

Shipping 2022

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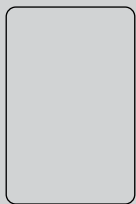
Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

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First published 2008
Fourteenth edition
ISBN 978-1-83862-720-1

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Shipping

2022

Contributing editors**Kevin Cooper and Nico Saunders****MFB Solicitors**

Lexology Getting The Deal Through is delighted to publish the 14th edition of *Shipping*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on India.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Kevin Cooper and Nico Saunders of MFB Solicitors, for their continued assistance with this volume.



London
June 2021

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This article was first published in July 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Global overview	5	Malta	113
Kevin Cooper and Nico Saunders MFB Solicitors		Kevin F Dingli and Suzanne Shaw Dingli & Dingli Law Firm	
Angola	8	Mozambique	126
José Miguel Oliveira, Filipe Rocha Vieira and Ivo Calueio Mahumane VdA		Filipe Rocha Vieira, José Miguel Oliveira and Kenny Laisse VdA	
Australia	18	Netherlands	136
Geoff Farnsworth, Nathan Cecil and Joshua Clarke Holding Redlich		Charlotte van Steenderen and Arnold van Steenderen Van Steenderen MainportLawyers	
Brazil	28	New Zealand	154
Godofredo Mendes Vianna, Camila Mendes Vianna Cardoso and Lucas Leite Marques Kincaid Mendes Vianna Advogados		Simon Cartwright, Zoe Pajot and Lydia Sharpe Hesketh Henry	
Cyprus	40	Nigeria	163
Michael McBride and Yiannis Christodoulou Chrysses Demetriades & Co LLC		Funke Agbor and Chisa Uba Dentons ACAS-Law	
Ecuador	48	Norway	173
Leonidas Villagran Villagran Lara Attorneys		Anne Dahl Frisak, Geir Gustavsson, Per Aksel Hammer Krog and Sondre Vegheim Advokatfirmaet BAHR AS	
Egypt	57	Portugal	188
Hamdy Madkour and Mohamed Farid Eldib Advocates		Ana Cristina Pimentel Ana Cristina Pimentel & Associados Sociedade de Advogados SP RL	
Ghana	65	Russia	196
Akua Serwaa Asomani-Adem, Kimathi Kuenyehia, Sr, Akua Pinamang Addae and Enid Baaba Dadzie Kimathi & Partners Corporate Attorneys		Alexander Mednikov Jurinflot International Law Office	
India	76	Singapore	204
Gautam Bhatkar Phoenix Legal		Haridass Ajaib, Augustine Liew, Thomas Tan and V Hariharan Haridass Ho & Partners	
Italy	84	South Korea	217
Filippo Pellerano and Francesco Gasparini Studio Legale Mordiglia		Sung Keuk Cho and Thomas Lee Cho & Lee	
Japan	95	Taiwan	226
Shuji Yamaguchi Okabe & Yamaguchi		Daniel T H Tsai Lee and Li Attorneys at Law	
Malaysia	103	Turkey	235
Siva Kumar Kanagasabai and Trishelea Ann Sandosam SKRINE		Caglar Coskunsu, Burak Cavus and Onur Azakli Cavus & Coskunsu Law Firm	

United Arab Emirates **246**

Bashir Ahmed, Chatura Randeniya and Mevan Bandara
Afridi & Angell

United Kingdom **255**

Kevin Cooper, Nico Saunders and Kirsten Jackson
MFB Solicitors

United States **273**

Bruce G Paulsen and Brian P Maloney
Seward & Kissel LLP

Angola

José Miguel Oliveira, Filipe Rocha Vieira and Ivo Calueio Mahumane

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NEWBUILDING CONTRACTS

Transfer of title

- 1 | When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Shipbuilding contracts are specially governed by the provisions of the 1888 Commercial Code, which are silent in this respect. Therefore, by reference to the principle of private autonomy, enriched in Angolan law, parties are free to agree upon when the title shall pass to the shipowner. Although experience tells us that parties usually agree that title shall pass upon delivery of the ship, some shipbuilding contracts provide for title to pass as the ship is constructed (milestones). Where the shipbuilding contract is silent then, by reference to the general principles established in Angola's Civil Code, title shall pass from the shipbuilder to the shipowner on physical delivery of the ship and full payment of the contract price.

Shipbuilding contracts are subject to mandatory registration with the Maritime National Administration.

Refund guarantee

- 2 | What formalities need to be complied with for the refund guarantee to be valid?

Refund guarantees usually take the form of an undertaking of a bank or other guarantor, whereby it is agreed that, if the shipbuilder fails to refund the monies advanced as instalments of the contract price upon the shipowner's having terminated the same for a good reason, the bank or the guarantor shall then pay the relevant sums to the shipowner on behalf of the shipbuilder.

