



ICLG

The International Comparative Legal Guide to:

Shipping Law 2017

5th Edition

A practical cross-border insight into shipping law

Published by Global Legal Group, with contributions from:

Advokatfirman Lindahl KB

Ana Cristina Pimentel & Associados,
Sociedade de Advogados, SP, RL

Arias, Fábrega & Fábrega

Bech-Bruun

BLACK SEA LAW COMPANY

Bloomfield Law Practice

Budidjaja International Lawyers

Clyde & Co LLP

D. L. & F. DE SARAM

Dardani Studio Legale

Dingli & Dingli

Esenyel&Partners Law Firm

Estudio Arca & Paoli Abogados

Fleet Hamburg LLP

FRANCO & ABOGADOS ASOCIADOS

FRANCO, DUARTE, MURILLO,
ARREDONDO

Gardere Wynne Sewell LLP
Goodwell & Co.

Hamdan Alshamsi Lawyers &
Legal Consultants

HFW

Hiratsuka & Co.

Izard Weston

Kegels & Co

Law Offices CHOI & KIM

Lee and Li, Attorneys-at-Law

LERINS & BCW

LEX NAVICUS CONCORDIA

Liouta & Partners Law Firm

Mulla & Mulla & Craigie Blunt & Caroe
Noble Shipping Law

Norton Rose Fulbright Canada LLP

Q.E.D INTERLEX CONSULTING SRL

Rosicki, Grudziński & Co.

Sabatino Pizzolante Abogados
Marítimos & Comerciales

Tomasello y Weitz

Van Traa Advocaten N.V.

Vda Vieira de Almeida | Angola
Counsel

Vda Vieira de Almeida | Guilherme
Daniel & Associados

VUKIĆ & PARTNERS

Wikborg Rein Advokatfirma AS





global legal group

Contributing Editor

Ed Mills-Webb,
Clyde & Co LLP

Sales Director

Florjan Osmani

Account Director

Oliver Smith

Sales Support Manager

Paul Mochalski

Sub Editor

Nicholas Catlin

Senior Editors

Suzie Levy, Rachel Williams

Chief Operating Officer

Dror Levy

Group Consulting Editor

Alan Falach

Publisher

Rory Smith

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd.
August 2017

Copyright © 2017
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-65-9

ISSN 2052-5419

Strategic Partners



General Chapters:

1	Unsafe Ports and the “OCEAN VICTORY”: What is an ‘Abnormal Occurrence’? – Ed Mills-Webb & Mark Tilley, Clyde & Co LLP	1
2	Maritime Liens: Update on Recent Decisions of U.S. Courts Following the Collapse of O.W. Bunker – John R. Keough & George G. Cornell, Clyde & Co US LLP	5
3	Risks in the Offshore Energy Industry in Mexico – Daniel Aranda & Alejandro Gómez-Strozzi, Gardere Wynne Sewell LLP	11
4	Terms and Conditions: The Importance of Clarity and Certainty – Donald Chard, BIMCO	13
5	Updating the Baltic Code – Mark Jackson, The Baltic Exchange	17

Country Question and Answer Chapters:

