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# Examining the Existing Legal Framework on Maritime Security Information Sharing: Relevant Government Agencies in Mainland Tanzania

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## Abstract:

Maritime security is a critical component of national security, and effective information sharing among government agencies is essential for preventing and responding to maritime threats. This article examines the existing legal frameworks governing maritime security information sharing in Mainland Tanzania, with a focus on identifying gaps and challenges that hinder the sharing of critical information. Through a doctrinal analysis of relevant laws and regulations, including the Merchant Shipping Act 2003, the Tanzania Shipping Agency Corporation Act 2017, the Ports Act 2004, Regional agreements and international conventions such as the United Nations Convention on the Law of the Sea 1982, and SOLAS Convention 1974 as amended under Chapter XI-2 International Ship and Port Facility Security (ISPS) Code. This article argues that Tanzania's legal frameworks require strengthening to facilitate seamless information sharing among government agencies. The article proposes recommendations for law reform and capacity building to enhance maritime security information sharing, ultimately contributing to the safety and security of Tanzania's maritime domain.

**Keywords:** Maritime Security, Information sharing, Merchant Shipping Act, United Nations Convention on the Law of the Sea, International Ship and Port Facility Security code

## Introduction

The maritime domain is a vital component of Tanzania's economy, providing a significant source of revenue and employment through shipping trade, tourism, and fisheries. However, the maritime sector is also vulnerable to various security threats, including piracy, armed robbery, human trafficking, and smuggling of contraband goods. Effective maritime security is therefore crucial to safeguarding Tanzania's national interests, protecting human life, and promoting economic development.

The critical aspect of maritime security is information sharing among relevant government agencies, which enables the timely detection, prevention, and response to security threats. However, the effectiveness of information sharing depends on the existence of robust legal frameworks that facilitate the collection, analysis, and dissemination of maritime security information. Maritime security has over the years transformed and evolved from the narrow perspective of national naval power projection by state naval actions to having a range of additional roles and functions related to contemporary non-conventional threats and the utilization of soft power instruments towards influencing the strategic operational environment<sup>1</sup>.

Alfred Mwangi Charo in his article<sup>2</sup> stipulated that, Mahan acknowledges the significance of the maritime sector in the theory of the sea and national strategy with the Influence of Sea Power on History, 1660- 1783. He explains the evolution of power on land through the exploitation of the sea by recognizing the strategic significance of

naval power in establishing command at sea as primary and equally important to the land strategy. His ideas about sea power were the dominance of the sea through naval superiority that was a necessity to the growth of national strength and prosperity, which was further enhanced by inter connectedness, maritime commerce and geography configuration of the state. He noted that given the relationship between affluence and maritime commerce, the sea is unavoidably the major dome of rivalry and confluent among nations seeking wealth and power<sup>3</sup>.

### 1.0 The History of Maritime Security in Maritime domain

The tracing back on maritime security can be described on the hijacking of the Italian cruise ship Achille Lauro, on 7 October 1985, was a significant actual terrorist act that influenced the critical safety and security measures. Despite the maritime security on threats in maritime domain was previously addressed in the United Nations Convention on the Law of the Sea of 1982, particularly the act of piracy, but following that incident of Achille Lauro cruise ship, International Maritime Organization adopted resolution A.584(14) on measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews. Subsequently in 1986, taking also account the request of the United Nations General Assembly to study the problem of terrorism on board ships and to make recommendations on appropriate measures, the IMO issued Maritime safety committee (MSC/Circ.443) on measures to prevent unlawful acts against passengers and crews on board ships<sup>4</sup>. International Maritime Organization continued

working towards the development and adoption of conventions and security regulations, in March 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) was adopted. The SUA Convention ensures that appropriate action is taken against persons committing unlawful acts against ships, including the seizure of ships by force, acts of violence against persons on board ships, and the placing of devices on board a ship which are likely to destroy or damage it<sup>5</sup>.

