

TRANSPORT LAW

Introduction

Transport is a very important sector of the Lithuanian economy currently integrating into the European market. After the re-establishment of Lithuania's independence, the Lithuanian transport sector has been developing quickly. The co-ordinated development of three branches of transport (sea, railways and, in particular, road), the integrity of their markets and interaction, based on the principles of logistics, have the greatest influence on the effectiveness of services provided by the transport sector. A convenient geographical location, transport influence opportunities and the potential of sufficiently qualified specialists influence prospects for the development of transit services.

The enactment and improvement of the Lithuanian transport legislation is an ongoing process. The main laws regulating transport activities were adopted in 1996. Since 1996 drafting of the new regulation and improvement of the existing are still underway. Notably, greatest attention has been given to the harmonisation of the Lithuanian transport legislation with the EU legal acts. Presently, more than 70% of the EU transport legislation has been fully or partly implemented in the Lithuanian legal acts.

Applicable Legislation

International Agreements

- 1) Convention on the Contract for the International Carriage of Goods by Road (CMR), Geneva, 19 May 1956;
- 2) Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR), 1978;
- 3) European Agreement Concerning the International Carriage of Dangerous Goods by Roads (ADR), Geneva, 30 September 1957;
- 4) Customs Convention on the International Transport of Goods under TIR carnets (TIR), 14 November 1975;
- 5) European Agreement Concerning the Work of Crews of Transport Means Going on International Routes (AETR), Geneva, 1 July 1970;
- 6) International Convention for the Safety of Life at Sea (SOLAS) 74/78, London, November 1974, with further amendments of 1978;

- 7) International Convention for the Prevention of Pollution from Ships (MARPOL), London, 1973, as modified by the Protocol of 1978;
- 8) International Convention on Revision of the International Regulations for Preventing Collisions at Sea (COLREGS), London, 1972;
- 9) International Convention on Standards of Training, Verifying and Watch-keeping of Seafarers, 1978;
- 10) Helsinki Convention on the Prevention of the Marine Environment in the Baltic Sea, Helsinki, 1974, with the further amendments 1992;
- 11) International Convention on Civil Aviation (ICAO), Chicago, 7 December 1944;
- 12) Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 1929;
- 13) International Agreement on Carriage of Goods by Railway (COTIF), 9 May 1980;
- 14) European Agreement on Main International Railway Lines, Geneva, 31 May 1985.

National Legislation

- 1) The 8 October 1991 Law No. I-1863 of the Republic of Lithuania “On Fundamentals of Transport Activities”;
- 2) The 11 May 1995 Law No. I-891 of the Republic of Lithuania “On Roads”;
- 3) The 16 May 1996 Law No. I-1340 of the Republic of Lithuania “On Klaipėda State Seaport”;
- 4) The 12 September 1996 Law No. I-1513 of the Republic of Lithuania “On Merchant Shipping”;
- 5) The 13 November 1997 Law No. VIII-512 of the Republic of Lithuania “On Protection of Sea Environment”;
- 6) The 29 August 2000 Law No. VIII-1897 of the Republic of Lithuania “On Safe Navigation”;
- 7) The 12 October 2000 Law No. VIII-2043 of the Republic of Lithuania “On Safe Traffic on Roads”;
- 8) The 17 October 2000 Law No. VII-2066 of the Republic of Lithuania “On Aviation”;
- 9) The 21 December 2001 Law No. IX-692 of the Republic of Lithuania “On Supervision and Financing of Development Programme of Roads”;
- 10) The 4 June 1996 Code of Railway Transport of the Republic of Lithuania;
- 11) The 24 September 1996 Code of Transport of Internal Waters of the Republic of Lithuania;

- 12) The 19 November 1996 Code of Roads Transport of the Republic of Lithuania;
- 13) The 23 October 1997 Resolution No. 1170 of the Government of Republic of Lithuania “On Licensing of Road Transport Activities”;
- 14) The 5 November 1998 of Resolution No. 1302 of the Government of Republic of Lithuania “On Licensing of Carriage of Goods and Passengers with Ships within the Republic of Lithuania and on International Routes”;
- 15) Regulations of Registration of Ships, as approved by the 3 September 1991 Resolution No. 373 of the Government of the Republic of Lithuania;
- 16) Regulations for the Licensing of Commercial Activities of the Railway Transport, as approved by the 29 March 1996 Resolution No. 406 of the Government of the Republic of Lithuania;
- 17) Regulations for the Issuance of Air Communication Licences, as approved by the 17 March 1997 Resolution No. 226 of the Government of the Republic of Lithuania;
- 18) Regulations of Registration of Seagoing Vessels, as approved by the 29 December 2001 Order No. 481 of the Minister of Communications;

Regulatory Framework

General

The Ministry of Communications co-ordinates the interrelationship of all transport sectors (road, water, railway and air), implements the general State transport strategy and policy.

