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Angola: Law & Practice

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Law and Practice

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CONTENTS

1. Maritime and Shipping Legislation and Regulation	p.4	4.5 Arresting a Vessel	p.11
1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts	p.4	4.6 Arresting Bunkers and Freight	p.11
1.2 Port State Control	p.4	4.7 Sister-Ship Arrest	p.11
1.3 Domestic Legislation Applicable to Ship Registration	p.4	4.8 Other Ways of Obtaining Attachment Orders	p.11
1.4 Requirements for Ownership of Vessels	p.5	4.9 Releasing an Arrested Vessel	p.11
1.5 Temporary Registration of Vessels	p.5	4.10 Procedure for the Judicial Sale of Arrested Ships	p.12
1.6 Registration of Mortgages	p.5	4.11 Insolvency Laws Applied by Maritime Courts	p.12
1.7 Ship Ownership and Mortgages Registry	p.7	4.12 Damages in the Event of Wrongful Arrest of a Vessel	p.12
2. Marine Casualties and Owners' Liability	p.7	5. Passenger Claims	p.13
2.1 International Conventions: Pollution and Wreck Removal	p.7	5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims	p.13
2.2 International Conventions: Collision and Salvage	p.7	6. Enforcement of Law and Jurisdiction and Arbitration Clauses	p.13
2.3 1976 Convention on Limitation of Liability for Maritime Claims	p.8	6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading	p.13
2.4 Procedure and Requirements for Establishing a Limitation Fund	p.8	6.2 Enforcement of Law and Arbitration Clauses Incorporated into a Bill of Lading	p.13
3. Cargo Claims	p.9	6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards	p.14
3.1 Bills of Lading	p.9	6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction	p.14
3.2 Title to Sue on a Bill of Lading	p.9	6.5 Domestic Arbitration Institutes	p.15
3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages	p.9	6.6 Remedies where Proceedings are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses	p.15
3.4 Misdeclaration of Cargo	p.9	7. Ship-Owner's Income Tax Relief	p.15
3.5 Time Bar for Filing Claims for Damaged or Lost Cargo	p.9	7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies	p.15
4. Maritime Liens and Ship Arrests	p.9		
4.1 Ship Arrests	p.9		
4.2 Maritime Liens	p.9		
4.3 Liability in Personam for Owners or Demise Charterers	p.10		
4.4 Unpaid Bunkers	p.10		

8. Implications of the Coronavirus Pandemic	p.15
8.1 COVID-19-Related Restrictions on Maritime Activities	p.15
8.2 Non-performance of a Shipping Contract	p.16
8.3 Enforcement of the "IMO 2020" Rule Relating to Limitation on the Sulphur Content of Fuel Oil	p.16
8.4 Trade Sanctions	p.16

9. Additional Maritime or Shipping Issues	p.17
9.1 Other Jurisdiction-Specific Shipping and Maritime Issues	p.17

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1. MARITIME AND SHIPPING LEGISLATION AND REGULATION

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The main domestic laws establishing the powers and authority of the Maritime Court are the Code of Civil Procedure and Law No 2/15 of 2 February 2015, which establishes the principles and general rules on the organisation and functioning of Common Jurisdiction Courts (Judicial Courts).

Furthermore, Executive Decree No 29/95 of 7 July 1995 creates the Maritime Affairs Chamber (*Sala das Questões Marítimas*), a first-instance special-jurisdiction court with authority over admiralty and maritime claims. The jurisdiction of this chamber is determined by Law No 2/15 of 2 February 2015 and Executive Decree No 26/97 of 6 June 1997, and includes all matters related to admiralty and shipping law. The rulings provided by the Maritime Affairs Chamber may be appealed to the Court of Appeals.

Experience tells us that the most common maritime and shipping claims filed with the Maritime Court are related to collisions and disputes concerning cargo and maritime claims (ship arrests).

1.2 Port State Control

The National Maritime Agency (*Agência Marítima Nacional*, or NMA) is responsible for exercising port state control over all ships, vessels, platforms and seagoing crafts calling at, or anchored in, a national port or temporarily deployed at sea in Angolan territorial waters. Under its port state responsibilities, the NMA holds the authority to inspect all vessels operating in Angola and to assess fines for infringements detected.

