

PORTS & TERMINALS

Angola



Ports & Terminals

Consulting editors

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HFW

Quick reference guide enabling side-by-side comparison of local insights, including into key ports; reform and port models; state development policy; green ports; legislative framework and regulation; public procurement and PPP; port development, construction and operation; corporate, finance, competition and dispute considerations; and recent trends.

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Table of contents

GENERAL

- Key ports
- Reform and port models
- State development policy
- Green ports

LEGISLATIVE FRAMEWORK AND REGULATION

- Development framework
- Regulatory authorities
- Harbourmasters
- Competition
- Tariffs
- Public service obligations
- Joint ventures
- Foreign participation

PUBLIC PROCUREMENT AND PPP

- Legislation
- Proposal consideration
- Joint venture and concession criteria
- Model agreement
- Approval
- Projects
- Term length
- Fee structures
- Exclusivity
- Other incentives

PORT DEVELOPMENT AND CONSTRUCTION

- Approval
- Port construction

PORT OPERATIONS

- Approval

Typical services

Access to hinterland

Suspension

Port access and control

Failure to operate and maintain

Transferrable assets

MISCELLANEOUS

Special purpose vehicles

Transferring ownership interests

Granting security

Agreement variation and termination

Contractual breach

Governing law

Disputes

UPDATE AND TRENDS

Key developments of the past year

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GENERAL

Key ports

Which are the key ports in your jurisdiction and what sort of facilities do they comprise? What is the primary purpose of the ports?

The main ports in Angola are Luanda, Lobito, Namibe, Cabinda and Soyo.

Port of Luanda is the largest-sized port in the country, as it handles at least 80 per cent of total containerised cargo. The remaining main medium-sized ports are Lobito, Namibe, Cabinda and Soyo. Namibe and Lobito mainly serve container ships and general cargo, whereas Cabinda mainly serves general cargo and passengers and Soyo Port serves mainly the offshore industry (oil and gas).

There is also an important smaller port, the Port of Amboim, which is the largest harbour in the province and the largest intermediate terminal between Lobito and Luanda. It is specialised in the marketing of agricultural products from the Amboim plateau.

Law stated - 01 August 2023

Reform and port models

Describe any port reform that has been undertaken over the past few decades and the principal port model or models in your jurisdiction.

There are a few changes to report regarding Angolan port legislation in the last year. The Law on Merchant Shipping, Ports and Related Activities (Law No. 27/12 of 28 August) was recently amended and republished by Law No. 34/22 of 13 September.

The main changes were related to:

- provisions regarding definitions;
- international cooperation;
- public water and port domain;
- composition of the National Maritime Authority;
- Maritime and Port Sector Regulatory Entity;
- National Maritime Traffic Control Service;
- maritime beaconing and signalling;
- Maritime Search and Rescue Service;
- prevention and combating pollution at sea;
- port domain;
- control of vessels, ships or other floating devices positioned and navigable in waters under the jurisdiction of the Republic of Angola;
- registration as Ship Managers;
- requirements and conditions for access to the activity of Shipping Agent and its exercise; and
- fines.

There were also added provisions regarding international cooperation, the Ship and Port Facilities Security Service, the Maritime Inspection Corps and the National Coast Guard, with the expressions 'National Maritime Administration' and 'Maritime and Port Institute of Angola' being replaced by 'Entity Responsible for the Maritime and Port Sector'.

Recently, a relevant group from Abu Dhabi (AD Ports Group) entered into a framework agreement with the Ministry of Transport of the Republic of Angola to work together on the development of infrastructure and maritime services across Angola. Potential areas for joint investment include a Maritime Academy in Angola, logistics platforms, ferry and cabotage services and maritime passenger terminals. This group has also entered into a Head of Terms Agreement with Angolan state-owned logistics and transportation company UNICARGAS, which manages the multipurpose terminal at the Port of Luanda, Angola's busiest port, to form a joint venture that will work to modernise, manage and operate the multipurpose terminal.

Also, in late 2020, an important innovation was approved in the country with the creation of the Regulatory Agency for the Certification of Cargo and Logistics of Angola (ARCCLA), created by Presidential Decree 326/20 of 29 December, which, despite not being a ports regulatory entity, as a function that remains with the Maritime and Port Institute of Angola, covers the ports in its logistics activity, as it regulates, among others, the National Network of Logistics Platforms, the promotion of the Lobito rail corridor and the implementation of the Single Window Logistics. ARCCLA is empowered to regulate, supervise and inspect the transport of goods by sea, land and air and to manage the logistical infrastructures that ensure the distribution of and access to goods and products within the national territory, including ports.

