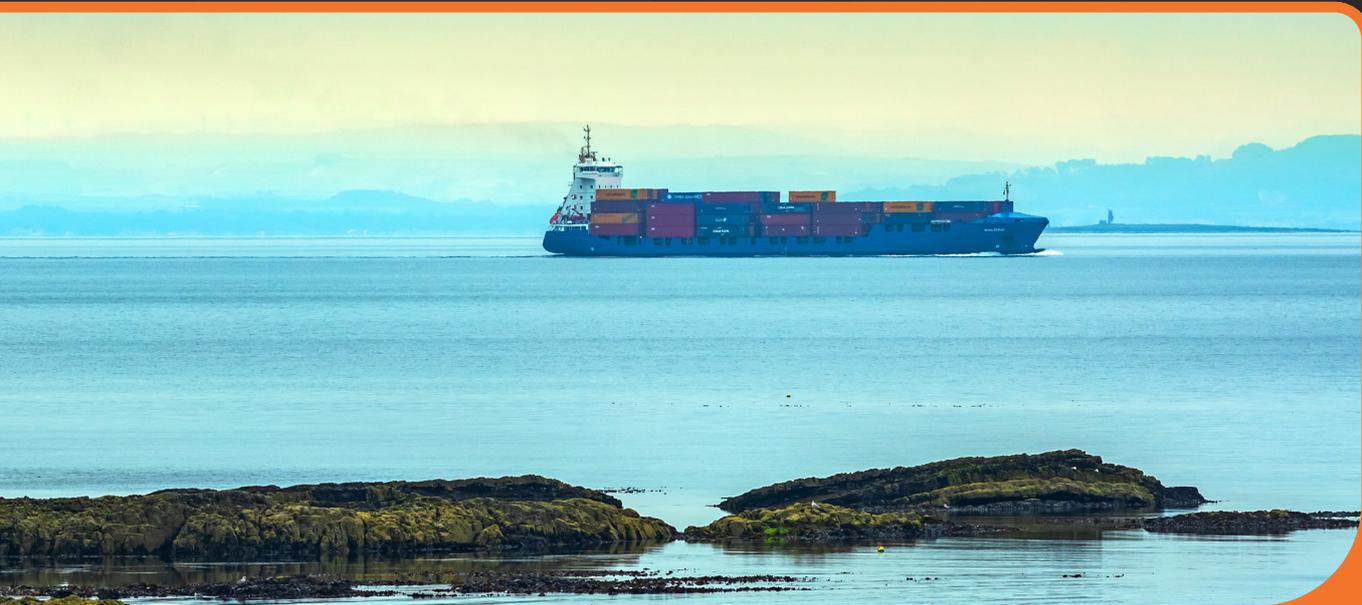


**International
Comparative
Legal Guides**



Practical cross-border insights into shipping law

**Shipping Law
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10th Edition

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Expert Analysis Chapters

- 1** **Legal Recognition of Electronic Trade Documents: Revolutionising Global Trade in the Digitalised Age**
Julian Clark & Reema Shour, Ince
- 6** **Portugal: Improvements to Lead the European Maritime Industry**
Cátia Fernandes & Marina Pimenta, CF – Maritime Legal Services

