THE SHIPPING LAW REVIEW

NINTH EDITION

Editors
Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

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This article was first published in June 2022
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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-80449-079-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

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PREFACE

The aim of the ninth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry, including ocean logistics, piracy, shipbuilding, ports and terminals, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2021, the total value of annual world shipping trade had reached more than US$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), the recovery was swift. The pandemic truly brought to

the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon
HFW
London
May 2022

Chapter 13

BRAZIL

Geoffrey Conlin, Bernardo de Senna and Carolina França[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

Brazil is the largest country in Latin America. It has a population of approximately 211 million people and a total land mass larger than America, excluding Alaska. It has in excess of 8000 kilometres of coastline and 20,000 kilometres of navigable river. Brazil has the 12th largest gross domestic product (GDP) in the world.

In 2021, Brazil had 0.244 per cent of the world's merchant fleet value, by flag of registration, with a total fleet of approximately 5.5 million deadweight tonnage (DWT) and 0.655 per cent DWT under Brazilian ownership. Approximately 50 per cent of this tonnage is oil tankers, 12 per cent bulk carriers, 2 per cent general cargo vessels, 14 per cent container ships and 22 per cent are 'other types'.

In 2021, 864 ships were registered under the Brazilian flag. During the same period, Brazil had approximately 29,000 registered seafarers. Container port throughput for 2021 was 10,130,740 tonnes, an increase of 10.71 per cent in comparison to 2020. These numbers are evidence of Brazil's developing shipping market even during the covid-19 pandemic years. In 2019, Brazil's shipbuilding sector was responsible for the production of 142,898 gross tonnage (GT).

In 2021, Brazil reaffirmed its position as a leading producer and exporter of soybeans (US$28.6 billion), iron ore (US$26.5 billion), crude petroleum (US$19.8 billion), raw sugar (US$8.95 billion), and frozen bovine meat (US$6.69 billion), exporting mostly to China (US$67.9 billion), the United States (US$21.9 billion), Argentina (US$8.57 billion), the Netherlands (US$6.7 billion) and Canada (US$4.39 billion), as their main trading partners.

Brazil is a significant exporter of aircraft, helicopter, spacecraft and car and vehicle parts. Brazil's main export trading partner is China (US$63.358 million), with the United States in a distant second place (US$29,860 million). Other strong trading export links are with the Netherlands, Argentina and Japan.

There are approximately 178 coastal and river ports in Brazil. Of these, approximately 34 are public and 144 are private. Public ports are administered by state-run dock companies or by concession and leasing agreements. Private ports account for approximately two-thirds of all cargo movement in Brazil.

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II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

The legislative framework for shipping is scattered across many different statutes. Key legislation is contained in the Brazilian Federal Constitution, the Brazilian Commercial Code dated 1850 and the Brazilian Civil Code dated 2002, which regulates contracts of carriage.

There are also other uncodified statutes, such as Federal Law 2,180/1954, which regulates the Admiralty Court and its jurisdiction, Decree-Law 116/1967 addressing, inter alia, limitation for cargo claims in shipping disputes, and Federal Law 7,542/1986, which regulates wreck removal.

Federal Law 10,233/2001 created the Brazilian Waterway Transportation Agency (ANTAQ), whose mandate includes the regulation of domestic and international waterway carriage of people and goods, offshore platform and port supply navigation, ports and terminals and the exploitation of the federal waterway infrastructure.

Federal Law 9,537/1997 regulates waterway safety in Brazilian territorial waters, Federal Law 9,432/1997 provides the statutory framework regulating waterway transportation, while Federal Law 9,611/1998 regulates multimodal transportation.

Federal Law 14,301/2022 (the Cabotage Act), which was enacted on 7 January 2022, has brought necessary and long-awaited innovations, seeking to facilitate investment, especially from overseas.

Brazilian Navigation Companies (EBNs) are no longer required to own their own fleet and the bareboat charter of foreign vessels will be allowed. Chartering is subject to the provisions of the Cabotage Act. Among other new rules, EBNs are now permitted to charter foreign vessels without the need for proof of tonnage. Under the previous regime, EBNs' ability to charter foreign vessels was limited by ANTAQ Regulations.