The port management model in Angola is the landlord port model. This means that the public entity maintains ownership of the ports, but the commercial exploitation of the terminals is attributed, through a public service concession, to private parties.

The financing and execution of infrastructures may, in this model, be of public or private responsibility, but the state, directly or indirectly, namely through the Maritime and Port Institute of Angola (IMPA) and the respective Port Authorities, is responsible for exercising functions of authority, supervision and superintendence, of coordination, control and general promotion of the port, ensuring a set of basic services of general interest.

This landlord port model aims to promote the participation of private initiative in the exploitation of port activity, presupposing the creation of a framework of transparency in the granting of concessions, with a view to modernising ports, both in terms of the capacity of their infrastructures and facilities, and improving their performance, considering the efficiency and transparency of the activity under concession, as well as the rules for monitoring them.

Law stated - 01 August 2023

State development policy

Is there an overall state policy for the development of ports in your jurisdiction?

The last few years saw enormous efforts to reduce the obstacle of high average waiting times for vessels (about a week in Luanda, with periods of more than 30 days), namely through high investments and new tenders for the management and operation of cargo terminals, especially in Luanda and Lobito.

Among these new investments underway and announced in these two ports, we should mention, due to its relevance, the new contract for the Lobito Corridor Rail Services and Support Logistics Concession, with a term of 30 years (extendable to 50 years) – where the Lobito Atlantic Railway consortium will now be responsible for the operation, management and maintenance of the vital rail infrastructure, which spans some 1,300 kilometres – and the deepening of the access channel to -16 (from the current -12.5) at the Port of Luanda, in addition to other important investments in security and new cargo terminals.

Relevant investments in logistics platforms (dry ports) and dredging are also planned for the ports of Cabinda and Soyo. Reference should also be made to the recent new concession contracts for the Lobito Multipurpose Container and General Cargo Terminal and the Luanda Multipurpose Terminal, both awarded to leading international companies for periods of up to 20 years.

Green ports

What 'green port' principles are proposed or required for ports and terminals in your jurisdiction?

The port sector must be governed, inter alia, by the principle of respect for environmental rules.

Law stated - 01 August 2023

LEGISLATIVE FRAMEWORK AND REGULATION**Development framework**

Is there a legislative framework for port development or operations in your jurisdiction?

Angolan port legislation is mainly regulated by the Law on Merchant Shipping, Ports and Related Activities (Law No. 27/12 of 28 August), recently amended and republished by Law No. 34/22 of 13 September.

At the end of 2020 an important innovation was approved in the country with the creation of the Regulatory Agency for Cargo and Logistics Certification in Angola, created by Presidential Decree 326/20 of 29 December. It regulates, among others, the National Network of Logistical Platforms, the promotion of the Lobito rail corridor and the implementation of the Single Window Logistics.

Other important legislation is:

- Decree No. 52/97 of 18 July, General Basis of Port Concession (BGCP);
- Law No. 9/98 of 18 September, Port Domain (LDP);
- Decree No. 53/03 of 11 July, Exploitation of the Ports of Angola (REPA);
- Decree No. 66/09 of 3 December, Utilisation of Port Domain (RDP);
- Joint Executive Decree No. 634/22 of 6 December, Port Tariff Regulation of Angola (RTP);
- Law No. 11/19 of 14 May, Public Private Partnership (LPPP); and
- Law No. 41/20 of 23 December, Public Contracts (LCP).

Law stated - 01 August 2023

Regulatory authorities

Is there a regulatory authority for each port or for all ports in your jurisdiction?

The National Maritime Authority delegates the pursuit of port regulation attributions to the Maritime and Port Institute of Angola (IMPA), which is responsible for regulating the port sector, and operates under the authority of the Ministry of Transport.

Law stated - 01 August 2023

What are the key competences and powers of the port regulatory authority in your jurisdiction?

