



ICLG

The International Comparative Legal Guide to: **Shipping Law 2019**

7th Edition

A practical cross-border insight into shipping law

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Shipping Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of shipping laws and regulations.

It is divided into two main sections:

Seven general chapters, which explore topical issues affecting shipping law from a cross-border perspective.

Country question and answer chapters. These provide a broad overview of common issues in shipping laws and regulations in 44 jurisdictions.

All chapters are written by leading shipping lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Andrew Bicknell of Clyde & Co LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Angola

João Afonso Fialho



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VdA

1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

The following international conventions are enforceable in Angola:

- 1910 International Convention for the Unification of Certain Rules of Law Related to Collision Between Vessels;
- 1952 International Convention for the Unification of Certain Rules concerning Civil Jurisdiction in Matters of Collision;
- 1952 International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation; and
- 1972 International Regulations for Preventing Collisions at Sea (“COLREGS”), as amended in 1981.

The above conventions are supplemented by domestic regulation, notably Article 73 *et seq.* of Law No. 27/12 of 28 August 2012 (the “Merchant Navy Law”) and Article 664 *et seq.* of the Commercial Code.

(ii) Pollution

The following international conventions and relevant protocols have been adopted by Angola:

- 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, as amended in 1973 and 1991;
- 1973 International Convention for the Prevention of Pollution from Vessels (“MARPOL 73/78”) and Annexes I/II, III, IV and V;
- 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (“OPRC 90”);
- 1992 Protocol to Amend the 1969 International Convention on Civil Liability for Oil Pollution Damage (“CLC 1969”);
- 1992 Protocol to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (“FUND”);
- 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea; and
- 1996 Protocol to Amend the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which regulates environmental protection.

At a domestic level, one must consider the relevant provisions of the Merchant Navy Law, the Environmental Law (Law No. 5/98 of 19 June 1998) and its ancillary regulations and related statutes.

(iii) Salvage / general average

Salvage is governed by the 1910 Salvage Convention and, where applicable, the provisions named in the Merchant Navy Law (Article 81 *et seq.*) and in the Commercial Code (Article 676 *et seq.*).

General average is governed by the provisions of the Commercial Code (Article 634 *et seq.*).

(iv) Wreck removal

Angola is not a signatory of the Nairobi International Convention on the Removal of Wrecks, 2007. The removal of wrecks must be dealt with in light of the domestic law, namely the Merchant Navy Law, the Environmental Law and ancillary statutes and regulations.

(v) Limitation of liability

Angola is not a signatory of the Convention on Limitation of Liability for Maritime Claims. 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. Furthermore, it is important to note that domestic law provides some special rules in respect of the limitation and sharing of liability (e.g., where collision was caused due to fault or wilful misconduct of the crew, damages will be computed and shared between owners *pro rata* to the severity of each crew party’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).

(vi) The limitation fund

The limitation fund can be established in any way admitted in the law and is dependent on the filing of a proper application before the relevant court. The application must identify/list:

- the occurrence and damages;
- the amount of the limitation fund;
- how the fund will be established;
- the amount of the reserve; and
- the known creditors and the amount of their claims.

The application must be filed along with the vessel’s documents supporting the calculation of the amount of the fund (e.g., a tonnage certificate).

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

The Port and Maritime Institute of Angola ("IMPA"), in its role as the Maritime Authority, is the governmental body in charge of investigating and responding to any maritime casualty. In performing its duties, the IMPA is assisted by the Harbourmaster with jurisdiction over the area where the casualty took place. In case of (eventual) environmental damage, environment authorities may also be called to act, notably the Ministry of Environment.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

The 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, also known as the Hague Rules, applies. Under the Hague Rules, the carrier is liable *vis-à-vis* 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 1888 Commercial Code (Article 538 *et seq.*), in the absence of detailed provisions set out in the relevant contract.

It is important to note that if the shipment (i.e., loading and place of destination) takes place between two countries party to the Hague Rules, 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 *lex rei sitae* principle.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

As a general principle, any party to a contract of carriage who holds an interest over the cargo and can demonstrate that it has suffered losses or damages arising from the carrier's actions and/or omissions is entitled to sue for losses or damages.

The rights to sue under a contract of carriage assist (1) the shipper, and (2) the rightful holder of the bill of lading. In this respect, it is noteworthy that when in the presence of: (i) a straight bill of lading, the right to bring a claim remains with the named consignee; (ii) an order bill of lading, only the latest endorsee is eligible to sue; and (iii) a bill of lading to bearer, it is up to the rightful holder at a given moment to sue.

Rights under a contract of carriage may be validly transferred to third parties either by way of assignment of contractual position or subrogation of 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.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

In light of Article 3.5 of the Hague Rules, the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies regarding the information (marks, number, quantity and weight) on the cargo to be transported.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

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.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Angola is a party to the 1952 Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Vessels ("1952 Convention"). Under the 1952 Convention, any person alleging that it holds a maritime claim is entitled to seek the arrest of a ship. A "maritime claim" is deemed to be a claim arising out of one or more of the situations named under Article 1.1 of the 1952 Convention.

