The Shipping Law Review

Fourth Edition

Editors
George Eddings, Andrew Chamberlain and Rebecca Warder

The Law Reviews

THE SHIPPING LAW REVIEW

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THE SHIPPING LAW REVIEW

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George Eddings, Andrew Chamberlain and Rebecca Warder

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CONTENTS

EDITORS' PREFACE vii
George Eddings, Andrew Chamberlain and Rebecca Warder

Chapter 1 COMPETITION AND REGULATORY LAW 1
Anthony Woolich and Daniel Martin

Chapter 2 MARINE INSURANCE 9
Jonathan Bruce, Alex Kemp and Rebecca Huggins

Chapter 3 OCEAN LOGISTICS 19
Catherine Emsellem-Rope

Chapter 4 PIRACY 26
Michael Ritter and William MacLachlan

Chapter 5 PORTS AND TERMINALS 34
Matthew Wilmshurst

Chapter 6 INTERNATIONAL TRADE SANCTIONS 40
Daniel Martin

Chapter 7 SHIPBUILDING 46
Simon Blows and Vanessa Tattersall

Chapter 8 SHIPPING AND THE ENVIRONMENT 54
Matthew Dow and Baptiste Weijburg

Chapter 9 OFFSHORE SHIPPING 62
Paul Dean, Emilie Bokor-Ingram and Matthew Dow

Chapter 10 ANGOLA 68
João Afonso Fialho, José Miguel Oliveira and Andreia Tilman Delgado

Chapter 11 AUSTRALIA......78
Gavin Vallely, Simon Shaddick and Alexandra Lamont

Chapter 12 BRAZIL......96
Camila Mendes Vianna Cardoso, Godofredo Mendes Vianna and Lucas Leite Marques

Chapter 13 CANADA......107
William Moreira QC

Chapter 14 CHILE......120
Ricardo Rozas

Chapter 15 CHINA......135
Nicholas Poynder and Jean Cao

Chapter 16 COLOMBIA......148
Javier Franco

Chapter 17 DENMARK......157
Jens V Mathiasen and Thomas E Christensen

Chapter 18 EGYPT......168
Gamal A Abou Ali and Tarek Abou Ali

Chapter 19 ENGLAND & WALES......180
George Eddings, Andrew Chamberlain and Rebecca Warder

Chapter 20 FRANCE......199
Mona Dejean

Chapter 21 GERMANY......215
Olaf Hartenstein, Marco Remiorz and Marcus Webersberger

Chapter 22 GREECE......225
Paris Karamitsios, Richard Johnson-Brown and Dimitri Vassos

Chapter 23 HONG KONG......235
Thomas Morgan and Winnie Chung

Chapter 24 INDIA......256
Amitava Majumdar (Raja), Aditya Krishnamurthy, Arjun Mital and Pranoy Kottaram

Chapter 25 IRELAND 274
Catherine Duffy, Vincent Power and Eileen Roberts

Chapter 26 ITALY 290
Pietro Palandri and Marco Lopez de Gonzalo

Chapter 27 JAPAN 302
Tetsuro Nakamura, Tomoi Sawaki and Minako Ikeda

Chapter 28 KOREA 313
Tae Jeong Kim

Chapter 29 MARSHALL ISLANDS 324
Lawrence Rutkowski

Chapter 30 MOZAMBIQUE 332
João Afonso Fialho, José Miguel Oliveira and Miguel Soares Branco

Chapter 31 NIGERIA 340
L Chidi Ilogu and Adedoyin Adeloye

Chapter 32 PANAMA 354
Juan David Morgan Jr

Chapter 33 PARAGUAY 364
Juan Pablo Palacios Velázquez

Chapter 34 PHILIPPINES 374
Valeriano R Del Rosario, Maria Theresa C Gonzales, Daphne Ruby B Grasparil and Jennifer E Cerrada