The terrorist attacks on September 11, 2001, in the United States raised significant concerns about the potential vulnerability of ships to similar acts, particularly the possibility of their use in terrorist operations. In response, the International Maritime Organization (IMO) adopted a resolution in November 2001 calling for a thorough review of existing regulations and safety protocols designed to prevent such incidents. The objective was to assess and reinforce current measures to safeguard ships, passengers, crew, cargo, and port personnel both at sea and in port facilities thereby minimizing the risk of maritime terrorism and enhancing overall port and maritime security.

At the 2002 SOLAS Conference, several amendments were made to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended. The most significant of these was the introduction of the International Ship and Port Facility Security (ISPS) Code. To support Member States in implementing this new code, the International Maritime Organization (IMO) released the first edition of the Guide to Maritime Security and the ISPS Code in 2012.

This guide is designed to help States with the implementation, verification, and enforcement of the IMO's maritime security provisions, particularly those outlined in the ISPS Code and SOLAS Chapter XI-2. According to Dr. Hiacinter B. Rwechungura<sup>6</sup> stated that, Tanzania ratified UNCLOS in 1985,<sup>7</sup> and incorporated some of UNCLOS provisions in its laws including piracy provisions<sup>8</sup>. However, despite having piracy provisions in its law, Tanzania did not have a legal base to prosecute piracy in the high seas<sup>9</sup>. In 2010 therefore, Tanzania amended among other laws, the Penal Code, Cap. 16 R.E. 2019 (herein after referred to as the Penal Code) so that courts of Tanzania can try high seas piracy cases. The criteria for an act to qualify as piracy in Tanzania are provided under Section 66(1) of the Penal Code.

Basically, most of the Tanzania maritime domestic laws such as Merchant Shipping Act, Territorial Sea and Exclusive Economic zone Act, the Deep Sea Fisheries Management and Development Act, among others were enacted with the assistance from the baseline of the International conventions and other related agreements that aims in setting standards, procedures, and provisions for maritime operations including the fighting and combating maritime security threats and protection of marine environment for sustainable socio-economic development.

## **2.0 Legal Frameworks on Maritime Security Information Sharing.**

This study had examined the existing legal frameworks on maritime security information sharing among the government agencies,

particularly in Tanzania mainland and discover how the related government agencies in maritime industry have been governed with various legal frameworks which are categorized into three aspects, where basically it governed under national, regional and international legal frameworks.

Legal frameworks refer to the structured system of laws, policies, regulations, and legal principles that govern specific areas, activities, or organizations. These frameworks establish the foundation for clearly defining, interpreting, and enforcing legal rights and responsibilities. They typically include statutes, regulations, judicial decisions (case law or precedents), and guidelines issued by relevant authorities. In many cases, they also incorporate international agreements or conventions applicable within a given jurisdiction.

## **2.1 National Maritime Security Legal Frameworks.**

In Tanzania mainland, the existing legal frameworks on maritime security information sharing among the government agencies are governed under various domestic laws, regulations and its resolutions which facilitate the information sharing on maritime security issues among the relevant government agencies which have a legal mandate to evaluate, plan, assess, collect and share the sensitive information of maritime security against the maritime threats for quick respond to ensure the safe maritime operations and continue to create the attractive marine environment for further investments.

### **2.1.1 Merchant Shipping Act (MSA), 2003**

The Tanzania Merchant Shipping Act of 2003 was enacted by the Parliament of the United Republic

of Tanzania in November 12, 2003 and was assented by the President of the United Republic of Tanzania in March 22, 2004, then came into force on April 14, 2005<sup>10</sup>. It is the maritime legislation in Tanzania mainland in which under section 342 (8) provides the Merchant Shipping (Ship and Port Facility Security) regulations of 2004 that have the provisions for the maritime security information sharing among the relevant government agencies. The information sharing on maritime security issues are discussed and shared in the National Maritime Security Committee that encompasses the various government agencies, who are responsible to execute the duties related to maritime security in territorial waters and exclusive economic zones as a coastal state under the stipulation of United Nations Convention on the Law of the Sea (UNCLOS).