EBNs applying to the new regime must provide evidence of their compliance with federal taxes and agree to periodically present information on the scope of their activities, improvements in the quality of their service, their level of local employment, sustainability and transparency regarding the costs of freight.

The Brazilian Navy, which acts as the Brazilian Maritime Authority, has an active role in shipping matters. It presides on the procedures tried before the Admiralty Court and issues norms, which are mandatory law within Brazilian jurisdictional waters, known as NORMAM.

In terms of international conventions, Brazil is not a signatory to the Hague, Hague-Visby, Hamburg or Rotterdam Rules. However, Brazil has ratified most of the conventions on marine safety, such as COLREGS, SOLAS and the International Convention on Salvage.

Brazil has also ratified the International Convention on Maritime Liens and Mortgages.

In practical terms, the statutory framework outlined above is designed to protect and develop the local shipping market.

III FORUM AND JURISDICTION

i Courts

Shipping disputes are litigated before either the state or federal courts of Brazil.

Under the Brazilian Constitution, federal courts have jurisdiction, inter alia, in cases involving the federal union, its agencies and companies; claims between foreign states or international organisations and a person domiciled in Brazil; claims arising from international treaties; and crimes committed on board vessels.

State courts have jurisdiction over all other cases, save for military, electoral and labour disputes, which are usually referred to specialised courts.

First instance judgments, handed down by a single judge, may be appealed to a second instance Court of Appeal and, in limited circumstances, to the Superior Court of Justice, the highest court of the land for non-constitutional matters or the Supreme Federal Court, the country's highest court.

The Admiralty Court has jurisdiction to investigate and try parties involved in accidents and to establish navigational facts. The Admiralty Court is an administrative tribunal, whose functions include imposing administrative sanctions (e.g., fines, licence suspensions and cancellations). The Admiralty Court aims to ascertain the root cause of an accident, assisting the Brazilian Maritime Authority in preventing similar casualties in the future. The Admiralty Court has no jurisdiction to determine the payment of damages between private parties. Decisions rendered by the Admiralty Court can be filed in federal and state courts as qualified evidence. The Admiralty Court is a specialised tribunal and, recognising its relevance, the Brazilian Code of Civil Procedure obliges regular lawsuits to be halted for up to one year, in case the same matter is subject to discussion at the Admiralty Court.

Brazilian courts have jurisdiction over cases:

a where the defendant is a Brazilian resident;
b if the obligation is to be performed in Brazil;
c if the case arises from an act or fact that occurred in Brazil;
d involving consumers, when such consumers are residents in Brazil; or
e if the parties submit to Brazilian jurisdiction, whether expressly or tacitly.

Brazilian courts have consistently disapplied foreign law and jurisdiction provisions, especially in circumstances where the contract is a contract of adhesion; namely, where the parties to the contract have unequal bargaining power. If the parties choose arbitration, their freedom to agree the law applicable to the arbitration should be upheld.

Limitation periods are set in the Brazilian Civil Code and other statutes. Disputes in tort usually have a three-year limitation period. Contractual disputes usually have a 10-year limitation period. Cargo disputes usually have a one-year limitation period, counting from discharge. Insurance disputes usually have a one-year limitation period, counting from the date on which the assured had knowledge of the claim.

ii Arbitration and ADR

Since 2014, it has been increasingly common to see parties referring maritime disputes to arbitration. Many people hold the view that disputes can be settled more quickly in arbitration than in court proceedings, by qualified maritime arbitrators, with perceived cost savings, while maintaining confidentiality over the dispute.

This has resulted in the creation of a number of local specialised maritime chambers, including the Brazilian Centre for Maritime Arbitration (CBAM), which was created as a joint initiative of the Trade Union of Shipping Agencies of Rio de Janeiro (SindaRio) and the Brazilian Association of Maritime Law (ABDM).