Outside the scope of the 1952 Convention, i.e., for the purposes of obtaining security for an unlisted maritime claim (e.g., arrest for a ship sale claim, unpaid insurance premiums, protection and indemnity ("P&I") dues, amongst others) 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 Angolan Code of Civil Procedure ("CPC"). In this case, and aside from the jurisdiction issue that needs to be properly assessed, in addition to providing evidence on the likelihood of its right/credit, the claimant shall also produce evidence that there is a risk that the debtor/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.

Before ordering the arrest, the arrestee is granted the opportunity to oppose/challenge the arrest application. Please note, however, that if the arrest application is properly filed and duly documented, the court may order the detention of the vessel before summoning the arrestee or granting the arrestee the chance to oppose the arrest application. The arrestee has 10 days to oppose the arrest application/order.

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 the release of the vessel pending foreclosure and auction.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

A claim arising from a bunker supply may be considered as a maritime claim under Article 1.k of the 1952 Convention.

4.3 Is it possible to arrest a vessel for claims arising from contracts for the sale and purchase of a ship?

Claims arising from ship sale and purchase contracts do not qualify as “maritime claims” for the purposes of the 1952 Convention. As such, and as stated under question 4.1 above, those willing to arrest a vessel for an unlisted maritime claim must make use of the provisions of the CPC (in order for measures to be taken, the claimant must provide evidence of the likelihood of its right and justified fear of irreparable damage or damage that is difficult to repair).

4.4 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

Assets (e.g., bunkers) belonging to the arrestee may be subject to arrest, provided that it is possible to establish ownership in respect thereof. In addition, the carrier is entitled to exercise a possessory lien over cargo. In this respect, please be advised that pursuant to Angolan law, a lien is only enforceable by operation of the law and not merely by contract. By way of illustration, Article 755 of the Civil Code provides that any debts resulting from shipping services entitle the carrier/creditor to retain goods in its possession until the full discharge of those debts.

4.5 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

Typically, cash deposits (at the court’s order) and bank guarantees are the most effective forms of security. Letters of undertaking (“LoUs”) are acceptable in very limited situations and their acceptance is always dependent on the other party’s agreement.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

Whenever there is a serious risk of loss, concealment or dissipation of property or documents, as well as when it becomes impossible or almost impossible to obtain testimony or certain evidence by way of inspection, parties are free to start an action and file a motion requiring it to be enlisted by the court or taken prior to the hearing. The relevant motion can be lodged whenever deemed suitable, the applicant always being required to provide due grounds for its request.

5.2 What are the general disclosure obligations in court proceedings?

As a general rule, it is up to the parties to establish the object of their claim/proceedings and the judge cannot go beyond the limits of the claim as put forward by the parties. In addition, parties have the burden of presenting the facts of their interest and producing evidence in respect thereof. The court will take into account the evidence produced/requested by the parties, but it is not limited to same. In fact, the court is also allowed to request and compel the parties to disclose all evidence deemed necessary to the discovery of the truth and/or to the best resolution of the dispute.

6 Procedure

6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

The Angolan judicial system foresees three categories of courts: (i) the Supreme Court, which is the higher body in the hierarchy of the Angolan courts; (ii) the Courts of Appeal; and (iii) 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 as regards 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 the so-called Rooms of Expertise. Existing since 1997, the Room of Expertise for Maritime Issues has jurisdiction over any maritime dispute submitted to its jurisdiction, including, to name a few, disputes on shipbuilding and repair contracts, purchase and sale agreements, charterparties and bills of lading, precautionary measures against ships and their cargo, etc.

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

With regard to legal procedures before national courts, these can be generally described as follows:

- Proceedings commence with the filing of an initial written complaint before the court. In addition to listing the facts and arguments sustaining the claim, the claimant is required to list its witnesses and request the other evidence proceedings, such as inspections or surveys.
- Service is made by the clerks, in person. Shipping agents represent owners’/disponent owners’/managers’ interests and can receive documentation on their behalf.
- Generally, the defendant has 30 days to challenge and oppose the claim. If it fails to present its defence, the facts presented by the claimant are deemed proven (exceptions apply).
- With the opposition lodged, the judge will summon the parties and will try to resolve the dispute amicably or, that not being possible, prepare the final hearing.
- At the final hearing, the witness will be examined and cross-examined by the lawyers representing each party, and the judge may intervene whenever it is deemed necessary. At the end, lawyers are required to issue their final arguments verbally.
- The judge will then prepare and issue the judgment which, depending on the amount of the claim, can entail an appeal.

As for the duration of maritime proceedings, as with any other legal proceedings in Angola, this is highly unpredictable. In our experience, excluding arrests and any other interim measures, it should not be expected to take less than one to two years, as it depends on several variables, such as the court's current caseload.

As for arbitration, the primary domestic source of law is Law No. 16/03 of 25 July 2003 (the Voluntary Arbitration Law or "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; 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 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, with the exception of 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 extra-contractual 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 an equal footing.

