

Legal 500

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Angola

Shipping

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VdA



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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Angola.

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Angola: Shipping

1. What system of port state control applies in your jurisdiction? What are their powers?

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

Still in this regard, it is worth mentioning that Angola is a member of the International Maritime Organization (IMO), having ratified a number of fundamental resolutions on international ship standards and port state control.

Moreover, Law No 27/12 of 28 August 2012 (the "Merchant Navy Law", as amended and recast by Law 34/22 of 13 September 2022) is the main domestic statute on port state control, establishing that the NMA may delegate the inspection of foreign vessels to classification societies or other recognised technical organisations that have entered into a statutory delegation of powers agreement with the Angolan state.

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

Having been accepted as a member of the Memorandum of Understanding on Port State Control for West and Central African Region (Abuja MoU), Angola is on the verge of incorporating the application of this agreement into domestic law.

The Abuja MoU is the legal document under which maritime authorities of countries in the region agreed to develop and implement a common mechanism for the respective port state control activities. The main work of Abuja MoU is the harmonization of the port state control procedures and practices of all the countries in the region

aimed at eliminating the operation of substandard shipping within the region thereby ensuring maritime safety, security, protection of our marine environment from pollution, improving the working and living conditions of ship crew, and to facilitate regional cooperation and exchange of information among member States.

2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

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

Pollution

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

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

Wreck Removals

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

International Convention on the Removal of Wrecks of 2007.

3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

The matter pertaining to the limits on sulphur content of fuel oil is addressed by Presidential Decree No 141/12 of 21 June 2012, which approves the Regulation for the Prevention and Control of the Pollution of National Waters, where it is prescribed that:

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

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

There are no MARPOL Emission Control Areas in force in Angola.

4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

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

Collision

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

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

Article 664 *et seq* of the Commercial Code.

Salvage

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

5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

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

However, 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") do apply.

Under domestic law, the provisions of the Merchant Navy Law and the Commercial Code are worth noting in this regard. For instance, where collision was caused due to fault or wilful misconduct of the crew, damages will be computed and shared between the owners *pro rata* to the severity of each crew's fault. Furthermore, if it is not possible to determine which vessel caused the accident, all intervening vessels shall be jointly liable for damages and losses arising therefrom.

6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to

obtain security for a claim to be pursued in another jurisdiction or in arbitration?

The 1952 Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Vessels ("1952 Convention" or "Brussels Convention") is applicable in Angola. Under the 1952 Convention, any person alleging that it holds a maritime claim is entitled to seek the arrest of a ship. A "maritime claim" is deemed to be a claim arising out of one or more of the situations named under Article 1.1 of the 1952 Convention.

Outside the scope of the 1952 Convention, i.e., for the purposes of obtaining security for an unlisted maritime claim [e.g., arrest for a ship sale claim, unpaid insurance premiums, protection and indemnity ("P&I") dues, amongst others] or to seek the arrest of a vessel sailing under the flag of a non-contracting state, the claimant must make use of the provisions of the Civil Procedure Code. In this case, and aside from the jurisdiction issue that needs to be properly assessed, in addition to providing evidence on the likelihood of its right/credit, the claimant shall also produce evidence that there is a risk that the debtor/arrestor may remove or conceal the ship (security for the claim) or that the ship may depreciate in such a way that, at the time that the final judgment is handed down in the main proceedings, the ship is no longer available or has substantially decreased in value.

Before ordering the arrest, the arrestee is granted the opportunity to oppose/challenge the arrest application. Please note, however, that if the arrest application is properly filed and duly documented, the court may order the detention of the vessel before summoning the arrestee or granting the arrestee the chance to oppose the arrest application. The arrestee has 8 days to oppose the arrest application/order.

With the arrest in place, the claimant is required to file the initial claim for the main proceedings, of which the injunction will form an integral part, within 30 days as of the arrest order. During the proceedings, the parties are free to settle by agreement and withdraw the claim. If the main claim should be filed with a foreign court, then the judge dealing with the arrest application must set out the period within which the claimant must commence proceedings on the merits in the appropriate jurisdiction. If such 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 1952 Convention, Angolan 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.

