
CHAMBERS GLOBAL PRACTICE GUIDES

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**Mozambique: Law & Practice
and Trends & Developments**

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VdA



MOZAMBIQUE



Law and 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 maritime courts in Mozambique is Law No 10/2022 of 7 July 2022 (“Law 10/2022”), which formally establishes the legal framework for the organisation, composition, operation and authorities of maritime courts. This law provides that the maritime courts have maritime, river, lake and port jurisdiction in civil, criminal, commercial, misdemeanour and international maritime law matters. By an order dated 6 April 2023, the Supreme Court declared the Maritime Courts of Maputo City, Sofala and Nampula provinces to be operational. However, presently, only the Maritime Courts of Maputo City and Sofala provinces are fully functional and operating and, therefore, the legal jurisdiction of the (future) Maritime Court of Nampula province is (temporarily) exercised by the provincial judicial courts.

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 and Resolution No 15/2022 of 19 September 2022, which approved INAMAR’s Organic Statute.

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 planning of maritime space and the public maritime domain of the coastal zone;
- 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 seafarers’ casualties and fatalities, grounding, pollution or wreck removal, INAMAR is responsible for the following, among others:

- monitoring and supervising 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;
- co-ordinating maritime search and rescue activities and the saving of property in maritime, river and lake areas;
- participating in the investigation of marine casualties and incidents as well as maritime infringement procedures;
- inspecting and monitoring the handling of dangerous cargo, in co-ordination with other competent entities;

- adopting 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;
- ensuring compliance with international and regional standards, and best practices and procedures, for preventing, reducing, controlling and combating pollution of the marine environment;
- preventing and combating pollution of the sea, rivers, lakes and their ecosystems from all sources that may cause damage to the aquatic and coastal environment, in co-ordination with other relevant entities;
- preventing, controlling and acting on actions that result in the intentional or unintentional discharge of waste into the sea, inland waters and coastal areas; and
- licensing, 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 and local traffic, 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 a 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 at least 35% owned by Mozambican citizens or Mozambican companies majority owned by Mozambicans) is entitled to a bareboat charter in a foreign vessel and to employ her in the carrying out of cabotage operations in Mozambique. While operating in Mozambique, the vessel (under a bareboat charter) is required to secure and exclusively fly

the Mozambican flag (the original flag must be suspended). While under a 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.

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 before a local notary public or a consular office. The documents required for the execution of the notary 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 notary 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 notary deed, on the

assumption that the borrower is not going to be represented at the notary deed by any of its legal representatives/directors;

- identification documents of the representatives of the parties signing the notary 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 of 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.

The Central Registration Office for Securities Guarantees

Once executed, the notary deed must be registered with the CREL and the Central Registration Office for Securities Guarantees. In this respect, the following must be stressed.

- 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:
 - (a) the obligation secured is extinguished by performance;
 - (b) 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
 - (c) in the event of cancellation authorised by the mortgagee.
- 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 CREL and the Central Registration Office for Securities Guarantees are made by means of:

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

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 notary 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, which is 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.

Upon registration with the CREL, the mortgages must be endorsed in the passports of the vessel(s) (reads, ownership certificate issued by INAMAR). 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.

1.7 Ship Ownership and Mortgages Registry

The registration of ownership and mortgage of a vessel are available for public perusal. 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 Co-operation.
- 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.

The following domestic laws should also be taken into account:

- the Environmental Law, approved by Law No 20/97 of 5 December 1997 (as amended by Law No 16/2014);
- the Regulation for Prevention of Pollution and Marine and Coastal Environment Protection, approved by Decree No 45/2006 of 30 November 2006 (as amended by Decree No 97/2020); and
- the Law of the Sea, approved by Law No 20/2019 of 8 November 2019.

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 1888 Commercial Code (a statute which was mostly superseded by the 2005 and 2022 Commercial Codes, excluding its Book III, on maritime trade, which remains in full force and effect today).

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 1888 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.

The application must be filed along with the vessel’s documents (eg, a tonnage certificate) sup-

porting 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 would most likely insist on a cash deposit or local bank letter of guarantee.

