

# Peru

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## NEWBUILDING CONTRACTS

### Transfer of title

- 1 | When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

The vessel's title passes from the shipbuilder to the shipowner according to the parties' agreement, unless the law provides otherwise. However, this is a matter to be analysed under both the Peruvian Commercial and Civil Codes.

### Refund guarantee

- 2 | What formalities need to be complied with for the refund guarantee to be valid?

Under Peruvian law there are no specific regulations or compulsory requirements. However, if the parties have agreed for a guarantee to be provided by the shipbuilder, this will be returned when the vessel is delivered to the shipowner's satisfaction, as per the corresponding contract.

### Court-ordered delivery

- 3 | Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

Yes, Peruvian general regulations will apply.

### Defects

- 4 | Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

The title to suit is derived from a contract, where provisions to this effect will be agreed upon covering cases where the vessel turns out to be defective and damage results.

This is not the only source, but common regulations also apply.

The time bar is five years pursuant to civil rules.

## SHIP REGISTRATION AND MORTGAGES

### Eligibility for registration

- 5 | What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

All the vessels are eligible for registration under the Peruvian flag provided that administrative proceedings are completed.

Yes, it is possible to register vessels under construction under the Peruvian flag in the National Public Registry.

### Application

- 6 | Who may apply to register a ship in your jurisdiction?

Peruvian nationals or Peruvian companies. Foreign companies may apply to register a vessel but with restrictions.

### Documentary requirements

- 7 | What are the documentary requirements for registration?

The documentary requirements are set by the Public Registry and are mainly:

- Title that evidence Ownership and Acquisition when the vessel has been acquired abroad (i.e. MoA and Bill of Sale); or
- Shipyard's construction certificate when the vessel is new or vessel's Registry Certificate;
- Legalised copy of the registration's certificates for both buyer and seller and its' representatives Power of Attorney.

If the vessel will be registered under a National (Peruvian) Shipping Company, according to Law No. 28583, the following documents are also required:

- Legalised copy of the certificate of technical characteristics;
- Legalised copy of the Peruvian shipping company's operations permits.
- Sworn declaration, indicating vessel's scope of operation.
- If the vessel is imported it is compulsory to evidence the cancellation of the original flag's registry.

### Dual registration

- 8 | Is dual registration and flagging out possible and what is the procedure?

Peruvian maritime law does not contemplate the dual registration of Peruvian-flagged vessels in general terms. Dual registration is only allowed by way of authority given by the original register in respect of vessels that are leased or bareboat chartered or both, both with compulsory purchase order, to be executed by a Peruvian shipping company.

## Mortgage register

### 9 | Who maintains the register of mortgages and what information does it contain?

All mortgages are registered in the Public Registry under vessel's docket.

This information is public and mainly contains, inter alia, the name of the vessel, her owners, the date of the registration of the mortgage, the identity of the creditors, the debtor and the secured amount.

## LIMITATION OF LIABILITY

### Regime

#### 10 | What limitation regime applies? What claims can be limited? Which parties can limit their liability?

The Code of Commerce, enacted in 1902, does not contain any stipulation regarding limitation of liability. Nonetheless, the shipowner can exonerate himself of liabilities by abandoning the vessel, its appurtenances and the freight earned during the last voyage.

The Peruvian Civil Code does not provide for a limitation of civil liability and establishes that anyone who causes damage to the other party must fully compensate for the damage caused, unless the said damages are not attributable to him or her.

Regarding limits of liability, in Peru only those can only be invoked that are contained in the Hague Rules.

Peru is a signatory party to the International Convention for the Unification of Certain Rules related to Bills of Lading of 1924 (the Hague Rules), signed in Brussels on 25 August 1924, which was incorporated by Peru into its domestic legislation by Supreme Resolution No. 687 of 16 October 1964.

The only claims that can be limited are cargo claims. As to the third question, shipowners and disponent owners can limit their liability.

Peru is not a party to the London International Convention for the Limitation of Liabilities on Maritime Claims 1976.

### Procedure

#### 11 | What is the procedure for establishing limitation?

There is no established procedure in Peru for obtaining limitation. Parties can limit their liabilities towards each other under a contract. Nevertheless, if the contract is considered an adhesion contract inserted in the bill of lading (B/L) regarded to be imposed by the carrier, the clauses that exclude or limit liability of one of the parties that wrote the clauses, might be considered null and void by Peruvian courts.

