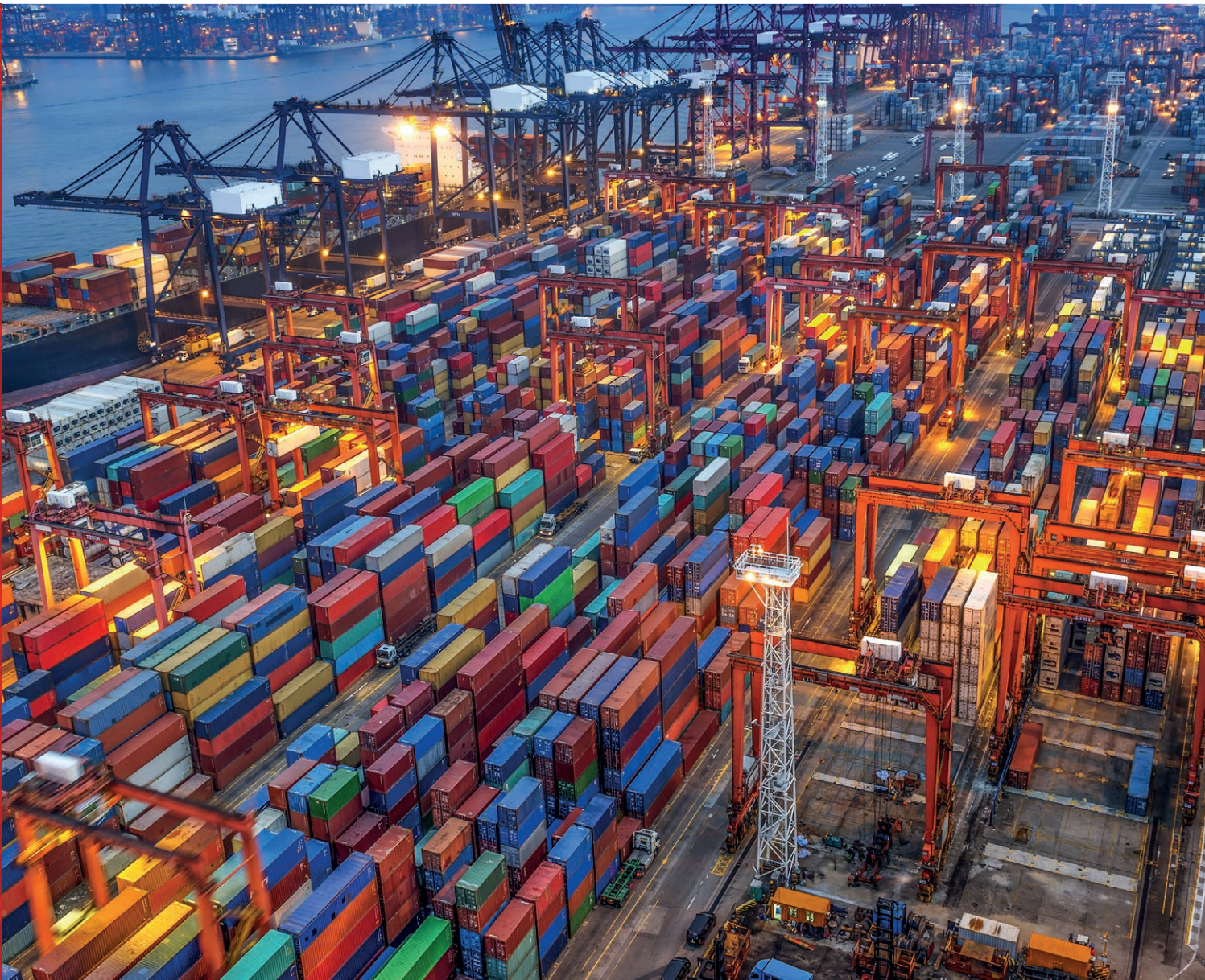


# Shipping, trade and logistics in Africa

Norton Rose Fulbright South Africa Inc

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# Our maritime, trade and logistics practice

Our South African maritime, trade and logistics practice is widely regarded as a leader in domestic and cross border legal services.

We are one of the few global practices able to provide all the services needed globally by today's sophisticated companies involved in all aspects of domestic and international transport and trade.

Our experience is particularly wide-ranging and, aided by our master mariner and English solicitor, we are recognised as specialists in South African shipping law with the ability to provide commercially focused advice supported by our international network across more than 50 countries.

We are particularly experienced in port regulatory matters where our understanding of both the commercial and operational aspects of port operations has proven most valuable to our commodity trade and energy clients.

