THE SHIPPING LAW REVIEW

FOURTH EDITION

Editors
George Eddings, Andrew Chamberlain and
Rebecca Warder

THE LAWREVIEWS

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Nick.Barette@thelawreviews.co.uk

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CONTENTS

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
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Chapter 10

ANGOLA

João Afonso Fialho, José Miguel Oliveira and Andreia Tilman Delgado[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

Angola's economy is mainly driven by its oil industry, which contributes to approximately 50 per cent of the GDP and 70 per cent of the country's revenues, and represents around 90 per cent of exports. Even though during the past decade the country has exhibited strong economic growth (averaging two digits), the fall in oil prices, starting in 2014, and a weak showing from the non-oil sector, led to a major structural shock, with business confidence hitting rock bottom in 2016. According to the African Development Bank Group, growth of GDP is projected to remain subdued at 3.5 per cent in 2017, growth of the oil sector will average 4 per cent, while the non-oil sector is expected to show a small improvement, growing by 3.4 per cent, driven mainly by a strong recovery in agriculture.

During the period 2010–2015 importations have increased at almost 2 per cent per year, while exports have decreased at an annualised rate of minus 5.5 per cent, with all it means in terms of the numbers of vessels calling in and calling out of Angola. It is worth mentioning that the most recent imports are led by special purpose ships, such as floating docks, floating cranes and dredgers, which, according to the Observatory of Economic Complexity, represent more than 9 per cent of the total imports.

The country's major commercial ports are located in Luanda, Cabinda, Lobito, Luanda, Namibe and Soyo (which is mostly allocated to the oil and gas industry). Over the past years, investments totalling millions of US dollars were made to expand, equip and modernise these and other infrastructure, such as railways and roads. More recently, it was announced that the Angola Sovereign Fund will invest US$180 million in building the first deep-water port in the country (works are under way), a project to be developed in Caio, Cabinda province. It is said that this new port will feature a modern shipyard, dry dock, an industrial zone and a duty-free zone, and that it will receive the first ships at the end of 2017. Moreover, there are rumours that the government plans to construct and equip a land and river terminals at Soyo to support oil operations at the Kwanza basin, as well as other investments in infrastructure and logistics to boost economic growth. Fisheries and coastal shipping are also sectors to which the government is paying close attention, not only to support local supplies and reduce imports, but also to promote effective transportation of goods and people along the country's coastline.

1 João Afonso Fialho is a partner, José Miguel Oliveira is a managing associate and Andreia Tilman Delgado is a trainee at VdA.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Since its independence in 1975, Angola has been steadily revising its laws and regulations, alongside ratifying and adhering to a number of international treaties and conventions. In this respect, it is noteworthy that a number of pivotal conventions on maritime and shipping-related matters applicable in the country result from when Angola was still a Portuguese overseas territory (e.g., the 1952 Arrest Convention). In fact, although after its independence Angola has not specifically adhered to the treaties and conventions to which Portugal was already a party as it was formally required under the Vienna Convention on Succession of Treaties, it is commonly accepted that the treaties ratified by Portugal and extended to Angola at that time still apply in light of Articles 58 and 59 of the Angolan Constitution, which was approved immediately after the country's independence, and which provided for the survival of any Portuguese laws and regulations in force at the time of independence, as long as they did not conflict with the word and spirit of the Constitution.

In terms of domestic laws, over the past five years a number of key statutes have been approved, for example, Law No. 27/12 of 28 August 2012 (the Merchant Navy Law). The Merchant Navy Law is a landmark achievement in terms of shipping and maritime legislation, as it is the first statute that seeks to regulate all maritime and port activities in a consistent manner, governing matters related to navigational, technical and security rules, registration duties and procedures for national and foreign vessels, licensing and other requirements applicable to marine and port-related activities, to name a few. In addition, in view of its impact on the local industry, it is worth mentioning a number of important statutes approved in 2014, notably: (1) Presidential Decree No. 50/14 of 27 February 2014, which approved the regulations applicable to the provision of shipping agency services; (2) Presidential Decree No. 51/14, also of 27 February 2014, which approved the regulations applicable to the carrying out of ship-management services; and (3) Presidential Decree No. 54/14 of 28 February 2014 (the Merchant Navy Regulations), which approved the rules applicable to merchants wishing to be engaged in the provision of cabotage or international transportation of goods and passengers (this statute limits the provision of cabotage to Angolan citizens). More recently, the Regulations on Seafarers and Maritime Personnel and the Regulations on Maximum Safety Capacity of Vessels and Ships were respectively approved by Presidential Decrees Nos. 78/16 and 79/16, both on 14 April 2016. These two statutes are also very important and show the attention that the Angolan government is paying to the sector. It is also important to mention that Angola is a party to UNCLOS, the 1995 UN Fish Stocks Agreement, and a number of other important treaties, as detailed below.