As port regulator, by delegation from the National Maritime Authority, the Maritime and Port Institute of Angola (IMPA) is the entity in charge of regulating the port sector and, in that capacity, its mission is to regulate, supervise and exercise coordination functions, as well as supervise and regulate the activities carried out in Angolan commercial

ports.

The IMPA has regulatory powers, including the supervision, oversight, monitoring, inspection and audit of the port sector.

Law stated - 01 August 2023

Harbourmasters

How is a harbourmaster for a port in your jurisdiction appointed?

The Harbourmaster is appointed by the government in the form of the National Maritime Authority.

Law stated - 01 August 2023

Competition

Are ports in your jurisdiction subject to specific national competition rules?

The ports are subject to general competition rules and thus they and the port services are under supervision from the Competition Authority.

Law stated - 01 August 2023

Tariffs

Are there regulations in relation to the tariffs that are imposed on ports and terminals users in your jurisdictions and how are tariffs collected?

The legal framework for port tariffs is set out in the Ports Tariff System Regulation (last update provided by Joint Executive Decree No. 634/22 of 6 December) and the tariffs defined in that system have the nature of public prices. This regulation establishes the fees applicable to vessels, goods, passengers, equipment rental, supplies and the prevention and combating of environmental pollution. It aims to adapt the amounts of fees and emoluments charged by the Ports of Angola both to the economic and financial situation that the country is going through and to the General Regime of Fees, approved by Law No. 7/11 of 16 February, which also establishes the sanctioning regime.

Without prejudice to the fee reductions or exemptions provided for in these regulations, the ports may grant others, at the request of the interested parties or by separate administrative act, when this is of benefit to the port, within the scope of the defence of port interests.

The Port Administration may set minimum billable amounts for each of the tables in these regulations or for each invoice issued.

The tariffs set out in these regulations are the maximum permitted tariff rates, and concessionaires may practise lower rates within the scope of the respective Concession and Tariffs Agreements to be approved by the grantor.

Law stated - 01 August 2023

Are there restrictions relating to the currency applied to the tariffs or to any fees that are payable by a port operator to the government or port authority? Are any specific currency conditions imposed on port operators more generally?

The fees contained in the Port Tariff Regulation of Angola are applicable throughout the jurisdiction of the Ports of Angola and the fees contained herein are expressed in US dollars, which shall be levied on the tariff unit.

Law stated - 01 August 2023

Public service obligations

Does the state have any public service obligations in relation to port access or services? Can it satisfy these obligations through a contract with a private party?

The state is responsible for road and rail infrastructure providing access to ports. This infrastructure is financed by the General State Budget.

The planning and execution of dredging works are the responsibility of the Port Authority, as well as the construction works and port installations.

The ports afford free access to all because they are in the public domain and are managed by the state through port authorities under limitations on safety and security.

Notwithstanding, the use of buildings, installations, embankments, land, quays, quay-bridges, seabed and margins in the area of jurisdiction of a given port can only be carried out through prior authorisation by the Port Authority, which grants the respective use through the attribution of a title of domain licence, domain concession contract or under a port public service concession contract.

Law stated - 01 August 2023

Joint ventures

Can a state entity enter into a joint venture with a port operator for the development or operation of a port in your jurisdiction? Is the state's stake in the venture subject to any percentage threshold?

To date, here are no examples of a joint venture. The public entity maintains ownership of the ports, but the commercial exploitation of the terminals is attributed, through a public service concession, to private parties.

Angolan law used to demand a majority stake from Angolan nationals, but this is changing.

Law stated - 01 August 2023

Foreign participation

Are there restrictions on foreign participation in port projects?

To exercise the activity of concessionaire, you must be an Angolan national. In the case of companies, they must be registered in Angola.

Law stated - 01 August 2023

PUBLIC PROCUREMENT AND PPP

Legislation

Is the legislation governing procurement and PPP general or specific?

The legislation governing procurement and PPP in Angola is general.

Law No. 11/19 of 14 May approves the public-private partnership regime and Law No. 41/20 of 23 December approves the legal regime of the Formation and Execution of Public Contracts.

Additionally, Decree No. 52/97 of 18 July defines the General Bases for Port Concessions.

Law stated - 01 August 2023

Proposal consideration

May the government or relevant port authority consider proposals for port privatisation/PPP other than as part of a formal tender?

Ports are state property, forming part of the public maritime domain. Therefore, the public entity retains the ownership of the ports, with only the commercial operation of the terminals being attributed, through public service concessions, to private parties.

