

### LIEN ON THE CARGO IN SPAIN

Valencia, June 2016

In the wake of the introduction of the new Spanish Maritime Navigation Act, which came into force as of September 2014, a number of publications and circulars have been produced outlining the various consequences and repercussions of the act, particularly regarding liens on the cargo. This circular will also focus specifically on liens over cargo in Spain, but will aim to provide a more brief and simplified overview of the key issues. It will also attempt to advise Owners on the potential risks involved if they are considering exercising a lien on the cargo in Spain, drawing from MedPandi's own personal experience in such issues.

#### BACKGROUND

It should be noted that, prior to the introduction of the new Spanish Maritime Navigation Act in September 2014, the option of a lien over cargo did not, in effect, exist in Spain. However, this new act recognises a lien as understood by Common law, whereby the "Carrier" can retain the cargo when the freight has not been paid. Port terminals are also now able to exercise a lien to retain cargo when port expenses have not been paid.

#### THE NEW SPANISH MARITIME NAVIGATION ACT AND LIENS ON THE CARGO

In our opinion, the key points in the new Maritime Navigation Act relating to liens on the cargo can be summarised as follows:

- The "Carrier" is entitled to retain the cargo until the freight, delays and other expenses relating to the carriage have been paid. In case of unpaid freight, a lien on the cargo can be exercised if the cargo belongs to the Charterer. If the cargo does not belong to the Charterer, the lien can only be exercised if it is specifically mentioned in the Bill of Lading that the freight is payable at destination. **(Article 237, 1.)**
- The "Carrier" is also able to request the initiation of deposit and sale proceedings through a Notary Public, who has the power to sell the cargo, with the same limitation with regards to a non-Charterer Consignee (only if it is stated in the Bill of Lading that the freight is payable at destination). **(Article 237, 2.)**
- In Time Charters, the "Carrier" will be entitled to exercise a lien on the cargo for unpaid freight when the Charterer is the owner of the cargo. If, alternatively, the cargo belongs to a third party who has contracted the freight from the Charterer, the "Carrier" is only able to retain or deposit cargo up to the equivalent amount of the unpaid freight still owed to the Charterer. **(Article 238)**
- It is worth mentioning that the new Maritime Navigation Act also grants port terminals the right to retain the cargo until they have been paid for their services. **(Article 338)**

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## EXERCISING A LIEN

If the “Carrier” chooses to exercise their right of lien over the cargo, the following steps will need to be followed:

- In principle, the “Carrier” would have to apply to the local Notary Public in order to demand the lien on the cargo.
- The “Carrier” would have to prove to the notary that there is a due or unpaid freight. Evidence and supporting documents proving a lack of payment would need to be provided to the Notary Public (Bills of Lading, information regarding the Consignee/Charterer, the freight and expenses claimed, etc.).
- If the notary accepts the application, they will request that the Consignee/Charterer immediately settles the due amount.
- If no guarantee of payment is provided by the Consignee/Charterer within 48 hours of this request, the notary can proceed to order the deposit and sale of the cargo. The amount received from the sale will, in the first instance, be used to cover the deposit, sale and auction expenses. The remainder will be used to reimburse the “Carrier” for the unpaid freight and additional expenses claimed, but only up to the claimed amount.

## KEY CONSIDERATIONS AND RECOMMENDATIONS

The new Spanish Maritime Act and the provision of a lien on the cargo must be considered as positive developments, giving Owners additional scope to secure freight payments. However, Owners should be aware of the risks associated with the decision to exercise a lien on the cargo. It is extremely important that Owners know all of the facts and relevant information prior to proceeding with the lien. MedPandi has recently come across a case when the Owner made the decision to exercise a lien on the cargo, without being fully aware of the situation. In this instance, the Owner took the decision to discharge and deposit the cargo on his own account and request the lien on the cargo before the Notary Public. However, as it transpired, the vessel was sub-chartered under a second Charter Party and cargo interests (the Sub-Charterer) were able to prove with supporting documents, inclusive of the Bills of Lading, that the freight had been paid to the Charterer in full. Upon presentation of this evidence, the Notary Public accepted that the freight had been paid and decided to discontinue the lien procedure, meaning that the cargo had to be delivered to the lawful cargo owners. Therefore, Owners ended up with a considerable bill for the discharge and storage of the cargo, without any option of seeking reimbursement.

Our recommendation for Owners would be to make sure that they have a lawful claim against the Charterer/Consignee in line with the new Spanish Maritime Act and are aware of the full picture before deciding to proceed with the lien.

We hope that you find the above to be of practical use and interest. Please do not hesitate to contact us should you have any queries.

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