We advise on all aspects of risk in relation to shipping and logistics and provide guidance on good corporate governance in mitigating such risks. We have played a leading role in almost every major marine casualty off the coast of South Africa for the past 35 years.

We have experience in both commercial charterparty work as well as charterparty advice and disputes relating to off hire, demurrage, despatch, port costs and a number of related issues.

We have lectured on the subject at post graduate level and provided seminars to clients on specific charterparty forms and have developed unique charterparty forms for our clients in the salt, manganese and ferro-chrome industries.

Our Customs team service a wide range of commodity, retail and freight forwarding clients in managing their interaction with the South African Revenue Service (SARS). We have extensive experience in disputes with SARS regarding tariff, duty and excise and regularly pursue appeals against penalties raised by SARS.

Our clients include a varied range of local and international owners and operators, banks, trading houses, lessors, charterers, commodity traders, hull, cargo and liability insurers and brokers, oil majors, LNG operators, ship builders, container shippers, cruise ship operators, warehousemen and stevedores, ship's agents and clearing and forwarding agents.

## Main practice areas

Admiralty matters	Hull and machinery insurance claims	Port Authority operations and liabilities
Collateral management agreements	International trade and commodities	Ports infrastructure
Customs and excise issues	Logistics and supply chain management	Ports regulatory work
Domestic and foreign dispute resolution	Marine insurance disputes and subrogated claims recovery	Recovery actions
Drafting charterparties and contracts of carriage	Maritime casualty response	Terminal, warehouse and stevedoring advice
Charterparty and sales contract demurrage and related disputes		Commercial litigation

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## Casualties

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### **Durban Big Storm**

Represented the national port authority, and its liability insurers, and its re-insurers in the London market, as well as the national port authority's asset insurers, after an unprecedented violent storm swept through the Durban harbour in South Africa causing vessels to break their moorings (including three 100 000mt containerships) and collide with other vessels, ground on sandbanks and at the entrance to the harbour. Various claims amounted to approximately USD85 million. The application of the exemption provisions in the National Ports Act will have an impact on at least 50 other significant pieces of legislation.

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### **mv APL Austria**

Represented cargo insurers in obtaining urgent access to the *mv APL Austria* which suffered a catastrophic fire which affected several hundred containers. The owners declared general average and the cargo was discharged at Port Elizabeth in South Africa for onwards carriage to final destination by various lines. We assisted the clients' fire expert to determine the cause of the fire and the merits of any recovery action, and securing all claims for general average. We have identified the owners of the cargo that started the fire and are advising on proceedings against them in Brazil and Hong Kong.

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### **mv Rena**

Advised the owners and insurers of this containership following her grounding on Astrolabe Reef, the largest ever marine environmental incident in New Zealand. The matter involved handling the initial response to the casualty, evidence gathering, and the enquiry, defending officers who faced criminal charges, wreck removal and the subsequent management of claims brought by a number of different parties.

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### **mv Macuti**

Acted for the owners and insurers of the dredger that was run aground on a sandbank in Beira to prevent her sinking after a collision with another vessel. Provided limitation and liability of each colliding vessel, access to each vessel and recovered approximately USD 16 million from the colliding vessel

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### **mv Smart**

Acted for insurers of a cargo of 80 000 mt of coal lost when this Capesize ran aground and broke up off Richards Bay. We obtained an access order to crew and evidence and have instituted proceedings to recover loss of USD 15 million from the port authority by way of litigation in South Africa.

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### **Durban Bulk Storage Terminal**

Following a collision between a vessel under pilotage and a bulk cargo loader, we were asked to advise a terminal operator and their London insurers on their options regarding the mitigation of its loss and the possible options for securing both its own and its insurers' rights of recovery against the vessel. The damage was extensive and proceedings were instituted in Germany, Hong Kong and South Africa and following various applications in South Africa, the terminal's claims were favourably settled.

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### **mv MSC Napoli Marine Cargo Insurers**

Represented the majority of the local cargo insurance market advising on cargo salvage, cargo losses, recovery actions against various contractual carriers and owners and limitation of liability by owners and carriers. Attended London mediation to settle claims with owners, charterers and P&I Clubs.