2.5 Seafarers’ Safety and Owners’ Liability

Mozambique is a State-Party to the Maritime Labour Convention as of the date of its ratification on 25 May 2021. In accordance with Standard A4.5 (2) and (10), the Mozambican government has recognised through Decree 50/2014, of 21 December 2014 – also known as the Maritime Work Regulation – and Decree 51/2017, of 9 October 2017 – known as the Mandatory Social Security Regulation – that seafarers benefit from the following protections:

- sickness benefit (Article 16 (1) (f) and (g) and Article 41 to 44 of the Maritime Work Regulation);
- old-age benefit (Article 65 (d) of the Maritime Work Regulation and Article 29 of the Mandatory Social Security Regulation);
- maternity benefit (Articles 27 and 28 of the Mandatory Social Security Regulation); and
- invalidity benefit and survivors’ benefit (Articles 36 to 39 of the Mandatory Social Security Regulation).

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 Hague Rules are supplemented by Article 538 et seq of the 1888 Commercial Code and, to a certain extent, by Articles 473 to 491 of the recently enacted Decree-Law No 3/2022 of 25 May 2022 (“Decree-Law 3/2022”), which approved the new Legal Regime of Commercial Contracts (and applies to the carriage of goods by sea). The latter incorporates into domestic law some of the provisions and principles enshrined in the Rotterdam Rules.

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 to 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.

Carriers may also take advantage of Article 125 of Decree-Law 3/2022 to limit or exclude indemnity payments to third parties.

Decree-Law 3/2022 further provides, in Articles 473 to 487, for different liabilities of the carrier in relation to the cargo, exceptions to such liability, the period of liability and specific obligations of the carrier during the carriage, which, where applicable, may complement the Hague Rules.

3.4 Misdeclaration of Cargo

Pursuant to Article 3(5) of the Hague Rules (and likewise Article 489 of Decree-Law 3/2022), the shipper should be deemed to have guaranteed the accuracy of the marks, number, quantity and weight to the carrier, and should indemnify the carrier against all loss, damages and expenses arising or resulting from any inaccuracies thereof.

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, while 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 and of Law 10/2022.

4.2 Maritime Liens

Maritime liens are recognised in Article 578 of the 1888 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 past 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.

Claims for indemnities for personal injury of a member of the crew or of passenger would not be recognised as a maritime lien or a maritime claim.

Liabilities resulting from contracts for chartering a vessel will not provide grounds for a maritime claim.

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 for the owner to be liable in personam for 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, the claimant may arrest such vessel or any other 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 Mozambique regarding the interpretation of this Article of the Brussels Convention.

4.5 Arresting a Vessel Powers of Attorney

The original power of attorney should be provided to the court and attached to the arrest application, unless it is not available. In the latter case, it is possible to request leave from the tribunal to submit the original power of attorney at a later stage (a scanned (colour) copy of the original power of attorney being submitted with the application whenever available).

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 these. In addition, documents should be written in Portuguese; otherwise, the parties must submit the documents in their original language, along with their certified Portuguese translation. However, documents cannot be filed electronically.

Security

Despite the judge being free to decide otherwise, usually no security is 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 provisions of the Civil Procedure Code and Law 10/2022. On similar terms as other provisional procedures, the claimant is required to demonstrate the likelihood of its right or credit, and the risk of it losing security for its credit if the arrest is not ordered.

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 must be released upon sufficient bail or other security being furnished, save for 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, 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 the claim has had no developments for a period of more than 30 days for reasons imputable to the creditor;
- where the main claim is definitively dismissed;
- where 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 where the claim has had no developments for a period of more than 30 days for reasons imputable to the creditor; or
- where the credit ceases to exist.

Typically, courts are reluctant to accept club's 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 be 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 notify 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 1888 Commercial Code, as mentioned in 4.2 Maritime Liens.

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 this law is to regulate:

- 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 as 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 Code, the Consumer Protection Law (Law No 22/2009 of 28 September 2009) and Articles 434 et seq of Decree-Law 3/2022. Mozambique has not ratified the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

In accordance with domestic laws, a passenger has 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.