Angola is not a party to the 1999 International Convention on Arrest of Ships.

7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

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, it is possible to request leave from the Court 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].

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

8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

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.

Recognition is typically a matter for the law of the forum.

9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessities?

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 1952 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.

As regards the example provided, a bunker supplier may arrest a vessel based on a maritime claim, as set out by Article 1(1)(k) of the 1952 Convention.

As set out by Article 3(4) of the 1952 Convention, a bunker supplier may arrest a vessel in connection with a claim for the price of bunkers supplied under a contract with the charterer, rather than with the owner, of that vessel, despite the added difficulty in enforcing the security where the charterer is not the owner. To the best of the authors' knowledge, there is no case law in Angola regarding the interpretation of this article of the 1952 Convention.

10. Are sister ship or associated ship arrests possible?

Articles 2 and 3 of the 1952 Convention establish that the vessel that originated the maritime claim, as well as any other associated vessel or sister-ship owned by the same

person(s), may be arrested by the claimant. However, in disputes regarding the title to, or ownership of, the ship, and disputes between co-owners as to the ownership, possession, employment, earnings, mortgage or hypothecation of a specific ship, associated vessels cannot be arrested.

Outside of the 1952 Convention, sister-ships may only be arrested when the owner is personally liable for the debt.

11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

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.

In addition to that, 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.

12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

Pursuant to Article 5 of the 1952 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 1952 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 1952 Convention, the vessel

shall also be released:

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

Although not common, courts have already accepted club's letters of indemnity as security.

13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

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.

14. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?

As this issue is not specifically addressed in the law, the statements of the bill of lading shall be conclusive. From the relevant provisions of Book III of the Commercial Code, enacted in 1888, a bill of lading ("*Conhecimento de Embarque*") has three different purposes, as follows: (i) it demonstrates the existence of a contract of carriage and the conditions thereof; (ii) serve as a receipt of the delivery of the goods to the carrier ("*transportador*"); and (iii) it constitutes a negotiable instrument, i.e., its lawful holder is entitled to the performance of the agreement embodied in the bill of lading. Accordingly, a bill of lading must include inter alia (a) the name and address of the owner ("*proprietário*"), (b) shipper ("*carregador*"), (c) master ("*capitão*") or charterer ("*fretador*"), (d) consignee ("*destinatário*") if determinable, (e) description of the cargo, including the nature, quality and quantity, and (d) freight/ hire ("*frete*").

The carrier is usually to be identified on the face of the bill of lading, being usually considered to be the person who signed the bill of lading or the person in whose name or on whose behalf the bill of lading was signed. Whoever issues a bill of lading without being the carrier, is liable for the damages caused to the shipper and other interested parties. If the carrier is not identified on the face of the bill of lading, and in the absence of an express provision in the law in this regard, we believe that there are grounds to argue that the vessel will be deemed liable in rem before cargo interests under the same terms as the carrier.

15. Is the proper law of the bill of lading relevant? If so, how is it determined?

Pursuant to Articles 41 *et seq* of the Civil Code, contracts are governed by the law chosen by the parties, provided that such election has a connection (nexus) with a relevant element of the contract or is otherwise supported by an interest in good faith (a bona fides interest) of the parties. However, under Article 22 of the Civil Code, a foreign law elected in accordance with those rules will not be acceptable if it involves a violation of fundamental principles of Angolan public policy.

Notwithstanding, under Article 46 of the Civil Code, the creation, assignment and cancellation of possession, ownership and other related rights, including guarantees, over movable or immovable property, are governed by the relevant *lex rei sitae*. When goods are in transit, *lex rex*

sitae shall be the place of final destination.

The above notwithstanding, one would say that, in general, Angolan courts are reluctant to interfere with commercial contracts unless there are very strong reasons against the relevant provision.