Private entities can only access port activity of cargo handling and related services, through a public service concession contract, applying the regime of the General Bases of Port Concessions.

Therefore, there is no room for self-proposals.

Law stated - 01 August 2023

Joint venture and concession criteria

What criteria are considered when awarding port concessions and port joint venture agreements?

The criteria are always the best proposal for the public interest. Within these criteria are included the best technical solution and the best revenue to the port authority.

The Ministry of Transport draws up the respective programmes of procedure and specifications for the purposes of the procedures of formation and execution of public service concession contracts relating to port activities.

Law stated - 01 August 2023

Model agreement

Is there a model PPP agreement that is used for port projects? To what extent can the public body deviate from its terms?

Private parties can only access the port activity of handling and loading (and related services) through a public service concession contract.

Decree No. 52/97 of 18 July defines the General Bases for Port Concessions. Port concessions are governed by the administrative contracts regime in Angolan law.

Law stated - 01 August 2023

Approval

What government approvals are required for the implementation of a port PPP agreement in your jurisdiction? Must any specific law be passed in your jurisdiction for this?

Each tender must have its own specific government act.

Law stated - 01 August 2023

Projects

On what basis are port projects in your jurisdiction typically implemented?

As a rule, until now, the terminals concessions have not been greenfield projects, as they have been designed and built by the government or port authority and what is transferred to the private operator is just the operation of the port terminal. In specific cases where the improvement or expansion of the terminal is included in the concession, the model used is build-own-operate-transfer.

Law stated - 01 August 2023

Term length

Is there a minimum or maximum term for port PPPs in your jurisdiction? What is the average term?

The law establishes that port concession contracts cannot have a term longer than 30 years. The contract can neither be renewable nor extendable in any way, unless otherwise resolved by the government. It is becoming normal to have contracts with a possible term of up to 50 years.

Law stated - 01 August 2023

On what basis can the term be extended?

The Public Procurement Law states that the term of the concession may be extended based on the need to ensure the amortisation and remuneration, under normal conditions of profitability of the operation, of the capital invested by the concessionary.

Law stated - 01 August 2023

Fee structures

What fee structures are used in your jurisdiction? Are they subject to indexation?

The Port Authority grants the use of part of the maritime public domain through the payment of a rent or fee for the pursuit of private purposes or activities, as established in the respective concession contract.

The fees are usually subject to indexation to annual inflation.

Law stated - 01 August 2023

Exclusivity

Does the government provide guarantees in relation to port PPPs or grant the port operator exclusivity?

As a public service concession contract, it is granted an exclusivity right for the concession area. Within the concession area only the respective holder may commercially explore services, uses and activities of whatever nature considered in the contract.

Law stated - 01 August 2023

Other incentives

Does the government or the port authority provide any other incentives to investors in ports?

In the case of port concessions, the law allows the constitution of guarantees on assets, provided that the period does not exceed two-thirds of the term of the concession.

Law stated - 01 August 2023

PORT DEVELOPMENT AND CONSTRUCTION

Approval

What government approvals are required for a port operator to commence construction at the relevant port? How long does it typically take to obtain approvals?

The execution of the works by the concessionary is subject to the issuance of a licence by the port authority, to which the respective projects must be submitted for approval.

The projects will be considered approved and the works authorised if, within 30 working days after the delivery of the projects or the request for a licence, the port authority does not issue an opinion.

Law stated - 01 August 2023

Port construction

Does the government or relevant port authority typically undertake any part of the port construction?

The state is responsible for road and rail infrastructure providing access to ports. This infrastructure is financed by the General State Budget.

The planning and execution of dredging works are the responsibility of the Port Authority, as well as the construction works and port installations.

Law stated - 01 August 2023

Does the port operator have to adhere to any specific construction standards, and may it engage any contractor it wishes?

The operator need not adhere to any specific construction standards, although it normally assumes the responsibility to use best practice and best engineering methods.

Law stated - 01 August 2023

What remedies are available for delays and defects in the construction of the port?

In case of delays or defects, the party responsible for construction of the port can be held liable for the delays or defects and the contract can ultimately be terminated. A penalty may also be applied for each day of delay.