Q&A Chapters

- 11** **Angola**
VdA, in association with ASP Advogados:
José Miguel Oliveira & Marcelo Mendes Mateus
- 19** **Belgium**
Kegels | Advocaten: André Kegels
- 29** **Brazil**
LP LAW | LOPES PINTO ADVOGADOS ASSOCIADOS:
Alessander Lopes Pinto
- 35** **Chile**
Tomasello y Weitz: Leslie Tomasello Weitz
- 41** **China**
Hightime Law Office Shanghai: Green Zhu
- 48** **Cuba**
Q.E.D INTERLEX CONSULTING SRL:
Luis Lucas Rodríguez Pérez
- 55** **Cyprus**
Montanios & Montanios LLC: Yiannis Papapetrou
- 62** **Dominican Republic**
Q.E.D INTERLEX CONSULTING SRL:
Luis Lucas Rodríguez Pérez
- 69** **Egypt**
Eldib Advocates: Mohamed Farid, Ahmed Said &
Ahmed Fahim
- 74** **France**
Richemont Delviso: Henri Najjar
- 81** **Greece**
Hill Dickinson International: Maria Moissidou &
Alexander Freeman
- 87** **Hong Kong**
Tang & Co. (in association with Helmsman LLC):
Tang Chong Jun & Vinca Yau
- 94** **Indonesia**
ABNR Counsellors at Law: Sahat Siahaan &
Ulyarta Naibaho
- 100** **Israel**
Harris & Co. Maritime Law Office: Yoav Harris &
John Harris
- 107** **Italy**
Dardani Studio Legale: Marco Manzone &
Lawrence Dardani
- 115** **Japan**
Mori Hamada & Matsumoto: Hiroshi Oyama,
Fumiko Hama & Yoshitaka Uchida
- 123** **Korea**
Moon & Song: Sang-Hwa Lee & Hun Song
- 129** **Malta**
Dingli & Dingli: Dr. Tonio Grech & Dr. Fleur Delia
- 135** **Mexico**
Franco, Duarte, Murillo, Arredondo, Lopez-Rangel
(FDMALR): Rafael Murillo Rivas
- 140** **Mozambique**
VdA, in association with GDA Advogados:
José Miguel Oliveira & Kenny Laisse
- 147** **Nigeria**
Bloomfield LP: Adedoyin Afun & Michael Abiiba
- 155** **Norway**
Kvale Advokatfirma DA: Kristian Lindhartsen
- 161** **Panama**
Arias, Fábrega & Fábrega: Jorge Loaiza III
- 176** **Poland**
Rosicki, Grudziński & Co.: Maciej Grudziński &
Piotr Rosicki
- 183** **Senegal**
AF Legal Law Firm: Dr. Aboubacar Fall &
Papa Bassirou Ndiaye
- 188** **Singapore**
Incisive Law LLC: Boaz Chan, Xue Ting Tan,
Benjamin Ow & C Sivah
- 195** **South Africa**
Shepstone & Wylie Attorneys: Pauline Helen Kumlehn
- 202** **Spain**
Kennedys Law: José Pellicer, Olivia Delagrange &
Paula Petit
- 208** **Sweden**
Advokatfirman Vinge KB: Michele Fara, Ninos Aho,
Paula Bäckdén & Anders Leissner

215 **Taiwan**
Lee and Li, Attorneys-at-Law: Daniel T.H. Tsai

222 **Turkey**
TCG Fora Law Office: Sinan Güzel

229 **United Arab Emirates**
Fichte & Co: Alessandro Tricoli, Moaz Forawi & Shehab Mamdouh

236 **United Kingdom**
Preston Turnbull LLP: Rob Collins & Natalie Johnston

244 **USA**
Seward & Kissel LLP: Bruce G. Paulsen, Hoyoon Nam & Brian P. Maloney

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Mozambique



José Miguel Oliveira



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VdA, in association with GDA Advogados

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 1997), as amended by Law 16/2014, of 20 June 2014, sets out the general provisions pertaining to the protection of the environment and imposes an environmental impact assessment process (which is governed by the Regulations on the Environmental Impact Assessment Procedure, approved by Decree 54/2015, of 31 December 2015) on companies carrying out activities which may have a 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 (as amended by Decree 97/2020 of 4 November 2020). 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, of 30 November 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. The carrying out of such activities (except in the cases expressly provided for in the Decree 45/2006, of 30 November 2006) may entail the assessment of heavy fines.

Furthermore, the Regulation on Environmental Quality and Emission of Effluents (Decree 18/2004, of 2 June 2004, as amended by Decree 67/2010, of 31 December 2010) also establishes environmental quality and effluent emission standards for the purpose of controlling and maintaining the acceptable levels of pollutant concentrations in environmental components.

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;
- the 1973 International Convention for the Prevention of Pollution from Vessels (“MARPOL 73/78”) and Annexes I/II, III, IV and V;
- the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (“OPRC 90”);
- the 1992 Protocol to Amend the 1969 International Convention on Civil Liability for Oil Pollution Damage (“CLC 1969”); and
- the 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 2007 Nairobi International Convention on the Removal of Wrecks. 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

Mozambique is not a signatory of the Convention on Limitation of Liability for Maritime Claims. Conversely, 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 Which authority investigates maritime casualties in your jurisdiction?

The National Institute of the Sea ("INAMAR") is the governmental body in charge of investigating and responding to maritime casualties. In performing its duties, the INAMAR is assisted by the local port authorities and captaincy with jurisdiction over the area in which the casualty took place. In the event of (eventual) environmental damage, environment authorities may also be called to act, notably the Ministry of Environment. Moreover, the National Institute of Hydrography and Navigation ("INAHINA") has an ancillary role on maritime safety.