There are also non-sector specific chambers in which sector-specialised arbitrators can be appointed by the parties in dispute, including the Brazilian Centre of Mediation and Arbitration (CBMA), the Centre for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC), the Chamber FGV of Mediation & Arbitration (Chamber FGV), and the Chamber of Conciliation, Mediation and Arbitration Ciesp/Fiesp.

Mediation is likely to be a significant area of future growth, owing to the uncertainty in many areas of Brazilian commercial law, potentially high amounts of interest and monetary correction on claims, the application of lawyer's fees, time incurred on interlocutory applications and the length of time to judgment or award.

Although conciliatory hearings are strongly encouraged in the context of court proceedings, these are rarely taken as seriously as they should be. It is unusual to resolve disputes in Brazil by reference to final and binding neutral evaluation by an independent expert.

iii Enforcement of foreign judgments and arbitral awards

In July 2002, Brazil became a member state of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Prior to its ratification, the key provisions of the New York Convention were incorporated into the Brazilian Arbitration Act of 1996 (the BAA).

Enforcement of a foreign arbitral award in Brazil is a two-phase process consisting of the following:

a recognition proceedings before the Superior Court of Justice (SCJ); and

b actual enforcement proceedings, before a federal court.

It is a prerequisite to recognition and enforcement that the award is final, binding and unappealable.

The applicant must file an application before the SCJ. The application must observe the formal requirements of the New York Convention, the BAA, the Brazilian Code of Civil Procedure and the internal rules of the competent court. All documents must be legalised and, if necessary, translated into Portuguese by a sworn translator.

The SCJ will issue an order for service of process to the federal court with personal jurisdiction over the defendant. Upon service, the defendant will have a limited time frame of 15 days to file a challenge, based on one or more limited grounds to resist recognition. These can be procedural or substantive (i.e., with minor differences, the same as the reasons listed in Article V (1) and (2) of the NYC).

If the application for recognition is not challenged, jurisdiction to hear it lies with the Chief Justice of the SCJ. If a challenge is made, jurisdiction moves to the Special Chamber and a reporting justice is appointed to conduct the proceedings and present the case to the other members of the Court. The applicant can file a reply, also within a limited time frame.

After the parties have filed their submissions, the reporting justice usually notifies the Federal Public Attorney's Office, which is asked to issue its opinion on compliance with formal evidence requirements by applicant. This is sent to the reporting justice who presents his own opinion. This can take several months, after which a hearing date is set.

During the hearing, the reporting justice will present his own assessment of the case, casting his vote against or in favour of partial or full recognition. The counsel of each of the parties has a short time frame to present their arguments to the Special Chamber. In the majority of cases, the other justices will simply follow the reporting justice.

The final decision will be published in the Official Gazette. After publication, the parties have five days to file a Motion for Clarification, or 15 days to file an Extraordinary Appeal to the Supreme Federal Court, under very exceptional circumstances.

After the final decision recognising the award, the competent court will issue a writ of enforcement. At this stage, the foreign arbitral award acquires full efficacy within Brazil. In

this sense, the arbitral award will have the same effect on the parties as a judgment rendered by a state or federal court. If it includes an obligation for payment, it shall constitute an enforceable instrument.

If payment is not volunteered when the validity of the arbitral award or judgment is recognised, the judgment creditor will need to commence enforcement proceedings, at the federal court that has jurisdiction over the defendant, aiming to attach the defendant's assets and to secure payment.

The court reviews the submission and, if the requirements are met and the request is in line with the award, the court will order service of the enforcement proceedings on the debtor, requiring payment within 15 days. The judge may rely on a court-appointed expert accountant to review the figures.

If payment is not effected in the 15-day period, the debt is increased by a fine of 10 per cent, plus additional lawyers' fees of 10 per cent, both on the amount of the total outstanding debt.

The enforcement judge may order the defendant to present to the court, within five days, a list of its assets subject to attachment, their value and their location. If the defendant does not comply with the order, it will be in contempt of court and subject to severe economic penalties.

It is possible to challenge the enforcement proceedings. However, any challenge must be made within a limited time frame and the grounds are very limited in scope; for example, defective service, lack of standing and jurisdictional challenge of the enforcement proceedings.