Chapter 35 PORTUGAL 388
João Afonso Fialho, José Miguel Oliveira and Ângela Viana

Chapter 36 RUSSIA 397
Igor Nikolaev

Chapter 37 SINGAPORE 406
Scott Pilkington, Magdalene Chew and Lim Chuan

Chapter 38 SPAIN ... 431
Luis de San Simón

Chapter 39 SWITZERLAND ... 441
William Hold

Chapter 40 TAIWAN ... 449
Daryl Lai and Jeff Gonzales Lee

Chapter 41 UNITED STATES ... 462
Raymond J Burke Jr, Stephen P Kyne, Christopher H Dillon, William F Dougherty, Keith W Heard and Michael J Walsh

Chapter 42 VENEZUELA ... 484
José Alfredo Sabatino Pizzolante

Appendix 1 ABOUT THE AUTHORS ... 497
Appendix 2 CONTRIBUTING LAW FIRMS' CONTACT DETAILS ... 523
Appendix 3 GLOSSARY OF TERMS ... 529

EDITORS' PREFACE

The fourth edition of this book aims to continue to provide those involved in handling shipping disputes in multiple jurisdictions with an overview of the key issues relevant to each jurisdiction. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals and environmental issues. We once again feature marine insurance and examine the significant legislative changes that have come into force since our last edition was produced. A new chapter on offshore shipping is also included, which seeks to demystify the complex contractual relationships within the sector.

Each jurisdictional chapter then gives an overview of the procedures for handling shipping disputes in each country, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked each author to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, any security or counter-security requirements and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in each country, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, along with the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are also examined, and contributors set out the current position in each jurisdiction. The authors have then looked forward and commented on what they believe are likely to be the most important forthcoming developments in their jurisdictions over the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around US$380 billion in terms of global freight rates, amounting to around 5 per cent of global trade overall. More than 90 per cent of the world's freight is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book once again reflect that.

The current financial climate remains a challenge for the industry, but forward-looking shipping companies are innovating to get ahead. For example, companies are increasingly

using big data to maximise profit, including by making their fleets as fuel-efficient as possible and looking to new technology to reduce costs. There have been interesting developments in relation to direct freight booking with owners via online platforms and the launch of new 'green' maritime tech, which has the potential to cut fuel costs and reduce emissions.

In the past year air emissions control has continued to be significant for the industry. This is expected to continue in the coming year, with confirmation at the IMO's Marine Environment Protection Committee 70 that the new, more stringent limit for fuel sulphur content of 0.5 per cent will come into force from 2020. In June 2017, the IMO's new Working Group on Reduction of GHG Emissions from Ships meets against the background of calls from the European Commission Climate Actions Directorate (ECAD) for the IMO to set a target within 2017 for lower maritime emissions. There is also an ECAD proposal for an EU Emissions Trading Scheme for shipping to be launched by 2023.

Regulatory challenges of other kinds also continue to preoccupy the sector. The Ballast Water Management Convention is in force from 8 September 2017, and it has been estimated compliance could cost the industry in the region of US$100 billion. In light of the change of US administration, the sanctions landscape is more complex and uncertain than ever before and the change of leadership in the US has also impacted on crewing, with issues for operators with crew members potentially affected by stricter immigration controls.

The UK's projected exit from the European Union is another key development. The UK triggered Article 50 in March 2017, beginning the process to leave the EU in March 2019. There have been concerns about enforcement of English judgments and arbitration awards. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly affect enforceability. Arbitration awards will continue to be enforceable under the New York Convention, and it is likely that reciprocal EU–UK enforcement of court judgments may also be agreed.

Since our last edition there have been significant changes to the English law of marine insurance. The Insurance Act 2015 came into force on 12 August 2016 and reformed areas including disclosure by policyholders and their agents, warranties and insurers' remedies for fraudulent claims. The Enterprise Act 2016, in force from May 2017, has now introduced liability for insurers if claims are not paid within reasonable time. These changes have generally been welcomed by policyholders.