Law stated - 01 August 2023

PORT OPERATIONS

Approval

What government approvals are required in your jurisdiction for a port operator to commence operations following construction? How long does it typically take to obtain approvals?

The concessionary must be licensed for the exercise of the concession activities, either by the port authority or by other entities that are competent for this purpose and may not commence activity without this requirement being met.

In the absence of the necessary licence, the port authority may order the suspension of the activity until the irregularity has been remedied.

Law stated - 01 August 2023

Typical services

What services does a port operator and what services does the port authority typically provide in your jurisdiction? Do the port authorities typically charge the port operator for any services?

The Port Authority provides water and electricity supply services and attributes to others, through port concession, the exploration of activities and services connected to the movement of cargo, that use and develop, for this purpose, certain areas, infrastructures and equipment in the port's area of jurisdiction.

The activities provided by a port operator through a concession under a public service regime are the following:

- ship loading and unloading;
- handling;
- parking;
- storage;
- consolidation and deconsolidation of port cargoes;
- piloting;
- towing;
- mooring;
- cleaning services and waste collection;
- the operation of recreational and sports navigation infrastructure;
- the operation of fishing ports, safeguarding the competences and responsibilities of other bodies in this type of activity, as well as other specific legislation applicable;
- the operation of terminals to support petroleum activities, safeguarding the competencies and responsibilities of

other bodies in this type of activity, as well as other specific legislation applicable;

- the operation of dry ports; and
- passenger traffic.

For the attribution of the powers and rights inherent to the concession, the concessionary must pay the Port Authority the contractually established fees.

Law stated - 01 August 2023

Access to hinterland

Does the government or relevant port authority typically give any commitments in relation to access to the hinterland? To what extent does it require the operator to finance development of access routes or interconnections?

The state is responsible for road and rail infrastructure providing access to ports and this infrastructure is financed by the General State Budget.

The planning and execution of dredging works are the responsibility of the Port Authority, as well as the construction works and port installations.

Dredging, port works and maritime land accesses can be financed by self-financing, public financing, public-private financing and private financing.

Law stated - 01 August 2023

Suspension

How do port authorities in your jurisdiction oversee terminal operations and in what circumstances may a port authority require the operator to suspend them?

The Maritime and Port Institute of Angola (IMPA) has powers regarding maritime safety and has power to order – on a precautionary basis and with immediate effect by means of a written and reasoned order – the suspension of activities when there are reasons of urgency. IMPA also has the power to request the collaboration of the police authorities to enforce the norms and determinations that, for security reasons, should be immediately executed.

The Port Authority must ensure port security from the perspective of:

- navigation;
- movement of passengers;
- crew;
- goods;
- the environment; and
- the prevention of illegal acts.

Port security is guaranteed by the Port Authority through a port security plan, which contains standards, manuals, procedures and emergency and contingency plans and a port facility security plan in accordance with the International Code for the Security of Ships and of Port Facilities.

Also, in the absence of the necessary licence for the exercise of the concession activities, the Port Authority may order

the suspension of the activity until the irregularity has been remedied.

Law stated - 01 August 2023

Port access and control

In what circumstances may the port authorities in your jurisdiction access the port area or take over port operations?

When there is a breach or defective performance of the obligations of the concessionary, the gravity of which puts at risk the continuity of the operation or the regular provision of services, the Port Authority may take over the management of the concession.

The costs of maintaining the assets and operating the services of the concession, as well as of restoring its normal operation, which cannot be covered by the revenue collected, are the responsibility of the concessionary.

Law stated - 01 August 2023

Failure to operate and maintain

What remedies are available to the port authority or government against a port operator that fails to operate and maintain the port as agreed?

The Port Authority or the Maritime and IMPA can suspend the implementation of the contract, apply penalties or even terminate the contract.

Law stated - 01 August 2023

Transferrable assets

What assets must port operators transfer to the relevant port authority on termination of a concession? Must port authorities pay any compensation for transferred assets?

At the end of the contract, the operator must transfer all port assets that should return to the possession of the Port Authority free of charge, unless other terms are agreed in the contract.

The concession contract may foresee the terms of the transfer of the operator's goods assigned to the service at the end of the contract. The contract must regulate the weight or gratuitousness of the transfer of the assets of the concessionaire assigned to the service and the form of this transfer. There can be no appropriation of the concessionary's private assets without payment of fair compensation, so the transfer of assets from the concessionary to the Port Authority at the end of the concession must follow this regime; that is, if the assets belong to the concessionary and are essential to the service, they must be transferred onerously if they have not yet been fully amortised, or gratuitously if not.