6	Angola	VdA Vieira de Almeida Angola Counsel: João Afonso Fialho & José Miguel Oliveira	19
7	Australia	HFW: Hazel Brewer & Nic van der Reyden	25
8	Belgium	Kegels & Co: André Kegels	32
9	Brazil	Clyde & Co LLP: Stirling Leech	39
10	Canada	Norton Rose Fulbright Canada LLP: John W. Bromley & Andrew J. Stainer	45
11	Chile	Tomasello y Weitz: Leslie Tomasello Weitz	50
12	China	Goodwell & Co.: William Lupo & Tan Jie	54
13	Colombia	FRANCO & ABOGADOS ASOCIADOS: Javier Franco	60
14	Croatia	VUKIĆ & PARTNERS: Gordan Stanković	64
15	Denmark	Bech-Bruun: Johannes Grove Nielsen & Birgitte Barfoed	69
16	Dominican Republic	Q.E.D INTERLEX CONSULTING SRL: Luis Lucas Rodríguez Pérez	75
17	France	LERINS & BCW: Laurent Garrabos	80
18	Germany	Fleet Hamburg LLP: Dr. Christoph Hasche	86
19	Greece	Liouta & Partners Law Firm: Marina D. Liouta & Avraam Papadimos	92
20	Hong Kong	Clyde & Co LLP: Matthew Lam & KinCheung Kung	97
21	India	Mulla & Mulla & Craigie Blunt & Caroe: Shardul Thacker	102
22	Indonesia	Budidjaja International Lawyers: Juni Dani & Bama Djokonugroho	109
23	Ireland	Noble Shipping Law: Helen Noble	115
24	Italy	Dardani Studio Legale: Marco Manzone & Lawrence Dardani	120
25	Japan	Hiratsuka & Co.: Makoto Hiratsuka & Yuji Miyazaki	126
26	Korea	Law Offices CHOI & KIM: J. H. Choi & S. W. Park	132
27	Malta	Dingli & Dingli: Dr. Tonio Grech & Dr. Fleur Delia	137
28	Mexico	FRANCO, DUARTE, MURILLO, ARREDONDO: Rafael Murillo	141
29	Mozambique	VdA Vieira de Almeida Guilherme Daniel & Associados: João Afonso Fialho & José Miguel Oliveira	145
30	Netherlands	Van Traa Advocaten N.V.: Vincent Pool & Jolien Kruit	150
31	New Zealand	Izard Weston: John Burton & Emmet Maclaurin	157
32	Nigeria	Bloomfield Law Practice: Adedoyin Afun	162
33	Norway	Wikborg Rein Advokatfirma AS: Gaute Gjelsten & Morten Lund Mathisen	168
34	Panama	Arias, Fábrega & Fábrega: Jorge Loaiza III	174
35	Peru	Estudio Arca & Paoli Abogados: Francisco Arca Patiño & Carla Paoli Consigliere	185
36	Poland	Rosicki, Grudziński & Co.: Maciej Grudziński & Piotr Rosicki	191
37	Portugal	Ana Cristina Pimentel & Associados, Sociedade de Advogados, SP, RL: Ana Cristina Pimentel	197
38	Russia	LEX NAVICUS CONCORDIA: Konstantin Krasnokutskiy	202
39	Singapore	Clyde & Co Clasis Singapore LLP: Gerald Yee & Andrew Gray	208
40	Sri Lanka	D. L. & F. DE SARAM: Jivan Goonetilleke & Savantha De Saram	213

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.



Country Question and Answer Chapters:

41	Sweden	Advokatfirman Lindahl KB: Philip Tonkin & Elias Himself	219
42	Taiwan	Lee and Li, Attorneys-at-Law: Daniel T.H. Tsai & James Chang	224
43	Tanzania	Clyde & Co Tanzania LLP: Peter Kasanda & Iain Boyle	229
44	Turkey	Esenyel&Partners Law Firm: Selcuk S. Esenyel	234
45	Ukraine	BLACK SEA LAW COMPANY: Evgeniy Sukachev & Anastasia Sukacheva	239
46	United Arab Emirates	Hamdan Alshamsi Lawyers & Legal Consultants: Dr. Ghandy Abuhawash	244
47	United Kingdom	Clyde & Co LLP: Ed Mills-Webb	248
48	USA	Gardere Wynne Sewell LLP: Peter A. McLauchlan & Anacarolina Estaba	253
49	Venezuela	Sabatino Pizzolante Abogados Marítimos & Comerciales: José Alfredo Sabatino Pizzolante & Iván Darío Sabatino Pizzolante	262

Mozambique

João Afonso Fialho



José Miguel Oliveira



Vda Vieira de Almeida | Guilherme Daniel & Associados

1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

The following international conventions are enforceable in Mozambique:

- 1910 International Convention for the Unification of Certain Rules of Law Related to Collision Between Vessels;
- 1952 International Convention for the Unification of Certain Rules concerning Civil Jurisdiction in Matters of Collision;
- 1952 International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation; and
- 1972 International Regulations for Preventing Collisions at Sea (“COLREGS”).

The above conventions and regulations are supplemented, in some cases, by domestic statutes, notably on rules of traffic within port areas, inland navigation, among others.