Subject to any special law requiring a more solemn 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.

In addition to the VAL, Law No. 12/16 of 12 August 2016 sets forth the rules applicable to the establishment and organisation of 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 concern waivable rights.

6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

Angola's legal framework on shipping and maritime matters is fairly complete and follows the international industry standards (please refer to question 8.1 below). Nevertheless, despite the efforts of the Angolan Government and the achievements reached in the past decade, the country needs to continue developing its infrastructure (courts, registries, notaries, public administration, etc.) and support the training and qualification of its citizens. Although proceedings may drag over long periods of time (years), Angola benefits nowadays from a very capable community of judges, lawyers and other legal professionals.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Article 1094 of the CPC sets out that any judgment awarded 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 (i.e., to obtain the "*exequatur*").

The review and confirmation of foreign decisions under the Angolan CPC is mostly formal and should not involve a review on the merits/grounds of the judgment, but a simple re-examination of the relevant judgment and additional judicial procedure requirements. The process must begin with the filing by the interested party of an application to that effect with the Angolan Supreme Court. In order for the foreign decision to be recognised by the Supreme Court, the following set of requirements must be met:

- There are no doubts that the judgment is authentic and its content understandable.
- It must constitute a final decision (not subject to appeal) in the country in which it was rendered.
- The decision must have been rendered by the relevant court according to the Angolan conflict-of-law rules.
- There is no case pending before or decided by an Angolan court, except if it was the foreign court which prevented the jurisdiction of the Angolan court.
- The defendant was served proper notice of the claim in accordance with the law of the country in which the judgment was rendered, except in cases where, under Angolan law, there is no need to notify the defendant, or in cases where the judgment is passed against the defendant because there was no opposition.
- The judgment is not contrary to the public policy principles of the Angolan state.
- The decision rendered against the Angolan citizen/company does not conflict with Angolan private law, in cases where this law could be applicable according to the Angolan conflict-of-law rules.

After the application is filed, the court must serve notice of same on the defendant. Once notice is served, the defendant may oppose the *exequatur* if any of the above requirements are not met.

If the defendant opposes the *exequatur*, the applicant may reply to the defendant's arguments. Afterwards, the case follows various procedural steps until the decision is made on whether to grant the *exequatur*. The losing party may still appeal against the court's decision.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Angola has acceded to the 1958 New York Convention, by means of Resolution 38/16 of 12 August 2016. Angolan courts are now required to give effect *prima facie* to an arbitration agreement and award rendered in another signatory country to the New York Convention. Where the arbitral award was not granted by another contracting state, to be enforceable it must have previously been reviewed and confirmed by Angola's Supreme Court (see question 7.1 above).

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

Since its independence in 1975, Angola has been steadily revising its laws and regulations, at the same time as ratifying and adhering to a number of international treaties and conventions. In this respect, it is worth mentioning that a number of pivotal conventions on maritime and shipping-related matters applicable in the country date from the time 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/conventions to which Portugal was already a party, as formally required under the Vienna Convention on Succession of Treaties, it is commonly accepted that the treaties ratified by Portugal and extended to Angola over time still apply in light of Articles 58 and 59 of the Angolan Constitution, approved immediately after the country's independence, which provided for the survival of any (Portuguese) laws and regulations in force at the time of independence, as long as these did not conflict with the letter and the spirit of the Constitution.

Over the past few years, a number of key statutes have been approved, the most relevant of which being the Merchant Navy Law. The Merchant Navy Law is a landmark achievement in terms of shipping and maritime legislation, as this 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 noting, in particular, some of the most important statutes on maritime matters that have been passed by the Angolan Government in recent years (a clear sign of the attention that the Government is paying to the sector), notably: (i) Presidential Decree No. 50/14 of 27 February 2014, which approved the regulations applicable to the provision of shipping agency services; (ii) Presidential Decree No. 51/14, also of 27 February 2014, which approved the regulations applicable to the carrying out of ship-management services; and (iii) Presidential Decree No. 54/14 of 28 February 2014, which approved the rules applicable to merchants wishing to be engaged in the provision of cabotage and/or international transportation of goods and passengers (this statute limits the provision of cabotage to Angolan citizens).

More recently, a new set of maritime legislation has been passed by the Angolan Government, most of which is directed towards matters of safety and transparency in the carrying out of maritime activities, including new regulations on seafarers and maritime personnel (Presidential Decree No. 78/16 of 14 April 2016), maximum safety capacity of vessels and ships (Presidential Decree No. 79/16 of 14 April 2016), search and rescue at sea (Presidential Decree No. 89/16 of 21 April 2016), prevention of terrorism associated with activities at sea (Law No. 19/17 of 25 August 2017) and, in 2018, the new beaconing system for the national maritime space and inland waterways (Presidential Decree No. 287/18 of 29 November 2018).

Angola has also recently adhered to the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, and to the African Maritime Transport Charter of the African Union, which reveals Angola's drive to elevate the national maritime sector to international standards.

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