Still in this regard, it is worth mentioning that Angola is a member of the International Maritime

Organization (IMO), having ratified a number of fundamental resolutions on international ship standards and port state control. Having been accepted as a member of the Memorandum of Understanding on Port State Control for West and Central African Region generally, Angola is on the verge of incorporating the application of this agreement into domestic law.

Moreover, Law No 27/12 of 28 August 2012 (the “Merchant Navy Law”) is the main domestic statute on port state control, establishing that the NMA may delegate the inspection of foreign vessels to classification societies or other recognised technical organisations that have entered into a statutory delegation of powers agreement with the Angolan state.

The NMA is also the authority responsible for investigating and responding to any maritime casualty, such as grounding, pollution or wreck removal. In performing its duties, the NMA is assisted by local port authorities and captaincy with jurisdiction over the area in which the casualty took place. Pursuant to the Merchant Navy Law, environmental authorities such as the Ministry of Environment may also be called to act in the event of (eventual) environmental damage and pollution.

1.3 Domestic Legislation Applicable to Ship Registration

The key domestic pieces of legislation applicable to ship registration are the Merchant Navy Law, Decree-Law No 42644 and Decree No 42645, both of 14 November 1959 (as amended), establishing the rules on commercial registry. In accordance with the Merchant Navy Law, all vessels, ships or other maritime craft are eligible for registration in Angola and fly the Angolan flag, provided that previous inspection and certification by the NMA is conducted and cleared, and compliance with age limitations is verified.

The registration of ships in Angola is a two-tiered system, involving a flag registration with the port and maritime authorities (ie, the NMA and the Port Authority) and a commercial registration with the Commercial Registry.

1.4 Requirements for Ownership of Vessels

The Merchant Navy Law provides that the registration of ships in Angola may be obtained by any natural or legal persons who have their permanent domicile or head office in the country.

Under conditions of reciprocity with other countries, natural or legal persons domiciled or having their head offices abroad may also apply for registration of their ships in Angola, provided that they have a local representative in the country.

However, the registration of ships engaged in specific activities (eg, cabotage) may be subject to more stringent requirements.

Vessels under construction may also be registered, even though their registration will remain provisional until completion of the relevant works and carrying out of the applicable inspections and clearances.

1.5 Temporary Registration of Vessels

Article 35 of the Merchant Navy Law provides that temporary registration of a vessel is allowed to Angolan ship-owners who have bareboat charter-in a foreign vessel.

Based on this statute, dual registration is (theoretically) possible for vessels under bareboat charter and for the duration of the relevant charterparty.

1.6 Registration of Mortgages

The creation of rights in rem (including possession, ownership and security) or of any security interests (including mortgages) in respect of,

or related to, vessels sailing under the Angolan flag is subject to mandatory registration with the Commercial Registry and the Central Security Registry.

On the basis of the foregoing, mortgages over vessels registered (or to be registered) in Angola and sailing (or to be sailing) under the Angolan flag must always be governed by the laws of Angola and registered in Angola as a condition of their effectiveness and enforceability against third parties (*erga omnes*).

Notary Deeds

Prior to – and as a condition for – registration, mortgages encumbering Angolan vessels must be executed by means of a notary deed (“Deed”) before a local notary public or a consular office. The documents required for the execution of the Deed include:

- a Commercial Registry certificate or equivalent document of the borrower;
- a power of attorney issued to the benefit of the representative(s) of the lender attending and signing the Deed, on the assumption that the lender is not going to be represented by any of its legal representatives/directors;
- a power of attorney issued to the benefit of the representative(s) of the borrower attending and signing the Deed, on the assumption that the borrower is not going to be represented at the Deed by any of its legal representatives/directors;
- identification documents of the representatives of the parties signing the Deed;
- certified copies of the loan agreements and/or resolution issued by the relevant corporate body of the lender approving the loans and the underlying terms and conditions of the mortgage, notably the amount of principal plus the amount equivalent to five years of interest;

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- a copy of the minutes of the resolution passed by the relevant corporate body of the borrower approving the granting of the mortgages to the benefit of the lender and the underlying terms and conditions, notably the amount of the principal plus the amount corresponding to five years' interest; and
- certificates of ownership of the vessels issued by the NMA and the Commercial Registry Office.

All documents executed or issued outside Angola must be previously legalised before the Ministry of Foreign Affairs (or equivalent), translated into Portuguese and then consularised before the Angolan consulate with jurisdiction over the country where the said documents were issued, as a precondition for being deemed valid, acceptable and enforceable in Angola.