(ii) Pollution

The Environmental Law (Law 20/97 of 1 October) sets out the general provisions pertaining to the protection of the environment and imposes an environmental impact assessment process on companies carrying out activities which may have direct or indirect impact on the environment. In a nutshell, the Environmental Law sets forth the legal basis for a proper management of the environment, cumulatively with the development of the country. It applies to both private and public entities pursuing activities with a potential impact on the environment. Core principles such as the polluter pays principle, rational management and use of the environment and the importance of international co-operation are referred to and integrated in the Environmental Law.

In order to specifically protect marine life and limit pollution resulting from illegal discharges by vessels or from land-based sources along the Mozambican coast, the Government enacted Decree 45/2006 of 30 November 2006. It should be noted that this Decree prevents pollution arising from maritime activity, particularly from oil tankers and VLCC vessels. Considering the prospective gas reserves found offshore Mozambique, Decree 45/2006 also details the activities that, due to their potential harm to the environment, fall within the oversight of the maritime authority,

such as the loading, offloading and transfer of cargo, tank cleaning and discharge of water waste in the sea.

Both of the above-mentioned statutes are complemented by the Conventions and Protocols signed by Mozambique, such as the:

- 1985 Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, and Related Protocols;
- 1973 International Convention for the Prevention of Pollution from Vessels (“MARPOL 73/78”) and Annexes I/II, III, IV and V;
- 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (“OPRC 90”);
- 1992 Protocol to Amend the 1969 International Convention on Civil Liability for Oil Pollution Damage (“CLC 1969”); and
- 1992 Protocol to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (“FUND”).

(iii) Salvage / general average

Salvage is governed by the 1910 Salvage Convention and, where applicable, the provisions of the 1888 Commercial Code (Article 676 *et seq.*).

General average is governed by the provisions of the 1888 Commercial Code (Article 634 *et seq.*).

(iv) Wreck removal

Mozambique is not a signatory of the Nairobi International Convention on the Removal of Wrecks, 2007. The removal of wrecks must therefore be dealt with in light of the domestic law, namely the Environmental Law and ancillary statutes and regulations.

(v) Limitation of liability

Both the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Seagoing Vessels and the 1957 International Convention relating to the Limitation of the Liability of Owners of Seagoing Vessels apply.

(vi) The limitation fund

The limitation fund can be established in any way admitted in the law and is dependent on the filing of a proper application before the relevant court. The application must identify/list:

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

The application must be filed along with the vessel’s documents supporting the calculation of the amount of the fund (e.g., a tonnage certificate).

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

The National Maritime Institute (*Instituto Nacional da Marinha* – “INAMAR”), in its role as the Maritime Authority, is the governmental body in charge of investigating and responding to any maritime casualty. In performing its duties, INAMAR is assisted by the Harbourmaster with jurisdiction over the area where the casualty took place.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

The 1924 International Convention for the Unification of Certain Rules of Law relating to bills of lading, also known as the Hague Rules, applies. Under the Hague Rules, the carrier is liable *vis à vis* the consignee in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods. Contracts of carriage are therefore governed by the terms of the Hague Rules and the 1888 Commercial Code (article 538 *et seq.*), in the absence of detailed provisions set out in the relevant contract.

It is important to note that if the shipment (i.e. loading and place of destination) takes place between two countries party to the Hague Rule, these rules shall apply. However, if the country of destination of the goods is not a signatory to the Hague Rules, then the applicable law would be determined by Mozambican courts in accordance with the *lex rei sitae* principle.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

As a general principle, any party to a contract of carriage who holds an interest over the cargo and can demonstrate that it has suffered losses or damages arising from the carrier's actions and/or omissions is entitled to sue for losses or damages. Taking the above into consideration, the rights to sue under a contract of carriage therefore assist (1) the shipper, and (2) the rightful holder of the bill of lading. In this respect, it is noteworthy that when in the presence of a: (i) straight bill of lading, the right to bring a claim remains with the named consignee; (ii) order bill of lading, only the latest endorsee is eligible to sue; and (iii) bill of lading to bearer, it is up to the rightful holder at a given moment to sue.