In Merchant Shipping Act (Ship and Port Facility Security) regulations, under section 5 (1) states that, *there shall be the National Maritime Security Committee*. This implies that, the government agencies that responsible for the maritime domain, have the platform under legal frameworks to meet accordingly and discuss, while sharing the relevant sensitive information of maritime security and set strategies and measures to combat, prohibit and fight against the maritime security threats within the territorial waters and exclusive economic zone<sup>11</sup> as stipulated under the United Nations Convention on the Law of the Sea (UNCLOS).

Under section 5 (2) States that, *The National Maritime Security Committee shall compose of the following members:*

- a) *The Registrar of Ships who shall be the Chairman;*
- b) *The representative of the Ministry of Home Affairs-Police;*
- c) *The representative of the Ministry of Home Affairs-Immigration;*
- d) *The representative of the Ministry of Finance-Customs;*
- e) *The representative of the authorities responsible for ports;*
- f) *The representative of the Ministry responsible for transport;*
- g) *The representative of the Ministry of Defense;*
- h) *The representative of the President's Office-Tanzania Intelligence Security Services; and*
- i) *The representative of the marine professional body designated by the Minister.*

The participants of the National Maritime Security Committee under this legislation are the relevant government agencies that have the responsibilities of ensuring the country and maritime domain is safe and security measures are on place to facilitate the effective information sharing. Under Section 6 stipulates that, The National Maritime Security Committee shall perform the following functions:

- a) *Give advice to the governments on all maritime security issues;*
- b) *Advise on the appropriate security level; and*
- c) *Co-ordinate security information regarding maritime activities in the United Republic.*

### **2.1.2 Tanzania Shipping Agency Corporation Act, 2017**

This study highlighted that, Tanzania Shipping Agency Corporation (TASAC) is the administration maritime body in Tanzania mainland on maritime transport and transportation of goods and passengers, that regulates and oversee the shipping business within the Tanzania

mainland. Under Part II of this Act, section 5 states that, it shall be the underlying objective of the Corporation in carrying out its functions and exercising its powers provided for under this Act, to enhance the benefits of maritime transport in Mainland Tanzania by;

- a) *promoting effective management and operations of shipping agencies;*
- b) *promoting effective operations of ports and shipping services;*
- c) *maintaining cargo safety and security;*
- d) *promoting and maintaining environment, safety and security; maritime*
- e) *promoting efficiency, economy and reliability;*
- f) *fostering the development and expansion of the maritime transport sector; and*
- g) *promoting competition in the shipping agency business.*

The examining of legal framework under this study have identified that, TASAC have the responsible to administer all activities related to maritime management and operations of shipping services by promoting and maintaining the ports operations, cargo safety and security, environment, safety and security on maritime domain under the Merchant Shipping Act.

For that circumstance, it shows how the Tanzania Shipping Agency Corporation has the inter-agency cooperation with the other relevant government agencies on the maritime issues with regarding the maritime security issues to shipping services while adhering the strategical measures of safety and security threats to the particular internal water, continental shelf, territorial sea, contiguous and exclusive economic zones.

### **2.1.3 The Ports Act,2004**

This study highlighted that, under Part III,

functions and powers of the Authority, Section 12(1) states that, Subject to the provisions of this Act, the functions and powers of the Authority shall be: (j) *the promotion of measures for the safety of life in the port and protection of the environment;* (t) *to prohibit, control and regulate the use of approaches, water areas and land within the limits of the ports and presence of any person, ship vehicle and goods;* (u) *to provide and maintain the modern information and communication technology facilities for the port community members to share and exchange cargo and ship information using a single platform and;* (v) *to administer port security standards and port boundaries.*