The refund commitment can, therefore, be construed either as a conventional guarantee of the shipbuilder or as an 'on demand' instrument, possibly in the form of a guarantee on first demand or a standby letter of credit. Regardless of this, the issuance of these guarantees is not subject to any special formality or requirement, being up to the parties to agree on its terms and conditions. Nevertheless, to guarantee their smooth and straightforward enforceability, it is important to make sure that they are written in a clear manner, that guarantor's undertaking is expressly established, as well as the amount secured, the validity or term of the guarantee and the conditions for its enforceability and assignment (to the extent applicable).

Court-ordered delivery

- 3 | Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

The retention of a vessel by the yard is only possible in the events where the shipbuilder holds a credit against the shipowner in connection with

costs or damages incurred with the vessel. Where retention is deemed unlawful, then the shipowner is entitled to initiate court proceedings against the shipbuilder to request delivery of the vessel or claim compensation for losses suffered.

Defects

- 4 | Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

Where the vessel is defective, claims for damages arising out of shipbuilding contracts must be constructed as claims in contract and lie on the regime established for the sale of defective goods in the Civil Code.

Unless otherwise agreed by the parties, by reference to the applicable provisions of the Civil Code (article 913 et seq), the shipowner generally holds 30 days as from the date that it has found the defect(s) and six months from the vessel's delivery date, to notify the shipbuilder to remedy the finding or, if necessary and physically possible, replace the defective items, except where the shipbuilder was (with no fault) not aware of the findings or defects. The named deadlines do not apply in case of wilful misconduct.

In the event that the shipbuilder fails to remedy the findings within the agreed term, the shipowner is then entitled to apply for a reduction of the agreed price (if the same remains interested in the deal) or cancel or terminate the shipbuilding agreement.

The judicial enforcement of the rights above must occur within six months of notification of the defect(s). The shipowner is also entitled to claim compensation for damages, except if the shipbuilder was genuinely not aware of the defects.

As for a third party that has sustained damages from the defects, it may claim compensation against both the shipbuilder and the shipowner on the basis of the general terms of non-contractual liability.

SHIP REGISTRATION AND MORTGAGES

Eligibility for registration

- 5 | What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

All ships that have been duly inspected and certified by the Port and Maritime Institute of Angola (IMPA) are eligible for registration under the flag of Angola.

Vessels under construction may also be registered, but the registration will be deemed and remain provisional until the vessel is finished.

6 | Who may apply to register a ship in your jurisdiction?

Pursuant to the Merchant Navy Law, individuals or legal entities domiciled in Angola are entitled to apply to register a ship. Where reciprocity applies, individuals or legal entities domiciled or having their place of business abroad are also permitted to register vessels in Angola, provided that they have a local representative based in the country. Without prejudice to the above, national regulation applicable to specific activities may have stricter standards in terms of nationality requirements.

Documentary requirements

7 | What are the documentary requirements for registration?

Ships must be registered before the relevant port and maritime authorities (flag registration) and also before the Commercial Registry (commercial registration).

Flag registration is dependent on the filing of a set of documents with the port and maritime authorities (ie, IMPA and the relevant harbour master or port captaincy).

In addition to the relevant Protocol of Delivery and Acceptance for new buildings, or Bill of Sale and Deletion Certificate (where the vessel was previously registered in another registry) for second-hand ships, the applicant is required to disclose certain pieces of information, including:

- shipowner's constitutional documents;
- customs documents (for imported vessels);
- vessel's name and details;
- authorisation from the Ministry of Fisheries or the Ministry of Transport, where applicable;
- reference to main activities and areas where the vessel is to be engaged and navigate;
- certified copies of the tonnage and navigability certificates;
- name of the classification society and class certificate;
- vessel's characteristics and propulsion system;
- shipyard and year of construction; and
- copies of the vessel's constitutional certificates.

Further, flag registration is dependent on the satisfactory outcome of a physical inspection to be carried out by IMPA's technicians to the vessel.

Dual registration

8 | Is dual registration and flagging out possible and what is the procedure?

Under the Merchant Navy Law, dual registration is theoretically possible for vessels under bareboat charters and for the duration of the relevant charter party.

Flagging out is accepted for vessels registered abroad aiming at initiate operations in Angola. In this case, the procedure initiates by obtaining a provisional registration and passport with the Angolan consulate in the relevant country. The vessel will then be subject to a survey by IMPA (or designated classification society) and to the completion of the subsequent registration formalities with the port and maritime authorities.

Mortgage register

9 | Who maintains the register of mortgages and what information does it contain?