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### **Tug owners and demise charterers**

Advised owners and demise charterers of a salvage tug and their P&I Club on their liabilities following a stranding during a violent storm. The litigation involved numerous legal regimes, including questions of private international law, choice of law, limitation of liability and pure economic loss relevant to the laws of at least four regimes. Central to the claim was an industry issue – being the applicability of the TOWCON contract and its “knock-for-knock” liability and “warranty of authority” provisions. We obtained expert advice on discrete Chinese, Dutch and English law issues as well as from master mariners, salvors, and marine architects

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### **mv Stellar Daisy**

Interviewed the surviving crew members of the *mv Stellar Daisy* following her sinking off Brazil; obtaining access to her sistership, the *mv Stellar Unicorn*; negotiating the preservation of documents from both vessels and her owners. We had to establish, from witness testimony, documentary evidence and expert evidence, whether the cargo had undergone liquefaction - the process by which fine particles are abruptly transformed from a solid dry state to an almost fluid state which may have caused the *mv Stellar Daisy* to lose stability, split in two and capsize.

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## Marine insurance

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### JLT Group

Drafted a bespoke set of marine insurance clauses dealing with the provision *stipulatio alteri* (being a contract for the benefit of a third party) for brokers representing logistics and other freight operators. The product produced for the client is unique in marine insurance industry in South Africa and is the only product of its kind.

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### Bailee and carriers liability policies

Advised Hollard, Bryte and Santam Limited in regard to Road Carrier Care Custody and Control policies and drafted the relevant policies.

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### Eikos Risk Applications (Pty) Limited/JLT

Advised on appropriate policy wording to cover insurance required by Freight Operators and drafted the appropriate policy wording. The resulting policy is unique to the industry.

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### Santam Marine

Represented Sasol (South Africa's largest chemical company) and their insurers in a matter involving the contamination of a cargo of MIBK. What was unique was that the source of the contamination proved to be extremely difficult to establish, and involved experts from South Africa, Rotterdam, the USA and the UK. In addition, the process of mitigating the contaminated cargo also set industry standards in this regard for all matters similar to this going forward.

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### National marine underwriter

Advised client on whether they were liable to Kalpataru under the policy of insurance and to defend the subsequent litigation instituted by Kalpataru. The claim arose out of damage to a consignment of project cargo caused by a derailment en route to the project site following discharge from the ship in Tanzania and haulage to Lubumbashi, DRC. Advised underwriters in a dispute arising out of non-compliance by the insured with various conditions and warranties, in particular a "Container Warranty" Clause, set out in a marine insurance policy.

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### Hollard Marine

Advised underwriters on its exposure to a multi-million rand claim under a freight forwarders' liability policy following a claim by SARS against a freight operator to an extremely large claim made against Access Freight by the South African Revenue Authorities following the fraudulent acquittal of tobacco exported by a third party. The matter was settled favourably for insurers

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### Old Mutual Insure

Advised insurers on coverage issues, particularly with regard to wreck removal and pollution liabilities, following the stranding of a vessel on a reef in the Indian Ocean

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### Navigate

Advised insurers on coverage issues following multiple losses by the insured due to the insured's failure to utilize proper vehicles to carry the goods in question

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### Nautical

Advised insurers on coverage and causation issues following the in tank contamination of a cargo of acetate, and thereafter settling the claim with the tank farm.

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### HDI-Gerling Industrie Versicherung AG

Acted on behalf of the underwriters of a consignment of 50 000 mt of bulk Mexican maize, which was found to be wet and mouldy on discharge at Durban. We provided advice on coverage issues, obtained access orders to carry out inspections and testing of hatch covers and to obtain pre-discovery documentation from the ship owners. We also secured a claim against the ship owners and are in the process of running a recovery action for the loss and damage. Storage space shortage for damaged cargo in Durban and time pressure created by constant testing of parcels meant the claim changed significantly from day to day which affected the security negotiations.

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## Disputes

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### Global demurrage project

We assist Shell in running a number of demurrage and related disputes where the relevant charterparties and sales contracts contain English law and arbitration clauses. We provide advice and assist with the recovery and defence of numerous claims involving most aspects of chartering.

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### Nurdle incident

We are acting for a global petrochemical company in respect of claims following the loss of several containers of nurdles off a ship on the South African coast. The nurdles have contaminated numerous beaches along our coast. The matter is complicated by the interaction between South African environmental and admiralty law and by the numerous potential jurisdictions in which proceedings can be pursued and/or defended.

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### Members of Parakou Shipping Group

Responded to a claim for charter hire following the collapse of shipping markets in 2008. This resulted in the arrest of three of our client's ships in South Africa, four appeals in South Africa, two London arbitration awards, liquidation proceedings in Singapore and a Mareva injunction in Hong Kong.

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### Marine Cargo Insurer-commodity traders

Assisted marine cargo underwriters with subrogated recovery action against a port terminal operator in

Tanzania following the theft of cargo. The recovery action was instituted out of the Tanzanian High Court (Commercial Division).

