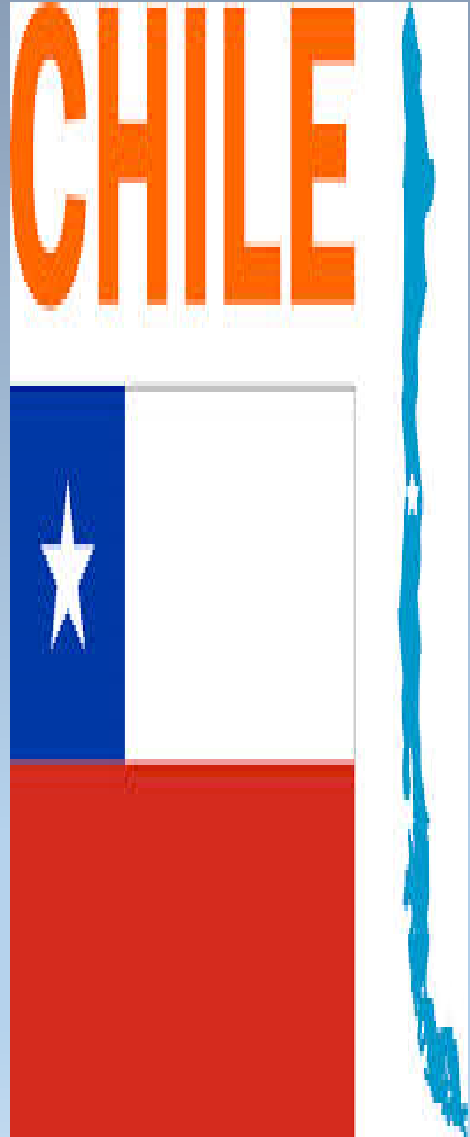


INTERNATIONAL MARITIME LAW SEMINAR 2016

Recent developments in Chile on civil liability derived from
pollution claims

By Ricardo Rozas
Jorquiera & Rozas Abogados
Santiago, Chile



Our Firm



Agenda

- **Civil liability for damage from spillages in Chile**
- **Amendments to limitation amounts**
- **Clarification given on court jurisdiction to handle constitution of limitation fund**
- **Courts accept letter of undertaking as sufficient guarantee in arrest of vessel**
- **Criminal Liability for spills that cause damage to hydro biologic resources**

Civil liability for damage from spillages in Chile

Under Chilean law there are generally three main potential scenarios in connection to civil liability for damages resulting from the spillage of hydrocarbons and other hazardous substances:

- spillage of hydrocarbons from seagoing vessels carrying oil in bulk as cargo, which is subject to the International Convention on Civil Liability for Oil Pollution Damage 1992;
- spillage of hydrocarbons from vessels not carrying oil in bulk as cargo, which is subject to the International Convention on Civil Liability for Oil Pollution Damage 1969 and the supplementary norms set forth by the Navigation Law (this is extended to spillage of other hazardous substances); and
- damage to the marine environment due to spillage or pouring of contaminating substances caused by land installations, which is subject to the Navigation Law.

Amendments to limitation amounts

IMO's Resolution LEG.1(82)

On October 18 2000, by Resolution LEG.1(82), the Legal Committee of the International Maritime Organisation adopted amendments to the limitation amounts in the 1992 Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage 1969. Article 6(1) of the 1992 Protocol was amended as follows:

- the reference to "3 million units of account" now reads "4,510,000 units of account";
- the reference to "420 units of account" now reads "631 units of account"; and
- the reference to "59.7 million units of account" now reads "89,770,000 units of account".

These amendments entered into force on November 1 2003. In July 2015 Chile issued Decree 43 approving the amendments.

Amendments to limitation amounts (cont)

International compensation regime

Chile is a party to the 1992 Civil Liability Convention. According to Decree 43/2015, Chile enjoys the benefit of the first layer of the international compensation regime up to 89.7 million special drawing rights (SDR).

However, Chile has yet to approve the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992*, together with the *2003 Protocol to the 1992 Fund Convention* (Supplementary Fund Protocol).

In this respect, some time ago Parliament suggested to the Chilean President that a draft agreement to the 1992 Fund Convention (which has yet to be approved) be adopted.

Amendments to limitation amounts (cont)

Trends

Approval of the amendments to the limitation amounts contained in Article 6.1 of the 1992 Civil Liability Convention has been a positive step towards harmonisation with the international community.

However, the adoption of the 1992 Fund Convention and the Supplementary Fund Protocol continue to be important missing parts of the international compensation regime, exposing Chile to the pollution contingency above its 89.7 million SDR cap.

In this respect, industry efforts are anticipated to at least approve the 1992 Fund Convention.

Clarification given on court jurisdiction to handle constitution of limitation fund

A minister of a Chilean court of appeal issued a first instance judgment confirming the court's jurisdiction to handle proceedings relating to the constitution of a limitation fund. The proceedings were commenced by a Chilean owner in regard to alleged pollution liability arising from a collision with a foreign vessel that resulted in spilled bunkers.