Registration with the Commercial Registry Office

Once executed, the Deed must be registered with the Commercial Registry Office. In this respect, it must be stressed that:

- registration with the Commercial Registry Office is a condition precedent for the effectiveness of mortgages; in other words, pending said registration, mortgages remain ineffective for all legal purposes;
- mortgages registered with the Commercial Registry Office remain valid and enforceable for an indefinite period of time, unless (i) the obligation secured is extinguished by performance, (ii) the mortgaged assets (vessel) are transferred to a third party (in which case, termination of the mortgage will occur 20 years after registration of the transfer of title and five years after the final maturity of the secured obligation), or (iii) in the event of cancellation authorised by the mortgagee; and
- the ranking of security interests or privileges over ships is linked to the order by which said

interests or privileges were registered ("prior in tempore, potior in iure").

Registrations with the Commercial Registry Office are made by means of:

- the filing of an official form; and
- submission of the relevant supporting documents, including a certified copy of the Deed.

In addition to this, constitutional documents (reads, commercial extracts or equivalent documents) of both the mortgagor and mortgagee are usually required by the registrar, although such disclosure is not legally grounded.

Registrations before the Commercial Registry Office may be requested by a legal representative or duly appointed attorney of the mortgagor or the mortgagee, within 90 days as of the execution of the Deed. Failure to file the relevant application within that period may lead to the application of fines, although such fines do not undermine the validity of the registration.

Still in this respect, it is worth mentioning that the law sets forth the possibility of securing a provisional registration of a mortgage over a ship before execution of the Deed. To that end, the mortgagor must file an application with the Commercial Registry Office authorising registration of a mortgage over a given ship in favour of the mortgagee. This (provisional) registration is valid for a term of three months, renewable. The priority of the prospective mortgage over other security interests, once the definitive mortgage is created, is ensured by provisional registration, which protects a mortgagee against concurrent mortgagees and allows the execution of a mortgage without the pressure of priority being given in the register to another mortgage, even where created later on.

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Upon registration with the Commercial Registry Office, the mortgages must be endorsed in the vessels' passports (reads, ownership certificate issued by the NMA). Such endorsement is made for publicity purposes; ie, it is not a condition of the effectiveness/validity of the underlying mortgage or of its enforcement.

Further to Law No 11/2021 of 7 April 2021 and Presidential Decree No 114/21 of 29 April 2021, which establish the legal framework for the use of movable assets as security for the discharge of obligations and create the Central Security Registry, respectively, the information on mortgages over vessels, as well as the registration of all ship-related securities, shall be centralised and maintained on the online platform of the Central Security Registry.

1.7 Ship Ownership and Mortgages Registry

The registry of ownership of a vessel is, in theory, public. Any individual may approach the NMA or the Commercial Registry in order to obtain information on the ownership of a vessel.

Moreover, pursuant to Law No 11/2021 of 7 April 2021 and Presidential Decree No 114/21 of 29 April 2021, the mortgage registry is available to the public and may be consulted by any person upon submission of a consultation request to the Central Security Registry. The consultation request must be submitted in accordance with the form made available on the online platform.

2. MARINE CASUALTIES AND OWNERS' LIABILITY

2.1 International Conventions: Pollution and Wreck Removal

The following international conventions and domestic laws are enforceable in Angola.

Pollution

- The 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, as amended in 1973 and 1991.
- The 1973 International Convention for the Prevention of Pollution from Ships and Annexes I/II, III, IV and V.
- The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation.
- The 1992 Protocol to amend the 1969 International Convention on Civil Liability for Oil Pollution Damage.
- The 1992 Protocol to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.
- The 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.
- The 1996 Protocol to amend the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which regulates environmental protection.

In terms of domestic laws, the Merchant Navy Law, the Environmental Law (Law No 5/98 of 19 June 1998) and its ancillary regulations and related statutes must also be taken into account.

Wreck Removals

Wreck removals are governed and dealt with in light of domestic law, namely the Merchant Navy Law, the Environmental Law and ancillary statutes and regulations, as Angola is not a signatory of the Nairobi International Convention on the Removal of Wrecks of 2007.

2.2 International Conventions: Collision and Salvage

The following international conventions and domestic laws are enforceable in Angola.