16. Are jurisdiction clauses recognised and enforced?

Angolan law allows the parties to a contract to agree on a foreign jurisdiction and/or arbitral tribunal to resolve any conflicts arising under the relevant agreement unless those conflicts are covered by provisions which, for any reason, are subject to mandatory Angolan law or jurisdiction.

Under the relevant provisions of the Law on Voluntary Arbitration ("Law 16/03, of 25 July") and the Civil Code and Civil Procedure Code, arbitration and jurisdiction clauses set out in a document which is incorporated into the main contract should be recognized as valid and effective, provided certain rules are met. Please refer to question 17 below on the arbitration clauses.

Taking the abovementioned into consideration, a jurisdiction clause set out in a charterparty will be generally recognized under Angolan law if it has been duly incorporated in the bill of lading by way of reference.

17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

In this regard, and in which concerns to arbitration clauses, it is important to note that in order to be valid and effective this type of clauses must be produced in writing and inserted into a document signed by the parties or contained in a form of communication (which includes electronic communications) made on a durable medium. With the above in mind, the courts would most likely acknowledge arbitration clauses incorporated in a charterparty as long as reference to same has been (i) made in writing in the relevant bill of lading and (ii) acknowledged and agreed by the parties thereto. Conversely, should a bill of lading contain generic references to the applicability of the terms of a charterparty, not specifically addressing the application of the arbitration clause referred therein, one can argue that the arbitration clause was not duly incorporated in the bill of lading and, therefore, is not effective.

18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

Although not ratified by Angola after its independence from Portugal, there are solid grounds to argue that Angola is a party to the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, ("Hague Rules").

Angola is not a signatory to most of the international conventions governing shipping and maritime issues. However, many of such conventions were initially ratified by Portugal, when Angola was still a Portuguese overseas territory. In addition to their publication in the Portuguese Official Gazette, international instruments would be independently gazetted, with express provision for their applicability to Angola and other Portuguese overseas territories.

Under the 1978 Vienna Convention on Succession of Treaties, after Angola gained its independence, it should have confirmed its willingness to be bound by any treaties and/or conventions to which Portugal was a party.

Notwithstanding this lack of confirmation, Articles 58 and 59 of the Angolan Constitution, approved immediately upon its independence provided for the survival of any (Portuguese) laws and regulations in force at the time of the independence until repealed or amended, and as long as they do not conflict with the word and spirit of the constitutional provisions. This provision applies to all treaties, conventions and alliances to which Portugal adhered and Angola was bound prior to independence.

Both the SDR Protocol and the Rotterdam Rules were not ratified by Angola and, therefore, are not applicable by statute.

19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

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

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

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

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

The enforcement of arbitral awards when the New York Convention is not applicable is regulated in the Law on Voluntary Arbitration and in the Civil Procedure Code, and can only be rejected on limited grounds (in addition to those that are also applicable to the enforcement of judicial decisions):

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

of Angolan law.

20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

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 (e.g., execution of an arbitration agreement, recognition of the debt).

Time bar is suspended when parties enter into negotiations over the claim and/or when legal proceedings are initiated.

21. Does your system of law recognize force majeure, or grant relief from undue hardship?

Angolan law accepts exemption clauses such as force majeure clauses (i.e. when the defaulting party proves that he/she/it failed to fulfil its obligation due to an impediment beyond their control and that they could not reasonably have foreseen at the time when they entered into the agreement).

Although not possible to completely exempt/exclude contractual liability by contract, Angolan law entitles parties to a contract to limit their liability in certain circumstances, either by establishing a compensation cap or overall limit of liability, or by defining the liquidated damages to be compensated. This type of limitation will be valid provided it does not: (i) have the practical effect of excluding a party's liability (as would be the case of a cap so low that would not serve the purpose to compensating the non-defaulting party for the damages); and/or (ii) cover gross negligence and/or wilful misconduct of the defaulting party.

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

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