Mortgages encumbering Angolan ships must be registered before the Commercial Registry. The information is maintained under the supervision of the relevant Registrar (a public officer) and is available for public consultation. The register includes information on:

- the type and term of the mortgage;
- the parties involved; and
- the amount of the credit (eg, capital, accessories to credit and interests).

It is important to stress that in view of the recently published Law 11/2021 of 7 April 2021, which establishes the legal framework for the use of movable assets as security for the discharge of obligations, as from 19 October 2021, mortgages over vessels, as well as the registration of all ship-related securities, shall become registrable with the new Central Security Registry.

LIMITATION OF LIABILITY

Regime

10 | What limitation regime applies? What claims can be limited? Which parties can limit their liability?

Angola is not a party to the 1976 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 (the 1957 Convention) are understood to be applicable in Angola. The shipowner is legally entitled to limit its liability in respect of claims pertaining to the situations foreseen in article 2 of the 1957 Convention (eg, loss of life of, or personal injury of any person, loss of, or damage to any property).

In addition to the above conventions, it is also important to consider the limitations arising from the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Hague Rules), concerning the limitation of liability relating to the carriage of goods by sea. The carrier (in its capacity of the shipowner or charterer of the vessel) is also legally entitled to limit its liability under those Rules.

Procedure

11 | What is the procedure for establishing limitation?

In accordance with the 1957 Convention, the shipowner or other entitled person can only limit its responsibility through the establishment of a limitation fund. The limitation fund can only be established in respect of a claim that has already been commenced. The limitation fund can be established in any way admitted by law. It is, however, dependent on the filing of a proper application before the relevant court (cash deposit is not necessary), which must identify or 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 creditor(s) and the amount(s) of their claims.

The application must be filed together with the vessel's documents supporting the calculation of the amount of the fund (eg, a tonnage certificate).

Break of limitation

12 | In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

The shipowner or other entitled person cannot limit its responsibility if the occurrence giving rise to the claim resulted from 'the actual fault or privity of the owner'.

Passenger and luggage claims

13 | What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

Angola is not a contracting party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. The carriage of passengers is governed in general by Angola's Civil and Commercial Codes and the Consumer Law, in addition to the individual terms of the contract of carriage. There are no limitation legal regimes applicable in Angola in respect of passenger and luggage claims. In the event of delays, unexpected changes of route, interruption of the transport, 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. In addition, any expenses that the passenger may incur that arise from the delay, interruption or change of route shall be undertaken by the carrier.

PORT STATE CONTROL

Authorities

14 | Which body is the port state control agency? Under what authority does it operate?

The Port and Maritime Institute of Angola (IMPA) is responsible for exercising port state control over all maritime activities in Angola. The IMPA acts under the authority of the Ministry of Transport.

Sanctions

15 | What sanctions may the port state control inspector impose?

The IMPA 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 detention of the relevant vessel. In such cases, a guarantee must be put before the IMPA as a precondition to the release of the vessel.

Appeal

16 | What is the appeal process against detention orders or fines?

Any sanction may be appealed directly to IMPA's administrative body who applied it or the general director of IMPA. Sanctions may also be challenged by appealing to the competent courts.

CLASSIFICATION SOCIETIES

Approved classification societies

17 | Which are the approved classification societies?

Currently, the number of classification societies operating in the country is very limited, with DNV GL and Bureau Veritas taking the lead in this respect.

Liability

18 | In what circumstances can a classification society be held liable, if at all?

There is no specific legislation dealing with the liability of classification societies in Angola. However, the general principles of civil and criminal liability must be applied.

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

19 | Can the state or local authority order wreck removal?

Yes, when there is a risk to the safety of navigation or to the environment (pollution).

When the shipowner fails to comply with the instructions issued by the Port and Maritime Authorities in respect thereof, the Port and Maritime Institute of Angola can appoint a third party to remove the wreck, being the shipowner responsible for the payment of the relevant fees and charges.

International conventions

20 | Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

Angola has ratified the following international conventions and regulations in relation to collision matters:

- 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.

Angola is not a signatory of the Nairobi International Convention on the Removal of Wrecks 2007, and wreck removals are governed by domestic law.

Salvage operations are governed by the 1910 Salvage Convention, the 1979 International Convention on Maritime Search and Rescue and, where applicable, by the provisions of the 1888 Commercial Code and, the Regulation on the Sea Search and Rescue System (Presidential Decree No. 89/16 of 21 April of 2016). Angola is not a signatory to the 1989 Salvage Convention.

In relation to pollution, the following international conventions and protocols are in force in 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;
- 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.