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

Within the area of maritime safety, it is worth mentioning that INAMAR is specifically responsible for (a) exercising control over foreign vessels when they are in Mozambican waters, (b) applying and implementing safety standards for national and foreign vessels engaged in maritime trade, (c) supervising pilotage in ports, (d) conducting enquiries on accidents, incidents and maritime infringement proceedings, and (e) licensing and supervising the exercise of towage and salvage activities within Mozambican waters.

In this respect, it is worth mentioning that, back in 2017, Mozambique ratified the International Code of Protection of Vessels and Port Facilities ("ISPS"), which foresees responsibilities to governments, shipping companies, shipboard personnel, and port facility personnel to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade.

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, 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: (i) a straight bill of lading, the right to bring a claim remains with the named consignee; (ii) an order bill of lading, only the latest endorsee is eligible to sue; and (iii) a 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.

2.4 How do time limits operate in relation to maritime cargo claims in your jurisdiction?

The general time bar for claims arising out of contracts is 20 years, although there are certain cases in which this statutory limitation period is shorter. Still, the statute of limitation for cargo claims arising out of contracts ruled by the Hague Rules is one year, counting from the date of delivery of the goods or of the date when the goods should have been delivered.

3 Passenger Claims

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

A 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 loss and damage caused by an action attributed to the carrier, regardless of its wilful misconduct.

3.2 What are the international conventions and national laws relevant to passenger claims?

Mozambique is not a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. Generally,

the rules applicable to the carriage of passengers are set forth in the Commercial and Civil Codes and the Consumer Law; this is in addition to the individual terms of the contract of carriage.

3.3 How do time limits operate in relation to passenger claims in your jurisdiction?

As mentioned above, the general time bar for claims arising out from commercial contracts is 20 years. Nevertheless, there are grounds to argue that claims for loss of life or personal injury (including for damages on property) arising out of shipping incidents impose strict liability to the carrier, being, in this case, the applicable limitation period of three years, counting from the moment that the claimant becomes aware of its rights.

It is worth noting that, in certain cases, the running of the statute of limitation period may be (i) suspended (in which case the period of suspension is not to be counted when assessing if the statute of limitation has expired), or (ii) interrupted (in which case the interruption renders the time already elapsed of no effect and a new statute of limitation will restart counting as from the interruption).

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, 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 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.

The Movables Security Law (Law 19/2018, of 28 December 2018) establishes a special regime regarding the perfection rules and enforcement regime of security interests over movable assets, including vessels. The main feature of this regime is the fact that the creditor may dispose of the movable asset given as security, without having to appeal to court or any other entity, provided that it is permitted to do so under the security agreement and complies with the procedure provided for in the law.

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 a maritime claim under Article 1.1.k of the 1952 Convention.

In addition, and 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.

4.3 Is it possible to arrest a vessel for claims arising from contracts for the sale and purchase of a ship?

Claims arising from ship sale and purchase contracts do not qualify as “maritime claims” for the purposes of the 1952 Convention. As such, and as outlined under question 4.1 above, those willing to arrest a vessel for an unlisted maritime claim must make use of the provisions of the CPC (in order for measures to be taken, a claimant must provide evidence of the likelihood of its right and justified fear of irreparable damage or damage that is difficult to repair).

4.4 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. Additionally, the carrier is entitled to exercise a possessory lien over cargo. In this regard, please note that in accordance with 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 those debts are fully discharged.

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

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.

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.

4.6 Is it standard procedure for the court to order the provision of counter security where an arrest is granted?

There is no standard practice in this regard (this will ultimately depend on the assessment made by the judge in charge of the file and the specifics of the claim/parties).

4.7 How are maritime assets preserved during a period of arrest?

While the arrest is pending, and until the vessel is sold in the enforcement proceedings, a custodian appointed by the court is responsible for ensuring the preservation of the assets, whenever the master and their crew are absent or urgent decisions are to be taken.

4.8 What is the test for wrongful arrest of a vessel? What remedies are available to a vessel owner who suffers financial or other loss as a result of a wrongful arrest of his vessel?

According to Article 6, paragraph 1, of the 1952 Convention, all questions regarding whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the contracting state in whose jurisdiction the arrest was made or applied for. Article 7(1) of the 1952 Convention in turn establishes that the courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of such state gives jurisdiction to such courts, as well as in the specific cases set out therein.

As mentioned in the answer to question 4.1, in order to obtain arrest of a vessel under the CPC, the claimant must provide the court with evidence of the likelihood of its right and justified fear of irreparable damage or damage that is difficult to repair.

