

Ship-Shape in bahrain

September 2014

What's happened?

"HM King Hamad Bin Isa Al-Khalifa has recently passed Bahrain Law No. 35/2014 (the "New Law") amending certain provisions of Bahrain Legislative Decree No. 23/1982. The New Law amends Articles 2, 8, 44, 117, 187 and 296," Saad Al Doseri explains.

What are the changes?

Article 2: Under the New Law, the Minister of Transport may now grant Bahraini nationality to vessels owned by non-Bahrainis subject to the approval of the Council of Ministers, even if the vessel is not registered in one of the Bahraini ports. The old Article (2) only granted Bahraini nationality to vessels owned by non-Bahrainis and only if the vessel was registered in one of Bahrain's ports.

Article 8: This amendment is in relation to co-owners of vessels. Previously, in the event that a co-owner disagreed with a decision of the majority, said dissenting owner was entitled to relinquish his shares in the vessel to the other co-owners thereby discharging him from obligations arising out of the majority's decision. This affords the dissenting co-owner a right to challenge the majority's decision before the High Court prior to giving up his ownership shares in the vessel. The co-owner may now challenge the majority's decision in the High Court within fifteen days from the date of issuance of the majority decision. The significance of this amendment is that it provides an additional guarantee to co-owners by enabling an element of judicial control in order to preserve the common interest of vessel owners. Previously, any decisions made were conclusively determined by a simple majority of the co-owners of the vessel. The New Law recognizes the rights of minority vessel owners.

Article 44: The New Law amended Article 44 relating to powers over vessels owned by debtors. Under the revised Article 44, other vessels owned by the debtor in addition to the one directly related to the debt, can be attached through the Execution Court. However, said other vessels cannot be attached in relation to one of the debts stipulated in Article 43(m)-(o), namely: disputes over the vessel's title, disputes over joint ownership, possession or operation thereof or disputes concerning rights of co-owners to amounts arising from its operation or maritime mortgage. This means that a dispute over one or more of the aforementioned three debts, will only entitle a creditor to seek an interim attachment order over the vessel which relates to the debt. Previously, a creditor claiming under any one of the fifteen debts specified in Article 43, all of which are of a maritime nature, could seek an order for an interim attachment over a vessel only to which the debt relates. However, the New Law goes further, allowing the creditor to seek an interim attachment over the vessel to which the debt is related to or any other vessel owned by the debtor, provided that he owned it at the time of the related debt with the above-mentioned exception.

Article 117: This provision has been amended so as to ensure the payment of compensation owed to the owner of a vessel as a result of delays in return of the vessel for any reason attributable to the charterer. Previously, a vessel owner that suffered delays due to the fault of a charterer was entitled to charge said charterer double the agreed rates for any overdue period. The New Law gives said vessel owner a further right to claim for any damages incurred due to the delay. Under the old law, the only penalty available against a charterer that delayed return of a vessel was payment of two times the normal rate for the overdue period only and without further compensation.

Article 187: A new paragraph has been inserted into Article 187 of the law stipulating that the Transportation, Ports and Maritime Affairs Minister will specify the exemptions from the obligation of pilotage and guidance of vessels for the Bahraini ports.

Article 296: Finally under a revised Article 296, the Minister in charge of maritime transport and maritime navigation can issue the necessary decisions to implement the Law's provisions instead of the Finance and National Economy Minister.

What's the most significant change?

We believe the amendment in regards to the possibility of interim attachment orders over other vessels owned by the debtor according to Article 44 is of uttermost importance to Bahrain Maritime Law due to its negative impact on vessel owners. . Accordingly, if a vessel owner is in debt and has more than a vessel docked in Bahrain, the creditor may seek the issuance of an interim attachment on more than one vessel. Contrastingly, the old Article only permitted the attachment of a single vessel (i.e. the one related to the debt).

Article 117 is another significant amendment as it reflects the practical consequences of a delay which is not entirely within the control of a vessel owner. For example, when a vessel owner is unable to meet third party obligations due to a delay of a charterer that has leased the vessel but defaulted on the timing of return of said vessel. This scenario leaves the vessel owner in a difficult position vis-à-vis third party lessees with whom he has agreed to lease the vessel subject to the delay. In such circumstances, any award of compensation is subject to the discretion of the court and will depend on the extent of damages which the vessel owner is able to prove he suffered, as a direct result of the delay.

Another important amendment is the exemptions from the obligation of pilotage and guidance. According to Article 187 the Minister shall specify such exemptions. Law No. 76 of 2006 promulgating the grant of Concession for the Operation and management of Salman Port; and the Concession for the operation, management, and development of Khalifa Bin Salman Port (the "Concession Agreement ") granted the Port Operating Company a concession right and obligation to provide compulsory pilotage services to vessels of more than 60 meters, and it further provides that any exemption must be in accordance with the Concession Agreement. Therefore, the new amendment for specifying pilotage exemptions cases should be in line with the Concession Agreement.

What's the practical and commercial impact?

Although the New Law does not entirely replace the existing Maritime Law, the amendments will follow certain practical and commercial consequences. For example the New Law affords vessel owners and lessees alike a wider choice of causes of action, e.g.: the right to claim compensatory damages against a lessee that delays return of a vessel; the right to attach against other vessels of a debtor, etc.

Further, the New Law underlies one of the paramount strategic objective of Bahrain's government which is to establish the Kingdom as a leading regional maritime centre. The New Law encourages more reliable and balanced maritime services across all functions and amongst both vessel owners and charterers.

Overall, the amendments are expected to have a positive commercial impact both by addressing practical issues that may have arisen in the past and that could not have been dealt with due to the limited scope of the old Maritime Law, as well as bringing certain provisions in line with international maritime standards.