Salvage

21 | Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory local form of salvage agreement, meaning that the parties are free to agree on the same or resort to any standard form in this regard (Lloyd's standard form of salvage agreement being acceptable).

The master of any vessel, ship or other craft, or the person in command of any such vessel, ship or other craft, is obliged to render salvage to persons in distress at sea, provided this does not involve a serious risk to his or her vessel, ship or other craft or to persons on board, and that his or her action entail the least possible environmental damage.

SHIP ARREST

International conventions

22 | Which international convention regarding the arrest of ships is in force in your jurisdiction?

The International Convention Relating to the Arrest of Sea-Going Ships 1952 (the Brussels Convention) applies in Angola.

Claims

23 | In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

Under the Brussels Convention, any person alleging to have a maritime claim is entitled to seek the arrest of a vessel. A 'maritime claim' is deemed to be a claim that arises out of one or more of the situations foreseen in article 1.1 of the Brussels Convention.

A claimant may seek the arrest of either the vessel in respect of which the maritime claim arose or any other associated vessel as long as both vessels are owned by the same person(s). Associated ships may not be arrested in situations foreseen in article 1.1, (o), (p) or (q) of the Brussels Convention.

Pursuant to paragraph (4) of article 3 of the Brussels Convention, in the case of a claim against a bareboat charterer, the claimant may seek the arrest of the bareboat (demise) chartered vessel or any other vessel in the ownership of the bareboat charterer, as the charterer and not the registered owner is liable in respect of such maritime claim relating to that vessel. However, no other vessel of the ownership of the registered owner may be arrested in respect of such maritime claim. The above-mentioned legal regime also applies to any case where a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

Maritime liens

24 | Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

Yes. Although it is understood that the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages is not applicable in Angola, article 578 of the 1888 Commercial Code specifies the following categories of claims afford maritime liens:

- 1 court costs incurred in the common interest of the creditors;
- 2 remuneration for salvage;
- 3 pilotage and towage expenses;

- 4 tonnage, lights, anchorage, public health and other harbour dues;
- 5 expenses made in connection with a vessel's maintenance and storage of her appurtenances;
- 6 master and crew wages;
- 7 costs incurred in connection with the repair of the vessel, her appurtenances and equipment;
- 8 reimbursement of the price of the cargo that the master was forced to sell;
- 9 insurance premiums;
- 10 any unpaid portion of the price due in connection with the purchase of a vessel;
- 11 costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the past three years;
- 12 unpaid amounts arising from shipbuilding contracts;
- 13 outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances, not mentioned in (11); and
- 14 sums due to shippers in respect of loss or damage to cargo.

Claims mentioned in (1) to (9) refer to those incurred in the last voyage and as a cause of it.

Wrongful arrest

25 | What is the test for wrongful arrest?

According to article 621 of Angola's Civil Code, if the arrest is rendered unjustified or otherwise expires on account of the applicant, same will be held liable for damages caused to the respondent, when it is proved that it failed to act with the necessary normal prudence or due care. Also, if the arrest is in place and the claimant fails to file the initial claim for the main proceedings, within 30 days of the arrest order, the arrest shall be lifted (article 382 of the Civil Procedure Code).

Bunker suppliers

26 | Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

It seems there is no case law in Angola in this regard. Perhaps it would be possible to arrest a vessel in this case, but where the charterer is not the owner it would be difficult to enforce the security unless there is a lien over the vessel.

Security

27 | Will the arresting party have to provide security and in what form and amount?

As a matter of principle, no security is required. Still, the judge is free to decide otherwise and ask the applicant to provide security in an adequate amount and form. Unless otherwise determined by the judge, the amount of the security generally corresponds to the amount of the claim. The security can be posted in any form acceptable by the court, cash deposits and bank guarantees (in terms to be agreed) being the most usual forms.

28 | How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

Typically, the amount of the security corresponds to the amount of the claim. Nevertheless, the judge may end up reviewing it subsequently, namely where the amount being claimed does not reflect the amount being effectively disputed. The amount of the security is not likely to exceed the value of the ship. Security can be posted in any form acceptable by the court or by the arresting party (eg, letter of intent issued by a P&I club).

Formalities

29 | What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

Lawyers are appointed by means of a power of attorney. Where issued abroad, and as a condition for their local acceptance and enforceability, powers of attorney must be previously notarised, legalised (before the Ministry of Foreign Affairs or equivalent body), translated into Portuguese language (by a sworn translator) and then consularised before the Angolan Embassy or Consulate with jurisdiction over the country of their issuance (Angola is not a party to the 1961 Hague Apostille Convention).