The SCJ has the power to issue interim or conservatory measures in the course of recognition proceedings and Brazilian courts are entitled to order, via a unified Brazilian central bank system, the online freezing of any monies deposited in any bank accounts in the debtor's name. Such orders are very swift and effective.

IV SHIPPING CONTRACTS

i Shipbuilding

In the absence of specific rules, the express terms and conditions of the Brazilian Civil Code provide the contractual framework of a shipbuilding contract.

Ancillary requirements are scattered throughout other statutes, which cover issues such as the rules on transfer of title, ownership registration, effect on rights of third parties and mortgages. For example, Federal Law 7,652/1988 establishes that ownership rights and security interests over Brazilian vessels must be registered with the Admiralty Court, if the vessel has more than 100 gross tonnes, while smaller vessels are registered at the port captaincy with jurisdiction over the port where the vessel is located.

The registration of maritime property (RPM) is mandatory whenever the vessel's owner is domiciled in Brazil, or is a government or private entity subject to Brazilian law. Non-compliance of these rules may render ineffective the transfer of title. The RPM validates the ownership title and secures the flag. Application to obtain the RPM must include the deed of acquisition or, in the case of a new build, the respective licence and evidence of payment of the price to the shipyard.

Brazilian vessels are also eligible for registration in the Special Brazilian Registration regime (REB). This provides incentives such as tax cuts and special financing rates. Registration of shipbuilding contracts with the Admiralty Court may entitle the shipping

company, as owner, and the Brazilian yard, as contractor, to a provisional enrolment in REB of vessels under construction with a Brazilian shipyard, for the purposes of taking advantage of tax and financing incentives.

Brazilian companies operating a foreign vessel may provisionally register a vessel to fly the Brazilian flag within the REB regime. The suspension of a vessel's original flag and the provisional utilisation of the Brazilian flag during the relevant period the vessel is in contract in Brazil is subject to compliance with specific requirements provided for in both Federal Law 9,432/1997 and Decree 2,256/1997.

If a vessel is delivered to the buyer with instalments still due to the shipyard, the buyer can apply for an RPM and request the registration of liens in the Admiralty Court for the unpaid balance, subject to the production of evidence.

ii Contracts of carriage

Generally, the authorities have opted to safeguard Brazil's position as a cargo country, as opposed to a carrier country. As such, Brazil is not a signatory to the main international conventions that limit the liability of carriers as regards cargo interests. Brazil has not ratified the Hague Rules, the Hague-Visby Rules, the Hamburg Rules or the Rotterdam Rules.

Brazilian courts have treated bills of lading as contracts of adhesion. As such, they tend to disapply any foreign law, jurisdiction and limitation of liability clause. Brazilian courts refer primarily to the Brazilian Commercial Code and the Brazilian Civil Code, case law precedent and scholarly commentary.

The obligation of a carrier is generally considered to be an obligation of result as opposed to a duty of due diligence or best efforts.

The issue of liens is regulated by the Brazilian Commercial Code, dated 1850 and by the Brussels Convention on Maritime Liens and Mortgages dated 1926. The Convention has been ratified and adopted via Decree 351/1935, which means maritime liens can be exercised in Brazil for, inter alia, the collection of federal taxes, payment of crew and captain's wages, salvage indemnities, port fees and general average contributions.

Multimodal transport is regulated by Federal Law 9,611/1998, which determines that a licensed Multimodal Transport Operator (OTM), is the principal party contracted to perform the multimodal transport of cargoes from origin to destination, using its own means or those of third parties, potentially under a single bill of lading.

Foreign vessels can act in cabotage, provided they are chartered by EBNs if they meet the criteria set forth in Federal Law 9,432/1997.

iii Cargo claims

A party who sustains damage arising out of a breach of a contract of carriage has title to sue, provided a Letter of Protest is issued within 10 days from the date of discharge. Some experts are of the view that the claimant can frame a claim against any of the participants in the transportation services' chain, namely charterers, sub-charterers, owners and non-vessel-operating common carrier (NVOCC), each of whom is arguably jointly liable to the cargo owner. Demise clauses are usually not enforceable.