This study has cited the above section and subsection of this Act to describe how the Tanzania Ports Authority has the mandate and powers to execute the functions related to security and ability to provide and maintain the modern information and communication technology facilities for the port community members to share and exchange cargo and ship information using a single platform. Under Section 5 (2) of the Merchant Shipping (Ship and Port Facility Security) regulations of 2004, mentioned the Tanzania Ports Authority through the representative of the authorities responsible for ports as a member of National Maritime Security Committee, where the subjected provisions of maritime security information is submitted and shared to the other member of the committee for the purpose of evaluating and setting strategical measures for combating the maritime threats and

other safety incidents pertaining to ports and marine environment protection and preservation within the national jurisdiction of marine spaces.

This study identified that, the TPA as landlords and ports operator and TASAC as maritime regulator which administer the Merchant Shipping Act, 2003, have the inter-agency cooperation and tendency of sharing maritime security information accordance with the provisions of the legal frameworks. Under section 45 (1) the authority may engage Auxiliary Police and Security officers who shall be responsible for maintenance of peace and order at the port. Sub-section (2) it shall be lawful for any member of Auxiliary Police and Security officer to detain within the limits of any port. Sub-section 2 (g) where is reason to believe that a person has acted or is acting in contravention of any of the provisions of the East African Customs Management Act of 1970, such person shall be handled over to a Customs Officer to be dealt with in accordance with the provisions of that Act<sup>12</sup>. This shows, there is inter-agency cooperation between the Tanzania Ports Authority and Tanzania Revenue Authority under Customs and Excise Department, where the Auxiliary Police and Security Officers have to share the security matters related to Customs as described under section 45(2) (g).

#### **2.1.4 The Deep-Sea Fisheries Management and Development Act, R.E 2020**

The study examined the Deep-Sea Fisheries Management and Development Act, revised edition, 2020 which under section 5(1) states that, *there is hereby established an Authority to be known as the Deep-Sea Fishing Authority.* Under

section 6 states that, the functions of the Authority shall be to (a) formulate, implement and monitor the implementation of national policy and strategies concerning the conservation, management, development and sustainable use of fishery resources in the Exclusive Economic Zone; (b) develop, manage and control all activities relating to fisheries, including fishing and related activities, in relation to the Exclusive Economic Zone and all other areas, persons and activities within the application and scope of this Act, including (vii) *coordinating or undertaking monitoring, control, surveillance and enforcement of all activities within the scope of this Act* and (g) *safeguard the marine environment of the Exclusive Economic Zone*. Under section 16(1) The functions and powers of the Director General shall be to: (d) *manage and coordinate as may be appropriate, through cooperating with other agencies of government, other governments, non-governmental organizations, regional bodies, regional fisheries management organizations and international organizations*.

Under section 98(1) states that, the Director General may, upon the recommendation of the Executive Committee, enter into an agreement with fisheries and other relevant authorities in Mainland Tanzania and Tanzania Zanzibar to further the purposes of this Act, including an agreement with respect to one or more of the following:

*(b) facilitating enhanced communication between the parties, including the exchange of scientific, economic, social and other information;*

*(e) processes for policy development, operational*

*planning and communication between the parties, including the exchange of scientific and other information; the circumstances and manner in which each party is to provide information on and cooperate in the administration and enforcement of its legislation that is relevant to the other parties.*

Under section 99 stipulates that, the Authority may, in performing its functions under this Act, establish and maintain a system of collaboration, affiliation, consultation and cooperation with Defense and Security Organs, Treasury, Customs, Marine Research Institutions, the Commission for Science and Technology and any other person or body of persons established by or under any relevant law and having functions related to those of the Authority.

## **2.2 Regional Legal Agreements on Maritime Security.**

This study highlighted the legal frameworks on maritime security information sharing to the regional agreements on the maritime security issues where Tanzania is the Part of it. Regional agreements on maritime security are described as the collaborative efforts that involves countries within a particular geographical region to address maritime threats and to promote safety, security and cooperation among the signatory countries.