The original power of attorney must be attached to the arrest application at the time of its filing. When that is not possible, lawyers may ask the court to grant additional time for submitting the original (where the original power of attorney is not available, the arrest application must be submitted along with a scanned (coloured) copy of the original power of attorney).

Although the submission of original documents is required, it is common practice to present scanned copies of the same, which in most cases is accepted. However, courts are always entitled to disregard copies or ask the parties to submit the relevant originals.

Documents submitted to the court must be written in Portuguese. When written in a different language, parties are required to submit the relevant originals along with their translation into the Portuguese language (the translation should be certified by a sworn translator).

Where, in view of the urgency, there is not sufficient time available to file the arrest application in compliance with all the required formalities, it is still possible to set the arrest procedure in motion while undertaking to the court to complete the formalities in a reasonable period of time (typically, no more than 10 calendar days).

Documents cannot be filed electronically.

There is no specific term for the preparation of an arrest application; this will typically depend on the urgency of the relevant arrest and on the complexity of the underlying claim.

Ship maintenance

30 | Who is responsible for the maintenance of the vessel while under arrest?

With the issuance of the arrest order, the court will appoint a depository or custodian agent for the vessel. This agent shall be responsible for supervising the maintenance of the vessel (it is up to the owner or master and relevant crew to ensure the maintenance of the vessel in the first instance; the depository or custodian agent should only be responsible for the maintenance of the vessel in the absence of her crew or where urgent decisions are to be taken).

Proceedings on the merits

31 | Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Claims on the merits should be initiated before the court having jurisdiction for such by reference to the law governing the contract. The arrestor may, therefore, pursue the main claim on its merits with a foreign court. The claimant is required to file the initial claim for the main proceedings of which the arrest will form an integral part within 30 days of the arrest order. However, an extension of this 30-day deadline may be required considering the difficulties of commencing procedures before a foreign court.

Injunctions and other forms of attachment

32 | Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Apart from arresting the ship, the claimant may seek to obtain security through the attachment of any other property owned by the debtor (other than vessels) and non-specified injunctions.

Delivery up and preservation orders

33 | Are orders for delivery up or preservation of evidence or property available?

Parties may file a motion requiring the court for the preservation of documents or property whenever there is a serious risk of their loss, concealment or dissipation. The relevant motion can be lodged whenever deemed suitable, but the applicant is required to provide due grounds for its request. Parties may also request the production of evidence within the control of the other party or request the anticipatory production of evidence (even before the proceedings are commenced) if there is a justifiable concern that the production of evidence at a later stage will be impossible or very difficult.

Bunker arrest and attachment

34 | Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Bunkers may be arrested by reference to the provisions of the Code of Civil Procedure (ie, the claimant is required to provide evidence on the likelihood of its right or credit, and that, unless the bunkers are arrested, they will have no other means of securing its credit).

JUDICIAL SALE OF VESSELS

Eligible applicants

35 | Who can apply for judicial sale of an arrested vessel?

In principle, the arrestor or any creditor can seek the judicial sale of the arrested vessel.

Procedure

- 36 | What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

In principle, a judicial sale of a ship cannot take place during the arrest proceedings, and require the bringing of a subsequent enforcement proceeding, in which the arrest is converted into a seizure of the vessel, after the existence of the credit has been recognised by the competent court.

After an enforcement application is lodged, the court shall notify the debtor (owner or charterer and other interested parties) to settle the claim or oppose the enforcement and the seizure. If the debtor fails to pay or if no opposition is lodged within an appropriate period, the court will order the sale. To that end, the court will then decide 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 (such as organising the tender and visits to the vessel, collecting the bids, getting the proceeds of the sale and liaising with the court). The debtor will have the power to recover the vessel at any time before completion of the judicial sale, provided it deposits with the court the amount of the credit plus fees and expenses.

The proceeds arising from the sale of the vessel will be used to pay the claimant or other creditors with prevailing rights over the vessel that have claimed credits in the proceedings, the court costs and expenses (including auctioneer's fees) and other credits and expenses.

The judicial sale of a vessel can take several months to complete.

Claim priority

- 37 | What is the order of priority of claims against the proceeds of sale?

Article 578 of the 1888 Commercial Code specifies the following ranking for maritime claims:

- 1 court costs incurred in the common interest of the creditors;
- 2 remuneration for salvage;
- 3 pilotage and towage expenses;
- 4 tonnage, lights, anchorage, public health, and other harbour dues;
- 5 expenses made in connection with a vessel's maintenance and storage of her appurtenances;
- 6 master and crew wages;
- 7 costs incurred in connection with the repair of the vessel, her appurtenances and equipment;
- 8 reimbursement of the price of the cargo that the master was forced to sell;
- 9 insurance premiums;
- 10 any unpaid portion of the price due in connection with the purchase of a vessel;
- 11 costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the last three years;
- 12 unpaid amounts arising from shipbuilding contracts;
- 13 outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances, not mentioned in (11); and
- 14 sums due to shippers in respect of loss or damage to cargo.