We would like to thank all the contributors for their assistance with producing this edition of *The Shipping Law Review*. We hope that this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

George Eddings, Andrew Chamberlain and Rebecca Warder
HFW
London
June 2017

Chapter 35

PORTUGAL

João Afonso Fialho, José Miguel Oliveira and Ângela Viana[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

Portugal's prime geographic location and its potential for growth in the ocean economy has led the Portuguese government to approve a number of strategic policies primarily aimed at strengthening traditional ocean activities (such as fishing and aquaculture, maritime transport, ports and the naval industry) and empowering emerging economic activities (such as blue biotechnology, ocean renewable energies and deep-sea strategic resources).

Seeking to transform Portugal's ocean economy value matrix, the Portuguese government intends to (1) leverage ocean science and R&D services to generate innovation and empower entrepreneurs, and (2) use ports as acceleration platforms for the development of ocean advances industries, integrated in global value chains. The following goals should be achieved by 2026:

a double the country's ocean economy to 6 per cent of the national gross value added (GVA) (approximately €8 million);
b increase shipping container handling by 200 per cent;
c increase naval industry GVA by 50 per cent (€60 million);
d increase ocean renewable energy GVA to €240 million;
e become the main Atlantic green shipping (LNG) and deep-sea resources innovation platform; and
f be the main Atlantic Ocean start-up hub.

As for ports and shipping, the Portuguese government undertook to adopt a number of policies, including, for example, to: (1) adapt infrastructures and equipment to the increase in the size of ships, the demand and hinterland connections; (2) improve port facilities' operational conditions; (3) develop a competitive merchant marine business sector; and (4) create 12,000 new jobs by 2030. The government launched a number of competitiveness strategy investments for 2016–2026 in order to meet these targets, which, in what concerns ports, translate into an overall investment of €2.1–2.5 billion, which is expected to correspond to a total load growth of 78 million tonnes (+88 per cent).

It is also worth mentioning that Portugal submitted its proposal for the Extension of the Continental Shelf to the United Nations Commission on the Limits of the Continental

1 João Afonso Fialho is a partner, José Miguel Oliveira is a managing associate and Ângela Viana is a senior associate at VdA.

Shelf on 11 May 2009. If the submission is successful, Portugal will have one of the largest Economic Exclusive Zones – an area bigger than India and equivalent to the continental EU (excluding UK and Sweden) – with all it entails for the country's shipping industry.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

The government intends to adopt a number of legislative measures to streamline and reorganise the maritime public service, value human resources and maritime knowledge and attract investment to the sector in order to achieve the objectives listed in Section I, *supra*. There are rumours that a number of legislative initiatives are being prepared, including a new Merchant Navy Law, the creation of a tonnage tax fiscal regime and the approval of new regulations on ship registry. The underlying idea is to take advantage of the fact that the country is party to the most relevant international treaties and conventions, and to adopt sophisticated internal laws capable of addressing the industry's concerns and boosting the economy.

III FORUM AND JURISDICTION

i Courts

The Maritime Courts were created in 1986, with the enactment of Law No. 35/86 of 4 September 1986. Currently, there is only one Maritime Court, the Maritime Court of Lisbon, with exclusive jurisdiction do deal in the first instance with maritime disputes materially connected with the Portuguese mainland. Maritime disputes occurring in Madeira and Azores are resolved at the first instance by local civil courts. Appeals are heard by the Court of Appeal and the Supreme Court as applicable.

Portuguese courts will generally find in favour of their own jurisdiction to rule on claims where parties in dispute and the claim itself have a close connection or link to Portugal.