Road Transport

The State Road Transport Inspection under the Ministry of Communications is responsible for the issuance of licences to Lithuanian hauliers for transportation of goods by roads on international routes, licences for heavy-weight vehicles operating on Lithuanian roads, licences for transportation of passengers on long distances and international routes, the management of the international haulage register for Lithuanian companies, *etc.* One of the objectives of the State Road Transport Inspection is to ensure equal competition conditions for all those engaged in the road transport.

The Lithuanian Road Administration is a State enterprise which is in charge of the State roads. The Lithuanian National Road Carriers’ Association (*Linava*) represents

Lithuanian carriers in three sectors: professional transportation of passengers, professional transportation of goods and transportation on own account.

Maritime Transport

The Klaipėda State Seaport Authority is responsible for the management of the Klaipėda State Seaport infrastructure, leasing of the port land, collection of port dues *etc.*

The Harbour Master is the officer who ensures the navigation within the Klaipėda port. The Harbour Master provides the ships with the information on port navigation and meteorological conditions, registers the arrivals and leaves of vessels from the port, *etc.* The Lithuanian Administration on Safe Navigation, established under the Law on Safe Navigation, is responsible for the control of safe navigation within the Lithuanian territorial waters. Therefore, after the last changes of laws, supervision of the sea transport sector is vested with two institutions: the Klaipėda State Seaport Authority and the Lithuanian Administration on Safe Navigation. The Lithuanian Administration on Safe Navigation registers the ships flying under the Lithuanian flag and issues other documents of the ships, executes port state control of vessels flying under the Lithuanian flag, issues seamen books, their qualification documents, organises the liquidation works of oil pollution in Lithuanian waters *etc.*

The Law on the Klaipėda State Seaport establishes the Klaipėda Free Port, the limits of which are to be approved by the Government of Lithuania. Individuals and legal persons, wishing to start the activity in the Klaipėda Free Port, will have to get the permission as well as to present the general guarantee to the Customs to secure the obligations of debtor which may arise in connection to the cargo stored in the Klaipėda Free Port. The import and export dues and taxes as well as prohibitions and restrictions on import and export will be applied only for the goods going to/out Lithuania from the Klaipėda Free Port. Customs procedures will not be applicable to those goods which are carried in or out from the Klaipėda Free Port by the sea transport.

Air Transport

The State administration of aviation is carried out by various institutions depending on their respective responsibilities: the Government of the Republic of Lithuania, the Ministry of Defence, the Ministry of Communication, the General Inspection of Ministry of Defence, the Head of Army and Administration of Civil Aviation. The Administration of Civil Aviation is responsible for licensing of civil aviation personnel, certification of

air operators and flight safety control, registration of civil air crafts, issuance of the air worthiness certification, registration and approval of civil aerodromes and navigation equipment. The Ministry of Communications issues licences for the carriage of passengers and goods by air as well as post.

Railway Transport

The State Inspection of Railway under the Ministry of Communications is responsible for supervision of matters related to railway transport. The Ministry of Communications issues licences for the railway carriage of passengers and goods by international routes as well as for the carriage of passengers by domestic routes.

Road Transport Activities

A company willing to carry passengers by road in Lithuania or to carry passengers and goods by road on international routes must obtain the licence from an appropriate authority.

Currently, the State Road Transport Inspection under the Ministry of Communications issues the licences for international transportation of goods and passengers by roads as well as for the regional transportation of passengers. The municipalities license urban passenger transport.

The licensing rules, currently applied to road transport in Lithuania, generally comply with the EU Directive No. 96/26. Furthermore, under the rules, a licence to undertake carriage of goods by international routes by road can be issued to a new company only on condition that the vehicles have the certificate of a “green” or “green and safe” lorry. Despite this strict requirement, the licensing rules will still have to be amended in accordance with the EU Directive No. 96/76, which implies basically raising the financial requirements by 31 December 2002 for hauliers active in international transport. The Ministry of Communications is considering to introduce licensing obligations for domestic road hauliers as well and additional transition period may be required for the implementation of this requirement. Since 1 April 2002 the insurance of the transport means operators’ civil liability is compulsory.