Legal effects

- 38 | What are the legal effects or consequences of judicial sale of a vessel?

The vessel is sold 'as is and where is' and free from any charges or encumbrances (including maritime liens), thereby clean title is given to the purchaser.

Foreign sales

- 39 | Will judicial sale of a vessel in a foreign jurisdiction be recognised?

Yes. A judicial sale decision as any other judgment awarded by a foreign court shall be subject to revision and confirmation by the Angolan Supreme Court to be valid and enforceable in Angola.

International conventions

- 40 | Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

No.

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

- 41 | Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

The 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Hague Rules) is applicable in Angola. The Hague-Visby Rules, Hamburg Rules and the Rotterdam Rules are not applicable in Angola. Pursuant to the Hague Rules, the carriage of goods by the sea covers the period comprised between the time when goods are loaded on board a vessel at the relevant shipping port and the time of their discharge at the port of arrival.

Multimodal carriage

- 42 | Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

There are currently no specific multimodal legal instruments in force in Angola. In any case, pursuant to the principle of private autonomy, parties are free to incorporate specific provisions from the UNCTAD/ICC Rules in the carriage contracts they enter.

Title to sue

- 43 | Who has title to sue on a bill of lading?

In principle, the parties entitled to sue on a bill of lading are the shipper, the carrier and the consignee.

Charter parties

44 | To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

Pursuant to the principle of private autonomy, the parties to a carriage contract are free to incorporate the terms of the charter party into the bill of lading, without any limitation or restriction. Both article 99(5) of the Civil Procedure Code and the Voluntary Arbitration Law, enacted by Law No. 16/03, of 25 July 2003, make the validity of the jurisdiction or arbitration clause dependent on the existence of a written agreement or written confirmation expressly mentioning the competent jurisdiction. If there is written reference to the jurisdiction or arbitration clause in the bill of lading and these terms have been acknowledged and accepted, the jurisdiction or arbitration clause shall be binding on any third party holding the bill of lading.

Demise and identity of carrier clauses

45 | Is the 'demise' clause or identity of carrier clause recognised and binding?

The carrier shall be identifiable at all times. Where that is not the case, the bill of lading is deemed to be not enforceable against the same.

Shipowner liability and defences

46 | Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

Pursuant to the Hague Rules, the carrier is liable as regards the consignee in relation to the loading, handling, stowage, carriage, custody, care and discharge of goods (the parties may foresee specific provision in the relevant contract). The rights under a contract carriage may be validly transferred to third parties either by way of assignment of contractual position or subrogation rights.

Where it is not possible to identify the carrier from the contents of the bill of lading and where the latter was issued by a party other than the same, there are grounds to argue that the vessel (represented by her owner) may be sued.

Deviation from route

47 | What is the effect of deviation from a vessel's route on contractual defences?

Any deviation from the vessel's route for a reason attributable to the carrier and that may result in a damage to the shipper shall be sanctioned in accordance with the terms set in the carriage contract and the general principles of civil liability. Nevertheless, route deviations that fall on the scope of article 4, paragraph 4 of the Hague Rules are allowed.

Liens

48 | What liens can be exercised?

The following liens can be exercised.

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; and
- insurance premiums.

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; and
- sums due to shippers in respect of loss or damage to cargo; and
 - mortgages, hypothec and similar charges; and
 - all other claims in rem thereafter rank *pari passu*.

Delivery without bill of lading

49 | What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

If the carrier delivers the cargo without producing the bill of lading, the carrier shall be deemed responsible for any damages and losses arising therefrom to the cargo owner.

Shipper responsibilities and liabilities

50 | What are the responsibilities and liabilities of the shipper?

The Hague Rules set out the contractual obligations of the shipper (in accordance with of article 3, paragraph 5 of the Hague Rules), stating that the shipper shall provide the carrier with accurate data or information concerning the shipment and shall compensate the latter for any damages or losses that may occur owing to inaccurate data or information provided by the shipper. However, pursuant to article 4, paragraph 3 of the Hague Rules, the shipper will not be liable for any damages or losses sustained by the carrier or ship due to any act, omission or neglect not attributable to the shipper, his or her agents or employees, or any third party hired by him or her.

SHIPPING EMISSIONS

Emission control areas

51 | Is there an emission control area (ECA) in force in your domestic territorial waters?

No.

