The Shipping Law Review

Sixth Edition

Editors
George Eddings, Andrew Chamberlain
and Holly Colaço

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THE SHIPPING LAW REVIEW

SIXTH EDITION

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George Eddings, Andrew Chamberlain
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PREFACE

The sixth edition of this book aims to continue to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. 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 of *The Shipping Law Review*, 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, offshore shipping, marine insurance and environmental issues. A new chapter on decommissioning is also included, which seeks to demystify this interesting and fast-developing area of law.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, 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 the authors 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, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during 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 about 5 per cent of global trade overall. More than 90 per cent of the world's trade is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

The maritime sector continues to take stock after experiencing a bumpy ride during the past few years and, while the industry is looking forward to continued recovery, there is still uncertainty about the effects of trade tariffs and additional regulation. Under the current US administration, the sanctions picture has become ever more complex and uncertain.

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With a heightened public focus on the importance of environmental issues, a key issue within the shipping industry remains environmental regulation, which is becoming ever more stringent. At the IMO's MEPC 72 in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by the year 2050. This agreement may lead to some of the most significant regulatory changes in the industry in recent years and is likely to lead to greater investment in the development of zero carbon dioxide fuels, possibly paving the way for phasing out carbon emissions from the sector entirely. This new IMO Strategy, together with the stricter sulphur limit of 0.5 per cent m/m coming in from 2020, is generating increased interest in alternative fuels, alternative propulsion and green vessel technologies.

Brexit continues to pull focus, with the withdrawal agreement reached between the EU and UK having been rejected three times and an extension of the Article 50 process granted until 31 October 2019. Much has been printed about the effects of Brexit on the enforcement of maritime contracts. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly effect enforceability. Arbitration awards will continue to be enforceable under the New York Convention and it seems likely reciprocal EU and UK enforcement of court judgments will be agreed.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope 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 Holly Colaço
HFW
London
May 2019

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Chapter 11

ANGOLA

João Afonso Fialho, José Miguel Oliveira and Ivo Mahumane[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

Oil continues to be the backbone of the Angolan economy. Despite the dramatic drop in oil prices that started in mid 2014, which substantially reduced the country's tax revenues and exports, with growth coming to a halt and inflation accelerating sharply, oil production and its supporting activities still account for more than 95 per cent of export revenue, 46 per cent of government revenue and 30 per cent of GDP. Economic growth slowed to 0.1 per cent in 2016 but recovered to an estimated 2.1 per cent in 2017, thanks to strong performances in the agriculture, fisheries and energy sectors. The economic prospects for the future are subdued, with growth projected to remain modest, at 1.2 per cent in 2019 and 3.2 per cent in 2020.[2]

Imports decreased to US$3,909.72 million in the third quarter of 2018 from US$4,092.50 million in the second quarter of 2018. Imports averaged US$6,520.37 million from 2002 until 2018, reaching an all-time high of US$2,2659.90 million in the fourth quarter of 2009 and a record low of US$ 2,777.87 million in the first quarter of 2018.[3]

The country's major commercial ports are in Luanda, Cabinda, Lobito, Namibe and Soyo (which is mostly allocated to the oil and gas industry). Over the years, millions of US dollars have been invested in expanding, equipping and modernising ports and other infrastructure, such as railways and roads. In 2017, an investment of roughly US$180 million was announced in the building of the first deepwater port in the country, a project to be developed in Caio, Cabinda province. This project, which is planned to feature a modern shipyard, a dry dock, an industrial zone and a duty-free zone, faced some significant drawbacks in 2018 (the original concession contract was terminated and a new tender was launched), but the government's plan for Caio remains in place. Moreover, two more projects contemplated within the National Development Plan 2018–2022 are worth noting: the first being the modernisation project for Namibe port, and the other being the construction of the new commercial port at Barra do Dande. 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 Ivo Mahumane is a junior associate at Vieira de Almeida.