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Collision

- The 1910 Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels.
- The 1952 International Convention for the Unification of Certain Rules concerning Civil Jurisdiction in Matters of Collision.
- The 1952 International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation.
- The 1972 International Regulations for Preventing Collisions at Sea, as amended in 1981.

Collision events are also governed by domestic law, notably Article 73 et seq of the Merchant Navy Law and Article 664 et seq of the Commercial Code.

Salvage

Salvage is governed by the International Convention on Maritime Search and Rescue and, on a domestic level, by the provisions of the Merchant Navy Law (Article 81 et seq), the Sea Search and Rescue System Regulation (Presidential Decree No 89/16 of 21 April of 2016) and the Commercial Code (Article 676 et seq).

2.3 1976 Convention on Limitation of Liability for Maritime Claims

The 1976 Convention on Limitation of Liability for Maritime Claims has not been ratified by Angola.

However, Angola is a signatory of the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-Going Vessels and the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (the “1957 Convention”).

Under domestic law, the provisions of the Merchant Navy Law and the Commercial Code are

worth noting in this regard. For instance, where collision was caused due to fault or wilful misconduct of the crew, damages will be computed and shared between the owners pro rata to the severity of each crew’s fault. Furthermore, 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.

2.4 Procedure and Requirements for Establishing a Limitation Fund

Pursuant to the 1957 Convention, the shipowner or another entitled person can limit their liability by establishing a limitation fund. The limitation fund can be established in any way admitted in the law and is dependent on the filing of an application before the competent court. The application must identify:

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

The application must be filed along with the vessel’s documents (eg, a tonnage certificate) supporting the calculation of the amount of the fund. The calculation of the limitation fund shall be in accordance with Article 3 of the 1957 Convention.

To the best of the authors’ knowledge, limitation funds have not been established in Angola. The authors believe that the courts will most likely insist on a cash deposit or local bank letter of guarantee.

3. CARGO CLAIMS

3.1 Bills of Lading

The provisions of the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the “Hague Rules”) are applicable in Angola. Angola is not a signatory of the Hague–Visby Rules, the Hamburg Rules or the Rotterdam Rules.

The provisions of the above-mentioned convention are supplemented by Article 538 et seq of the Commercial Code.

3.2 Title to Sue on a Bill of Lading

As a general rule, the right to sue on a bill of lading assists the shipper, the carrier and the consignee.

3.3 Ship-Owners’ Liability and Limitation of Liability for Cargo Damages

In the absence of detailed provisions set out by the parties in the contract, Article 2 of the Hague Rules establishes that the carrier is liable, under every contract of carriage of goods by sea, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods.

Nevertheless, Articles 7 and 8 of the Hague Rules, as well as Articles 1(1), 2 and 3 of the 1957 Convention, establish that the ship-owner may limit their liability in respect of claims arising under specific circumstances (eg, personal or property claims), unless the occurrence resulted from the actual fault or privity of the owner. Limitation of liability requires that a limitation fund has been constituted, as set out by Articles 2 and 3 of the 1957 Convention.

3.4 Misdeclaration of Cargo

Pursuant to Article 3(5) of the Hague Rules, the shipper shall be deemed to have guaranteed the

accuracy of the marks, number, quantity and weight to the carrier, and shall indemnify the carrier against all loss, damages and expenses arising or resulting from such inaccuracies.

To the best of the authors’ knowledge, no relevant judgments are available in this respect.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

According to the relevant Civil Code provisions, the general time bar for filing contractual claims is 20 years, whilst the time bar for liability in tort claims is three years. Statutes of limitation cannot be extended, but they can be suspended (Articles 318 to 322 of the Civil Code) or interrupted (Articles 323 to 327) under specific circumstances (eg, execution of an arbitration agreement, recognition of the debt).

Furthermore, Article 3(6) of the Hague Rules establishes that the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

4. MARITIME LIENS AND SHIP ARRESTS

4.1 Ship Arrests

The International Convention Relating to the Arrest of Sea-Going Ships 1952 (the “Brussels Convention”) is applicable. Outside its scope, the claimant must make use of the provisions of Angola’s Civil Procedure Code.

4.2 Maritime Liens

Maritime liens are recognised in Article 578 of the Commercial Code, which specifies the following categories of claims:

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- (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 incurred 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 ship-building 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.