If cargo owners and carriers have contracted with equal bargaining power (e.g., if cargo owners are multinational corporations heavily involved in the international carriage of goods market, such as manufacturers of large commoditised goods), then the tendency of the courts is to uphold the written terms of the contract. This approach is encouraged by the Charter of Economic Freedom, under Federal Law.

Claimants are often subrogated local insurers. Service of a party not domiciled in Brazil can be effected via its local maritime agents.

iv Limitation of liability

Brazil has not yet ratified the Convention of Limitation of Liability for Maritime Claims 1976, although it has ratified the International Convention for Unification of Certain Rules, relating to the Limitation for Liability for Owners of Sea-Going Vessels 1924. However, the Brazilian courts frequently do not apply its provisions.

Civil liability is therefore usually determined under the Brazilian Civil Code, which makes provision for contractual liability (Article 389) and liability in tort (Article 927).

The Brazilian Civil Code provides a strict liability regime in circumstances where the activity, normally performed by the party who causes damage, implies by its very nature a risk to the rights of others. This is particularly relevant for claims arising in tort, when carriers are the tortfeasor, irrespective of who the victim is (e.g., another vessel or a terminal in the case of collision).

In terms of the contractual liability of carriers, Brazilian courts have ruled that liability for the correct and timely delivery of the cargo is strict.

However, strict liability, whether in contract or in tort, is excluded if, for example, carriers can evidence that the damage arises from *force majeure* or the victim's exclusive actions, or the exclusive acts of third parties (e.g., shipper's incorrect packaging).

As a general rule, Brazilian courts do not usually uphold the limitation of a carriers' liability in respect of cargo owners. A Brazilian court is likely to hold charterers, sub-charterers, owners and NVOCCs jointly and strictly liable for damage to cargo owners. However, they each retain their right to seek recourse against the party who actually caused the damage.

The ordinary measure of damages under Brazilian law is usually upheld by the courts in cargo disputes. In practical terms, all damages that are sustained (whether physical damage or damages that arise from reasonable loss of profits and business interruption) would potentially be indemnifiable. Punitive damages are not available and indirect and consequential losses are excluded from the ordinary measure of damages, save if the parties agree otherwise.

As stated above, in circumstances where the case involves sophisticated parties, with equal bargaining power, as opposed to consumers, and assuming the contract is not considered to be an adhesion contract, Brazilian law will usually uphold the parties' freedom of contract. As such, the parties' express contractual position on the allocation of liability for certain categories of damages should supersede the default position under Brazilian law.

V REMEDIES

i Ship arrest

Brazil is not a party to the two main international conventions on ship arrest, namely the International Convention relating to the Arrest of Sea-Going Ships dated 1952 and the International Convention on Arrest of Ships, dated 1999. The matter is therefore regulated by the rules of the Brazilian Commercial Code, the Brazilian Civil Code and the Brazilian Code of Civil Procedure, which provide for two types of arrests:

a to secure the payment of a debt due to the risk of the debtor potentially not paying a future award or judgment against them; and

b to enforce the payment of a debt already granted by an award or judgment that the debtor has not paid.

The arrest described in (a) is available on an interim basis, as an injunction or precautionary measure. If the creditor's application is successful and the vessel is arrested and the debtor does not pay, then the creditor has to file a substantive action to seek an award or judgment in its favour. The ordinary requirements for injunctions and precautionary orders apply.

For the arrest described in (b), a final decision is necessary, and the creditor must have exhausted other forms of collecting the amount awarded in its favour. A Brazilian court is extremely unlikely to grant an arrest in a case where Brazilian courts do not have jurisdiction to decide on the merits of the substantive claim.

In terms of procedure, claimants may be ordered to provide counter-security at the court's discretion, for damages potentially arising from a wrongful arrest. If an arrest is ordered and subsequently lifted on the basis that it was wrongful, then the damaged (arrested) party may claim compensation. Parties domiciled abroad, depending on whether or not their country of origin has signed a bilateral cooperation treaty with Brazil, may also be required to post security for costs, pursuant to Article 83 of the Brazilian Code of Civil Procedure.

