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Shipping 2022

Mozambique: Law & Practice

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MOZAMBIQUE

Law and Practice

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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 law establishing the authorities of the maritime and shipping courts in Mozambique is Law No 5/96 of 4 January 1996, which formally establishes the maritime courts. This law provides that the maritime courts have jurisdiction in civil, criminal, misdemeanour and international maritime law matters. However, despite being formally established many years ago (ie, in 1996), they have not yet come into operation and therefore their legal jurisdiction is exercised by the provincial judicial courts, with the possibility of appeal to the Supreme Court.

The most common maritime and shipping claims filed with the competent courts are related to collisions and disputes concerning cargo and maritime claims (ship arrests).

1.2 Port State Control

In Mozambique, port state control is exercised by the National Sea Institute (*Instituto Nacional do Mar, IP*, or INAMAR), a public entity that has competence over all maritime matters in the country, as provided for in Decree No 88/2021 of 28 October 2021.

In general, INAMAR is responsible for the following:

- the exercise of maritime authority in the areas of maritime, lake, fluvial jurisdiction and coastal zones, as well as in the domain of maritime administration, safety and protection;
- the supervision of activities in maritime, fluvial and lake areas, and public maritime domain of the coastal zone, as well as compliance

with standards regarding the protection of marine and coastal ecosystems and the conditions of conservation and exploitation of marine conservation areas;

- the development and implementation of measures ensuring the sustainable exploitation, conservation and preservation of aquatic ecosystems; and
- the conducting and/or co-ordinating of search and rescue activities, as well as saving assets, in maritime, fluvial and lake areas, with the involvement of other relevant entities.

Regarding marine casualties such as grounding, pollution or wreck removal, INAMAR is responsible, among others, for the following:

- to monitor and supervise vessels and fixed and mobile platforms, in order to prevent and detect any pollution activities in the marine environment and inland waters, in co-ordination with other relevant entities;
- to co-ordinate maritime search and rescue activities and the saving of property in maritime, river and lake areas;
- to participate in the investigation of marine casualties and incidents as well as maritime infringement procedures;
- to inspect and monitor the handling of dangerous cargo, in co-ordination with other competent entities;
- to adopt measures for the prevention, control and combating of pollution of the marine environment from ships or other floating media at sea, in co-ordination with other relevant entities;
- to ensure compliance with international and regional standards and best practices and procedures for preventing, reducing, controlling and combating pollution of the marine environment;
- to prevent and combat pollution of the sea, rivers, lakes and their ecosystems from all sources that may cause damage to the

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aquatic and coastal environment, in co-ordination with other relevant entities;

- to prevent, control and act on actions that result in the intentional or unintentional discharge of waste into the sea, inland waters and coastal areas; and
- to license, among others, the exercise of assistance and maritime salvage activities, and the recovery of objects or cargo on the seabed and inland waters.

1.3 Domestic Legislation Applicable to Ship Registration

The key domestic pieces of legislation applicable to ship registration are Decree-Law No 42644 and Decree No 42645, both of 14 November 1959 (as amended), which establish the rules on commercial registry.

In Mozambique, the registration of ships is a two-tiered system, involving a flag/administrative registration with the port and maritime authorities (ie, INAMAR) and a commercial registration with the Legal Entities Registry Office (*Conservatória do Registo de Entidades Legais*, or CREL).

1.4 Requirements for Ownership of Vessels

Registration of ships in Mozambique may be obtained by any natural or legal persons who have their permanent domicile or head office in the country.

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

It is important to highlight, however, that domestic law may impose nationality requirements relating to vessels and/or ship-owners (*armadores*) as a condition for carrying out certain

activities, such as in cabotage, as provided for in Decree No 35/2007 of 14 August 2007 and Decree No 35/2016 of 31 August 2016.

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

Temporary registration is permitted in certain cases, namely for Mozambican ship-owners who have bareboat charter in a foreign vessel for the carrying out of cabotage activities.