III FORUM AND JURISDICTION

i Courts

The Angolan judicial system contains three categories of court: (1) the Supreme Court, which is the higher body in the hierarchy of the Angolan courts; (2) the courts of appeal; and (3) the district courts. Courts of appeal have jurisdiction to review and revise the district court's contested decisions. Likewise, the Supreme Court has a corresponding power in what regards to contested decisions rendered by the courts of appeal.

District courts have jurisdiction over the areas in which they are established and can be divided and organised by expertise under what are known as 'rooms of expertise'. Existing since 1997, the Room of Expertise for Maritime Issues has jurisdiction over any maritime

dispute submitted to its jurisdiction, including disputes on shipbuilding and repair contracts, purchase and sale agreements, charterparties and bills of lading, and precautionary measures against ships and their cargo.

In general, Angolan courts will find themselves competent to rule on claims where parties in dispute and the claim itself has a close connection or link to Angola.

ii Arbitration and ADR

The primary domestic source of law relating to arbitration in Angola is Law No. 16/03 of 25 July 2003 (the Voluntary Arbitration Law; VAL). The VAL governs both domestic and international arbitration.

According to the VAL, arbitration will be of an international nature when international trade interests are at stake, in particular, when the parties to the arbitration agreement have business domiciles in different countries at the time of the agreement's execution; or the place of performance of a substantial part of the obligations resulting from the legal relationship from which the dispute arises is situated outside the countries where companies have their business domiciles; or when the parties have expressly agreed that the scope of the arbitration agreement is connected with more than one state.

The general rule under the VAL is that parties are free to submit their disputes to arbitration, except for disputes that fall under state courts' exclusive jurisdiction and disputes that relate to inalienable or non-negotiable rights. As such, disputes relating to the following issues, *inter alia*, may be submitted to arbitration: commercial and corporate law, maritime and shipping matters, securities transactions and intra-company disputes.

The arbitration agreement may consist of either an arbitration clause or a submission agreement. The arbitration clause concerns potential future disputes arising from a given contractual or extracontractual relationship, whereas the submission agreement arises from existing disputes, whether or not they have already been submitted to a state court. The VAL treats both types of arbitration agreement on equal footing.

Subject to any special law requiring a stricter form, the arbitration agreements must be made in writing. An arbitration agreement is considered to be in writing if documented either in a written instrument signed by the parties or in correspondence exchanged between them. The VAL allows arbitration agreements to be incorporated in a contractual document that is not signed by both parties, simply by reference to general terms and conditions on another contract.

Pursuant to the VAL, an arbitration agreement shall be declared null and void when entered into in breach of formal requirements or provisions on legitimacy, scope and arbitration exclusion.

Under the VAL, parties in domestic and in international arbitration are free to designate the substantive law or rules of law applicable to the merits of the case. In both domestic and international arbitration, parties may also authorise the tribunal to decide *ex aequo et bono*, provided they do so expressly. If, however, parties in domestic arbitration fail to agree on the substantive applicable law, the arbitral tribunal shall decide in accordance with Angolan substantive law. As to international arbitration, failing party agreement, the tribunal shall apply the law resulting from the rules on conflict of laws.

In addition to the VAL, Law No. 12/16 of 12 August 2016 sets forth the rules applicable to the establishment and organisation of the mediation and conciliation procedures as

alternative dispute mechanisms. With the enactment of this statute, disputes in civil, commercial (including maritime), employment, family and criminal matters can now be submitted to mediation, provided that they regard waivable rights.

iii Enforcement of foreign judgments and arbitral awards

Angolan law allows the parties to a contract to agree on a foreign jurisdiction and arbitral tribunal to resolve any conflicts arising under the relevant agreement unless those conflicts are covered by provisions that, for any reason, are subject to mandatory Angolan law or jurisdiction.

