

The Ship

malcom is a shipping law firm headed by Javier Arias-Camisión which aims to provide a full and complete range of maritime, admiralty and ship finance legal services in all Spanish ports, seas and oceans.

We are proud to practise shipping law and will be passionately involved in all your cases and deals conducted in Spain in order to obtain the most favourable solution, from transactional issues to marine casualties and of course dispute resolutions. We are fully committed to your commercial interests and will provide an immediate response to all your legal needs, always in an efficient, proactive and cost-effective manner.

Our expertise will allow you to benefit if an emergency response is needed, and our exhaustive shipping services will provide you with the comfort of no longer sailing alone through Spanish waters.

The Shipping Services

We provide legal services in the areas of ship finance, chartering & ship sale, ship arrest, cargo claims, litigation & arbitration, newbuilding & ship repair, ship mortgages & securities, port state control, trade & international sale, collision & salvage, marine insurance & P&I, and yachting & sailing as follows:

Ship Finance

Acting on behalf of borrowers and lenders all over the world, we carry out our task by advising on loan documentation and preparing the corresponding security packages, ranging from assignments of freights and insurance to corporate guarantees and ship mortgages on Spanish flagged vessels as security for both construction and permanent loan transactions.

We are also retained in complex Spanish tax lease structures to advise on and implement general and shipping benefits, such as the interest rate subsidy under Royal Decree 442, the Special Shipping Registry of the Canary Islands, the Spanish tonnage tax and both the finance lease agreement and the economic interest grouping tax systems. Although it depends on each particular transaction, in general terms a Spanish tax lease will involve a ship newbuilding for a lease company, which will enter into a leasing agreement over the vessel with an economic interest grouping. The latter will enter into a bareboat charter of the vessel with the borrower, with a call option in favour of the borrower at the end of the charter. Further to that, the economic interest grouping and the borrower may enter into a separate put option agreement and the borrower and the lease company may enter into direct put and call options arrangements. Additionally, there may be long-term vessel chartering arrangements.

We provide full support in the documentation package for the structure, consisting of ship sale and transfer arrangements, finance lease agreements, bareboat charter parties and put and call option agreements, as well as master agreements, payment mechanisms and other documents needed as per the particular deal.

Chartering & Ship Sale

We provide a complete range of chartering services and advise shipowners and charterers on the drafting of all types of time, voyage and bareboat charterparties as well as contracts of affreightment in respect of all kinds of cargo, passenger and offshore vessels in order to better protect our clients' interests. We are also retained to advise on disputes regarding cargo claims, demurrages, and payment of hire. If requested, we will also proceed to appoint surveyors to carry out on-hire and off-hire inspections whenever delivery or redelivery takes place at a Spanish port.

We also advise on sale and purchase of second-hand vessels by drafting protective memorandums of agreement, bills of sale and protocols of delivery and acceptance, by creating or releasing, as the case may be, the corresponding ship mortgages, or by arranging for pre-delivery inspections. If needed, we are also able to cooperate in looking for financing from banks and financial institutions specialising in the marine industry throughout the European market. Lastly, we fully arrange with Spanish shipping authorities and registries for registration or deregistration of vessels in and from the ordinary shipping registry or the special shipping registry of the Canary Islands, including tax and custom clearance services.

We perform all the above tasks at the best fee rate and supporting your commercial interests in a professional and reliable manner.

Ship Arrest

We put in place all legal actions to arrest a ship in Spanish ports and waters, acting on behalf of holders of maritime claims, such as ship mortgages, collision, salvage, general average, chartering, newbuilding, ship repair, disbursements, supplies and cargo claims, inter alia.

Please note that the arrest of a ship is in essence an urgent and confidential measure, since the vessel will remain at port only for as long necessary to load or unload the cargo. Consequently, we always act quickly together with our court attorneys and the relevant debtor, who may be prepared to provide a power of attorney duly apostilled to be effective in Spain as well as the guarantee requested by the court arresting the vessel, as soon as possible. Once the vessel is arrested as security for the future outcome of the corresponding litigation or arbitration proceeding, the relevant court will grant time to institute such proceedings on the merits, and that may be done in Spain or in any other jurisdiction.

Please note that we also defend the vessel's interests in case of arrest, acting on behalf of shipowners, shipmanagers, marine insurance companies and P&I clubs, and by filing the corresponding countersecurity to release the ship. In this regard, please note that Spanish courts do not accept letters of undertaking issued by clubs and insurers, so we arrange to file a deposit as a matter of urgency and thereby allow immediate departure of the vessel.

All the above legal services are rendered at the best fee rate and always working on an emergency basis.