Any proceedings brought before a Portuguese court in disregard of a foreign jurisdiction or arbitration clause may be challenged. It is up to the defendant to seek the formal dismissal of the proceedings based on the breach of the arbitration or foreign jurisdiction clause and ensuing lack of jurisdiction of the Portuguese courts. The court will then assess whether it has jurisdiction (if so, the court will hear the parties on the substantive proceedings) or, alternatively, rule that it has no jurisdiction and dismiss the claim.

ii Arbitration and ADR

The primary domestic source of law for arbitration in Portugal is Law No. 63/2011 of 14 December 2011 (the Voluntary Arbitration Law; VAL). The VAL is based on the UNCITRAL Model Law, albeit with differences and specificities tailored to the Portuguese legal system and the arbitral culture and practice.

The VAL is applicable to all arbitrations seated in Portugal although it contains some specific rules applicable to international arbitrations to make Portugal an attractive seat. Under the VAL, when international trade interests are at stake arbitrations are considered international.

The VAL requires arbitration agreements to be made in writing, otherwise they will be deemed null and void. This requirement is met if the agreement is recorded in a written document signed by the parties, in an exchange of communications providing a written record of the agreement, including electronic means of communication as well as any other type of support that offers the same guarantees of reliability, comprehensiveness and preservation.

References made in a contract to a document containing an arbitration clause constitute an arbitration agreement, provided that they are made in writing and that the reference is such as to make that clause part of the contract.

The VAL distinguishes between an arbitration agreement concerning an existing dispute, even if already pending before a state court (submission agreement), and an arbitration agreement arising from a given legal contractual or non-contractual relationship (arbitration clause). A submission agreement must specify the subject matter of the dispute and an arbitration clause must specify the legal relationship underlying the dispute. An arbitration agreement, in the form of an arbitration clause, can cover all future disputes arising out of or in connection with such contract.

In international arbitrations seated in Portugal, the validity of the arbitration agreement and the possibility of referring the dispute to arbitration are determined by reference to the requirements set out either by the law chosen by the parties to govern the arbitration agreement, by the law applicable to the subject matter of the dispute or by Portuguese law, according to which arbitration is allowed.

Any dispute involving economic interests may be referred to arbitration, save for those disputes that are exclusively submitted by a special law to the state courts (e.g., criminal and insolvency disputes) or to compulsory arbitration (e.g., certain labour disputes). In addition, disputes that do not involve economic interests may also be subject to arbitration provided that the parties are entitled to settle the disputed right.

Law No. 29/2013 of 19 April 2013 (the Mediation Law), established for the first time the general rules applicable to mediation carried out in Portugal, as well as the legal framework for civil and commercial mediation. Under the Mediation Law, disputes falling within the scope of civil or commercial matters and relating to interests of a patrimonial nature can always be subject to mediation. 'Non-patrimonial' disputes may nevertheless be subject to mediation if the parties are entitled to settle a disputed right. In any case, a mediation clause should be executed in writing. Agreements reached through mediation conducted by a mediator officially registered by the Ministry of Justice may be granted immediate enforceability without the need for judicial confirmation provided that certain requirements are met. In Portugal, it is still not common practice to resolve shipping and maritime disputes through mediation.

iii Enforcement of foreign judgments and arbitral awards

Enforcement proceedings of both foreign judgements and foreign arbitral awards are subject to previous *exequatur* proceedings in Portugal, the first under Brussels I and the second under the New York Convention, to which Portugal is a party. Although both instruments provide for different procedural steps in order to obtain *exequatur*, in practical terms there will be a great difference in choosing one over the other. The same goes for enforcement, although in addition to the grounds on which a judgment's enforcement can be challenged, the enforcement of arbitral awards is also subject to the grounds provided for in Article V of the New York Convention and the VAL.

IV SHIPPING CONTRACTS

i Shipbuilding

Shipbuilding contracts are mainly governed by Decree Law 201/98 of 10 July 1998, and subsidiarily by the provisions of the Civil Code applicable to works contracts. They must mandatorily be made in writing and parties are free to agree on its contents (the Norwegian Standard Form Shipbuilding Contract 2000 is widely accepted).