In the event that the arrest is found to be inadmissible or unjustified or if it expires (e.g., because the main proceedings are not initiated after the arrest is granted), the claimant is liable for the damage caused to the defendant whenever it has not proceeded with reasonable prudence or due care (as per Article 387 of the CPC and Article 621 of the Civil Code). The arrest may be considered wrongful, *inter alia*, whenever there is a conscious manipulation or omission of facts or imprudence or culpable error in the allegation of facts and in the submission of evidence considered in the decision of arrest taken by the court.

Accordingly, the owner of the vessel can request the payment of compensation by the claimant for any damages suffered as a result of a wrongful arrest, such compensation to be claimed in separate judicial proceedings.

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?

Mozambican civil law provides the possibility of the applicant requiring from the court a motion aiming at ensuring the preservation of documents or property whenever there is a serious risk of their loss, concealment or dissipation. This motion shall be duly grounded. Parties may also request the production of evidence within the control of the other party or request the anticipatory production of evidence if there is a justifiable concern that the production of evidence at a later stage will be impossible or very difficult.

5.2 What are the general disclosure obligations in court proceedings? What are the disclosure obligations of parties to maritime disputes 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 the same. In fact, the court is also permitted 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.

No specific procedure disclosure obligations are foreseen regarding maritime disputes.

5.3 How is the electronic discovery and preservation of evidence dealt with?

There is no specific provision regarding the electronic discovery in Mozambican civil law. However, the court shall consider all the evidence produced and it is common to consider that the electronic evidence has the same probative value of the documents.

As noted above, Mozambican civil law provides the possibility of the applicant requiring from the court a motion aiming at ensuring the preservation of documents whenever there is a serious risk of their loss, concealment or dissipation.

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.

6.1.1 Which national courts deal with maritime claims?

Mozambique has enacted specialised courts in maritime and shipping matters, to be installed in the most important cities of the country. These are independent courts exercising jurisdiction over all sorts of maritime contracts (from engineering,

procurement and construction contracts for vessels to bare-boat charters) and disputes. However, these courts are not yet in operation and maritime claims are currently heard before common judicial courts. As a rule, jurisdiction clauses stated in contracts (including bills of lading) are valid and enforceable, provided they arise from a written agreement, in which the competent jurisdiction is expressly mentioned, as established by Article 99 of the Civil Procedure Code.

Article 12 of Law 5/96 further establishes that Mozambican courts' jurisdiction cannot be excluded in matters of international maritime law which would be within the jurisdiction of Mozambican courts in accordance with its domestic law, unless the parties are foreigners and if it is a question regarding an obligation that must be performed in foreign territory and does not relate to assets located, registered or enrolled in Mozambique.

With regard to 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 for the duration of maritime proceedings, as with any other legal proceedings in Mozambique, this is highly unpredictable. In our experience, excluding arrests and any other interim measures, it should not be expected to take less than one to two years, as it depends on several variables, such as the court's caseload.

6.1.2 Which specialist arbitral bodies deal with maritime disputes in your jurisdiction?

Mozambique does not have an arbitral institution specialised in maritime disputes but has created the Centre for Arbitration, Conciliation and Mediation ("CAMC") to oversee and promote arbitration, as well as other alternative dispute resolution mechanisms.

Thus, maritime disputes are dealt with by the general arbitral bodies, governed by Law 11/99, of 8 July 1999, the Law on Arbitration, Conciliation and Mediation ("LACM"). The LACM governs both international and domestic commercial arbitration and follows the general standards and terms of UNCITRAL Model Law for the conduct of proceedings, tribunal composition and recognition of the award given.

According to the LACM, arbitration will be of an international nature when international trade interests are at stake, in particular when: the parties to the arbitration agreement have business domiciles in different countries at the time of the agreement's execution; the place of arbitration, of the performance of a substantial part of the obligations resulting from the legal

relationship from which the dispute arises, or of the place with which the object of the dispute is most closely connected is situated outside the countries where companies have their business domiciles; or the parties have expressly agreed that the scope of the arbitration agreement is connected with more than one state.

The general rule under the LACM is that parties are free to submit their disputes to arbitration, with the exception of disputes that fall under state courts' exclusive jurisdiction and disputes that relate to inalienable or non-negotiable rights.

