

M E D P A N D I

MEDITERRANEAN P&I Correspondents

SPANISH ADMINISTRATIVE AND SANCTIONING PROCEEDINGS IN A NUTSHELL

Valencia, June 2014

This circular aims to report on the current situation and recent trends regarding ship detentions in Spanish ports, as well as offering a brief explanation of administrative and sanctioning proceedings in Spain. The intention is to give a concise and brief overview of the basics of the Spanish administrative proceedings or, in other words, “Spanish Administrative Proceedings for beginners”.

SANCTIONING PROCEEDINGS & FINANCIAL SECURITY

Vessel's undergoing PSC/MOU inspections in Spain that are found with serious deficiencies¹ are at risk of being detained and sanctioned. Indeed, Spain is one of only a few European countries to issue sanctioning proceedings for Paris MOU breaches. In these situations the Spanish legislation supersedes the Paris MOU regulations.

Sanctioning proceedings normally follow the below model:

1) Notification of the initiation of proceedings

Normally, a financial security will be requested. This can be done either by way

of bank guarantee, insurance bond, or cash deposit.

2) Submission of defence allegations

The Harbour Master will grant a period of 15 days (extendable to 22) to submit defence allegations.

3) Notification of the proposal of resolution

After a period of potentially several months, the Harbour Master will issue a proposed resolution. At this point an additional 15 days will be granted to submit further defence allegations, arguing the points raised in the proposed resolution if they are different to those stated in the initiation of proceedings.

4) Notification of the resolution

The proceedings are forwarded to the Directorate of Shipping (DoS) in Madrid, who will issue the final resolution. The notification of the resolution should be received within 12 months of commencing proceedings, otherwise the present proceedings will be considered concluded without resolution. In this case, the maritime authorities can and are likely to re-open the proceedings, as serious offences have a time-bar of 3 years, whilst minor offences only of 1 year.

¹ As listed in the MOU/PSC report of inspection as “action taken” number 30 ‘grounds for detention’.

Following the detention of a vessel, financial security² will be required in order to allow the ship to sail while sanctioning proceedings are ongoing. This guarantee can be provided either in cash, as a bank guarantee, or alternatively by way of an insurance bond. The procedure can be slow, especially if the guarantee is to be put up as a bank guarantee instructed by a foreign bank. In these cases the putting up of the guarantee can take between 2 and 4 working days.

However, the lifting of the detention is usually much quicker if cash security is put up. Given that PSC sanctioning proceedings are not normally covered by P&I Clubs, owners frequently put up security in cash to speed up the lifting of the detention and to save on interests and costs. A cash deposit can later be substituted for a bank guarantee, without the threat of a detention.

Important to know:

1) **There are no short cuts.** Often we are asked if it is possible to conclude the proceedings in a shorter period of time. Once proceedings have been initiated they have to run their course. The only way to shorten the proceedings is to accept liability from the very beginning and accept the initial amount requested as the sanction. We would only recommend this if the amount requested is reasonable, the owner is satisfied, and the costs of defending the proceedings are likely to be higher than the initial amount requested.

2) **Pollution cases.** In pollution cases the security requested tends to be quite high³. Often in these type of cases the Harbour Master will require two different types of

security, one to ensure the efficiency of the proceedings and the payment of the final sanction, and the other to ensure the payment and the recovery of all the cleaning costs and third party damages (such as vessels or property that are affected by the pollution).

The latter can be negotiated with the parties involved if the owner is able to reassure the maritime authorities and the third parties that all the cleaning costs and damages will be settled before the ship's departure. It has to be borne in mind that in these types of pollution cases the Harbour Master will issue proceedings against all the parties involved such as owner, manager, charterer, insurers and P&I. This means that the P&I Insurer will have to issue a power of representation on an ad-hoc basis for the purposes of receiving notifications and submitting defence allegations on their behalf and provide an address in Spain.

More concerning for us is when the pollution incident becomes high profile and the press and media are involved. In these cases there might be significant pressure on the judiciary to act in the protection of the environment. Judges can initiate criminal proceedings which will put on ice the resolution of the administrative proceedings until the criminal proceedings have been concluded. This, given that Spanish court proceedings are often lengthy, can considerably delay the administrative resolution which could take up to several years. This would be an extra burden for the owner and/or his insurer who will have to maintain the financial security for this length of time.

² Often Owners believe this amount to be

the sanction. This is merely an initial amount put up by way of bank guarantee, insurance bond or cash deposit in order to ensure the efficiency of the proceedings. The payment of the final sanction is determined at the end of the proceedings by way of the resolution' issued by the GoD in Madrid.

3 We have recently seen cases where the maritime authorities have requested security for € 600,000.00 in order to ensure the efficiency of the proceedings and, in others, € 600,000.00 to cover the cleaning costs of the pollution.

SHIP DETENTIONS IN SPANISH PORTS (2009-2014)

Despite Spain's reputation for the strict application of sanctioning proceedings, the last 18 months has seen a notable decrease in the sanctioning activity of Harbour Masters in Spanish ports. Very few sanctioning proceedings have been initiated in the port of Valencia in this period, a trend that appears to be mirrored throughout the whole of Spain. 64 ships were detained in Spanish ports in 2013, representing a 43% decrease from the previous year. As of 1st June 2014, 28 vessels had been detained this year in Spanish ports, apparently confirming this pattern of decreased activity. The ship detention stats from 2009 up until June 2014 are as follows: (According to the information provided on www.fomento.gob.es)

Detentions

2009: 112	2010: 90
2011: 107	2012: 113
2013: 64	2014: 67*

** estimated for the whole year, based on the figures so far for 2014*

The most active ports in Spain appear consistently to be Algeciras and Las Palmas. The explanation for this is that these two ports are hub and transit ports with a large number of ships calling.

RECOMMENDATION

We recommend that during the PSC inspection the Master and crew always cooperate and assist the PSC inspector. We have seen that sometimes certain deficiencies appear to be simple misunderstandings between the PSC surveyors and the crew. Once the proceedings have been served, it is important for the Master and Chief Engineer to issue a report explaining the nature and circumstances of the found deficiencies and the actions taken to correct these deficiencies. This is important in order to submit defence allegations and defend the Member's interests throughout the proceedings. It can happen that the PSC surveyors list a number of deficiencies on the spot which indeed are deficiencies that were previously known and that are in the process of being corrected (spare parts have been ordered and are on their way to the ship, etc.), or other issues that are unknown to the correspondent which can be helpful to submit a strong defence. We hope that this brief explanation is helpful to you and your Members and clarifies this reoccurring issue of administrative and sanctioning proceedings in Spain following a PSC inspection.

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