2 Source: www.afdb.org.

3 Source: https://tradingeconomics.com/angola/imports.

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There are rumours that, with a view to enhancing competition and boosting the national economy, the Angolan government will soon pass a new set of policies aimed at attracting and easing investment in the fisheries and shipping sectors.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Since gaining its independence in 1975, Angola has been steadily revising its laws and regulations, alongside ratifying and adhering to several international treaties and conventions. In this respect, 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 since its independence Angola has not specifically adhered to the treaties and conventions to which Portugal was already a party (as 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 gained 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, many key statutes have been approved during the past few years, 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 relating 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, a number of important statutes approved in 2014 have had an effect on local industry, 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 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). During 2016 a set of decrees was approved by the Angolan government on pilotage, maritime traffic control and assistance and salvage at sea. More recently, a regulation implementing a new beaconing system for the national maritime space and inland waterways entered into force. These statutes are a clear sign of the attention that the government is paying to the sector.

Angola is a party to the UNCLOS, the 1995 UN Fish Stocks Agreement, the 2010 African Maritime Transport Charter of the African Union and many other important treaties, as detailed later in the chapter.

III FORUM AND JURISDICTION

i Courts

The Angolan judicial system comprises three categories of court: (1) the Supreme Court, which is the highest body in the hierarchy; (2) courts of appeal; and (3) district courts. Courts

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of appeal have jurisdiction to review and revise district courts' contested decisions. Likewise, the Supreme Court has power with regard 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, charter parties 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 (1) when the parties to the arbitration agreement have business domiciles in different countries at the time of the agreement's execution, (2) 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 (3) 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 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 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 both domestic and international arbitration are free to designate the substantive law or rules of law applicable to the merits of the case. 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,

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the arbitral tribunal shall decide in accordance with Angolan substantive law. As regards 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 out 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.

Angola acceded to the 1958 New York Convention by means of Resolution 38/16 of 12 August 2016. Angolan courts are now *prima facie* to give effect to an arbitration agreement and award rendered in other signatories 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, it is mandatory to register shipbuilding contracts before the Maritime National Administration.

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 goods. Contracts of carriage are therefore governed by the terms of the Hague Rules and the Angolan Commercial Code (Article 538 et seq.) in the absence of detailed provisions set out in the relevant contract.

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If the shipment is between two countries that are party to the Hague Rules (i.e., loading and place of destination), those 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 loss or damages arising from the carrier's actions or omissions is entitled to sue for loss 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 aforementioned conventions, it is also important to consider the limitations arising from the Hague Rules, where applicable. It is also important to note 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 the 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 (*fumus boni iuris*) is entitled to seek the arrest of a ship. A 'maritime claim' is one that arises out of one or more of the situations named under Article 1.1 of the Brussels Convention.

Outside the scope of the Brussels Convention, that is to say for the 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 (*fumus boni iuris*),

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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 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.

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 or charterer and other interested parties) to settle the claim or to oppose the sale. If the debtor fails to pay or if no opposition is lodged within an appropriate period of time, the court will order the sale. To that extent, 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 (such as organising the tender and visits to the vessel, collecting the bids, getting the proceeds of the sale and liaising with court). The vessel is sold 'as is and where is' and free from any charges or encumbrances.

Proceeds arising from the sale of the vessel will be used to pay the claimant or relevant creditors. In this regard, note 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 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; and

b other maritime liens:
- any unpaid portion of the purchase price;
- repair costs accruing during the past 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;

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- mortgages, hypothec and similar charges; and
- all remaining claims *in rem* rank *pari passu*.

VI REGULATION

i Safety

The Merchant Navy Law sets out in Article 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 sea lies with the Port and Maritime Institute of Angola (IMPA) in its role as maritime authority.

In addition, 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 later in this chapter.

ii Port state control

The IMPA is also responsible for exercising port state control over all foreign vessels calling in and operating within Angola waters. The IMPA, either directly or through a classification 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 the 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 these clarifications will follow from the regulations that are yet to be approved.

In a nutshell, the registration of a merchant vessel in Angola is in two stages: (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 a survey by the IMPA (directly or resorting to a classification society operating in the country (e.g., Bureau Veritas, DNV GL, to name but two); (2) registration with the Harbour Master; and (3) completion of the commercial registration with the Commercial Registry.

The above notwithstanding, note 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 to

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perform operations therein, it was necessary to have the vessel registered before the IMPA. This interpretation was confirmed by two Circular Letters[4] and seems to be aligned with the Merchant Navy Regulations.