Sulphur cap

52 | What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

Currently, there is no specific legislation dealing with this matter. Still, indications are that a cap on the sulphur content of fuel oil in Angolan waters will be set at 0.5 per cent m/m, as per Annex VI of MARPOL.

SHIP RECYCLING

Regulation and facilities

53 | What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

Angola is not a signatory of the International Convention for the Safe and Environmentally Sound Recycling of Ships (2009) and Angola has no specific legislation dealing with ship recycling. In addition, Angola has no ship recycling facilities.

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

54 | Which courts exercise jurisdiction over maritime disputes?

Existing since 1979, 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.

Service of proceedings

55 | In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

If the defendant is located outside Angola, service of court is made through a precatory letter to the competent authorities of the country where service is sought.

Arbitration

56 | Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

No. There is not a domestic arbitral institution specialising in maritime arbitration. In any event, the Minister of Justice is the entity empowered to authorise the incorporation of arbitration institutions in Angola and there are several arbitral institutions currently in existence in Angola.

Foreign judgments and arbitral awards

57 | What rules govern recognition and enforcement of foreign judgments and arbitral awards?

Articles 1094 and 1095 of the Code of Civil Procedure foresee that any judgment awarded by a foreign court is, as a rule, subject to review and confirmation by the Supreme Court to be valid and enforceable locally (eg, to obtain the 'exequatur'). The review and confirmation of foreign decisions is mostly formal and should not involve a review on the merits or grounds of the judgment.

However, for the foreign decision to be recognised in Angola, 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 in accordance with Angolan conflict-of-law rules;
- there is no case pending before or decided by an Angolan court, except if it was the foreign court that 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; and
- the decision rendered against the Angolan citizen or company does not conflict with Angolan private law, in cases where this law could be applicable in accordance with the Angolan conflict-of-law rules.

Given that Angola has acceded to the 1958 New York Convention, by means of Resolution 38/16 of 12 August, courts may only refuse an award rendered in any other signatory to the New York Convention on the grounds stated therein. Where the arbitral award was not rendered in another contracting state, to be enforceable the award must have previously been reviewed and confirmed by Angola's Supreme Court.

Asymmetric agreements

58 | Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

Asymmetric jurisdiction and arbitration agreements are not directly regulated under Angolan law and we are also unaware of any decisions of Angolan courts on this matter. Choice of jurisdiction agreements are directly foreseen in the Code of Civil Procedure and its validity is subject to a few formal requirements.

Breach of jurisdiction clause

59 | What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

There are no specific remedies in case proceedings that are commenced in a foreign court in breach of a clause that determined the jurisdiction of an Angolan court. The clause must be invoked before the court that lacks jurisdiction.

60 | What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

The defendant may raise the lack of jurisdiction of the Angolan court to hear the dispute as an argument of defence and request it to dismiss the claim.

LIMITATION PERIODS FOR LIABILITY

Time limits

61 | What time limits apply to claims? Is it possible to extend the time limit by agreement?

In accordance with Angola's Civil Code, claims for breach of contract are subject to the ordinary statute of limitations of 20 years and claims for liability in tort are subject to a shorter statute of limitations of three years.

Statutes of limitation may not be extended by agreement; however, there are several circumstances in which they can be suspended, and they can generally be interrupted by court service or judicial notice of any act that expresses the intention of exercising the relevant right (or any judicial act that performs the same function), through the execution of an arbitration agreement or by the recognition of the debt.

Court-ordered extension

62 | May courts or arbitral tribunals extend the time limits?

Courts or arbitral tribunals may not extend the statutes of limitation.

MISCELLANEOUS

Maritime Labour Convention

63 | How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

Angola is not a signatory of the Maritime Labour Convention. However, with the enactment of the Merchant Navy Law and the recent approval of the Regulations on Seafarers and Maritime Personnel, Angola now incorporates the overriding principles vested in this Convention. Most of Angola's domestic laws, either directly or indirectly, are aligned with most aspects of the Maritime Labour Convention or other international labour instruments, such as the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the STCW Convention). However, there are parts of Angola's domestic laws that are not in line with the Maritime Labour Convention, that are unclear in nature or that do not consider offshore workers' employment conditions, well-being and equal treatment. For instance, the industry is concerned with topics such as the abandonment of seafarers, repatriation, shipowners' liability and on-board complaint procedures. These topics are covered by the Maritime Labour Convention and Angola's domestic legislation should incorporate them and be improved to keep up with contemporary international maritime labour standards.