The arbitration agreement may consist of either an arbitration clause or a submission agreement. The arbitration clause concerns potential future disputes arising from a given contractual or extra-contractual relationship, whereas the submission agreement arises from existing disputes, regardless of whether they have already been submitted to a state court. The LACM treats both types of arbitration agreement on an equal footing.

Subject to any special law requiring a more solemn form, the arbitration agreements must be made in writing. An arbitration agreement is considered to be in writing if documented either in a written instrument signed by the parties or in correspondence exchanged between them. The LACM allows arbitration agreements to be incorporated in a contractual document that is not signed by both parties simply by reference to general terms and conditions on another contract.

6.1.3 Which specialist alternative dispute resolution bodies deal with maritime mediation in your jurisdiction?

There is no alternative dispute resolution body specialised in maritime mediation. Regarding the LACM and CAMC, see above (question 6.1.2).

6.2 What are the principal advantages of using the national courts, arbitral institutions and other ADR bodies in your jurisdiction?

The main advantage of resorting to arbitral institutions instead of national courts are those typically associated to arbitration, including the ability to choose the arbitrators, the efficiency and celerity of the proceedings and the legal certainty of the decision rendered, which is subject to enforcement under the New York Convention. On the other hand, the cost of resorting to arbitral institutions is not higher by comparison to those of the judicial courts, especially for cases with significant monetary claims.

6.3 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 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 a Mozambican court, except if it was the foreign court that 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 the 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 another signatory country to the New York Convention. To be enforceable, foreign arbitral awards must have previously been reviewed and confirmed by Mozambique's Supreme Court. Under domestic law, the grounds for refusing the enforcement of an arbitral award are the same as those foreseen for the enforcement of court decisions, which are wider than those of the New York Convention (see question 7.1).

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.

In recent years, Mozambique has enacted a number of important laws and regulations at the same time that it has ratified several key international treaties and conventions. The underlying purpose seems to be clear: follow and adopt the latest international trends in the industry and take advantage of the

country's location and impacts of the multimillion gas project in the North to increase levels of FDI; upgrade existing port and logistic infrastructures; and therefore boost the economy and contribute to the wellbeing and social development of its population.

As part of these ongoing efforts, and without prejudice to the legislative reforms carried out in the last two years (2020 and 2021), in November 2021, the Deputy Minister of Transport and Communications said that the Ministry of Transport is already working to amend the legislation on maritime cabotage this year (2022), on the grounds that cabotage maritime transport is unsustainable due to the national maritime navigation law that obliges each ship operator to use tugboats in each port where it docks, which incurs high costs.

In March 2022, the Government announced, through its spokesman, that the new Commercial Code and the Legal Regime for Commercial Contracts were approved.

With regard to the new Commercial Code, the spokesman highlighted that, among the other aspects, it has a modernist tendency and that brings the Mozambican commercial legislation into line with the way in which electronic transactions and trade are currently carried out and with the commitments made at the level of the Southern African Development Community ("SADC") and the African Union ("AU").

With regard to the Legal Regime for Commercial Contracts, in particular, he mentioned that it aims to improve the general conditions of the business climate to increase the attraction of national and international investors to Mozambique.

Still in this regard, it is important to note that the Council of Ministers submitted, for consideration by the Assembly of the Republic, in the current year (2022), the proposal for the revision of Law 5/96, of 4 May, which approves the organisation, composition, functioning and powers of the Maritime Courts ("Maritime Courts Law"). Among other factors that determined the drafting of the Maritime Courts Law proposal, we highlight the following:

- the need to align the rules and principles of the Maritime Courts Law with the current Constitution of the Republic of Mozambique;
- the need to respond to a set of challenges brought by Law 20/2019, of 8 November, mainly related to the qualification of some practices in the maritime space as maritime crimes; and
- the need for speed in the assessment of issues brought to trial in national courts, with a focus on the fact that maritime courts operate on public holidays.

Although there are still no details on all likely legislative reforms, we believe that they will have a considerable impact on the shipping sector in Mozambique.

Regardless of the Government's ongoing efforts to strengthen and develop the shipping and maritime sector, the fact is that the Islamic insurgency in Cabo Delgado, Northern Mozambique will certainly put at risk maritime security in the region and a halt on the increasing volumes of cargo imported and exported over the last years. Notably, if one takes into account that such increase was owed to the investment flows related to the development of the mega gas projects happening in Areas 1 and 2 of the Rovuma Basin, and that oil major TotalEnergies, Operator of Area 1, has recently declared *force majeure* and suspended its \$28bn LNG project due to the escalation of violence on the ground.

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