Registration with the Harbour Master (and the IMPA), being an international standard, is dependent on the meeting of a number of legal and technical requirements, which vary according to the type of vessel (e.g., merchant vessel, fishing vessel, tug, 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 the 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);
- *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 environmental 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 1952; (3) the Criminal Collision Convention 1952; and (4) the COLREGs. These conventions are supplemented, as the case may be, by domestic regulation, namely Article 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 Angolan 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 the arrest of the defendant's vessel has been effected, or of any vessel belonging to the defendant

4 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.

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that 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 Civil Procedure Code, which provide 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 first called after the 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, demonstration of the causal link can be problematic as 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 from which 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 (Article 81 et seq.) and the Commercial Code (Article 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 relative danger of the operation. Finally, the compensation amount needs to cover any expenses accrued by 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 (1) the court that has jurisdiction over the place where the salvage operation took place, (2) in the court of residence of the owners of the saved goods, or (3) of the vessel's flag, or (4) where the rescued vessel is found, as per the Commercial Code. According to the law, salvage claims ought to commence within two years of the day on which the salvage operations are concluded or were interrupted.

Finally, with regard to wrecks, Angola is not a signatory of the Nairobi WRC 2007. The removal of wrecks must therefore be dealt with in light of 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

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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 loss and damages 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 in domestic law.

VII OUTLOOK

With the aim of exiting recession and easing the country's economic dependency on the oil sector, Angola has announced the implementation of structural reforms, as outlined in the National Development Plan for 2018–2022. One of the main sectors of intervention for this programme is shipping, under which (1) the construction of new ports and other related infrastructures; (2) the improvement of inland waterways safety and navigability conditions; and (3) the creation of an electronic database that will assist on the monitoring of all maritime imports and exports of goods is expected. These reforms are in line with the maritime and shipping law revision promoted by the government between 2014 and 2016 and translate the country's commitment to develop and modernise the maritime and shipping industries.

In addition, it is worth mentioning that by means of Law 10/18, of 26 June 2018, the government has approved a new private investment regime, which is generally expected to increase both foreign and national investments, provide more legal certainty and boost investors' confidence in the country. Transportation and logistics will certainly continue to be the key in this challenge and a safe bet for private investors that may wish to benefit from the government's expressed goal to mark Angola as the continent's logistics hub.

Government confidence is that new opportunities will be available for investors willing to (re)invest in the country, in particular in the fishery industry and technology-based areas of seaport operations.

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Appendix 1

ABOUT THE AUTHORS

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João Afonso Fialho joined VdA in 2015. He is currently head of VdA's oil and gas practice, having been involved in shipping matters since his first years in the legal profession.

With more than 20 years of practice in the transport sector, his experience in shipping includes the contract of international transport, particularly in providing advice to owners, charterers, P&I clubs and port operators, commodities traders and various industry brokers. Advice is rendered in most shipping industry legal matters, with relevance in particular to 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, bills of lading, ship finance, mortgages and insurance.

His practice is focused in particular on specific matters arising from shipping activities associated with the oil and gas cluster, including wreck removal and environmentally sensitive issues.

JOSÉ MIGUEL OLIVEIRA

Vieira de Almeida

José Miguel Oliveira joined VdA in 2015. He is a managing associate in VdA's oil and gas practice. He has gained extensive experience within the international shipping industry, particularly across African jurisdictions, where he has been particularly active in assisting all sorts of industry players, from owners, charterers, P&I clubs, ship brokers, ship managers, ship agents, freight forwarders, port operators and stevedores, to commodities traders on all sorts of wet and dry shipping matters. In addition, he provides advice on regulatory matters to oil companies and service providers to the offshore oil and gas industry, notably with respect to the use and employment of rigs, FPSOs, support and multipurpose vessels. He also has a deep knowledge of the bunkering industry, having assisted major players in the setting up of their local structures, securing licences and deals (cargo and bunkering contracts). José is dual qualified (Portugal and Angola) and his regular presence in Angola and Mozambique allows him to gain an in-depth understating of the local and neighbouring industry and relevant legal environment.

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Ivo Mahumane joined VdA in 2016. He is a trainee in VdA's oil and gas practice, having been involved in several transactions in Portugal, Angola and Mozambique. In his experience with VdA, he worked as a summer trainee in the projects – infrastructure, energy and natural resources practice area and, between 2017 and 2018, as a trainee in the banking and finance practice area.

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