A shipowner or other entitled person can constitute a limitation fund if it has been agreed between the parties to the contract. As Peru is not a party to the Convention on Civil Liability, it is not mandatory to constitute a limitation fund.

### Break of limitation

#### 12 | In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

Not applicable (see question above).

### Passenger and luggage claims

#### 13 | What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

Peru is not a signatory to the Athens Convention or its protocols.

The Peruvian Code of Commerce governs the contract of carriage of passengers and their luggage. Also, the Law of Promotion of the National Merchant Fleet contains some stipulations on this topic.

Regarding liabilities of the carrier, the rules of the Peruvian Civil Code should be applied since the previous ones do not contain any stipulation in this respect.

Two matters should be proved in order for the carrier to be liable: that the incident that caused the damage occurred in the course of the carriage; and that it was caused by the fault or neglect of the carrier.

There are no limitations of liabilities regarding passenger claims to the passenger nor to his or her luggage.

## PORT STATE CONTROL

### Authorities

#### 14 | Which body is the port state control agency? Under what authority does it operate?

Port State Control Agency is not an independent body. It operates under the authority of the General Directorate of Port Captaincies (DICAPI) and in accordance to the 1992 Viña del Mar Convention. In practice, it is the second officer in command of each Port Captaincy who acts as Port State Control inspector when needed.

### Sanctions

#### 15 | What sanctions may the port state control inspector impose?

Port State Control does not impose sanctions as such. It verifies vessel's compliance with different local, regional and international regulations and, depending on the default by the vessel, Port State Control can request the competent authorities to avoid issuing the sailing permit until the corresponding remedy actions are performed. Any action performed by Port State Control must be informed to vessel's flag.

### Appeal

#### 16 | What is the appeal process against detention orders or fines?

Any challenge to Port State Control decisions must be addressed to the Port Captaincy and to the General Directorate of Port Captaincies (DICAPI). Classification societies

## CLASSIFICATION SOCIETIES

### Approved classification societies

#### 17 | Which are the approved classification societies?

Peru approves any classification society registered before the International Association of Classification Societies (IACS).

### Liability

#### 18 | In what circumstances can a classification society be held liable, if at all?

Peruvian maritime law has no specific regulations on the responsibility of the Classification Society. If there is an affected party it is possible to file a claim based on the Peruvian Civil Code.

## COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

### Wreck removal orders

#### 19 | Can the state or local authority order wreck removal?

Yes, in pursuance of section 14.41 of our Port Captaincy regulation, D.S. No. 015-2014-DE, the maritime authority can order wreck removal. As per sections 256 and 258, anybody who wants to extract any object, finding, wreck, etc. must obtain a permit from maritime authorities.

## International conventions

### 20 | Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

There are no international conventions in force in relation to collision, wreck removal and salvage.

With regard to Collision, Peru is party to the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

With regard to pollution, Peru is a party to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and its annexes. Further, Peru is also a party to the International Convention on Civil Liability for Oil Pollution Damage (CLC 69) and its protocols.

## Salvage

### 21 | Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory form of salvage agreement. Section 240 of the Port Captains Regulation states that there is salvage of the vessel in danger and provided that it is proved that one of the two following cases has happened:

- when there is a contract of salvage; or
- when the master of the vessel does not express his or her reasonable opposition to the voluntary action for salvage.

Lloyd's standard form of salvage agreement is acceptable.

As to who may carry out salvage operations, there are no specific restrictions in this respect.

## SHIP ARREST

## International conventions

### 22 | Which international convention regarding the arrest of ships is in force in your jurisdiction?

By Legislative Resolution No. 30566, issued on 23 May 2017, Peru approved the International Convention on the Arrest of Ships 1999 (Geneva). Also, Decision No. 487 in 2000 issued by the Andean Community, incorporated in one document the provisions of both the International Convention on Maritime Liens and Naval Mortgages of 1993 and the International Convention on the Arrests of Ships of 1999. It also added a few sections, namely its own legislation on the matter.

## Claims

### 23 | In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

Yes, a bareboat chartered vessel can be arrested for a claim against the bareboat charterer, and a time-chartered vessel cannot be arrested for a claim against a time-charterer. Although the arrest should be valid, Peruvian courts have not yet decided on the matter.

