navigation. That study shall be submitted to Parliament.

Final Provision eleven. *Referral of a Bill to Parliament.*

Within the term of six months from publication of this Act, the Government shall submit to Parliament a bill to regulate abandonment of moveable assets and proceedings for sale, notarial and electronic auction and disposal of such assets.

Final Provision twelve. *Entry into force.*

This Act shall come into force within two months of it being published in the "Official State Gazette".

In view whereof,

I order all Spaniards, private individuals and authorities, to abide by and enforce this Act.

Madrid, 24th July 2014.

FELIPE R.

The President of the Government
MARIANO RAJOY BREY

MAQUETACIÓN

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