Clarification given on court jurisdiction to handle constitution of limitation fund

Limitation of liability

Chile is not a party to the Conventions on Limitation of Liability for Maritime Claims 1957 and 1976, but it has adopted elements of both conventions into its Code of Commerce.

Clarification given on court jurisdiction to handle constitution of limitation fund

Limitation of liability

The constitution of a limitation fund and other related matters - such as verification, settlement, distribution and opposition- can be heard by the following courts:

- a) When the limitation of liability refers to a vessel registered in Chile, the civil court that lies within the jurisdiction of the port of registration of the vessel has jurisdiction to hear the matter.
- b) If the matter deals with a foreign vessel, the court with jurisdiction is the appropriate Chilean civil court of the port in which the accident occurred, the first Chilean port of call after the accident or, failing either of these, whichever court has jurisdiction in the place where the vessel was first retained or a guarantee for the vessel was first granted.

Clarification given on court jurisdiction to handle constitution of limitation fund

Limitation of liability (cont)

- c) When a procedure has still not been brought in any of the above-mentioned courts and the limitation of liability is filed as a defence in a plea, the same court before which it is being pleaded has jurisdiction to hear the case on limitation, provided that it is an ordinary tribunal.

If dealing with a court of arbitration, copies of the relevant background information will be sent to the court that has jurisdiction to hear the case so that an action aimed at establishing and distributing the limitation of liability fund can be brought before this court. In these cases, the defence for limitation of liability through the constitution of a fund may be made only when answering the lawsuit action.

Clarification given on court jurisdiction to handle constitution of limitation fund

Limitation of liability (cont)

In addition, the competent tribunal to hear a pollution case at first instance is a minister of the court of appeal of the place where the incident occurred. This minister can take cognizance of, among other things, all actions arising from the same facts and between the same parties, including the constitution of a limitation fund based on the general liability rules contained in the Code of Commerce.

SLIDE TRANSICIÓN

[TRANSICIÓN]

Legal Framework

- The International Convention Relating to the Arrest of Sea-Going Ships (Brussels, 10 May 1952) has not been ratified by Chile, although its principles were taken into account by Chilean domestic law.
- The fundamental regulations applicable to ship arrest are found in [1] the Chilean Code of Commerce (articles 1,231 *et seq.*) and [2] in the common rules contained in the Code of Civil Procedure, which are subsidiary to those of the Code of Commerce.
- With respect to the regulations applicable to the judicial sale of vessels, they are found, [i] in the section of the Code of Commerce, denominated '*About the Naval Property*' (Articles 831 *et seq.*), which has to be read in conjunction with [ii] the common law rules contained in the Chilean Code of Procedure denominated '*About the Administration of Arrested or Attached Goods and the Foreclosure Procedure*' (Articles 479 *et seq.*), and [iii] the regulations contained in the section of the same Code, denominated '*About the Action of Dispossession Against Third Parties who Possess a Mortgage Property*' (Articles 758 *et seq.*).

Maritime Privileged Credits

- Under Chilean law there is no statutory definition for *privileged credits*. However, they may be defined as those which give rise to a maritime lien and allow the request of an arrest as per the special rules set forth by the Code of Commerce, denominated '*About the Procedure to Arrest Vessels and Its Release*' (Articles 1231 *et seq.*).
- List & Rank of Maritime Privileged Credits (Articles 844, 845 and 846).

Arrest Petition

The arrest of a vessel begins with filing an arrest petition at a competent court. The complaint must comply with the following requirements:

- All formal requirements related to the presentation of a suit as per general procedural regulations;
- Arrest preconditions
- Indicating substantive action and its grounds
- Form of security

Court hearings & proceedings subsequent to arrest

- Timing
- Arrest Petitioner's Obligations following and arrest decreed as a *prejudicial precautionary* measure: [1] filing his complaint and [2] requesting that the decreed arrest remain in force within a time period which, in principle, is 10 days, but which may be extended for up to a total of 30 days, provided there is a sound basis to do so. The non-fulfillment of these obligations means the cancellation of the arrest and liability for the damages which may have been caused, on the irrefutable presumption that the proceedings for the arrest were fraudulent.
- Wrongful arrest

Lifting the Arrest

- As soon as the requested security has been provided, the court must lift the arrest without further proceedings.
- Nature of the Guarantee / Maximum value.
- Modification, reduction or lifting of the Guarantee.

Acceptance of LOUs by Chilean Courts

In a recent arrest relating an alleged claim for damages arising from pollution at Quintero Bay, the court of Quintero accepted a P&I club letter of undertaking without the agreement of the arrest petitioner.

The arrest petitioner requested a financial guarantee of several million dollars. However, the Court held that the LOU was sufficient and lifted the arrest.



International Maritime Law Seminar





Thanks!

Ricardo Rozas

Jorquiera & Rozas Abogados

Santiago, Chile