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Organic Law of Aquatic Spaces reorganises the Maritime Administration and set general principles for shipping business

Originally published in Official Gazette No. 37,290 of 25 September 2001, and later on re-printed in the Official Gazette No. 37,330 of 22 November 2001, this law —from now on referred to as the LOEA (its abbreviated name in Spanish, Ley Organica de Espacios Acuaticos e Insulares)— set the general principles governing the shipping and port business throughout the country, reorganising also the maritime administration.

As prescribed by article 1 of the LOEA, the aim of the law is to regulate the sovereignty, jurisdiction and control of aquatic and insular spaces of the Republic of Venezuela, according to internal and international law. The scope of application is, therefore, broader as “aquatic space” comprises in the context of this law, all those maritime, river and lake areas of the national geographic space (art. 2). The law underlines the importance of the aquatic spaces declared by art. 7 as of “public interest”, also stating the strategic character of all activities related to the aquatic spaces, especially, national and international maritime transport of goods and persons.

Titles III to XII of the LOEA deal with the concepts related to the international law of the seas, such as territorial sea, innocent passage, continental shelf, exclusive economic zone, high sea and the sea bed,

including regulations applicable to sub-aquatic archaeologist remains and delimitation of marine and sub-marine areas as well as scientific research in aquatic spaces.

Title XIII of the LOEA reorganises the maritime administration until recently exercised by the Ministry of Infrastructure through the Dirección General de Transporte Acuático. Thus, article 77 of the LOEA creates a National Council of the Merchant Marine, with participation of various ministries to act as an advisory body to the National Executive on matters such as fostering and development of the merchant marine, naval industry, development of navigation channel, training, etc. Art. 82 of the LOEA, on the other hand, states that the aquatic authority is vested with the Ministry of Infrastructure through a national body named "Instituto Nacional de los Espacios Acuáticos" (INEA), based in Caracas, that will exercise its functions locally through the Port Captaincies. The INEA will have among its activities (art. 85) the exercise of the aquatic administration, the planning and supervision of ports and terminals, the execution of the shipping and port policies, the Venezuelan naval Registry (RENAVE), the promotion of policies for the financing of the aquatic sector, etc. To that end, the INEA will organise and supervise important activities such as pilotage, towage, salvage, shipping registration, among others. The activities of the INEA, by way of illustration, will be financed through revenues coming from tariffs paid by the pilotage and towage companies (ranging between 28% to 40% of the gross revenues of these companies), naval registry fees and concessions of port and marine and river terminals, as prescribed by art. 87 of the LOEA.

An important feature of this law is that it assigns to the INEA a fund (art. 93), the so-called Fund for the Development of Aquatic Spaces, aimed to finance projects to fostering the shipping and port industry, as well as related activities such as constructions of ports, purchase of port machinery, construction and repairs of ships, training, etc. As per art. 99 of the LOEA, the fund will receive, among others revenues, those monies arising in connection with the percentage based on the gross tonnage of national and foreign ships engaged in international traffic, and the foreign flag ships that by way of exception may be engaged in cabotage traffic (Art. 99, Numeral 3 of the LOEA). The relevant percentages to be paid are set in article 100 of the LOEA; however, Venezuelan flag ships engaged in international trade are subject to a rebate of 50% of this payment needed to obtain the authorisation to set sail from the Port Captaincy. It is important to point out that this is a one payment for voyage to the country, irrespective of the numbers of national ports the vessel is calling at.

Title XVI deals with the Aquatic Jurisdiction, article 109 states that three (3) Superior Maritime Courts are created with jurisdiction over all national

aquatic spaces, all vessels registered in the Venezuelan Naval Registry, independently from the jurisdiction of the waters where they may be located, and over foreign vessels located in waters under national jurisdiction; and also, rights and actions derived from operations taking place in port areas and any other activities as indicated by law. According to the same provision, the Superior Maritime court is a personal court. On the other hand, article 110 states that Maritime Courts of First Instance are created with the same jurisdiction as assigned to Superior Courts. These courts are also personal. The Superior Maritime Courts must be established in Caracas (Central Region), Barcelona (Eastern Region), and Maracaibo (Western Region); and five Maritime Courts of First Instance to be located in the following ports: La Guaira, Puerto Cabello, Puerto Ordaz, Maracaibo and Puerto La Cruz. Article 113 of the LOEA states that First Instance Maritime Courts are competent to hear, among other matters, about controversies arising from civil and mercantile actions related to commerce and maritime traffic, as well as those related to maritime activity at ports and those activities following by virtue of use of modal/container transportation because of maritime commercial activity; procedures and executions of naval mortgages; actions to claim maritime privileges; execution of foreign sentences, with previous presentation of corresponding exequatour; execution of arbitration awards and resolutions related to maritime causes; procedures for limitation of liability by shipowners and port operators, etc. Obviously, the creation of the maritime courts is quite significant for the international trade of Venezuela, since importers, exporters and the main actors of the shipping and port industry will have the possibility to solve their controversies in a specialised jurisdiction, saving time and money; unfortunately, it is not clear yet when these courts will be opened, due to bureaucratic and budgetary steps to comply with, but it might be expected that before the end of the year, at least some of them will be working.

Another important point is that the LOEA defines, pursuant to art. 121, "cabotage" as the carriage of national cargoes or even those not nationalised, as well as persons, between Venezuelan ports. The cabotage is restricted to ships registered in the Venezuelan naval registry (RENAVE), without prejudice to the prescribed by the international treaties adopted by the Republic. The cabotage reservation for the ships registered in RENAVE, could mean that charterers are entitled to pay freights up to 5% over the freight offered for ships of similar characteristics in the international market. On the other hand, Art. 122 of the LOEA states that "domestic navigation" is every activity different than cabotage, taking place within jurisdictional waters of the Republic, such as fishing, dredging, sporting, leisure and tourist navigation, and scientific activities. Despite the above mentioned, art. 123 of the LOEA states that the National Institute of Aquatic Spaces shall grant, at the request of the interested party, and by way of exception, a special permit to ships of foreign registry, to carry out

cabotage or domestic navigation. The said permit will be based on the revision by the Council of Merchant Marine of the National Council of Aquatic Spaces. The INEA shall certify that the ship complies with the requisites of the national and international legislation, in the safety field, as well as lack of national tonnage. Venezuelan ships are subject to tariff incentives in pilotage, towage and port charges.

A final aspect to be mentioned is that related to the incentives for the shipping and port industry, since the LOEA departing from the original wording of the draft, does not prescribe express exonerations for the importation of ships, something that could be regarded as contrary to the development of the domestic merchant marine. Thus, in the light of art. 127, the President of the Republic in Council of Ministries, in the exercise of the powers granted to him by the taxation and customs legislation, could grant total or partial exonerations in connection with the definitive or temporal importation of ships, materials, machineries, equipments, spare parts and all accessories related to the activity object of the law, as well as the enrichments derived from the activities of the merchant marine, naval industry, ports and marinas and activities related to the sector. It should borne in mind that the LOEA does not repeal the Law for the Development of the National Merchant Marine, enacted in June 2000, for which reason the incentives prescribed by articles 4 and 5 of the said law, are still in force.

No doubt that the LOEA will have a significant impact upon the shipping and port industry, not only for the introduction of new concepts but also due to the adjustments of tariffs. Nevertheless, many Regulations currently under drafting are still needed to better understand the new legislation.

Should you need any assistance or further information regarding the topic stated above, please feel free to contact:

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