Once an arrest order has been issued by the court, it is forwarded to the relevant Brazilian Navy's port captaincy. The port captaincy will enforce the arrest, usually by withholding the vessel's exit pass. An interested third party (e.g., the owner) may intervene in order to try to lift the arrest, for instance by presenting a guarantee to secure the release of the vessel.

Brazilian law recognises the distinction between *in personam* arrests and *in rem* arrests. *In personam* arrests aim to secure payment of debts incurred by the owners or charterers, whether they have been incurred in relation to the specific vessel being arrested or not. *In rem* arrests aim to secure payment of privileged debts incurred by the specific vessel being arrested, regardless of whether such vessel is currently run by different sets of companies. *In rem* arrests usually arise from maritime liens.

Brazilian law does not address the issue of arrest of sister ships. Sister ship arrests are less likely to succeed if the arrest is sought *in rem*, based on a maritime lien. *In personam* arrests of sister ships may be granted. In terms of the arrest of bunkers, this is uncommon and not expressly provided for in statute, and therefore cases would follow the general procedure described above.

ii Court orders for sale of a vessel

Court orders for sale of vessels are available under the same rules as those for public auctions and asset bidding, more commonly used for the sale of real estate. The court order will include the minimum bid value, and the auction will be conducted by a court appointed auctioneer, who charges a percentage fee of the proceeds of the sale. The vessel cannot be sold below the minimum bid value in the first auction. However, it can be sold at any price in the second auction.

Once the sale has been concluded and ratified by the court, the highest bidder will be able to register its ownership of the vessel with the Admiralty Court, which keeps a record of the ownership of vessels. Pursuant to Article 477 of the Brazilian Commercial Code, all prior debts and liens are extinguished by the judicial sale and the transaction is considered to be equivalent to a first acquisition.

VI REGULATION

i Safety

Article 178 of the Brazilian Federal Constitution states that the law will establish the rules regarding navigation and transport of goods and passengers by sea, while abiding by the international conventions signed by Brazil.

The main statute addressing marine safety is Federal Law 9,537/1997 (The Waterway Transport Safety Law, also known as LESTA). This is regulated by Decree 2,596/1988 (also known as RLESTA). Both statutes provide safety rules, including for pilotage and seafarers, and penalties for infractions.

Brazil does not have a coastguard, and the Brazilian Navy acts as the Brazilian Maritime Authority, pursuant to Article 17 of Federal Complementary Law 97/1999. The Maritime Authority also enacts safety regulations via the issuance of NORMAM (see Section II, above), by the Brazilian Navy's Directorate of Ports and Coasts.

If a breach of safety recommendations results in an accident, the Maritime Authority will be responsible for opening a formal inquiry to investigate the cause of the accident. The investigation may lead to an administrative procedure at the Admiralty Court, where administrative liability will be ascertained.

As regards international conventions on safety, Brazil is a signatory to the Convention on International Regulations for Preventing Collisions at Sea 1972 (COLREGS) and the International Convention on Safety of Life at Sea 1974 (SOLAS).

ii Port state control

Port state control inspections of foreign-flagged vessels aim to verify if the conditions of the vessel and its equipment comply with the requirements established by Brazilian law and applicable international conventions.

The inspections' objective is restricted to the safeguarding of human life and the safety of navigation, whether in open waters or in inland waterways. Port state control inspections also focus on the prevention of environmental pollution from ships, fixed platforms or their support vessels.

After the port state control's inspection, the Maritime Authority issues a Declaration of Conformity to Operate in Brazilian Jurisdictional Waters, which certifies that the vessel is compliant with the applicable legislation. Qualified and authorised marine inspectors carry out the inspection, as determined by NORMAM 4 (Norms for Recognition of Classification Societies to Act on behalf of the Brazilian Government), issued by the Directorate of Ports and Coasts.