Unless otherwise agreed, title remains with the shipbuilder until delivery and payment in full of the agreed price.

The shipbuilder is statutorily responsible for repairing any defects reported by the owner within one year from delivery.

ii Contracts of carriage

Portugal has ratified the Hague Rules, which have been given the force of law in Portugal by means of Decree Law 37.748 of 1 February 1950. The Hague Rules apply mandatorily where the bill of lading was issued in the territory of a contracting state. Although not having signed or ratified the Visby Protocol, some of its provisions (notably those in regard to package and unit calculation) were transposed into internal law by means of Decree Law 352/86 of 21 October 1986 (as amended). Decree Law 352/86 applies on a subsidiary basis to the Hague Rules, also covering a number of issues that fall outside the scope of such Rules, as is the case of the pre-loading and post-discharge responsibilities and liabilities, calculation of package and units limitation. Decree Law 352/86 has also transposed into domestic law the limitation period of two years arising from the Hamburg Rules.

iii Cargo claims

As a general principle, any party to a contract of carriage that holds an interest over the cargo and can demonstrate that it has suffered loss or damage arising from the carrier's actions or omissions is entitled to sue for losses or damages. Taking the above into consideration, the rights to sue under a contract of carriage assists therefore to (1) the shipper and (2) the rightful holder of the bill of lading. In this respect, it is noteworthy mentioning that when in the presence of a: (1) straight bill of lading, the right to bring a claim remains with the named consignee; (2) order bill of lading, only the latest endorsee is eligible to sue; and (3) bill of lading to bearer, then it is up to the rightful holder at a given moment to sue.

In addition to the above, rights under a contract of carriage may also be validly transferred to third parties either by way of assignment of contractual position or subrogation in rights (which is typically the case when insurers indemnify cargo interests and then seek reimbursement from the carrier), as long as the relevant rules provided in the Civil Code are met.

iv Limitation of liability

Portugal is a party to both the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Seagoing Vessels and 1957 International Convention relating to the Limitation of the Liability of Owners of Seagoing Vessels and its 1979 Protocol (the 1957 Convention). In addition to the above conventions, it is also important to consider the limitations arising from the Hague Rules and those provided in Decree Law 352/86 of 21 October 1986 (as amended), which end up

transposing into domestic law some of the provisions contained in the Visby Protocol, notably those in regard to package and unit calculation, and Decree Law 202/98 of 10 July 1998 (on vessels limitation of liability).

Taking into consideration the reserves raised by Portugal at the time of its accession to the 1957 Convention, the following claims may be limited, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner:

a loss of life of, or personal injury to, any person being carried in the vessel, and loss of, or damage to, any property on board the vessel; and

b loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the vessel for whose act, neglect or default the owner is responsible or any person not on board the vessel for whose act, neglect or default the owner is responsible – provided, however, that with regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his liability when the act, neglect or default is one that occurs in the navigation or the management of the vessel or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers.

The owner and the insurer for the owner, the ship merchant, the master, crew members and other servants can request for limitation of their liability in the cases named above. Liability can be limited under the 1957 Convention, as follows:

a where the occurrence has only given rise to property claims of an aggregate amount of 66.67 units of account for each tonne of the vessel's tonnage;

b where the occurrence has only given rise to personal claims of an aggregate amount of 206.67 units of account for each tonne of the vessel's tonnage;

c where the occurrence has given rise both to personal claims and property claims of an aggregate amount of 206.67 units of account for each tonne of the vessel's tonnage, of which a first portion amounting to 140 units of account for each tonne of the vessel's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting to 66.67 units of account for each tonne of the vessel's tonnage shall be appropriated to the payment of property claims. Provided, however, that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund.

The unit of account mentioned above is the special drawing right, as defined by the International Monetary Fund. The amounts mentioned in points (a) to (c) above shall be converted into euros on the basis of the value of the euro on the date on which the owner has constituted the limitation fund, made the payment, or given a guarantee that, under the relevant law, is equivalent to such payment.