Liens mentioned in (1) to (9) are understood to refer to those incurred during, and as a cause of, the last voyage.

Maritime claims are those set forth in Article 1(1) of the Brussels Convention (in respect of which, a vessel may be arrested under the terms of the Convention).

4.3 Liability in Personam for Owners or Demise Charterers

It is not required that the owner is liable in personam for an arrest of a vessel to be accepted. Pursuant to Article 3(4) of the Brussels Convention, if the charterer (and not the registered owner) is liable in respect of a maritime claim relating to a vessel, in the context of a charter by demise of a vessel, the claimant may arrest such vessel or any other vessel in the ownership of the charterer by demise, even though no other vessel in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The above-mentioned regime shall apply to any case in which a person other than the registered owner is liable in respect of a maritime claim relating to that vessel.

4.4 Unpaid Bunkers

A bunker supplier may arrest a vessel based on a maritime claim, as set out by Article 1(1)(k) of the Brussels Convention.

As set out by Article 3(4) of the Brussels Convention, a bunker supplier may arrest a vessel in connection with a claim for the price of bunkers supplied under a contract with the charterer, rather than with the owner, of that vessel, despite the added difficulty in enforcing the security where the charterer is not the owner. To the best of the authors' knowledge, there is no case law in Angola regarding the interpretation of this article of the Brussels Convention.

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4.5 Arresting a Vessel

Powers of Attorney

The original power of attorney shall be provided to the court and attached to the arrest application, unless it is not available. In the latter case, the arrest application must be submitted along with a scanned (colour) copy of the original power of attorney.

Besides, where issued abroad, powers of attorney are only accepted and enforceable if previously notarised, legalised, translated into Portuguese and, finally, consularised before Angola's embassy or consulate with jurisdiction over the country of their issuance.

Documentation

Regarding the documentation, and even though courts are entitled to the originals, it is common practice to accept scanned copies of those. In addition, documents shall be written in Portuguese; otherwise, the parties shall submit the documents in their original language, along with their certified Portuguese translation. Documents cannot be filed electronically, though.

Security

Despite the judge being free to decide otherwise, no security is usually required. Whenever the court asks the claimant to provide a security deposit, it will generally correspond to the amount of the claim. The security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

4.6 Arresting Bunkers and Freight

Bunkers and freight may be arrested, as determined by the relevant Civil Procedure Code provisions. On similar terms as other provisional procedures, the claimant is required to demonstrate the likelihood of their right or credit, and the risk of losing security for its credit otherwise.

4.7 Sister-Ship Arrest

Articles 2 and 3 of the Brussels Convention establish that the vessel that originated the maritime claim, as well as any other associated vessel or sister-ship owned by the same person(s), may be arrested by the claimant. However, in disputes regarding the title to, or ownership of, the ship, and disputes between co-owners as to the ownership, possession, employment, earnings, mortgage or hypothecation of a specific ship, associated vessels cannot be arrested.

Outside of the Brussels Convention, sister-ships may only be arrested when the owner is personally liable for the debt.

4.8 Other Ways of Obtaining Attachment Orders

Apart from ship arrest, security may only be obtained when the debtor is personally liable for the claim through the attachment of any other property owned by the debtor.

4.9 Releasing an Arrested Vessel

Pursuant to Article 5 of the Brussels Convention, the vessel shall be released upon sufficient bail or other security being furnished, save in arrests in respect of any of the maritime claims regarding disputes as to the title or ownership of the ship, or in disputes between co-owners of the ship as to the possession, employment or earnings of any vessel. In such cases, the court may permit the person in possession of the vessel to continue trading it, upon such person furnishing sufficient bail or other security.

Outside the Brussels Convention, the vessel will also be released if security is provided in the form and amount deemed sufficient by the court.

As mentioned above, the security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

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Both under and outside the Brussels Convention, the vessel shall also be released:

- upon payment of the debt;
- in the event the main claim is not commenced within 30 days – or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court – from the arrest being ordered or has had no developments for a period of more than 30 days for reasons imputable to the creditor;
- the main claim is definitively dismissed;
- if the main claim is upheld but the debt remains outstanding and the creditor does not initiate the enforcement proceedings within six months from the claim being definitively upheld or they have no development for a period of more than 30 days for reasons imputable to the creditor; or
- if the credit ceases to exist.

Although not common, courts have already accepted clubs letters of indemnity as security.