Article 1094 of the Angolan Civil Code of Procedure sets out that any judgment issued by a foreign court is, as a rule, subject to review and confirmation by the Supreme Court in order to be valid and enforceable locally (obtain the *exequatur*). That is to say, unless a special regime applies, the enforcement of any foreign judgment is subject to the consideration of Angola's highest court.

Considering that Angola has recently acceded to the 1958 New York Convention, by means of Resolution 38/16 of 12 August, Angolan courts are *prima facie* to give effect to an arbitration agreement and award rendered in other signatory to the New York Convention. Where the arbitral award was not granted by another contracting state, to be enforceable it must have been previously reviewed and confirmed by the Supreme Court.

IV SHIPPING CONTRACTS

i Shipbuilding

Angola does not have specific legislation dealing with shipbuilding contracts. These contracts are often treated as sale and purchase agreements and therefore are subject to the principle of private autonomy of the contracting parties. The parties can negotiate the terms and conditions of the contract in accordance with Article 405 of Angola's Civil Code. Under the Civil Code, contractual risk and ownership is transferred upon delivery and full payment of the price, unless otherwise agreed.

The above notwithstanding, it is important to stress that pursuant to the Merchant Navy Law, registry of shipbuilding contracts before the Maritime National Administration is mandatory.

ii Contracts of carriage

The Hague Rules are applicable in Angola. Under the Hague Rules, the carrier is liable with regard to the consignee in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods. Contracts of carriage are therefore governed by the terms of the Hague Rules and the Angolan Commercial Code (Articles 538 et seq.) in the absence of detailed provisions set out in the relevant contract.

It is important to note that if the shipment takes place between two countries party to the Hague Rules (i.e., loading and place of destination) these rules shall apply. However, if the country of destination of the goods is not a signatory to the Hague Rules, then the applicable law would be determined by Angolan courts in accordance with the principle *lex rei sitae*.

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 losses or damages arising from the carrier's actions or omissions is entitled to sue for losses or damages. Taking this into consideration, the right to sue under a contract of carriage rests with: (1) the shipper, and (2) the rightful holder of the bill of lading. When in the presence of a straight bill of lading, the right to bring a claim remains with the named consignee; with an order bill of lading, only the latest endorsee is eligible to sue; and with a 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

The LLMC Convention is not applicable in Angola. Conversely, both the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Seagoing Vessels and the 1957 International Convention relating to the Limitation of the Liability of Owners of Seagoing Vessels are applicable. In addition to the above conventions, it is also important to consider the limitations arising from the Hague Rules, where applicable. Furthermore, it is also important to notice that the Merchant Navy Law foresees some special rules with respect to the limitation and sharing of liability; for example, where collision was caused as a result of fault or wilful misconduct of the crew, Article 78 of the Merchant Navy Act provides that damages will be computed and shared between owners *pro rata* to the severity of each party crew's fault, and that if it is not possible to determine which vessel caused the accident, all intervening vessels shall be jointly liable for damages and losses arising therefrom.

V REMEDIES

i Ship arrest

The Brussels Convention is applicable in Angola. 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) or to seek the arrest of a vessel sailing under the flag of a non-contracting state, the claimant must make use of the provisions of the Civil Procedure Code. In this case, aside from the jurisdiction issue that needs to be properly assessed, and in addition to providing evidence on the 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 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 timely lodged, the court will order the sale. To that extent, the judge will determine on 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 sold 'as is and where is' and free from any charges or encumbrances.

The proceeds arising from the sale of the vessel will be used for paying the claimant/relevant creditors. In this regard, please be advised that the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (the 1926 Convention) is also applicable in Angola. Generally, if a claim affords a maritime lien set forth by the 1926 Convention, then it would have priority over maritime liens established in the Commercial Code. Otherwise, Article 578 of the Commercial Code applies, which specifies the following ranking for maritime liens:

a liens accruing from the last voyage:
- legal costs incurred in in the common interest of all creditors;
- remuneration for salvage;
- pilotage and towage;
- harbour dues;
- costs of custody;
- crew wages;
- supplies and repairs to the vessel;
- insurance premiums;

b other maritime liens:
- any unpaid portion of the purchase price;
- repair costs accruing during the last three years;
- unpaid amounts arising from shipbuilding contracts;
- outstanding insurance premiums other than those relating to the last voyage;
- sums due to shippers in respect of loss or damage to cargo;
- mortgages, hypothec and similar charges;
- all remaining claims *in rem* rank *pari passu*.