The 1957 Convention was incorporated into domestic law by virtue of Decree Law 49028 of 26 May 1969. Reference must also be made to Article 12 of Decree Law 202/98, which provides that, in addition to the limitation of liability provisions set forth in any international conventions to which Portugal is a party, and where the claims at stake are other than those contained in said conventions, the owner can limit his or her liability to the vessel and to the freight at risk by abandoning the vessel to its creditors and in order to establish a limitation of liability fund.

V REMEDIES

i Ship arrest

Portugal has ratified the Brussels Convention. Under the Brussels Convention, any person alleging to have a maritime claim (*fomus bonus iuris*) is entitled to seek the arrest of a ship. A 'maritime claim' is a claim arising out of one or more of the situations named under Article 1.1 of the Brussels Convention.

Outside the scope of the Brussels Convention, i.e., for purposes of obtaining security for an unlisted maritime claim (e.g., arrest for a ship sale claim, unpaid insurance premiums, P&I dues, among others) or to seek the arrest of a vessel sailing under the flag of a non-contracting state, claimant must make use of the provisions of the Civil Procedure Code. In this case, and aside from the jurisdiction issue that needs to be properly assessed, in addition to provide evidence on likelihood of its right or credit (*fomus bonus iuris*), the claimant shall also produce evidence that there is a risk that the debtor or arrestor may remove or conceal the ship (security for the claim) or that the ship may depreciate in such a way that at the time that the final judgment is handed down in the main proceedings the ship is no longer available or has substantially decreased in value (*periculum in mora*).

With the arrest in place, the claimant is required to file the initial claim for the main proceedings of which the injunction will form an integral part within 30 days as of the arrest order. During the proceedings, the parties are free to settle by agreement and withdraw the claim. If the main claim should be filed with a foreign court, then the judge dealing with the arrest application must set out the period within which the claimant must commence proceedings on the merits in the appropriate jurisdiction. The defendant is entitled to post a security before the relevant court in the amount of the claim brought by the claimant and seek for the release of the vessel pending foreclosure and auction.

ii Court orders for sale of a vessel

The arrestor or any interested party can seek the judicial sale of an arrested vessel. In principle, the sale cannot take place during the arrest proceedings, being therefore dependent on the outcome of the main claim and requiring the bringing of new enforcement proceedings. In a nutshell, with the enforcement application lodged, the court will notify the debtor (owner/charter and other interested parties) to settle the claim or to oppose to the sale. If the debtor fails to pay or if no opposition is lodged in time, the court will order the sale.

The above notwithstanding, in very limited situations (e.g., when in view of the lack of maintenance the arrested vessel is substantially depreciating its value) the Maritime Court has authorised the anticipated sale of vessels within the arrest proceedings. To that extent, the applicant must request in writing authorisation for the anticipated sale of the vessel, ground such request and propose a minimum amount for the sale. In view of the information and evidence produced, the judge will authorise the sale if the arresting party reaches an agreement with respect thereof with the claimant or, alternatively, the judge is convinced by the facts presented.

The judge will determine how the sale will take place (public auction, private negotiation, sealed bids) and will appoint an auctioneer who will be responsible for the relevant proceedings and arrangements (organising the tender and visits to the vessel, collecting the bids, getting the proceeds of the sale, liaising with court, etc). The vessel is typically sold 'as is and where is'

and free from any charges or encumbrances. In addition to the reimbursement of the relevant costs and expenses incurred, the auctioneer will be entitled to remuneration to be determined by the court and that typically corresponds to 5 per cent of the sale price.

VI REGULATION

i Safety

Portugal has ratified SOLAS and its 1978 and 1988 Protocols. In light of Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004, on enhancing ship and port facility security, Portugal has also adopted Part A (mandatory for all ships flying the Portuguese flag) and Part B of the ISPS Code. In addition, it is worth mentioning that the Colregs, MARPOL, the CLC Convention and other international conventions on pollution and environment, as detailed below, are also in force, with all it implies in terms of safety.