Claims for indemnities for personal injury of a passenger are not recognised as a maritime lien or a maritime claim.

In accordance with the 1888 Commercial Code and Decree-Law 3/2022, the time bar applicable will vary between one and three years. In addition, under Decree-Law 3/2022, a carrier will also benefit from a time bar of 120 days for loss or damage suffered by the carrier due to inaccurate information on, or false description of, the goods being carried.

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 must 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 where 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 22 of Law 10/2022 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 Mozambican domestic law, unless the parties are foreigners and if it is a question regarding an obligation that must be performed in a 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 ("Law 11/99"), an arbitration clause is valid as long as it arises from a written agreement of 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 regards 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 it 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 should commence the main proceedings. If the action or proceedings are 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, Mozambican courts will also accept the arrest in respect of claims subject to foreign arbitration or jurisdiction clauses where 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, in such matters general arbitral bodies will be competent, governed by Law 11/99.

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 such before the court that lacks jurisdiction and ask for the claim to be dismissed.

7. Ship-Owner's Income Tax Relief

7.1 Ship-Owner's Income Tax Relief

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. This notwithstanding, 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 Non-performance, the IMO 2020, Trade Sanctions and the War in Ukraine

8.1 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.

8.2 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 this 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.

8.3 Trade Sanctions

Mozambique formally recognised and enforced the international economic sanction against Rhodesia (now Zimbabwe) in 1976, and decided to close all its borders with said 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 5/GBM/2022 of 17 November 2022 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 to ensure compliance with any applicable international sanctions.

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.

8.4 The War in Ukraine

Mozambique has been neutral on the war in Ukraine. It has called for dialogue and abstained in the UN General Assembly’s resolutions condemning Ukraine’s invasion by Russia. No sanctions on Russian individuals and/or entities by the Mozambican government are currently in place. From an economic point of view, the Russia–Ukraine conflict has led to a rise in freight transport prices and, consequently, higher costs for Mozambican companies and higher inflation. However, as far as the authors have been able to determine, the Mozambican courts are yet to deal with any cases of non-performance of obligations resulting from, or related to, the conflict.

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, through the Institute

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of Maritime Transport (ITRANSMAR), 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.

Trends and Developments

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VdA

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Shipping Developments in Mozambique in 2024

Introduction

The shipping sector in Mozambique plays a critical role in the country's economic development, as it offers a significant means of transportation with access to the international markets. Mozambique has a coastline of approximately 2,500 kilometres, three major ports – Maputo, Beira and Nacala – and several minor ports and harbours.

The Port of Maputo is the largest and busiest port in Mozambique, handling about 90% of the country's trade, and more than 12 million tonnes of goods annually. The port offers diverse transit options for cargo, including sea, road and rail, thereby connecting Mozambique to neighbouring Southern African countries.

The Port of Beira also plays a major role in the shipping sector, serving as a vital gateway for landlocked countries such as Zimbabwe, Zambia and Malawi and an essential transit hub for fuel, cargo and containers.

The Port of Nacala is located in the northern region of Mozambique and is one of the deepest ports in Southern Africa. It is mainly used for exporting coal from the adjacent Moatize coal mines. The port also serves as an important hub for exporting other commodities, including agricultural products.

While Mozambique's shipping industry has recently experienced several challenges, including maritime security issues such as piracy and organised crime (see the section on the Rovuma Project further on in this article), the industry remains a critical sector for Mozambique's economic growth and the country is increasingly becoming fertile ground for shipping contracts

and legal action on maritime liens. The Mozambican government is investing in infrastructure improvements aimed at enhancing the country's connectivity and competitiveness in the regional and international markets, particularly in the development of a transportation corridor that connects the central and northern regions and links the ports to the landlocked countries of Southern Africa.

Additionally, the ports of Pemba and Palma, located further north in Mozambique, are projected to become crucial servicing and logistics ports for the oil and gas industry. These ports will support transportation of goods and personnel to and from offshore oil and gas drilling sites in the Rovuma Basin. The development of these ports aligns with Mozambique's ambitions to become a significant player in the global gas market and attract foreign investment to the sector.