Cargo Claims

When cargo damage or shortage is discovered by stevedores or consignees at unloading operations, we act for them and cargo underwriters to protect actions and rights against carriers by holding them liable in accordance with the terms of carriage. After evaluating the scenario we recommend a claim course of action in order to obtain the most positive settlement. If an amicable solution cannot be arrived at, then we manage the full dispute resolution procedure via litigation or arbitration to achieve the best and most favourable decision in respect of physical and financial losses. All the above legal services are provided at a competitive fee rate.

Please note that collection of commercial invoices, packing lists, bills of lading, delivery receipts and protests, stevedores worksheets and OS&D reports, notifications to ship agents and carriers and survey reports are a must in order to handle a good case. Remember that in case of apparent damage or shortage at the time of delivery, an exact and detailed description has to be recorded on the delivery receipt to properly support the claim.

If requested, we are also able to appoint appropriate and cost-effective surveyors in all Spanish ports in order to investigate and adjust cargo damages and shortages.

Litigation & Arbitration

We run all types of proceedings before the Spanish courts and arbitration panels and attend hearings and appeals in respect of maritime claims regarding chartering disputes, cargo claims, marine casualties, newbuilding controversies, international sales and all the other procedures involving civil liability and debt collection.

We also make arrangements before the Spanish courts for the recognition and enforcement of foreign arbitral awards and judgements in Spain. We are also able to obtain security in order to guarantee the result of the future outcome of all the above proceedings, by filing applications for ship arrest and also for the arrest of bunkers, cargo, freight and other assets belonging to the debtor.

Finally and in respect of asset recovery we also carry out seizure proceedings of a ship or other assets in execution or satisfaction of a judgement or award, and also in case of enforcement of ship mortgages and other securities.

If needed, we are supported by appropriate marine surveyors during the course of the proceedings and hearings in order to obtain the most favourable result.

Newbuilding & Ship Repair

Acting on behalf of owners and shipbuilders, we attend direct negotiations between the parties and advise on all terms of construction contracts for all types of vessels, from small tug boats to specialised LNG carriers, and provide a full range of services at the phase of execution of building documents, throughout the construction period and at the time of delivery of the vessel, drafting the relevant shipbuilding agreements, the performance and refundment guarantees, the assignments of insurances and all kinds of delivery documents such as builder's certificates or protocols of delivery and acceptance.

Where a repair yard is involved, we are also retained to provide documentary support and legal advice on claims arising as a result of repairs, conversions and lengthenings of vessels. Additionally, if pre-delivery or long-term ship finance is needed by owners, we draft the relevant assignments and securities or create construction ship mortgages fully effective in the Spanish jurisdiction.

Finally, we provide specialised legal advice where differences arise between builders and buyers, or in all disputes for lack of compliance with shipbuilding standards and against makers, class societies and engineering companies.

Ship Mortgages & Securities

In order to guarantee the amounts due under facility agreements and swap arrangements, as well as the performance of call options in respect of ship finance transactions, and all types of payment and performance obligations involving newbuildings and also second-hand vessels, we establish both construction and permanent ship mortgages over hulls and vessels registered with the Spanish registries.

In so doing, we draft the relevant public deeds, take actions to execute the documents before the relevant notary on the closing date, make arrangements before the tax authorities and file the ship mortgages with the relevant trade and ship registries, avoiding the lapse of any time from the date of execution in order to fully protect the mortgagor's interests. Please note that registration is of the essence under Spanish law: if a ship mortgage is not registered it is as if the security does not exist.

We also prepare and advise on other securities such as corporate guarantees, assignments of insurances, earnings and rights, and refund guarantees.

Finally, we also make all necessary arrangements for the release of the ship mortgages and securities, whether there is a ship sale, repayment of the indebtedness or full performance of obligations.

Port State Control

Spain is a jurisdiction where the provisions of the Paris Memorandum of Understanding on Port State Control apply strictly. If the relevant PSC officer and Harbour Master decides to detain a vessel in view of deficiencies found on board, we recommend making arrangements without further delay in order to release her and minimize the shipowner's financial losses. Time is of the essence, since the vessel will be detained until both deficiencies are repaired and a security is put up to guarantee the outcome of the ensuing administrative sanctions proceedings.

In that regard, please remember that Spanish Harbour Masters do not accept letters of undertaking issued by P&I clubs or civil liability insurers, and that security can only be arranged by means of a deposit or a Spanish banker's draft filed with the Inland Revenue's General Deposit Fund.

We provide full legal assistance at all Spanish ports in both managing release and sanctions proceedings at standard legal rates. Additionally, please note that similar actions may be taken by the Harbour Master Offices in case of spillage in Spanish waters, where the vessel does not comply with routing measures applying to traffic separation schemes, or if any other administrative offence is discovered.

Trade & International Sale

Fully connected with shipping, we also provide our legal services in trade and international sales by advising traders on a broad range of goods sale and purchase agreements and supply contracts, as well as on documentary credits and other means of payment, cargo delivery terms and Incoterms.