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### Chinese marine underwriter

We were instructed by a Singapore solicitor on behalf of a Chinese marine underwriter in relation to a cargo of wet damaged GMO soy beans. The carrying vessel remained under arrest at Cape Town for several months. The cargo underwriters required assistance in preserving their potential recovery rights against the vessel owner as well as their rights under the marine cargo insurance policy.

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### Otto Marine and owner of the *osv Go Regulus*

The offshore supply vessel *Go Regulus* was damaged whilst undergoing repairs. Advised on three arrests on the vessel, the prospect of the vessel having claims against the operator of the Cape Town dry-dock, various hull and machinery insurance issues and claims by the port authorities for outstanding port dues. Further, advised both the client and the mortgagee bank on various issues arising out of the potential sale of the vessel.

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### *mv Mainport Ash*

Advised the owners and underwriters of the *mv Mainport Ash* which suffered a catastrophic engine failure after undergoing drydocking at Durban. The matter dealt with conflicting contractual terms and issues

relating to causation. The matter was complicated in that it involved the co-ordination of technical experts and overseas factual witnesses and negotiating with the lawyers for the drydock.

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### Starr Adjustment Services Inc

Advised insurers of the cargo regarding the legal and administrative requirements of trans-shipping, a cargo of 10 000mt of Titanium Rutile, an extremely refined product, following the breakdown of the vessel, her arrest and proposed sale of the ship in Durban harbour.

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### Goltens Rotterdam B.V.

Obtained payment of a claim against the Fund established from the sale of the *mv Iskandar* for services rendered by Goltens Rotterdam B.V. to the vessel. The contract was subject to Dutch law and involved a complicated contractual arrangement due to the changing scope of the work that Goltens Rotterdam B.V. contracted to undertake.

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### Recovery agents

Instructed by London based recovery agents, on behalf of London based underwriters, to pursue a subrogated recovery for the loss of copper in the amount of approximately USD 600,000 against a warehouse operator based in Johannesburg, South Africa.

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## The Royal Bank of Scotland

Advised the bank on the arrest and sale by way of judicial auction of a vessel subject to a mortgage in favour of the bank. Objecting to other maritime claimants who sought to assert a preferent ranking over the bank. Recovered balance of proceeds of sale for the bank. The different ranking provisions in different jurisdictions highlighted that banks need to be proactive in enforcing mortgage claims.

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## Deutsche Bank AG, New York Branch

Advised client on how best to resist being joined to an application relating to an arrest of a ship for claims arising out of the collapse of the OW Bunkering group of companies. The matter was important to the banks as they often have arrangements in place to pay bunker suppliers in the event that they have outstanding debts. On paying these debts, the debts were transferred into the ownership of the banks – many of whom had insured these debts in the event that they were unrecoverable. We successfully resisted the joinder of the bank.

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## Skuld P&I Club via Verein Hanseatischer Transportversicherer e.V.

Defended various claims brought by crew, dependants of crew and the owners of the mv *Lindsay* against the owner of the mv *Ouro do Brasil*. The claims arose out of the sinking of the fishing vessel following her collision with the mv *Ouro do Brasil*.

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## Port regulatory and services

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### Durban dig-out port

Provided advice to a South African petroleum related products refinery on possible expropriation of land and relocation of refinery and SBM at a cost of USD600 million due to new Durban port.

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### Terminal Operators

Advised a number of terminal operators on the rights regarding leases for their premises and port operations. This included High Court interdicts and appeals to the Ports Regulator.

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### Terminal development in Mozambique

Advised on all aspects arising out of concessions to operate most of the bulk and container terminals in Maputo Port, Mozambique. This included drafting the terminal regulations.

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### Bidfreight Port Operations (Pty) Ltd (BPO)

Drafted BPO's standard trading terms and assisted with the securing of claims against vessels that have caused damage to BPO equipment during loading, and defending claims brought by ship owners against BPO following alleged vessel damage during stevedoring operations.

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### Rennies Ships Agency (Pty) Ltd

Protected the client's position as

preservation agent for the mv *Silver Star* that had been under arrest in Port Elizabeth for over a year. A current lacuna in South African legislation exposed the client to the possibility of not being able to recover from the ship, its owner or the admiralty marshal that had instructed the client.

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### SAPIA

Advised the South African Petroleum Industry Association on various significant issues involving their operations in the ports of Durban, East London and Port Elizabeth

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### Energy Consortia

Advised a number of energy consortia (off-shore wind and LPG) on port regulatory issues relevant to the setting up of operations in or off some Richards Bay and Port Elizabeth.