According to Decree No 35/2016 of 31 August 2016, which authorises the special registration of foreign vessels to engage in maritime cabotage operations, a Mozambican company (ie, a company incorporated and organised under the laws of Mozambique and owned at least 35% by Mozambican citizens or Mozambican companies majority owned by Mozambicans) is entitled to bareboat charter-in a foreign vessel and employ her in the carrying out of cabotage operations in Mozambique; while operating in Mozambique, the vessel (under bareboat charter) is required to secure and fly exclusively the Mozambican flag (the original flag must be suspended). While under bareboat charter, the ownership of the vessel will not be changed/impaired; ie, for the relevant legal purposes, her foreign owners will remain holding full legal title over the same.

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 Mozambican flag is subject to mandatory registration with the CREL and the Central Registration Office for Securities Guarantees.

On the basis of the foregoing, mortgages over vessels registered (or to be registered) in Mozambique and sailing (or to be sailing) the Mozambican flag must always be governed by the laws of Mozambique and registered in Mozambique 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 Mozambican 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;
- 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 INAMAR and the CREL.

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

Central Registration Office for Securities Guarantees

Once executed, the Deed must be registered with the CREL and the Central Registration Office for Securities Guarantees. In this respect, it must be stressed that:

- registration with the CREL 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 CREL 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”).

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Registrations with the CREL and the Central Registration Office for Securities Guarantees are made by means of (i) the filing of an official form, and (ii) 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 CREL and the Central Registration Office for Securities Guarantees 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 vessel before execution of the Deed. To that end, the mortgagor must file an application with the CREL 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 mortgages 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.

Upon registration with the CREL, the mortgage must be endorsed in the vessels' passports (reads, ownership certificate issued by INAMAR). Such endorsement is made for publicity purposes; ie, it is not a condition of the effective-

ness/validity of the underlying mortgage or of its enforcement.

1.7 Ship Ownership and Mortgages Registry

The registration of ownership and mortgage of vessels are available for public consultation. The registration can be seen through the content of the certificates issued by the CREL and the Central Registration Office for Securities Guarantees, at the request of any interested party.

2. MARINE CASUALTIES AND OWNERS' LIABILITY

2.1 International Conventions: Pollution and Wreck Removal

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

Pollution

- The 1973 International Convention for the Prevention of Pollution from Ships and Annexes I/II, III, IV and V.
- The 1982 United Nations Convention on the Law of the Sea.
- The 1985 Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.
- The 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation.
- The 1992 Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage of 1969.
- The Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

In terms of domestic laws, the Environmental Law, approved by Law No 20/97 of 5 December

1997; the Regulation for Prevention of Pollution and Marine and Coastal Environment Protection, approved by Decree No 45/2006 of 30 November 2006; and the Law of the Sea, approved by Law No 20/2019 of 8 November 2019, must be taken into account.

Wreck Removals

Wreck removals are governed by domestic law, namely the Environmental Law and ancillary statutes and regulations, as Mozambique 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 Mozambique.

Collision

- The 1910 International 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 664 et seq of the Commercial Code.

Salvage

Salvage is governed by the 1910 Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea and, on a domestic level, by the provisions of the Salvage and Assistance Regime, approved by Legislative

Diploma No 96/72 of 12 October 1972, 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 Mozambique.

However, Mozambique 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, it is worth noting the provisions of the Commercial Code 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 ship-owner or other 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.

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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 Mozambique. The authors believe that 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 Mozambique. Mozambique 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 Mozambique’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:

- (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.

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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 Mozambique regarding the interpretation of this article of the Brussels Convention.

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 Mozambique'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 claimant will risk 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 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.

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.

Typically, courts do not accept a clubs letter 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

Mozambique’s bankruptcy regime is set forth in Decree-Law No 1/2013, of 4 July 2013. The purpose of Decree-Law No 1/2013 is to regulate:

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- the 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 Decree-Law No 1/2013, acceptance of a request for the debtor’s judicial recovery protects the debtor’s assets against creditors; ie once this request is accepted, 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. The same applies to proceedings in which the debtor is adjudicated insolvent by the relevant court of law.

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 applicant 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 Mozambique’s Civil and Commercial Codes and the Consumer Protection Law (Law No 22/2009 of 28 September 2009). Mozambique has not ratified the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

In accordance with the domestic laws, passengers have the right to be compensated for any losses or damages caused by an action attrib-

uted 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.

In accordance with the Commercial Code, the time bar applicable will vary between one and three years.