**2.2.1 Djibouti Code of Conduct (DCoC) Agreements, 2009 and Jeddah Amendments, 2017** The Djibouti Code of Conduct is a regional cooperation agreement that aimed at repressing piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden and red sea. The agreement signed on January 29<sup>th</sup>

,2009, and expanded through the Jeddah

Amendment in 2017 to include broader maritime security issues and transnational organized crime by 20 countries including Tanzania<sup>13</sup>.

The aims of DCoC are to protect global shipping and supply chains, enhancing maritime security and safety in the region, addressing transnational maritime crimes that including piracy and armed robbery that countering attacks on ships and coastal installations, human trafficking and smuggling by preventing exploitation of vulnerable individuals, Illegal, Unreported and Unregulated (IUU) fishing by promoting sustainable fisheries management, trafficking in arms, narcotics, and psychotropic substances by combating the organized crime and maritime environment threats by mitigating pollution and other ecological hazards.

According to Djibouti Code of Conduct/Jeddah Amendment on Standard Operation Procedures for the Regional Maritime Information Sharing, stipulates that, in an interconnected world, effective communication and collaboration are pivotal in addressing the challenges of maritime security and promoting global stability. These Standard Operating Procedures (SOPs) serve as a comprehensive guide to facilitate seamless information exchange and cooperation among participating entities in line with the objectives of the Revised Code of Conduct concerning the repression of piracy, armed robbery against ships and other illicit maritime activity in the Western Indian Ocean and the Gulf of Aden Area, also known as the Jeddah Amendment to the Djibouti Code of Conduct 2017, (DCoC/JA). Its purpose is to promote maritime safety and security through

the reliable exchange of information. The National Maritime Information Sharing Centre's (NMISCs) are a constituent part of the DCoC/JA information sharing network<sup>14</sup>.

Within the DCoC information sharing framework, the National Maritime Security Committee has an overarching responsibility in ensuring the effective operationalization and running of the Multiagency National Maritime Information Sharing Centre<sup>15</sup>. The study highlighted that DCoC has the success mainly to facilitate information sharing among the relevant maritime agencies in particular national and regional cooperation, Maritime Domain Awareness, and capacity-building initiatives. Article 11 on Coordination and Information Sharing and Article 12 on Incident Reporting in the DCoC Jeddah Amendment emphasize the critical role of regional cooperation in maritime security<sup>16</sup>.

### **2.3 International Conventions on Maritime Security.**

International Conventional on maritime security provide a comprehensive legal structure for states to cooperate in maintaining safety, security, and order on the seas. These frameworks, often developed under the umbrella of the International Maritime Organization (IMO), address various aspects like navigation, pollution prevention, and combating illegal activities. The key examples include the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and its chapter XI-2 International Ship and Port Facility Security (ISPS) Code and International Convention of Pollution from Ships (MARPOL)<sup>17</sup>.

### 2.3.1 Unites Nations Convention on the Law of the Sea (UNCLOS), 1982

The United Nations Convention on the Law of the Sea (UNCLOS) plays an important part in helping countries to share information related to maritime security. It provides a structured set of rules for how oceans are managed, which makes it easier for nations to work together to tackle threats like piracy, ship attacks, and illegal activities at sea<sup>18</sup>. UNCLOS promotes cooperation among the nations and facilitates information sharing on maritime threats. It sets out the legal frameworks for maritime activities, including navigation, resources exploitation, coastal states rights and jurisdictions, and environmental protection<sup>19</sup>.