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### Dormac (Division of Southey Holdings)

Acted for a major ship yard and ship repairer in South Africa in the purchase and installation of a floating dock in Durban Harbour. This entailed assisting with drafting the purchase and construction contract with the Ukrainian builder, advising on the risks associated with the construction, payment for and transport of the floating dock and with registration of the floating dock on the South African Ships Registry. The transaction was complicated by the risks associated with purchasing a partly built floating dock whose original buyer might have intervened and by the multi-jurisdictional aspects of the case.

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**Commercial shipping, commodities and trade**

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**mt Advantage Sky**

We advised the time charterer of the mt *Advantage Sky* which had been arrested at Cape Town and ultimately sold by creditors. The charterer had a letter of quiet enjoyment from the mortgagee bank as well as various contractual rights relating to the possible novation of the disponent owners with any potential new buyer. We assisted with the arrest and sales proceedings and the legal issues relating to the purchase and novation of the existing charterparty.

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**Ilanga Scientific (Pty) Ltd**

Drafted many discrete voyage charter party terms, and FOB and CFR agreements for the sale, purchase and carriage of salt in bulk from Namibia to Nigeria, Cameroon, Europe and North America. We have also provided advice on issues arising out of vessel delays, the implications of Covid, cargo contamination and delays due to locust swarms.

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**Protea Chemicals (Pty) Ltd**

Drafted long term supply agreement for supply of bulk methanol to the Angolan offshore oil industry. This included consideration of underlying supply agreements from Europe, charter party arrangements and contracts with offshore floating supply and storage platforms. It also involved the assessment of risk and management of terminal conditions. It incorporated the laws of Holland, Angola, England and South Africa.

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**Ore & Metal (Pty) Ltd**

Advising Ore & Metal on numerous sales and charterparty agreements for the provision of various commodities. We have advised on sales agreements, force majeure incidents both in SA and elsewhere, GA claims and bill of lading disputes.

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**Global manganese miner**

Advised a global manganese miner on amendments to its contract of sale of consignments of manganese and amendments to the voyage charter party following a number of demurrage claims arising from shipments to China.

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**Global iron ore trader**

Drafted back to back precedent and bespoke FOB and CFR purchase and sale agreements as between our client and supplying mines, and our client and Chinese purchasers, respectively.

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**Wilmar Oils and Fats Africa (Pty) Ltd**

Acted on behalf of commodity trader following cancellation of a number of forward contracts during the market collapse in 2008 relating to numerous shipments of vegetable oil into Mozambique. Obtained FOSFA arbitration awards and proceedings have been commenced in Mozambique to enforce the awards against the purchaser.

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**Wilmar Oils and Fats Africa (Pty) Ltd**

Assisted the client with regard to risk assessment and contract concluded with Transnet National Port Authority at Richards Bay and Richards IDZ regarding the construction of a veg oil processing plant in Richards Bay. This included advice on environmental impact assessment, construction of a pipeline from the Port to the IDZ and a common users' agreement for the pipeline. This supplemented a similar project in Cape Town.

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**Coal Terminal**

Investigated an alleged incident at one of the world's largest coal terminals which involved the loading of a cargo of hot coal which caused an explosion on board the vessel and required the cargo of coal to be discharged. This matter required our technical skills and knowledge of the port regulatory environment, the sale of coal, and our expertise on port liability insurance.

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## Customs and excise

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### Motorvia 1993 (Pty) Limited

Successfully appealed against penalty raised by South African Revenue Services (SARS) for removal of numerous motor vehicles that were the subject of a detention order. SARS is on a revenue drive and accordingly raises penalties against companies in the logistics chain even if most of them are not guilty of any contraventions.

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### AlcoNCP (Pty) Ltd

Represented the client in several appeals against penalties raised by SARS relating to the import, manufacture and export of raw alcohol to, in and from bonded manufacturing and storage facilities.

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### Renewable energy project

Advise client on tariffs applicable to the import of a solar energy plant from various companies. This included comment on possible rebates applicable.

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### Kalmar Industries South Africa (Pty) Ltd

Advise client on tariff applicable and engaged with SARS regarding duty payable on the import of container handling equipment. This included advice on the applicable classification in terms of the WTO Rules incorporated into the South African tariff.

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## Teams

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# Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 4,000 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; life sciences and healthcare and consumer markets. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

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## Our global offices



### Key industry strengths

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Energy, infrastructure  
and resources  
Transport

Technology and innovation  
Life sciences and  
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Consumer markets

**6800+**  
People worldwide

**50+**  
Offices

**3500+**  
Legal staff worldwide

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