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 correspond 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 12 of Law No 5/96 of 4 January 1996 further establishes that Mozambican courts’ jurisdiction cannot be excluded in matters of international maritime law that would be within the jurisdiction of Mozambican 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 Mozambique.

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

Pursuant to Articles 4(1) and 5(2) of Law No 11/99 of 12 July 1999, 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 Mozambican courts.

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

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 Mozambique.

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 Mozambique.

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 Mozambican courts;
- there is no case pending or decided before a Mozambican 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 the principles of international public policy or international private law of Mozambique.

Under domestic law, the grounds for refusing the enforcement of an arbitral award are the same as those set forth for the enforcement of court decisions, which are wider than those of the New York Convention.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

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

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 Mozambican court may fix the time within which the claimant shall commence the main proceedings. If the action or 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.

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Outside the scope of the Brussels Convention, Mozambican 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 Mozambique. Hence, general arbitral bodies will be competent, governed by Law No 11/99 of 12 July 1999, 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 Mozambique 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 32% corporate income tax on their taxable profits. Notwithstanding the above, according to the Code of Fiscal Benefits, tax benefits and reliefs may be granted to holders of investment projects approved under the Investment Law. Non-resident shipping companies that obtain income from chartering vessels for fishing or cabotage activities are subject to a reduced 10% withholding rate (the general rate is 20%, if a double tax treaty is not applicable).

8. IMPLICATIONS OF THE CORONAVIRUS PANDEMIC

8.1 COVID-19-Related Restrictions on Maritime Activities

Since the beginning of the outbreak of the COVID-19 virus, the Mozambican state has approved a number of transitional measures aimed at ensuring that the transportation sector kept operating while complying with the relevant safety measures. To that extent, a number of port and maritime services deemed as essential (such as maritime freight services, and loading and unloading operations) continued to be provided throughout the pandemic.

However, the Ministry of Transportation and Communications, by means of Circular No 02/GM/MTC/2020 of 9 April 2020, imposed specific restrictive measures on maritime activities, such as the following.

- Maritime authorities and port managers shall ensure that all members of the vessels' crews are subject to compulsory health screening.
- During the ships' stay in port, it is necessary to ensure that all members of the crew remain on board. The crew members may only disembark from their ships into the port area for operations deemed as strictly necessary regarding the loading and unloading of their ships and are prohibited from leaving the port area, except for health issues.
- In the case of touristic cruise ships, the ship's crew and passengers may disembark and go beyond the port area, provided that all the relevant preventative measures are complied with.
- It must be ensured that the health officer, who is a member of the port authorities' team, must first board to assess the health of the crew members, and only once free practice has been declared on board will the remain-

ing members of the inspection, customs and migration team enter.

- The removal of all kinds of waste from the ship should be prohibited.

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 Mozambican 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

For the time being, Mozambique has not approved specific domestic legislation dealing with the sulphur content of fuel oil used on board ships – with all it implies in terms of enforcement of the international standards on sulphur content limitations.

However, there are now some players in the market that have started to provide fuel oil in compliance with the IMO 2020 regulation.

8.4 Trade Sanctions

Mozambique has formally recognised and enforced the international economic sanction against Rhodesia (now Zimbabwe), in 1976, and decided to close all its borders with this country, in full implementation of the relevant decisions of the United Nations. However, this was part of a political decision and was enforced by means of a presidential communication to the nation, published in the official gazette on 3 March 1976.

Mozambique has not approved any statute specifically governing the enforcement of international trade sanctions. However, the Bank of Mozambique has approved Notice No 4/GBM/2015 of 17 June 2015 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.

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Currently, there are sanctions in place against individuals and legal entities in Mozambique, namely the Islamic State operating in Cabo Delgado Province, but there is no record of legal proceedings being initiated in this regard.

9. ADDITIONAL MARITIME OR SHIPPING ISSUES

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

As part of the ongoing legislative reforms, the Mozambican government has recently launched a tender for the review of the main statutes dealing with maritime and shipping matters, with the aim of codifying the key matters in a single statute, to be complemented by specific regulations on a case-by-case basis.

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MOZAMBIQUE LAW AND PRACTICE

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