The Direcção Geral de Recursos Naturais, Segurança e Serviços Marítimos (DGRM), as the Portuguese maritime administration, is responsible for supervising, controlling and manage general safety and for implementing the obligations undertaken by Portugal in this respect.

In addition, Portugal has ratified the most relevant international conventions and treaties adopted by the International Maritime Organization and the International Labour Organization on safety and security.

The European Maritime Safety Agency (EMSA) is headquarter in Lisbon. The EMSA provides technical assistance and support to the European Commission and Member States in developing and implementing European Union legislation on maritime safety, ship pollution and maritime security.

ii Port state control

The DGRM is the entity responsible for exercising port state control over all foreign vessels calling in and sailing within Portuguese waters and, consequently, for ensuring that they meet and comply with the international safety, security and environmental standards, and that their crews have adequate living and proper working conditions. Where deficiencies are uncovered during the inspections, the DGRM holds powers to assess fines and detain the vessel until the reported deficiencies are duly rectified.

Portugal is a member state of the Paris MoU.

iii Registration and classification

All types of merchant vessels can be found under the Portuguese flag: product and chemical carriers, bulk carriers, container vessels, gas tankers, cruiseships, crude oil, etc. To fly under the Portuguese flag, a merchant vessel must be registered either with the Ships Conventional Registry or the International Shipping Registry of Madeira (MAR). In a nutshell, the Conventional Registry implies registration with both the Harbour Master's Office and the Commercial Registry, while registration with the MAR implies registration with its Technical Commission and also the Commercial Registry. Vessels under construction are eligible for registration. Dual registration and flying in is also admissible in both the Ship Conventional Registry and the MAR.

The MAR offers a very competitive tax regime, applicable to both vessels and shipping companies, full access to EU cabotage and full application of the relevant international maritime conventions. In addition, when compared with the Ships Convention Registry, the

MAR has fewer requirements in terms of the nationality of the crew members and offers a very flexible and competitive mortgage system (e.g., mortgagor and mortgagee can, by means of a written agreement, freely choose the law governing the mortgage).

In terms of classification, there are a number of class societies approved, such as, to name a few, RINAVE/Bureau Veritas, DNV GL, Loyd's Register, the American Bureau of Shipping and Class NK.

iv Environmental regulation

The following conventions and relevant protocols regarding pollution and the environment are applicable:

a MARPOL (73/78), its optional annexes III, IV, V and the 1997 Protocol on annex VI;
b the 1992 Protocol to Amend the 1971 International Fund for Compensation for Oil Pollution Damage;
c the CLC 1992);
d the 2003 Protocol to Amend the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
e the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) and its 2000 Protocol (OPRC-HNS Protocol); and
f the Bunker Convention.

v Collisions, salvage and wrecks

In regard to collisions, the following international conventions were ratified by Portugal:

a the Collision Convention 1910;
b the Collision Convention 1952;
c the Criminal Collision Convention 1952; and
d the Colregs.

Under the Collision Convention 1952, a claim for collision can be brought before a Portuguese court in any one of the following situations: (1) Portugal is the only country where the defendant has his or her habitual residence or place of business; (2) Portugal is the country where arrest of the defendant's vessel has been effected or of any vessel belonging to the defendant which can be lawfully arrested or where arrest could have been effected and bail or other security has been furnished; or (3) collision occurred within the limits of a Portuguese port or within its inland waters. When there is a collision between a vessel sailing under the Portuguese flag and another vessel sailing under the flag of a non-contracting state to any of the above conventions and regulations, one must resort to the rules set forth in the Code of Civil Procedure, which provides that the claimant must commence an action before the court of the place where (1) the collision occurred (provided it was in Portuguese territorial waters); (2) the defendant is domiciled; (3) the vessel took refuge; or (4) the vessel called for the first time after collision.