Under Peruvian law, a vessel may be arrested if the requesting party has a maritime credit that entitles him or her to do so. In this sense, the International Convention on the Arrest of Ships 1999 and section 1 of Decision No. 487 from the Andean Community classifies the Maritime Credit as follows:

- loss or damage caused by the operation of the vessel;

- death or personal injury occurring on land or on water, in direct connection with the operation of the vessel;
- assistance or salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations or assistance with respect to a vessel which by itself or its cargo threatens to damage the environment;
- damage or threat of damage caused by the ship to the environment, coastline or related interests;
- costs and expenses relating to the launching, removal, recovery, destruction or rendering harmless of a sunken ship, wrecked, abandoned, including anything that is or has been on board a ship, and costs and expenditures related to the preservation of an abandoned ship and maintenance of its crew;
- any contract relating to the use or hire of the ship in a charter party or otherwise;
- a contract for the carriage of goods or passengers on board the ship in a charter party or otherwise;
- loss or damage to the goods (including luggage) carried on board the ship;
- general average;
- trailer;
- pilotage;
- goods, parts, supplies, bunkers, equipment (including containers) supplied or services rendered to the vessel for its operation, management, preservation or maintenance;
- construction, repair, conversion or equipping of the vessel;
- the rights and duties of ports, canals, docks, harbours and other waterways;
- salaries and others due to the master, officers and crew, including repatriation costs as well as those of social security payable on his or her behalf;
- disbursements made on behalf of the ship or its owners;
- insurance premiums, P & I contributions, payable by the owner of the bareboat chartered vessel, or on his or her behalf in connection with the vessel;
- commissions, brokerages or agency fees payable by the ship-owner or bareboat charterer, or on their own, in connection with the vessel;
- any dispute concerning the ownership or possession of the ship;
- any dispute between co-owners of the vessel regarding its use or the proceeds of its exploitation;
- a registered mortgage or encumbrance of the same nature on the ship; and
- any dispute arising from a contract of sale of the ship.

Associated ships (sister ships) may also be arrested in certain cases.

## Maritime liens

### 24 | Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

Yes, refer to question 23.

## Wrongful arrest

### 25 | What is the test for wrongful arrest?

A precautionary arrest demands a main lawsuit, which must be filed within 10 days of the arrest decision being issued. The latter suit will discuss whether the debt really exists and its value. If it is adjudged that the debt did not exist, then there was a wrongful arrest. Therefore, as a consequence of a decision considering the main lawsuit groundless, the party that requested the arrest may be held liable for wrongful arrest

and ordered to pay all losses sustained by the defendants, including lawyers' fees and court expenses.

### Bunker suppliers

26 | Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

Yes, those claims are qualified as a maritime credit, thus the vessel can be arrested.

### Security

27 | Will the arresting party have to provide security and in what form and amount?

Yes, the court will require a counter-guarantee in order to compensate eventual losses sustained by a vessel's interests in case of a wrongful arrest. However, the form and the amount of the counter-guarantee will be decided at the judge's discretion.

### Security amount

28 | How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

The amount of security will be determined by the judge taking into consideration the supporting evidence submitted and the amount requested by the claimant.

In principle, the arrested vessel may be released on the offering of a bank guarantee in the amount for which the arrest is applied by claimants. This procedure can take one week. The most practical way to release a vessel from arrest is to pay the total claimed amount in the form of a cash deposit. This procedure to release the vessel can take between two and five days.

The amount of security cannot exceed the value of the ship.

### Formalities

29 | What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

A power of attorney nominating the relevant lawyer must be provided to the court. This document must be authenticated and apostilled by the Peruvian consulate and duly translated into Spanish (sworn translation). Peru is signatory to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention). If the power of attorney comes from a non-party to the above-mentioned Convention, legalisation by the Peruvian consul will suffice and his or her signature will have to be validated by the Minister of Foreign Affairs of Peru.

Also, in order to make the arrest, all supporting documents should be submitted before the court in their original form or certified copy by a public notary and, if they are written in any language other than Spanish, they must be duly translated into Spanish (sworn translation).

On the other hand, if there is insufficient time available before filing the arrest application to comply with all the required formalities, it is possible to begin (not to execute) the arrest procedure, while the

arresting party completes the formalities or the relevant documents as soon as possible.