TIR carnets in Lithuania are issued by *Linava* which has approved the rules regulating the issuance of TIR carnets. Presently, TIR carnets are issued only to the members of *Linava* (since 1 February 2002 also to the candidates to members of *Linava*).

Point of Interest

In order for a newly registered company to get TIR carnets, it has to correspond to certain criteria, which among others include membership of Linava and the licence to carry goods by road on international routes for not less than 2 years.

Water Transport Activities

A company willing to carry passengers by ships within Lithuania or to carry passengers and goods by ships on international routes must obtain an appropriate licence from the Ministry of Communications.

A company intending to provide the ship agency, towage, salvage and underwater services must be certified by the Ministry of Communications.

Registration of Ships

According to Article 8 of the Law on Merchant Shipping, a vessel can be registered on the Lithuanian Ships Register provided it is designed and built for navigation at sea, has the documents confirming this and provided it is owned by either a Lithuanian citizen or an enterprise registered in Lithuania.

The procedure and documents needed for the registration of vessels in Lithuania were defined in the Regulations of Registration of Ships as approved by the 3 September 1991 Government Resolution No. 373. Upon the registration with the Lithuanian Ships Register, the vessel is entitled to fly the Lithuanian flag. Double flagging is not allowed.

In order to promote the registration of vessels with the Lithuanian Ships Register as well as to implement the provisions of the UN Convention on Maritime Law of 1982, the Regulations of Registration of Seagoing Vessels were approved by the 29 December 2001 Order No. 481 of the Minister of the Communications which further will be effective from 1 March 2002 (“the new Regulations of Ships Registration”). The main changes introduced by the new Regulations of Ships Registration are briefly outlined below.

A ship owner, wishing to register its vessel with the Lithuanian Ships Register, must present the following documents to the Lithuanian Administration on Safe Navigation (before its establishment the documents have to be presented to Klaipėda Harbour Master office):

- 1) written request of the owner to register the ship;
- 2) duly completed original application form for the registration;
- 3) copy of documents proving the ownership of the ship;
- 4) copy of the certificate of measurements for the ship;
- 5) copy of the seaworthiness certificate of the ship;
- 6) copy of the permission to carry passengers (for passenger ships only);
- 7) permission to use the radio station of the;
- 8) receipt of payment of the stamp duty/tax for the registration (presently LTL 400 for seagoing vessels).

According to the new Regulations of Ships Registration, besides the documents listed under items 2, 3, 4, 7 above, the following documents will have to be presented additionally:

- 1) document issued by the competent authority of the foreign state confirming the deletion of the vessel from the foreign state ships register (if the vessel earlier was registered on the foreign state ships register);
- 2) temporal certificate to fly under the Lithuanian flag, if applicable;
- 3) notarised copy of the registration certificate (in case the ship owner is a legal person) or a notarised copy of passport (in case the ship owner is a natural person);
- 4) copy of the Class Certificate;
- 5) certificate from the Fishing Department under the Ministry of Agriculture (for registration of fishing vessels only).

Further, according to the new Regulations of Ships Registration, the preliminary survey by either the Inspector of the Lithuanian Administration on Safe Navigation or by a representative of the classification society authorised by the Lithuanian Administration on Safe Navigation must be carried out for every vessel before its registration with the Lithuanian Ships Register. Before the registration of the ship, the Lithuanian Administration on Safe Navigation must check its identity in accordance with the

identification number issued by the IMO and make sure the vessel does not fly the flag of any other state.

A vessel may be registered with the Bareboat Charter Register, provided that either the vessel is registered in Lithuania and has been chartered to a foreign bareboat charterer or a foreign registered vessel has been chartered to a Lithuanian bareboat charterer. If a vessel is chartered to a Lithuanian person or enterprise, the same documents must be submitted to the Lithuanian Administration on Safe Navigation as for initial registration of a ship together with the following additional documents:

- 1) permission of the Lithuanian Minister of Communications to fly the Lithuanian flag;
- 2) permission of an appropriate official body of the port of original registration confirming the release of the vessel from the duty to fly the flag of the original registration state;
- 3) notarised copy of the bareboat charter or any equivalent document;
- 4) extracts from the original register stating the owner and the mortgager or other person having a security interest in the vessel;
- 5) international identification number of the chartered vessel;
- 6) permission of the owner of a ship;
- 7) permission of the mortgagee or person having similar security interest in the vessel.