4.10 Procedure for the Judicial Sale of Arrested Ships Procedure

Usually, the judicial sale of arrested ships requires that a new enforcement proceeding is initiated by the creditor before the competent court. Once the application is lodged, the court will notify the debtor to settle the claim or offer its opposition, as well as any other interested parties, such as secured creditors.

If the sale is ordered, the judge will decide on how it will take place, and then appoint an auctioneer. The vessel is sold “as is and where is” and free from any charges or encumbrances. Notwithstanding, the debtor may still recover the vessel until completion of the judicial sale, provided it deposits the amount being claimed plus court fees and expenses.

Ship Maintenance

Once the vessel is arrested and until sold in the enforcement proceedings, an agent appointed by the court will be liable for supervising its maintenance, whenever the Master and their crew are absent or urgent decisions are to be taken.

Claim Priority

The order of priority of claims is established under Article 578 of the Commercial Code, as mentioned above.

4.11 Insolvency Laws Applied by Maritime Courts

Angola recently enacted Law No 13/21 of 10 May 2021 (“Law 13/21”) on the Legal Framework for Corporate Restructuring and Insolvency, unanimously approved by Parliament on 19 January 2021. This law entered into force in the country on the day it was published. The purpose of Law 13/21 is to regulate:

- the legal regime of extrajudicial and judicial recovery of natural and legal persons in economic distress or “imminent insolvency”, provided that the recovery is viable; and
- the legal regime of insolvency proceedings of natural and legal persons.

Pursuant to Law 13/21, once recovery and insolvency proceedings are put in motion, all suits pending against the debtor are suspended, which means that the Maritime Court shall be barred from ordering the arrest or judicial sale of a vessel owned by companies undergoing such proceedings.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

In the event of wrongful arrest of a vessel or where the arrest is lifted for reasons imputable to the applicant, the latter is liable for the damages caused to the arrestee, provided that the appli-

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cant has not acted with normal prudence or due care, as set out by Article 621 of the Civil Code.

5. PASSENGER CLAIMS

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

In addition to the individual terms of the relevant contract, the carriage of passengers is governed in general by Angola's Civil and Commercial Codes and the Consumer Law. Angola has not ratified the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

In accordance with the domestic laws, passenger have the right to be compensated for any losses or damages caused by an action attributed to the carrier, regardless of its wilful misconduct, and for any expenses incurred by the passenger deriving from the delay, interruption or change of route undertaken by the carrier.

The time bar applicable will vary if the claim arises from a breach of contract, where the general time bar of 20 years applies, or from tort, where a three-year time bar will apply.

6. ENFORCEMENT OF LAW AND JURISDICTION AND ARBITRATION CLAUSES

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Choice of Law Clauses

Notwithstanding the provisions set out by the Brussels Convention or the Hague Rules, the parties may choose the law that governs the obligations arising from a contract (including bills of lading), as established by Article 41(1) of the Civil Code. However, that choice shall cor-

respond to a serious interest of the parties or be connected to a relevant element of the contract (eg, the place where the parties are domiciled or the contract shall be performed), as set out by Article 41(2) of the Civil Code.

Jurisdiction Clauses

As a rule, jurisdiction clauses stated in contracts (including bills of lading) are valid and enforceable, as long as they arise from a written agreement, in which the competent jurisdiction is expressly mentioned, as established by Article 99 of the Civil Procedure Code.

Article 5 of Executive Decree No 26/97 of 6 June 1997 further establishes that Angolan courts' jurisdiction cannot be excluded in matters of international maritime law that would be within the jurisdiction of Angolan courts in accordance with its domestic law, unless the parties are foreigners and if it is a question regarding an obligation that must be performed in foreign territory and does not relate to assets located, registered or enrolled in Angola.

6.2 Enforcement of Law and Arbitration Clauses Incorporated into a Bill of Lading

Pursuant to Articles 1(1) and 3(1) of Law No 16/03 of 25 July 2003, an arbitration clause is valid as long as it arises from a written agreement from the parties and it concerns a claim of rights that can be disposed of or waived and that is not attributed to the exclusive jurisdiction of Angolan courts.

For choice of law clauses, see **6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading**.

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6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is applicable in Angola.