The relevant documents cannot be filed electronically.

Finally, the arresting party will require approximately 15 days' notice to prepare an arrest application.

### Ship maintenance

30 | Who is responsible for the maintenance of the vessel while under arrest?

Shipowners and owners are liable in solidum for the custody and placing relevant measures to secure the vessel.

### Proceedings on the merits

31 | Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Yes, it is possible to pursue proceedings on the merits elsewhere. Peru is a party to the Andean Pact, and as such ought to abide by the Decisions or Resolutions issued by the relevant authority (the Andean Community Commission), which allows the above.

### Injunctions and other forms of attachment

32 | Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Yes. The Peruvian Civil Procedural Code establishes other forms of precautionary measures to be taken and injunctions sought to obtain security, either by attachment of values or seizure of assets.

### Delivery up and preservation orders

33 | Are orders for delivery up or preservation of evidence or property available?

Yes. The Peruvian Civil Procedural Code provides for the possibility of precautionary measures to be taken and injunctions to allow, inter alia, the urgent production of evidence, disclosure of documents and preservation of evidence or assets.

### Bunker arrest and attachment

34 | Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Yes, it is possible but not a usual practice in Peru. This arrest is subject to the same legal regime as the arrest of vessels.

## JUDICIAL SALE OF VESSELS

### Eligible applicants

35 | Who can apply for judicial sale of an arrested vessel?

The creditor after an affirmed sentence or an arresting party may apply for the judicial sale of an arrested vessel if the debt is not paid.

### Procedure

- 36 | What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

According to the Peruvian Code of Commerce, the judicial sale of a vessel must observe the rules and formalities set forth by the Code of Civil Procedure for the judicial sale. The procedure may take from a couple of months up to one or two years. Court costs are usually minor but other costs can be taken into consideration when duly supported.

### Claim priority

- 37 | What is the order of priority of claims against the proceeds of sale?

The order of priority main items considered according to the Code of Commerce are listed on the following add:

- taxes;
- legal costs;
- pilotage;
- salary of vessels custodian and other expenses Incurred by them;
- master, officers and crew's salaries gained on the last voyage of the vessel;
- maritime credits including privileged credits;

### Legal effects

- 38 | What are the legal effects or consequences of judicial sale of a vessel?

To extinguish all previous credits.

### Foreign sales

- 39 | Will judicial sale of a vessel in a foreign jurisdiction be recognised?

Yes, but all foreign decisions and awards must be previously ratified by the Superior Court of Justice to become valid and effective in Peru.

### International conventions

- 40 | Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

No, Peru is not a signatory party to the Convention. However, most of their rules are contained in Decision No. 487 of the Andean Community.

## CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

### International conventions

- 41 | Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

Peru is only a signatory party to the International Convention for the Unification of Certain Rules related to Bills of Lading of 1924 (the Hague Rules), signed in Brussels on 25 August 1924, which was incorporated by Peru into its domestic legislation by means of the Supreme Resolution No. 687 of 16 October 1964.

Subject to other agreement between the parties, the carriage of goods at sea begins when cargo is received at the port of loading and ends at the port of discharge.

### Multimodal carriage

- 42 | Are there Conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

In respect of air transport, Peru is a party to the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention). The Peruvian Law of Civil Aeronautics Act No. 27261 published on 8 May 2000 covers all the relevant sections of the Montreal Convention.

As to the other, some rules are found in the Code of Commerce and Decisions 331, 393 and 399 of the Andean Community.

### Title to sue

- 43 | Who has title to sue on a bill of lading?

The consignee, shipper or third-party holder of the B/L or endorsee, as the case may be.

### Charter parties

- 44 | To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

Peruvian judges have no uniform criteria in respect of the B/L terms since many of them consider its clauses as imposed terms, amounting to a contract of adhesion.

It is possible to incorporate the terms of the charter party on the B/L by express reference.

The jurisdiction or arbitration clause may be binding under Peruvian law provided that the charter party is duly filled in and signed by the consignee or, query, the consignee has been properly informed of its contents in advance.

### Demise and identity of carrier clauses

- 45 | Is the 'demise' clause or identity of carrier clause recognised and binding?

None of them have effect under Peruvian law, as per Decision 487 of the Andean Community.