Key areas of development

Legislative developments

In 2022, acknowledging the preponderance that its maritime ports may have as a result of the above-mentioned facts, Mozambique approved the Maritime Courts' Law (Law No 10/2022), which provides for the institution of specialised maritime courts with specific know-how on matters relating to shipping contracts, maritime liens, maritime claims and arrest of ships. At the end of 2023, the Maritime Courts of Maputo City and Sofala Provinces came into operation, followed by the Maritime Court of Nampula Province at the beginning of 2024, in a clear sign of the government's commitment to ensuring adequate responses to the specificities of the shipping sector.

In October 2023, the French government guaranteed that it will continue to finance the construction of maritime courts in Mozambique, as

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a way of consolidating the country's maritime sovereignty and enhancing legal certainty and enforcement within the sector.

Training

In June 2023, the staff of the Ministry of Transport and Communications were trained by the International Maritime Organization's (IMO's) Maritime Security team on the transposition of IMO instruments related to maritime security into national legislation. The workshop aimed to provide support on how to translate measures within the International Convention for the Safety of Life at Sea, 1974 (SOLAS) Chapter XI-2 and the International Ship and Port Facility Security Code ("ISPS Code") into Mozambique's national maritime security legislation. It should be noted that this was the first workshop held in Mozambique under the IMO's Port Security Project which is funded by the EU.

Moreover, the Confederation of Economic Associations of Mozambique (CTA) and the Centre for Judicial and Legal Training of Mozambique (CFJJ) signed a co-operation agreement for training on maritime law and related matters. This will contribute, inter alia, to the training of maritime court judges, bringing legal certainty to the shipping sector that is increasingly consolidated and aligned with the best market practices.

Infrastructure

Recently, the Mozambican government has made a positive commitment to the shipping sector by investing around USD1 million to replace the buoys along the access channel to the Port of Maputo. This investment ensures that the port remains competitive and maintains its position in the region in terms of cargo handling and berthing larger ships. The replacement of buoys will improve navigation conditions along

the access channel to the Port of Maputo, thereby supporting the growth of the shipping sector in Mozambique.

Rovuma Project

The Rovuma Project, otherwise known as Mozambique LNG (liquefied natural gas), is a project led by TotalEnergies to produce and exploit natural gas in the Rovuma Basin, in northern Mozambique. This project has been suspended for the last two years due to a series of terrorist attacks in the area, but 2023 marked the resumption of work to ensure that gas can be exported as early as 2027. Being an offshore project, it will involve an important shipping component at the various stages of its development, especially in terms of imports and exports.

The Rovuma Basin's natural gas projects have the potential to significantly impact the shipping industry in Mozambique. The development of LNG production facilities and export terminals requires significant maritime infrastructure, including the construction of port facilities, pipelines and transportation vessels designed to carry LNG safely and efficiently.

Mozambique has already taken steps to improve its port infrastructure, for example, the construction of the deep-water port of Nacala that can accommodate large vessels and enable the export of coal and other bulk goods. Additional investment will be required in port facilities to support the influx of vessels carrying materials and equipment required for the development of the Rovuma Basin's natural gas reserves.

There will also be an increase in the demand for regional shipping services to transport people, equipment and materials required to support the Rovuma Project and other natural gas-related projects. Shipments of natural gas will also

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necessitate specialised vessels like Liquefied Natural Gas Carriers (LNGC) that can operate in deep waters and carry massive quantities of liquefied gas. This demand for shipping services will generate significant economic activity and job opportunities for workers in Mozambique's shipping sector.

The development of the Rovuma Project(s) may also lead to increased activity in the supply chain, benefiting shipping companies operating in the region. This activity will support local businesses and generate employment opportunities in transportation, logistics, and port-related activities, impacting positively on the economy of Mozambique and the shipping industry in the country.

One thing is certain: the opportunities are real. There is great potential, and it is now up to the Mozambican shipping sector to take advantage of them, with the certainty that the legal framework and its application will play a fundamental role in operationalising and monetising the opportunities.

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