Brazilian port state controllers follow the International Maritime Organization's Port State Control Procedures of 2017. Brazil is also a party to the Latin American Agreement on Port State Control of Vessels of 1992, known as the Viña del Mar Agreement.

iii Registration and classification

Federal Law 7,652/1988 regulates the registration of vessels. Brazilian vessels, except those owned by the Brazilian Navy, must be registered with the port captaincy with jurisdiction over the area where the owner is domiciled, or where the vessel will operate. The registration of the property in the Admiralty Court is mandatory if the vessel has a gross tonnage greater than 100.

According to Federal Law 7,652/1988, a vessel may be acquired while under construction or by any other means already established by Brazilian law. However, property is only transferred effectively, once the title is duly registered at the Admiralty Court or the respective port captaincy.

The Admiralty Court is responsible not only for the registration of the property of vessels but also for the registration of ship owners and *in rem* guarantees, as well as any relevant contracts or changes to the vessel's characteristics, such as change of company name, charter contracts, changes to the vessels structure and engines.

Classification societies are recognised organisations with delegated powers conferred by the Brazilian Maritime Authority, pursuant to NORMAM 6. The Directorate of Ports and Coasts maintains a list of the classification societies approved by the Brazilian Maritime Authority.

The classification societies' activities are varied and include classifying ships and maritime units, representing the Maritime Authority, certifying compliance with environmental regulations, and health and safety regulations, and providing technical consulting services.

iv Environmental regulation

Brazil's environmental legal framework is onerous and complex. It is encompassed in a series of different statutes. There are a number of environmental agencies with overlapping jurisdiction. Owing to Brazil's federative structure, environmental agencies may be federal, state or municipal entities, each with its own structure and mandate.

Environmental liability is several and strict and, as such, liability will be ascertained regardless of fault or negligence. Environmental liability has three main areas, namely administrative, civil and criminal liability, which can all operate on a simultaneous basis.

In June 2021, the Brazilian Congress approved Draft Bill 3,729/2004, which regulates environmental licensing. The new environmental legal benchmark, which is currently being reviewed by the Senate, stipulates new rules for port construction and reform, aiming to facilitate and speed up the licensing process.

Brazil has ratified a limited number of international conventions on environmental matters, such as MARPOL (73/78), the International Convention on Civil Liability for Oil Pollution Damage (CLC 1969) and the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention 1990). Brazil has not ratified most of the subsequent protocols, meaning that conventions such as MARPOL are not up to date with current amendments.

Brazil has not signed relevant international conventions, such as, inter alia, the Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, and the International Convention on Liability Damage Caused by Oil Bunker, 2001.

v Collisions, salvage and wrecks

Brazil has signed the following international conventions regarding the liability of shipowners and carriers, in relation to collisions and salvage:

a the International Convention of Private Law (Bustamante Code), signed in 1928;
b the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea (Brussels 1910);
c the International Convention on Regulation for Preventing Collisions at Sea 1983; and
d the International Convention on Salvage, 1989.

Brazil is not a signatory of the Nairobi International Convention on the Removal of Wrecks.

The domestic legal framework regarding wreck removal comprises Federal Law 7,542/1986 and NORMAM 10. These regulations allow the Brazilian Maritime Authority to order the wreck to be removed by the responsible party, in circumstances where the wreck poses a danger or an obstacle to safe navigation, a threat to the environment or a threat of damage to a third party. When ordering a removal, the Maritime Authority may request a Letter of Undertaking by a first class insurance company or a protection and indemnity club, in case the wreck is not successfully removed and damage occurs.

vi Passengers' rights

Brazil is not a signatory of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974.

Brazilian courts have held that the Consumer Protection Code (CDC) or Federal Law 8,078/ 1990 applies to passengers. The carriage of passengers by sea is considered to be a service under Brazilian law and passengers are treated as consumers – the final recipients of the service.

The Brazilian Civil Code has a specific chapter on transport contracts, which could potentially supersede the provisions of the CDC, on the basis that the Civil Code specifically addresses the issue of transport, where the CDC does not.