VI REGULATION

i Safety

The Merchant Navy Law sets forth in Articles 45 et seq. the overriding rules and principles on the safety and security of navigation and life at sea. Under Article 52, the responsibility for supervising, controlling and licensing the activities carried out at the sea relies with the Port and Maritime Institute of Angola (IMPA), in its role as maritime authority.

In addition, it is worth mentioning that for the past few years Angola has made a consistent effort to adhere to and ratify the most relevant international conventions and treaties adopted by the International Maritime Organization and the International Labour Organization on safety and security, including the CLC Convention and other international conventions on pollution and environment, as detailed below.

ii Port state control

IMPA is also responsible for exercising port state control over all foreign vessels calling in and operating within Angola waters. IMPA, either directly or through a class society it has appointed, holds the authority to inspect all vessels operating in Angola and to assess fines for infringements detected. In addition to the assessment of (heavy) fines, the lack of compliance with the applicable laws and regulations may lead to the retention of the relevant vessel. In such cases, a guarantee must be put before IMPA as a precondition to the release of the vessel.

iii Registration and classification

The requirements applicable to Angolan flagging and vessel registration are governed by the Merchant Navy Law and by old regulations that date back to the period prior to Angolan independence, in particular (1) the Commercial Code; (2) the Commercial Registration Code; and (3) the Harbour Master General Regulations. Despite its goal, the Merchant Navy Law did not manage to clarify the issues raised under the old regulations on vessel registration. It is expected that such clarifications will follow from the regulations that are yet to be approved.

In a nutshell, the registration of a merchant vessel in Angola requires two steps: (1) registration with the Harbour Master; and (2) registration with the Commercial Registry. The main steps required to register a vessel can be summarised as follows: (1) performance of survey by IMPA (directly or resorting to a class society operating in the country – e.g., Bureau Veritas, DNV GL, to name a few); (2) registration with the Harbour Master; and (3) completion of the commercial registration with the Commercial Registry.

The above notwithstanding, it is important to stress that before the Merchant Navy Law was enacted, Angolan authorities' interpretation and the practice relayed by the local authorities was that whenever a vessel was purchased by an Angolan entity and was imported to Angola in order to perform operations therein, it was necessary to have the vessel registered before IMPA. This interpretation was confirmed by two Circular Letters (Circular Letter 264/DPP/SNA/2011 issued by the National Customs Service of Angola on 30 December 2011, and Circular Letter 02/GDN/2003 issued by the Angolan National Directorate of Merchant Navy and Ports on July 2003) and seems to be aligned with the Merchant Navy Regulations.

Registration with the Harbour Master (and IMPA) is, as it is international standard, dependent on the meeting of a number of legal and technical requirements, which vary in view of the type of vessel (e.g., merchant vessels, fishing vessels, tugs, SOV).

Neither the recently enacted Merchant Navy Law nor the old regulations are clear as to the situations in which it is mandatory to register a vessel in Angola, and consequently acquire Angolan nationality and fly Angolan flag. One of the few situations that raises no doubts in this respect refers to the carrying out of cabotage activities, which, in light of the Merchant Navy Regulations, seems to be limited to vessels flying the Angolan flag.

iv Environmental regulation

In addition to the Merchant Navy Law, the Environmental Law (Law No. 5/98, of 19 June 1998) and its ancillary regulations and related statues (e.g., Law No. 6-A/04, of 8 October 2004 – Law on Leaving Aquatic Recourses, as amended), the following international conventions and relevant protocols are currently in force in Angola:

a 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, as amended in 1973 and 1991;

b 1973 International Convention for the Prevention of Pollution from Vessels MARPOL 73/78 and Annexes I/II, III, IV and V;

c 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 90);

d 1992 Protocol to Amend the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC 1969);

e 1992 Protocol to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND);

f 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea; and

g 1996 Protocol to Amend the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which regulates environment protection.

v Collisions, salvage and wrecks

In regard to collisions, the following international conventions are enforceable in Angola: (1) the Collision Convention 1910; (2) the Collision Convention 1992; (3) the Criminal Collision Convention 1952; and (4) the Colregs. These conventions are supplemented, as the case may be, by domestic regulation, namely Articles 73 et seq. of the Merchant Navy Law and Article 664 et seq. of the Commercial Code.