With regard to domestic law, Articles 1094 to 1096 of the Civil Procedure Code are applicable to the review and confirmation of foreign judgments. As a rule, any judgment awarded by a foreign court shall be subject to review and confirmation by the Supreme Court in order to be valid and enforceable in Angola.

The following set of requirements must be met for the review and confirmation of a foreign judgment, as set out by Article 1096 of the Civil Procedure Code:

- there are no doubts as to the authenticity of the judgment and the intelligibility of its decision;
- it must have become a final decision (not subject to appeal) according to the law of the country where the judgment was issued;
- it comes from a foreign court whose jurisdiction has not been fraudulently acquired and does not concern a matter of exclusive jurisdiction of the Angolan courts;
- there is no case pending or decided before an Angolan court, unless the foreign court has prevented jurisdiction;
- the defendant has been duly summoned to the proceedings, in accordance with the law of the country of the court of origin, and the principles of adversarial proceedings and equality of the parties have been observed; and
- it does not contain a decision whose recognition would lead to a result manifestly incompatible with international public policy or the principles of international private law of Angola.

The enforcement of arbitral awards when the New York Convention is not applicable is regulated in Law No 16/03 of 25 July 2003 and in the Civil Procedure Code, and can only be rejected on limited grounds (in addition to those that are also applicable to the enforcement of judicial decisions):

- the dispute is not arbitrable;
- the award is rendered by an arbitral tribunal with no jurisdiction;
- the arbitration agreement has expired;
- the award lacks the statement of grounds;
- there has been a violation within the proceedings of fundamental principles and the violation had a decisive influence on the outcome of the dispute;
- the arbitral tribunal has dealt with issues that it should not have dealt with, or has failed to decide issues that it should have decided; or
- when the tribunal decided as amicable compositeur and the award breaches the principles of public policy of Angolan law.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In accordance with Articles 2, 4 and 8 of the Brussels Convention, Angolan courts may order the arrest of a vessel in respect of any maritime claims.

However, pursuant to Article 7(3) and (4) of the Brussels Convention, if the parties have agreed on submitting the dispute to a different jurisdiction or to arbitration, the Angolan court may fix the time within which the claimant shall commence the main proceedings. If such proceeding is not brought within the time so fixed, the defendant may apply for the release of the vessel or of the bail, or other security.

Outside the scope of the Brussels Convention, Angolan courts will also accept the arrest in respect of claims subject to foreign arbitration

or jurisdiction clauses when the vessel is within their territorial jurisdiction.

6.5 Domestic Arbitration Institutes

Currently, there is no domestic arbitration institution that specialises in maritime claims active in Angola. Hence, general arbitral bodies will be competent, governed by Law No 16/03 of 25 July 2003, in such matters.

6.6 Remedies where Proceedings are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In the event of a breach of foreign jurisdiction or arbitration clauses, the defendant must invoke that before the court that lacks jurisdiction and ask for the claim to be dismissed.

7. SHIP-OWNER'S INCOME TAX RELIEF

7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

Companies incorporated in Angola will be subject to the general taxation regime set forth for other companies incorporated or with a permanent establishment in the country; ie, they will be subject to 25% industrial tax on their profits. Notwithstanding the above, tax benefits and reliefs may be applicable for investment projects submitted under the Private Investment Law regime. Non-resident shipping and airline companies are exempt from industrial tax provided that Angolan companies benefit from the same exemption regime in such foreign jurisdiction.

8. IMPLICATIONS OF THE CORONAVIRUS PANDEMIC

8.1 COVID-19-Related Restrictions on Maritime Activities

Since the beginning of the outbreak of COVID-19, the Angolan state has approved a number of transitional measures aimed at ensuring that the transportation sector kept operating and trying to keep restrictions to a minimum. To that extent, a number of port and maritime services deemed as essential (such as maritime freight services, and loading and unloading operations; cargo handling and repackaging for security reasons; and rescue and other urgent operational services) continued to be provided throughout the pandemic.

However, passenger cruises were, and are still, prohibited, as entries in the country are limited to a restricted number of situations, namely the return of national citizens and foreign residents or the entry of foreign citizens for work or business purposes, or those with refugee status.