In addition to the above, rights under a contract of carriage may also be validly transferred to third parties either by way of assignment of contractual position or subrogation of rights (which is typically the case when insurers indemnify cargo interests and then seek reimbursement from the carrier), as long as the relevant rules provided in the Civil Code are met.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

In light of Article 3.5 of the Hague Rules, the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies regarding the information (marks, number, quantity and weight) on the cargo to be transported.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Mozambique is not a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (“PAL”). Generally, carriage of passengers is governed by the Commercial and Civil Codes and the Consumer Law, in addition to the individual terms of the contract of carriage. Carrier's liability is mostly fault-based. In the event of delays, unexpected changes of route, damages or loss of carriage, passengers are entitled to claim compensation for losses and damage caused by an action attributed to the carrier, regardless of its wilful misconduct.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

The 1952 Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Vessels (“1952 Convention”) is applicable in Mozambique. 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 Mozambican Code of Civil Procedure (“CPC”). 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 to the arrest application. The arrestee has 10 days to oppose to 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. The defendant is entitled to post a security before the relevant court in the amount of the claim brought by the claimant, and seek the release of the vessel pending foreclosure and auction.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

A claim arising from a bunker supply may be considered as a maritime claim under Article 1.k of the 1952 Convention.

4.3 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

Assets (e.g., bunkers) belonging to the arrestee may be subject to arrest provided that it is possible to establish ownership in respect thereof. In addition, the carrier is entitled to exercise a possessory lien over cargo. In this respect, please be advised that pursuant to Mozambican law, a lien is only enforceable by operation of the law and not merely by contract. By way of illustration, Article 755 of the Civil Code provides that any debts resulting from shipping services entitle the carrier/creditor to retain goods in its possession until the full discharge of those debts.

4.4 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

Typically, cash deposits (at the court's order) and bank guarantees are the most effective forms of security. Letters of undertaking ("LoUs") are acceptable in very limited situations and their acceptance is always dependent on the other party's agreement.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

Whenever there is a serious risk of loss, concealment or dissipation of property or documents, as well as when it becomes impossible or almost impossible to obtain testimony or certain evidence by way of inspection, parties are free to start an action and file a motion requiring it to be enlisted by the court or taken prior to the hearing. The relevant motion can be lodged whenever deemed suitable, the applicant always being required to provide due grounds for its request.

5.2 What are the general disclosure obligations in court proceedings?

As a general rule, it is up to the parties to establish the object of their claim/proceedings and the judge cannot go beyond the limits of the claim as put forward by the parties. In addition, parties have the burden of presenting the facts of their interest and producing evidence in respect thereof. The court will take into account the evidence produced/requested by the parties, but it is not limited to this. In fact, the court is also allowed to request and compel the parties to disclose all evidence deemed necessary to the discovery of the truth and/or to the best resolution of the dispute.

6 Procedure

6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

With the enactment of Law 5/96, specialised courts in maritime and shipping matters were established in the most important cities of the country, such as Maputo, Inhambane, Beira, Quelimane, Nacala and Pemba. These are independent courts exercising jurisdiction over all sorts of maritime contracts (from engineering, procurement and construction contracts for vessels, to bareboat charters) and disputes.

In general, Mozambican courts will find themselves competent to rule on claims where the parties in dispute and the claim itself have a close connection/link to Mozambique.

As regards legal procedures before national courts, these can be generally described as follows:

- Proceedings commence with the filing of an initial written complaint before the court. In addition to listing the facts and arguments sustaining the claim, the claimant is required to list its witnesses and request the other evidence proceedings, such as inspections or surveys.
- Service is made by the clerks, in person. Shipping agents represent owners'/disponent owners'/managers' interests and can receive documentation on their behalf.
- Generally, the defendant has 30 days to challenge and oppose the claim. If it fails to present its defence, the facts presented by the claimant are deemed proven (exceptions apply).
- With the opposition lodged, the judge will summon the parties and will try to resolve the dispute amicably or, that not being possible, prepare the final hearing.
- At the final hearing, the witness will be examined and cross-examined by the lawyers representing each party, and the judge may intervene whenever it is deemed necessary. At the end, lawyers are required to issue their final arguments verbally.
- The judge will then prepare and issue the judgment which, depending on the amount of the claim, can entail an appeal.

As to the duration of maritime proceedings, as with any other legal proceedings, this is highly unpredictable. In our experience, excluding arrests and any other interim measures, it should not be expected to take less than one year to 18 months, as it depends on several variables, such as the court's current caseload.