Under the 1952 Convention, a claim for collision can be brought before an Angola court in any one of the following situations: (1) Angola is the only country where the defendant has its habitual residence or place of business; (2) Angola 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 an Angolan port or within its inland waters.

When there is a collision between a vessel flying under the Angolan flag and another vessel flying 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 Angolan territorial waters); (2) the defendant is domiciled; (3) the vessel took refuge; or (4) the vessel called for the first time after collision.

As a general rule, Angolan courts will rule in favour of compensating any sort of damage resulting from collisions. The claimant must demonstrate the causal link between

the damage and the collision. From our experience, the demonstration of the causal link can be problematic as the Angolan law requires an adequate causal nexus between the action and damage for liability to occur (pursuant to Article 563 of the Civil Code). It should be noted that the concepts of indirect and consequential damage are not clearly distinguished for indemnity purposes. Compensation is only due for those damages that the party would probably not have suffered if the collision did not take place. This excludes consequential and indirect damages. In a nutshell, compensation should cover not only the damages directly caused by the collision but also the advantages the non-defaulting party would have benefited if the collision had not occurred.

Salvage is governed by the 1910 Salvage Convention and, where applicable, the provisions named in the Merchant Navy Law (Articles 81 et seq.) and Commercial Code (Articles 676 et seq.). The salvage contract must be in written form (Lloyd's standard form of salvage agreement is acceptable). If there is no salvage contract and the parties fail to agree, the Commercial Code provides that the compensation amount shall be set by the court, on the grounds of equity, taking into consideration, *inter alia*, the nature of the salvage operation, the current value of the salvaged goods, after deducting expenses, the expenses and losses incurred by the salvor, the number of individuals who actively participated and the danger of the operation. Finally, the compensation amount needs to cover any expenses of the salvors, except fees, costs, rights, taxes and conservation, storage and assessment expenses relating to the sale of the saved goods (if applicable).

Lastly, a judicial claim for the reimbursement of salvage compensation can be filed with the court with jurisdiction over the place where the salvage operation took place; or in the court of residence of the owners of the saved goods; or of the vessel's flag; or where the rescued vessel is found, as per the Commercial Code. According to the law, salvage claims ought to commence within two years following the day on which the salvage operations are concluded or were interrupted.

Finally, as to wrecks, Angola is not a signatory of the Nairobi WRC 2007. The removal of wrecks must therefore be dealt in light of the domestic law, namely the Merchant Navy Law, the Environmental Law and ancillary statutes and regulations.

vi Passengers' rights

Angola is not a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. Generally, carriage of passengers is governed by the Angolan Commercial and Civil Codes and the Consumer Law, in addition to the individual terms of the contract of carriage. Carrier's liability is mostly fault-based. In the event of delays, unexpected changes of route, damages or loss of carriage, passengers are entitled to claim compensation for losses and damage caused by an action attributed to the carrier, regardless of its wilful misconduct.

vii Seafarers' rights

Angola adopted the STCW Convention 1978. This convention prescribes minimum standards relating to training, certification and watchkeeping for seafarers, which countries are obliged to meet or exceed. In addition, with the enactment of the Merchant Navy Law and recent approval of the Regulations on Seafarers and Maritime Personnel, Angola now incorporates the overriding principles vested in the Maritime Labour Convention 2006 into domestic law.

VII OUTLOOK

The approval of the Merchant Navy Law and its ancillary regulations has been seen as a landmark achievement to the country's maritime and shipping industry. It brings together a number of national, regional and international principles and laws, making Angola one of the most prominent countries in the continent in terms of shipping law, which provides legal certainty. It is hoped that the local authorities and courts have the means, resources and know-how required to take advantage of the existing legal framework and definitely put Angola among the regional potencies in terms of shipping.

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

VdA

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).

ANDREIA TILMAN DELGADO

VdA

Andreia joined Vieira de Almeida & Associados in 2015. She is trainee in the oil and gas area of practice, where she has been actively involved in several transactions.

VDA

Av. Duarte Pacheco, 26
1070 – 110 Lisboa
Portugal
Tel: +351 21 311 3478/422
+351 91 701 86 39 (J A Fialho Mobile)
+351 91 537 0144 (J M Oliveira Mobile)
jaf@vda.pt
jmo@vda.pt
atd@vda.pt
www.vda.pt