In this regard, it is also important to note that the administration of the Port of Luanda (*Empresa Portuária de Luanda*, or EP) has approved transitional measures to prevent the spread of the virus while ensuring the continuity of the necessary port operations, including the following:

- vessels wishing to dock must inform the port 72 hours in advance of the vessel's last ten ports, in addition to the information that is usually disclosed;
- all requests for direct berthing at the EP are suspended, vessels should anchor outside the port and be subject to inspection visits by Health and Maritime Sanitation entities; and
- the port pilot shall only come on board vessels once the inspection by the health authorities is conducted.

8.2 Non-performance of a Shipping Contract

If the parties have not included force majeure or hardship clauses in their contracts, it is particularly important to take into consideration the general Angolan legislation, namely the provisions of the Civil Code regarding abnormal changes in circumstances (Articles 437 and 438) or impossibility of performance of contracts (Articles 790 to 793).

Abnormal Changes in Circumstances

Article 437 of the Civil Code applies whenever the circumstances on which the parties based their decision to enter into an agreement have suffered an abnormal change. As a result, the party that has been adversely affected by that change may terminate the agreement or ask for its modification based on equity, provided the party demonstrates that it could not have predicted the event and its consequences and that there is a causal link between the event and the failure to perform.

However, the above-mentioned regime includes very strict requirements in order to be invoked, since it is not enough to demonstrate the difficulty in performing the contract, but rather that the abnormal change is not covered by the risks inherent to the contract, and that requiring the performance of the agreement is contrary to the principles of good faith.

Impossibility of Performance

If the contract becomes impossible to perform, Articles 790 to 793 of the Civil Code are applicable, establishing different consequences based on whether the impossibility is total or partial and definitive or temporary.

The pandemic is, in theory, an event that may give rise to the application of both regimes in question to contracts entered into before the pandemic. For contracts entered into after March

2020, it will be increasingly challenging to invoke the pandemic as a ground for the application of these regimes, but ultimately this requires a case-by-case assessment.

8.3 Enforcement of the “IMO 2020” Rule Relating to Limitation on the Sulphur Content of Fuel Oil

There is no track record regarding the implementation of the “IMO 2020” rule regarding the limitation on sulphur content of fuel oil used on board ships in Angola.

This matter is addressed by Presidential Decree No 141/12 of 21 June 2012, which approves the Regulation for the Prevention and Control of the Pollution of National Waters, where it is prescribed that:

- the sulphur content of fuel oil used on board ships does not exceed 4.5% mass by mass (m/m) within ports;
- the sulphur content of fuel oil used on board ships does not exceed 1.5% m/m in inland waters; or
- the ship shall have installed an exhaust gas cleaning system duly approved in accordance with the criteria and specifications contained in the international certificates for the prevention of air pollution.

The Ministry of Environment is the authority responsible to supervise and control the enforcement of the above-mentioned sulphur content limits.

Given that the implementation of the IMO 2020’s sulphur content limits is still pending, there are no enforcement actions or proceedings/sanctions taking place in this regard.

8.4 Trade Sanctions

The recognition of international trade sanctions in Angola is governed by Law No 5/20 of

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27 January 2020, as amended (the Law on the Prevention and Combating Money Laundering, Terrorist Financing and Proliferation of Weapons of Mass Destruction), Law No 1/12 of 12 January 2012 (the Law on the Designation and Execution of International Legal Acts), and ancillary regulations thereof. Further to providing the national legal framework with an adequate system of enforcement of international sanctions imposed by the United Nations Security Council, these statutes also prescribe the terms for the criminal liability resulting from non-compliance with the restrictions imposed by the relevant sanctions.

Further to the above, the National Bank of Angola has approved Notice No 14/20 of 22 June 2020 containing the rules and procedures to be adopted by commercial banks in order to conduct proper KYC and risk assessment analysis in relation to all operations requested by their clients and ensure compliance with any applicable international sanctions.

The only record of a sanction imposed on an Angolan entity dates back to 1993 and was imposed by the UN Security Council on the National Union for the Total Independence of Angola (UNITA). The sanctions included the freezing of the group's funds, a ban on the diamonds originating from UNITA-held territory, and an embargo on the sale of arms and petroleum to the group. The sanctions were in force until peace was assured in 2002, in light of UNITA's commitment to continue the peace process. No legal process was initiated in this regard.

9. ADDITIONAL MARITIME OR SHIPPING ISSUES

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

There are rumours that the Angolan government is planning to review the Merchant Navy Law and its regulations, in order to make the same more sophisticated and aligned with IMO requirements.

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ANGOLA LAW AND PRACTICE

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