Relief from contractual obligations

64 | Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

Article 437 of Angola's Civil Code allows a party to terminate or to seek the amendment of the contract on equity grounds whenever the circumstances on which the parties based their decision to enter into an agreement have suffered an abnormal change. However, such legal regime is based on strict requirements, notably that the event giving rise to the changes in circumstances renders the performance of the contract excessively onerous such that performance would seriously affect the principles of good faith, and that such onerousness is not covered by the risks inherent to the contract in question. Mere difficulties to perform the contract or losses emerging thereof will not suffice for the application of the change of circumstances legal rules.

Furthermore, the affected party must not be in default when invoking the changes in circumstances.

The relevant contract may foresee specific clauses to deal with this type of situations, such as 'hardship' clauses, in which case its terms and conditions may set aside or complement the legal regime of article 437.

Other noteworthy points

65 | Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

No.

UPDATE AND TRENDS

Key developments of the past year

66 | Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

In 2020, the Angolan government announced the implementation of a number of structural reforms foreseen in the National Development Plan for 2018–2022 (NDP 2018–2022). Shipping is one sector that benefits the

most from NDP 2018–2022, as the priorities set forth in the programme include the construction of new ports and modernisation of existing infrastructures; the improvement of inland waterways safety and navigability conditions; and the creation of an electronic database that will assist in the monitoring of all maritime imports and exports of goods.

As a result of the country's commitment to boost the sector, in Q3 2020 the Angolan government and Dubai Ports World initiated discussions, followed by the signature of a memorandum of understanding, to modernise the multipurpose terminal of the Port of Luanda. The underlying concession contract was signed and awarded in January 2021, translating into an overall investment of US\$190 million by DP World during the next 20 years. Further to the award, DP World announced that it intends to leverage the activity at the Port of Luanda and use the connections worldwide to bring more investments to Angola, and transform the port into a gateway for the country and the region for large investments in technology, automation and digital platforms.

In 2020, Sogester Terminal Management Company, a joint venture between APM Terminals and GF Gestão de Fundos that operates the container terminal at the port of Luanda, continued investing in terminal handling equipment, IT system upgrades and facilities. The investment includes the acquisition of new reach stackers, terminal trailers, empty handlers and an LH800 mobile harbour crane (with a 20-row outreach), which will benefit all shipping lines calling at the terminal. But the investment was not limited to Luanda, as Sogester continued to carry out infrastructure upgrades to its terminal in Namibe, Angola's third-largest port, that it initiated in 2019, completing improvements to yard structure and equipment.

In terms of laws and regulation, there are no major developments to report in 2020. Still, there are rumours that the Ministry of Transport and the Port and Maritime Institute of Angola engaged a team of legal consultants to revise the Merchant Navy Law (Law 27/12, of 28 August 2012) and its ancillary regulations, and carry out a complete review and revision of the outdated legal framework on port jurisdiction and domain (a hot topic for the moment, as some ports seem to be charged port dues outside their jurisdictional area, with all it implies).

As to the future, the amendments approved to the Private Investment Law in April 2021 are likely to increase investment in the sector, as investors now benefit from a reinstated specific contractual regime that allows them to negotiate tailored incentives and facilities to their investment. Moreover, one may anticipate that the enactment of the National Bank of Angola's Order No. 2/21, of 24 March 2021, which, in a nutshell, requires local shipping agents, port services providers and owners or managers of foreign-flagged vessels calling in Angola to settle port charges exclusively in hard currency, is likely to face severe opposition from local shipping agents, who, due to applicable foreign exchange laws and regulations and constraints in accessing hard currency, may be unable to secure the interest of their clients as local prices will certainly end up increasing and ships currently calling in Angolan ports may consider diverting to neighbouring countries, as is the case in Namibia.

Coronavirus

67 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Angolan state implemented a number of laws and measures aimed at containing the spread of the covid-19 pandemic. The approved legislation is of a transitional nature, being in force for as long as the pandemic threat to public health remains, and overrides the application of the existing laws which remain unchanged.

The state of emergency was declared at midnight of 27 March 2020 and remained in place until 11:59pm on 25 May 2020. From then on, a state of public calamity was declared, which is still in force. The declaration of a state of emergency or a public calamity determines or allows for the determination of partial suspension of citizens' rights, freedoms and guarantees based on the occurrence (or threat) of a public disaster such as the covid-19 pandemic.

The Angolan state has approved a number of transitional measures aimed at ensuring that the transportation sector keeps operating while the situation of public calamity is in place, such as ensuring that an essential port and maritime services continued to be provided, the reduction of the personnel providing in-person services to the absolute minimum, and the implementation of special measures and procedures for the docking and berthing of ships at national ports.

In view of the above, we recommend that clients performing shipping activities in Angola or calling at an Angolan port plan their voyage with adequate advance notice and keep in close contact with the local port and maritime authorities to ensure that all the applicable requirements (which are amended from time to time) are complied with.



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