The primary source of domestic law relating to arbitration is the Law on Arbitration, Conciliation and Mediation, commonly referred to as LACM (Law 11/99 of 8 July 1999). The LACM governs both international and domestic commercial arbitration, recognises the New York and Washington Conventions but applies the rules set out in the CPC for arbitration proceedings. It is worth noting that the LACM does not diverge from the UNCITRAL Model Law on International Commercial Arbitration, and that it follows the general standards and terms of UNCITRAL Model Law for the conduct of proceedings, tribunal composition and recognition of the award given.

In order to submit a dispute to arbitration, there must be an arbitration agreement (often a clause which is express, valid and enforceable). Such agreement is required to be in a written format (in the contract under which the dispute arises or in any correspondence exchanged between the parties).

As a final note, it is worth mentioning that the Government of Mozambique created the Centre for Arbitration, Conciliation and Mediation (“CAMC”) to oversee and promote arbitration, as well as other alternative dispute resolution mechanisms. The CAMC is headquartered in Maputo but also has branches in the cities of Beira and Nampula.

6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

Despite the efforts of the Mozambican Government and the achievements reached in the past few decades, the country needs to continue developing its infrastructure and support the training and qualification of its citizens. Bureaucracy and a lack of qualified technicians still continue to be some of the biggest challenges to operating in the country.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Articles 1094 and 1095 of the CPC set out that any judgment awarded by a foreign court is, as a rule, subject to review and confirmation by the Supreme Court in order to be valid and enforceable locally (i.e., to obtain the “Exequatur”).

The review and confirmation of foreign decisions under the CPC is mostly formal and should not involve a review of the merit/grounds of the judgment, but a simple re-examination of the relevant judgment and additional judicial procedure requirements. The process must begin with the filing by the interested party of an application to that effect with the Supreme Court. In order for the foreign decision to be recognised by the Supreme Court, the following set of requirements must be met:

- There are no doubts that the judgment is authentic and its content understandable.
- It must constitute a final decision (not subject to appeal) in the country in which it was rendered.
- The decision must have been rendered by the relevant court according to the Mozambican conflict of law rules.
- There is no case pending before or decided by an Mozambican court, except if it was the foreign court which prevented the jurisdiction of the Mozambican courts.
- The defendant was served proper notice of the claim in accordance with the law of the country in which the judgment was rendered, except in cases where, under Mozambican law, there is no need to notify the defendant, or in cases where the judgment is passed against the defendant because there was no opposition.
- The judgment is not contrary to the public policy principles of the Mozambican state.
- The decision rendered against the Mozambican citizen/company does not conflict with Mozambique’s private law, in cases where this law could be applicable according to the Mozambican conflict of law rules.

After the application is filed, the court must serve notice of same on the defendant. Once notice is served, the defendant may oppose the Exequatur if any of the above requirements are not met.

If the defendant opposes the Exequatur, the applicant may reply to the defendant’s arguments. Afterwards, the case follows various

procedural steps until the decision is made on whether to grant the Exequatur. The losing party may still appeal against the court’s decision.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Considering that Mozambique has acceded to the 1958 New York Convention, Mozambican courts are to give effect *prima facie* to an arbitration agreement and award rendered in other signatory to the New York Convention. Where the arbitral award was not granted by another contracting state, to be enforceable it must have previously been reviewed and confirmed by Mozambique’s Supreme Court (see question 7.1 above).

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

Since its independence in 1975, Mozambique has been steadily revising its laws and regulations, at the same time as ratifying and adhering to a number of international treaties and conventions. In this respect, it is worth mentioning that a number of pivotal conventions on maritime and shipping-related matters applicable in the country result from the time when Mozambique was still a Portuguese overseas territory (e.g., the 1952 Arrest Convention). In fact, although after its independence Mozambique has not specifically adhered to the treaties/conventions to which Portugal was already a party, as formally required under the Vienna Convention on Succession of Treaties, it is commonly accepted that the treaties ratified by Portugal and extended to Mozambique over time still apply in light of Article 71 of the Constitution, approved immediately after the country’s independence, which provided for the survival of any (Portuguese) laws and regulations in force at the time of independence, as long as these did not conflict with the letter and spirit of the Constitution.