Salvage is governed by the 1910 Salvage Convention. It must be added that although Portugal did not ratify the 1989 Salvage Convention, Decree Law No. 203/98 of 10 July 1998 transcribes most of its provisions into domestic law.

Finally, as to wrecks, Portugal is not a signatory of the Nairobi WRC 2007. The removal of wrecks must, therefore, be dealt in view of Decrpee Law No. 64/2005 of 15 March 2005, which, among others, lists the entities that hold powers to order the removal of the wreck and the obligations to the owners in respect thereof.

vi Passengers' rights

Portugal has ratified the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, as amended by its 2002 Protocol. The limitation regime set forth therein on passenger and luggage claims is therefore applicable. Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents is also of relevance.

vii Seafarers' rights

Portugal has ratified the STCW Convention. The STCW Convention prescribes minimum standards relating to training, certification and watchkeeping for seafarers, which countries are obliged to meet or exceed. By means of Decree Law No. 280/2001 of 23 October 2001 (as amended by Decree-Law No. 206/2005 of 28 November 2005 and Decree Law No. 226/2007 of 31 May 2007), Portugal has also approved domestic rules governing the profession of seafarer, including those related to their training and certification. More recently, with the approval of Decree Law No. 34/2015 of 4 March 2015, Directive 2012/35/EU, of the European Parliament and of the Council of 21 November 2012, was transposed into domestic law and the Manila Amendments to the STCW Convention were duly incorporated at a national level.

On 12 May 2016, Portugal ratified the Maritime Labour Convention 2006 (MLC), having become the 78th member state of the International Labour Organization that has committed to the decent work standards of the MLC. As the fourth pillar of the international maritime legal regime, in complement to key Conventions of the International Maritime Organization, the MLC establishes and protects decent working and living conditions for seafarers. The MLC entered into force in Portugal on 12 May 2017.

VII OUTLOOK

In view of the legislative initiatives in place and strategic goals established by the government for the sector, it is expected that the Portuguese shipping industry will experience a considerable boom in the coming years, namely with respect to LNG and specialised high-value vessels. This expansion will dramatically increase if the country's submission for the extension of its continental shelf is successful.

JOÃO AFONSO FIALHO

VdA

João Afonso Fialho joined VdA in 2015. He is one of the partners of the projects – infrastructures, energy and natural resources practice group and a member of the oil and gas practice group.

With more than 20 years of practice in the transport sector, his experience in shipping includes the contract of international transport, particularly in what concerns advice to owners, charterers, P&I clubs and port operators, as well as commodities traders and various industry brokers. Advice is rendered in most shipping industry legal matters, with relevance in what concerns the bunkering industry, as well as assistance and salvage at sea, ship arrest, customs and maritime litigation.

João also has an extensive track record with construction contracts and ship acquisition, charter parties, bill of lading, ship finance, mortgage and insurance.

Particular reference should be made to his experience in the specific matters arising from shipping activities associated with the oil and gas cluster – including wreck removal and environmentally sensitive issues.

JOSÉ MIGUEL OLIVEIRA

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José Miguel Oliveira joined VdA in 2015. He is managing associate in the projects – infrastructure, energy and natural resources practice group. He has been actively involved in several transactions, namely in Portugal and Angola, advising clients in sectors such as oil and gas, energy, distribution/wholesale and transport (in particular, shipping and ports).

ÂNGELA VIANA

Ângela Viana joined Vieira de Almeida & Associados in 2015. She is senior associate in the projects – infrastructure, energy and natural resources practice, where she has been actively involved in several transactions in Portugal and Angola, with a particular focus on energy, mining, investment, water and waste management and shipping. She has been particularly active in providing assistance to several mining projects in Angola, notably in the negotiation and renegotiation of mining investment contracts, structuring and restructuring of joint ventures, farm-ins and farm-outs, and assisting some of the world leaders of the mining sector.

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