Nevertheless, the prevailing tendency of the courts, when judging cases involving passengers, is to apply the CDC. The CDC has stringent provisions on service providers, ranging from extended limitation periods to shifting the burden of proof to the defendant.

vii Seafarers' rights

Under Brazilian law, all those who work in open sea navigation, maritime support, port support and inland navigation are deemed seafarers. This definition covers both crew members in charge of operating the vessel and the workers who carry out activities that do not involve the operation of the vessel, such as waiters, nurses and cooks.

The Consolidation of Labour Laws, which is the Brazilian equivalent of a Labour Law Code, governs the rights and duties of workers in general, and is also applicable to seafarers. However, they contain very limited provisions that specifically address this type of work. The very particular conditions of seafarers' work and the lack of specific regulations generate significant scope for legal uncertainty.

Seafarers are also governed by Federal Law 9,537/1997 and Decree 2,596/1998. Brazil is also a signatory of the Maritime Labour Convention 2006, which was enacted into law on 7 May 2021, under Decree 10,671/2021. The following conventions of the International Labour Organization (ILO) have also been ratified by Brazil:

a Convention No. 07 (Convention on the Minimum Age for Admission of Minors in Maritime Work);
b Convention No. 146 (Convention Relating to the Annual Paid Vacations of Seafarers);
c Convention No. 163 (Welfare of Maritime Workers at Sea and in Port);
d Convention No. 164 (Health Protection and Medical Assistance to Maritime Workers);
e Convention No. 166 (Repatriation of Maritime Workers);
f Convention No. 147 (Minimum Standards of Merchant Marine); and
g Convention No. 178 (Convention on the Inspection of Living and Working Conditions of Sea Workers).

VII OUTLOOK

In 2021, the Brazilian port sector, including both public ports and private terminals, handled 1.210 billion tonnes of cargo. This number represented a growth of 4.8 per cent compared to 2020, according to a survey carried out by ANTAQ. Regarding the main cargos handled, iron ore continues to lead the list in terms of quantity: 370.4 million tonnes were handled in 2021, a 4 per cent increase from 2020. In 2021, Commodities trade led to an increase in activity in ports in the north of Brazil (i.e., within the Northern Arc) of over 5 per cent in volume.

The federal government intends to privatise the main ports in Brazil. This will certainly attract foreign investors. The Cabotage Act encourages such investments, in port infrastructure, as a larger number of vessels will require modern port facilities. The Port of Santos, which is the largest port in Brazil, as well as the Ports of Suape and Vitoria are expected to be privatised in 2022.

The enactment of new legislation on decommissioning of platforms and other vessels has opened a new horizon of local opportunities. A large portion of production units have reached the regulatory 25-year limit of usage, meaning such vessels do not have the technology to remain operating. ANP Resolution 817 aims to incentivise the decommissioning of such vessels locally, creating a market to deal with an ever-growing demand.

Brazil is the largest exporter of soya beans and corn, much of which is grown in central Brazil, especially the states of Mato Grosso and Goiás. Bottlenecks in the heavily over-burdened ports located south of Brazil, aligned with a proximity to the Northern Hemisphere, have resulted in the consolidation of the Northern Arc as one of the main grain export gateways.

Over the past decade, the Brazilian government has invested in the Northern Arc, and the results show an increase of 482 per cent of the amount of soybeans and corn exported from the northern ports in 2020, when compared to the amounts exported in 2010.

The Northern Arc includes the Brazilian ports and cargo handling facilities along the Amazon River and its tributaries, from Porto Velho (Rondonia) in the west to Sao Luis in the East (Maranhão), including Manaus, Santarém, Belém and Santana.

Appendix 1

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Geoffrey Conlin is a partner at HFW and a foreign law consultant to Costa, Albino & Lasalvia Advogados in Brazil. He is an English lawyer and is registered as a foreign lawyer with the Order of Attorneys of Brazil, where he has been based since February 2013. Geoffrey acts mainly for charterers, commodity traders, insurers and reinsurers. He specialises in resolving complex marine insurance claims (cargo, hull and machinery, and liability) and is an expert in ports and terminals work. He is a member of the British Insurance Law Association and has presented on shipping, insurance and reinsurance related issues in the United Kingdom and in various countries in Latin America.

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ISBN 978-1-80449-079-2