### Shipowner liability and defences

- 46 | Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

Section 600, as construed by Peruvian judges, expressly declares that both the shipowner and the contractual carrier shall be liable for the acts of the master in relation to the goods loaded on board the vessel. Hence, claimants are entitled to act against any of them. We disagree with this interpretation.

The above does not mean that in the proper forum the contractual carrier cannot act against the shipowner afterwards.

### Deviation from route

47 | What is the effect of deviation from a vessel's route on contractual defences?

The repudiation of the contract, unless the deviation is exercised under the terms of section 4.4 of the Hague Rules.

### Liens

48 | What liens can be exercised?

The arrest (embargo) of a vessel to obtain a guarantee provided that the matter is considered as a maritime credit.

The corresponding port captaincy can also impede the sailing of the vessel in some cases under investigation, such as pollution, death of persons and others.

With regard to liens on cargo, the Commercial Code states that the carrier cannot retain the cargo in case of lack of payment of freight or other expenses. Nevertheless, the carrier is entitled to proceed with the embargo of the cargo and its deposit as decided by the competence judge.

### Delivery without bill of lading

49 | What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

The value of the cargo plus the damages. Carriers cannot limit such liability.

### Shipper responsibilities and liabilities

50 | What are the responsibilities and liabilities of the shipper?

According to the Law of Securities Exchange, the main responsibilities and liabilities of the shipper are established in the contract of carriage as evidenced by a B/L.

The shipper is responsible before the carrier for damaged goods, in particular dangerous goods and missing information, provided all of them occur prior to the delivery at the port of loading.

The shipper is also responsible for paying the freight, unless otherwise agreed by the parties.

## SHIPPING EMISSIONS

### Emission control areas

51 | Is there an emission control area (ECA) in force in your domestic territorial waters?

There is no emission control area in Peru.

### Sulphur cap

52 | What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

In domestic territorial waters, Peru applies the MARPOL Convention, by which the sulphur content of any fuel oil used on board vessels shall not exceed 3 per cent m/m.

Peru has not yet implemented any regulation regarding a cap of the sulphur content of fuel oil.

## SHIP RECYCLING

### Regulation and facilities

53 | What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

There are none.

## JURISDICTION AND DISPUTE RESOLUTION

### Competent courts

54 | Which courts exercise jurisdiction over maritime disputes?

Civil courts in general and commercial courts in Lima, exercise jurisdiction over maritime disputes.

### Service of proceedings

55 | In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

A defendant located out of the jurisdiction will be correctly notified at the vessel's local port agent domicile in Peru. In that sense, the deadlines to make a formal appearance and to plead preliminary pleas and points of defence are the same as for a defendant located in the Peruvian jurisdiction.

### Arbitration

56 | Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

Yes, there are two main domestic arbitral institutions with a panel of maritime arbitrators specialising in maritime arbitration, namely the Lima Chamber of Commerce and the American Chamber of Commerce of Peru.

### Foreign judgments and arbitral awards

57 | What rules govern recognition and enforcement of foreign judgments and arbitral awards?

With regard to recognition and enforcement of foreign judgments:

- the exequatur is a legal proceeding whereby a foreign judgment is recognised and enforced in our judicial system. This proceeding, which in Peru is a 'non-contentious' one, does not involve the review of the contents of said judgment; and
- the exequatur procedure must be initiated considering the effectiveness of international rules (treaties, conventions) binding on Peru and the state in which the court issued the respective judgment.

If a treaty exists on the matter, the process is followed according to the terms thereof.

In the absence of a treaty the judge will verify the reciprocity that exists in the country where the judgment was issued with regard to the application of Peruvian judgments in that country.

Once the exequatur has been achieved, the interested party has free access to the title in order to request the enforcement of the judicial decision with the same characteristics and procedures for enforcing the national judgments.

With regard to recognition and enforcement of arbitral awards, for arbitration awards, provisions of Executive Decree No. 1071, the General Arbitration Law, shall be applicable as per the provisions of section 2111 of the Peruvian Civil Code. According to this law, the foreign arbitration awards would be recognised and executed, taking into consideration:

- the Convention on Recognition and Enforcement of Foreign Arbitration Awards, approved in New York on 10 June 1958;
- the Inter-American Convention on International Commercial Arbitration, approved in Panama on 30 January 1975; or
- any other treaty on recognition and enforcement of arbitration awards to which Peru is a party.