More recently, the Government of Mozambique has been enacting important domestic legislation to support the shipping industry, and paving the ground for foreign and national investments. The setting up of maritime courts, the creation of an institute exclusively dedicated to regulating and overseeing the shipping industry (INAMAR), the opening of cabotage activities to foreign vessels and owners, and the announcement that the Government intends to rule access to the sea through a Strategic Sea Policy and to adopt new regulations on maritime concessions, are clear indications of the Government’s drive to set up a consistent legal regime for maritime and shipping activities.

Acknowledgment

The authors would like to thank Guilherme Daniel for his assistance in preparing this chapter. Guilherme is the founder of Guilherme Daniel & Associados (the exclusive Mozambican member of Vda Legal Partners) and specialises in Corporate, Energy and Natural Resources, and Infrastructure Law (Tel: +258 82 312 48 60 / Email: gdd@guilhermedaniel.com).



João Afonso Fialho

VdA Vieira de Almeida
Av. Duarte Pacheco, 26
1070-110 Lisbon
Portugal

Tel: +351 21 311 3478 / 3422

Email: jaf@vda.pt

URL: www.vda.pt

João Afonso Fialho joined VdA in 2015. He is one of the partners in the Projects – Infrastructure, Energy & Natural Resources practice group and a member of the Oil & Gas practice group.

With more than 20 years of practice in the transport sector, his experience in shipping includes contracts in international transport, providing advice, in particular, to owners, charterers, P&I clubs and port operators, as well as commodities traders and various industry brokers. João advises on most legal matters relating to the shipping industry, including the bunkering industry, as well as assistance and salvage at sea, ship arrest, customs and maritime litigation.

João also has an extensive track record with construction contracts and ship acquisition, charter parties, bills of lading, ship finance, mortgages and insurance.

He has particular expertise in shipping activities associated with the oil & gas sector, including wreck removal and environmentally sensitive issues.



José Miguel Oliveira

VdA Vieira de Almeida
Av. Duarte Pacheco, 26
1070-110 Lisbon
Portugal

Tel: +351 21 311 3478 / 3422

Email: jmo@vda.pt

URL: www.vda.pt

José Miguel Oliveira joined VdA in 2015. He is a managing associate in the Projects – Infrastructure, Energy & Natural Resources practice group. Before joining the firm, he worked for six years at Miranda Correia Amendoeira. In 2008, he was seconded to the Corporate and Commercial Law Department at Eversheds International LLP's London office. From 2002 to 2008 he worked at Barrocas Sarmiento Neves. José has been actively involved in several transactions in Portugal and Angola, advising clients in sectors such as oil & gas, energy, distribution/wholesale and transport (in particular, shipping and ports). He is a member of the Portuguese and Angolan Bar Associations.



VdA is an independent Portuguese law firm with 350-plus staff and strong experience in various industries.

Over the past 40 years, VdA has been involved in a significant number of pioneering transactions in Portugal and abroad, in some cases together with the most relevant international law firms, with whom we have a strong working relationship.

The recognition of VdA's work is shared with our team and clients, and is reflected in the awards achieved, such as: the "Financial Times 2015 Game Changing Law Firm in Continental Europe"; the "Financial Times Innovative Lawyers in Continental Europe 2013 and 2016"; the "Most Active Law Firm" awarded to VdA by *Euronext* for six consecutive years, including 2017; the "Portuguese Law Firm of the Year 2015 and 2016" awarded by the *IFLR*; the "Portuguese Law Firm of the Year 2016" and "Client Service Law Firm of the Year 2017" awarded by *Chambers & Partners*; the "Iberian Firm of the Year 2017" awarded by *The Lawyer*, and the "International Firm of the Year 2017" awarded by *Legal Business*.

VdA, through its VdA Legal Partners (which encompasses all lawyers and independent law firms associated with VdA Vieira de Almeida for the provision of integrated legal services), is actively present in 11 jurisdictions that include all African members of the Community of Portuguese-Speaking Countries ("CPLP"), as well as Timor-Leste and some of the francophone African countries.

Guilherme Daniel & Associados is the exclusive Mozambican member of VdA Legal Partners.

Angola – Cape Verde – Congo – Democratic Republic of the Congo – Equatorial Guinea – Gabon – Guinea-Bissau – Mozambique – Portugal
São Tomé and Príncipe – Timor-Leste

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com