Law stated - 01 August 2023

MISCELLANEOUS

Special purpose vehicles

Is a port operator that is to construct or operate a port in your jurisdiction permitted (or required) to do so via a special purpose vehicle (SPV)? Must it be incorporated in your jurisdiction?

The port operator must establish an SPV with the sole object to operate and manage the terminal. The SPV will be the concessionaire and it must be incorporated in Angola.

Law stated - 01 August 2023

Transferring ownership interests

Are ownership interests in the port operator freely transferable?

The concessionaire is forbidden to enter into contracts with third parties that imply in whole or in part, directly or indirectly, the transfer of the operation of the concessionary public service without the previous authorisation of the Port Authority and the government.

Law stated - 01 August 2023

Granting security

Can the port operator grant security over its rights under the PPP agreement to its project financing banks? Does a port authority in your jurisdiction typically agree to enter into direct agreements with the project financing banks and, if so, what are the key terms?

In case of port concessions, the law allows the constitution of guarantees on assets, provided that the period does not exceed two-thirds of the term of the concession.

Law stated - 01 August 2023

Agreement variation and termination

In what circumstances may agreements to construct or operate a port facility be varied or terminated?

The serious breach of obligations of the concession, irremediable or not remedied, implies the right to terminate the contract by the Port Authority.

Law stated - 01 August 2023

Contractual breach

What remedies are available to a government or port authority for contractual breach by a port operator?

The concession regime provides for the seizure of the concession, namely, the possibility for the Port Authority to suspend the contract and oversee the management of the concession due to serious breach or non-performance of the concessionary's obligations that jeopardise the public service.

The government can also apply penalties and even terminate the contract.

Governing law

Must all port PPP agreements be governed by the laws of your jurisdiction?

As a rule, PPP agreements are governed by the laws of Angola.

Law stated - 01 August 2023

Disputes

How are disputes between the government or port authority and the port operator customarily settled?

Usually, disputes between the government or Port Authority and the port operator are solved by arbitration, as set forth in the contract.

Parties can resolve disputes in the general administrative courts or in other alternative ways, such as conciliation, mediation or dispute boards.

Also, in case of a dispute regarding the application, interpretation or integration of the contractual rules or general principles applicable to the concession, parties may agree to take legal action, in a pre-litigation phase. In this case, the parties shall appoint an expert or group of experts by agreement, who shall give their opinion proposing the settlement of the dispute in accordance with principles of equity. If this pre-litigation procedure should fail, disputes will be submitted to an arbitration court.

The procedure for establishing the arbitration court and deciding disputes shall be governed by general law unless otherwise provided in the contract. It can be agreed to any international arbitration rules, as ICC.

Angola has now ratified the Washington Agreement (the International Centre for the Settlement of Investment Disputes).

Law stated - 01 August 2023

UPDATE AND TRENDS**Key developments of the past year**

Are there any other current developments or emerging trends that should be noted?

The Angolan port sector has been the target of important investments and the granting of new concessions to relevant international operators, which have changed the way the activity is developed, although they do not alter the existing model.

The legislation in force is up to date and capable of responding to the challenges of these new initiatives, and a greater openness to other experiences in the Lusophone world may be considered in the future.

As mentioned in question 1.2.1 above, there are a few changes to report regarding Angolan port legislation in the last year. The Law on Merchant Shipping, Ports and Related Activities (Law No. 27/12 of 28 August) was recently amended and republished by Law No. 34/22 of 13 September.

The main changes are related to:

- provisions regarding definitions;
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Law stated - 01 August 2023

Jurisdictions

	Angola	SRS Legal
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	India	Phoenix Legal
	Japan	TMI Associates
	Mozambique	VdA
	Netherlands	Van Steenderen MainportLawyers
	Nigeria	Creed & Brooks
	Paraguay	Palacios Prono and Talavera Abogados
	Portugal	SRS Legal
	South Korea	DR & AJU LLC
	Turkey	Turunç
	United Kingdom	HFW
	Venezuela	Sabatino Pizzolante Maritime & Commercial Attorneys