The timescale should be between six and nine months.

Afterwards, the execution of the foreign arbitration awards, solely recognised by a Peruvian tribunal, should be followed through the courts of justice.

### Asymmetric agreements

- 58 | Are asymmetric jurisdiction and arbitration agreements (where the parties have differing rights to select the forum for dispute resolution) valid and enforceable in your jurisdiction?

There is no jurisprudence as to asymmetric jurisdiction. We believe Peruvian judges would not accept it, although it is arguable. As to arbitration agreements, they are fully accepted as a valid alternative to a court's jurisdiction.

### Breach of jurisdiction clause

- 59 | What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

The defendant, within the period granted for reply, may file a plea of jurisdiction alleging the lack of jurisdiction of the court due to the existence of a jurisdiction clause. In the event of a foreign jurisdiction having been elected, the lawsuit filed in Peru will be extinguished should the said clause be considered valid. If the selected jurisdiction is in Peru, the records of the proceedings will be forwarded to the competent court.

According to Peruvian law, Peruvian courts are totally competent to know about matters that should be executed in Peru (eg, consignees in maritime matters can validly appear before the court).

### Breach remedies

- 60 | What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

The defendant is able to submit a plea of jurisdiction, arguing that claimants have filed a lawsuit before a non-competent Peruvian court when, according to the contract of maritime carriage as evidenced by a B/L, the parties have agreed that any claim or dispute shall be solved by another foreign court. The legal basis governing the plea of jurisdiction is stipulated in the Peruvian Civil Procedural Code.

Therefore, if the incompetent court upheld the defendants' plea of jurisdiction, the legal proceedings will be suspended for all defendants and the entire file will be sent to the correspondent court to continue the legal proceedings, in accordance with the provisions of section 451, paragraph 6 of the Peruvian Civil Procedural Code.

## LIMITATION PERIODS FOR LIABILITY

### Time limits

- 61 | What time limits apply to claims? Is it possible to extend the time limit by agreement?

### Time limit for cargo claims resulting from ocean carriage

The Peruvian Code of Commerce provides a one-year time bar as of the date of discharge in ocean carriage.

For contractual liabilities, the time bar is 10 years and for actions in tort two years, according to the Peruvian Civil Code.

It is not possible to extend the time limit by an agreement between the parties, as this is a question of public policy that cannot be changed by the will of the parties. What is admitted is time-bar interruption through a court proceedings notification. Once interrupted, the time bar is renewed for an equal period. Strikes by court employees will suspend the time bar.

### Court-ordered extension

- 62 | May courts or arbitral tribunals extend the time limits?

No. The time limit is a question of public policy that cannot be changed and cannot be extended by the parties, not even by the courts or arbitral tribunals.

Nevertheless, it is usual practice in Peru to grant a time extension to claimants but its validity would be subjected to the person granting the extension, since legally it has no effect.

## MISCELLANEOUS

### Maritime Labour Convention

- 63 | How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

Peru has not ratified the Maritime Labour Convention.

### Relief from contractual obligations

- 64 | Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

It is impossible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract. In this respect, Peru applies the principle of the immutability of the contracts according to the Peruvian Civil Code *pacta sunt servanda*. In this way, there are no express regulations that allow modification of the terms of a shipping contract, where economic conditions have made contractual obligations more onerous.

### Other noteworthy points

- 65 | Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

Under Legislative Decree No. 1413 published in September 2018, the parliament sought to promote and facilitate coastal trade. The application of the Decree is awaiting the issuance of the rules and regulations by the government.

The most important changes are that vessels are not obliged to fly the Peruvian flag.

Further, foreign corporations would be allowed to operate on coastal trade except in carriage of liquid cargo, including chemicals and GLP cargoes.

Peru ratified the modification to Annexes I, II, IV and VI of MARPOL 73/78 by Directorial Resolution No. 0823-2018-MGP/DGCG, dated 13 July 2018.

Finally, on 16 November 2018, Directorial Resolution No. 1450-2018-MGP/DCG established that all tug boats operating within Peruvian waters must exhibit a new or updated bollard pull certificate, issued by an IACS classification society before 14 May 2019; but several tug boats companies are challenging the order.

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