We also advise shippers and consignees in respect of chartering of vessels, by voyage or by time, bills of lading and carriage of all types of commodities, whether by sea, road, rail, air or multimodal, as well as in all issues regarding cargo insurance during carriage.

In case of shortage or damage at delivery we handle the full cargo claim in order to obtain the best result and, if necessary, proceed with the corresponding litigation or arbitration procedure after dealing with any cross-border and jurisdictional dispute arising from the international interests involved in these transactions.

Collision & Salvage

In marine casualties, we deal with groundings, collisions, pollution, salvages, towages and wreck removals in Spanish ports and waters, acting on behalf of shipowners, marine insurance companies and P&I clubs, and tug and salvage operators.

We negotiate Lloyds Open Forms or other standard salvage contracts, and in case a port of refuge is needed by the vessel, we make arrangements with the Spanish Directorate General of Shipping.

We file bails and bank guarantees and defend any administrative or port state control proceedings instituted by the shipping authorities as a result of a casualty or spillage. Remember that Spanish courts and authorities may not accept letters of undertaking issued by clubs and civil liability insurers. We also provide our legal assistance in cases of general average or limitation of liability.

After the surveyors investigate the background of the casualty, we report on liabilities and attempt to settle the matter. Failing that, we proceed with the relevant litigation or arbitration proceeding to obtain the best result in order to compensate physical and financial losses. All admiralty proceedings are supported by appropriate marine surveyors.

Marine Insurance & P&I

We are retained to advise on particular terms of marine insurance and P&I policies involving hull, cargo, freight, disbursements, strikes, war, builder's risks, protection and indemnity and other coverages requested for carriage and international sale, including leisure activities such as yachting. Our insurance practice is also related to the marine casualty area, since we handle all types of claims regarding hull and liability: collision, pollution, salvage, general average, limitation of liability, and of course cargo claims and other marine-related exposures.

We report on coverage issues and, at request, appoint appropriate marine surveyors to investigate the casualty. We also take claim actions and if a settlement cannot be arrived at, handle the complete arbitration or litigation proceedings to obtain the best outcome. We also act on behalf of marine insurance companies and P&I clubs in order to file the corresponding guarantees and release a ship arrest from any Spanish port. And, if needed, we also collect unpaid premiums and calls from insurers and members supporting the commercial interests of insurers and clubs.

We provide all the above services at a cost effective rate and in a professional manner for shipowners, charterers, marine insurance companies and P&I clubs.

Yachting & Sailing

Spanish waters are the destination of a huge number of yachts and sailing vessels not only during the summertime but also throughout the rest of the year due to the good weather conditions of the Mediterranean sea and the Balearic and Canary islands.

In that regard, we are retained to handle collisions, pollutions, towages, salvages and shipwrecks of pleasure boats, and provide legal support to skippers by drafting sea protests, advising on manoeuvre disputes and claiming against liable third parties and marine insurance companies under the hull & machinery and the P&I coverages.

We also act on behalf of owners and skippers where sanctions proceedings are instituted by the relevant harbour master's office as a result of an administrative offence, and make arrangements to file any security requested by such Spanish authorities.

We also deal with non contentious matters and advise on ship sale, chartering, insurance and registration with the Spanish shipping registries of yachts and other pleasure boats.

The Seas & Oceans

We provide our legal shipping services at all Spanish ports and waters, from the Gulf of Biscay, the Cantabrian Sea and the Atlantic Ocean to the Straits of Gibraltar, the Mediterranean area and the Balearic and Canary Islands, supported if necessary by a network of court attorneys, legal contacts and marine experts.



The Master



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Javier Arias-Camisón is the leading head of **malcom** at the firm's Madrid offices. He was previously professionally employed at the law firms Albors, Galiano & Co. and Amya where he became a partner.

Born in Bilbao, Javier studied Law at Salamanca University and was thereafter admitted to the degree of Master of Maritime and Admiralty Law at Oviedo University's European Institute of Maritime Studies. He is currently a member of the Law Society of Madrid and practises throughout Spanish territory. His maritime vocation is confirmed with his membership of the Spanish Association of Maritime Law (national branch of the International Maritime Committee) and the Latin-American Institute of Maritime Law.

Although Javier renders all legal shipping services and practises in all areas of maritime and admiralty law, he focuses on advising leading financial institutions, shipowners and shipyards in ship finance and newbuildings, ship sale and registration, and ship mortgages and securities. In addition, he has a reputation as a litigator in legal and arbitration proceedings, and advises the most reputable P&I clubs and insurers in claims conducted in Spain. He has been considered «highly recommended» in the latest issues of Legal 500, and as an «undisputed leader» by the 2008 edition.

He is a frequent press contributor and lectures in the Spanish Maritime Institute's Master of Maritime Law program. Javier speaks Spanish and English.

Come on Board

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