No pledge, mortgage, hypothec or similar charge may be registered with the Bareboat Charter Register of the ship under Lithuanian laws. Such kind of encumbrances are registered in accordance with the laws of the country of original registration.

After the issuance of the certificate of the temporary registration of the ship with the Bareboat Charter Register, the vessel is entitled to and must fly only the Lithuanian flag during the whole period of the registration. Consequently, it is prohibited to fly under the flag of the original registration state.

According to the new Regulations of Ships Registration, there will be no separate Lithuanian Bareboat Charter Register anymore. A Lithuanian ship will be chartered on the bareboat charter basis to foreign persons subject to the notification to the Lithuanian Administration on Safe Navigation and submission of the required documents. The permission to fly under the Lithuanian flag must be returned to the Lithuanian

Administration on Safe Navigation in exchange for the certificate on the suspension of the Lithuanian flag during the bareboat charter period. The foreign vessels, which are chartered to the Lithuanian persons on the bareboat charter basis, will be registered with the Lithuanian Ships Registry upon submission of appropriate documents. During the whole period of bareboat charter the vessel is entitled to fly only under the Lithuanian flag.

Not less than 75% of the crew (Captain and chief engineer including) must be citizens of the Republic of Lithuania. The ship operator is responsible for ensuring that an appropriate member of crew would hold all necessary qualification certificates issued in accordance with the 1978 International Convention on Standards of Training, Certification and Watch - keeping for Seafarers, with amendments of 1995.

Vessels, registered with the Lithuanian Ships Register may be mortgaged in accordance with requirements of the Law on Mortgage and the Law on Merchant Shipping. The ship is to be mortgaged with all equipment and belongings which are necessary for its navigation or voyage and which are on vessel at the moment of conclusion of the mortgage agreement. Equipment and belongings of the mortgaged vessel must be listed in a mortgage bond, except those which do not belong to the owner of the vessel. The mortgage of the vessel does not cover fuel, oils or cargo belonging to the ship owner or other persons. The application to register, amend or cancel the ship mortgage should be submitted to the Hypothecary Division of Klaipėda local court. It should be noted that presently Lithuania is not a party to the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967.

The mortgaged vessel may not be removed from the Lithuanian Ships Register until the mortgage is finished or there are written consents of all creditors to do so, certified by the public notary. The temporal permission to fly under a foreign flag for a vessel registered with the Lithuanian Ships Register may not be issued until the mortgage of the vessel is finished. This requirement is not applicable if written consents, certified by public notary, are given by creditors. Vessels, which are registered in a foreign port and have the temporal permission to fly under the Lithuanian flag, may not be mortgaged in Lithuania.

The fishing vessels registered with the Lithuanian Ships Register must be additionally registered with the Fishing Vessels Register administered by the Fishing Department under the Ministry of Agriculture.

Arrest of Ships

Lithuania is not a party to any international convention on arrest of seagoing vessels, though Lithuania intends to ratify the 1952 Convention on Arrest of Seagoing Vessels in 2002. As a result, the present procedures involving ship arrest in Lithuania are different from those used in most other countries. Imposition of ship arrest or prohibition to sail from the port is possible only as a security for a civil claim. Therefore, the civil proceedings should be started in Lithuanian court. Only the vessel which is owned by the defendant (debtor) may be arrested. Together with the main claim (which is subject to stamp duty for the proprietary claim), the application to arrest the ship or prohibit its sail from the port may be submitted. Therefore, the procedure for ship arrest or prohibition to sail from the port may take a considerable length of time.

Another important and complicated question in this procedure is the release of a ship from arrest. Again, because of the lack of specific provisions concerning ship arrest and its release, it is necessary to follow the general provisions of the Code of Civil Procedure of the Republic of Lithuania regarding the release of interim measures. The law allows the defendant to pay the amount of the claim into the deposit account of the bailiff office which may be applied if the ship was arrested for a proprietary claim. But payment into the deposit account does not mean the automatic release of a ship from arrest. The release of a ship from arrest must be resolved during court proceedings, and the parties must be duly informed. The ruling of the court to release the ship arrest is not legally binding until the time for the appeal (currently, 7 days) has expired. If the ruling to release a ship from arrest is appealed, the release would be delayed considerably.

Point of Interest

There are no specific rules regulating arrest of ships in Lithuania and the arrest of a vessel or its prohibition from sailing from the port may be obtained only as an interim measure to secure a civil claim.