Anil Jai Singh (2022) argued that, Maritime cooperation amongst states is an intrinsic necessity for effective maritime governance. UNCLOS offers the framework to develop legislative and regulatory provisions to address the larger issues related to the effects of climate change in the maritime domain<sup>20</sup>. Under Article 94, Duties of the flag State, section (1) states that, every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. Section (3) every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:

- a) *the construction, equipment and seaworthiness of ships;*
- b) *the manning of ships, labor conditions and the training of crews, taking into account the applicable international instruments;*
- c) *the use of signals, the maintenance of communications and the prevention of collisions.*

Under Article 108 section (1) highlight, all States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions. Section (2) Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic. This study highlighted that, the international law, reveals its crucial role in enhancing maritime security and environmental protection, while also facilitating information sharing among nations which are coastal states and government agencies to counter maritime security threats.

### 2.3.2 International Convention for the Suppression of Unlawful Acts (SUA), 1988

The international Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, was adopted 10 March 1988 and entry into force 1 March 1992 and Protocols adopted 14 October 2005 and entry into force 28 July 2010.

In essence, maritime security has to do with ‘threats’ that prevail in the maritime domain. They include illegal exploitation of living marine resources, increased competition over non-living marine resources, use of weapons of mass destruction, maritime inter-state disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods, arms proliferation, illegal fishing, environmental crimes, or maritime accidents and disasters

including other similar incidents<sup>21</sup>. The 2005 Protocol to the SUA Convention is among the unlawful acts covered by the SUA Convention in Article 3 are the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it<sup>22</sup>. Articles like 8bis and 3bis specifically lay out the procedures for cooperation during ship searches and broaden the types of unlawful acts covered. Overall, the SUA Convention and its protocols are essential tools that help countries work together to improve maritime security and respond more effectively to potential threats.

### **2.3.3 International Ship and Port Facility Security (ISPS) Code.**

These are new requirements from the international framework through which ships and port facilities can cooperate to detect and deter acts which threaten security in the maritime transport sector<sup>23</sup>. Under Part A: Mandatory requirements regarding the provisions of chapter XI-2 section 1.3 stipulates that, in order to achieve its objectives, this Code embodies a number of functional requirements. These include, but are not limited to:

- 1. gathering and assessing information with respect to security threats and exchanging such information with appropriate Contracting Governments;*
- 2. requiring the maintenance of communication protocols for ships and port facilities;*

This study highlights the additional guidance on information sharing which encourages the establishment of secure and reliable communication systems particularly on maritime

security communication network and provides the supports regional cooperation for maritime domain awareness, encourages use of intelligence, early warning systems, and collaboration with other governments agencies, international organizations, Shipping companies and private security firms in maritime domain.

## **3.0 Conclusion and Recommendations**

### **3.1 Conclusion**

This study draws the conclusion that, despite of, Tanzania mainland can improve its maritime security and enhance more effective information sharing among government agencies, ultimately contributing strongly to the safety and security of its maritime domain by developing a comprehensive strategic maritime security Act, to reduce the fragmented national laws, enhancing coordination and cooperation among agencies, continue to influence the capacity building and training for maritime security personnel and utilize effectively the established centralized information sharing facility which called the National Maritime Security Center in Tanzania known as National Joint Operations Center (NJOC) found in Dar es salaam, that was established 27<sup>th</sup> September 2024 in collaboration of the Government of United Republic of Tanzania and the United Nations Office on Drugs and Crime (UNODC) through its Global Maritime Crime Programme (GMCP) with the support of the US States Department Bureau of International Narcotics and Law Enforcement Affairs which serve as a crucial hub for coordinating the country's maritime law enforcement and enhancing regional security in the Western Indian Ocean under the DCoC/JA.

### 3.2 Recommendations

This study recommends and provides insights on what more needs to be done as a nation to continue being resilient in the context of maritime security threats and facilitate information sharing initiatives on maritime security, while continuing on protection and conservation of marine environment for the sustainable development of international trade and commerce.

- i. There is need to develop a comprehensive maritime security Act and more strategy that outlines clear objectives, roles, and responsibilities for information sharing among the relevant government agencies such as the U.S. Maritime Transportation Security Act (MTSA 2002). This act mandates that various federal agencies, including the Coast Guard, Customs and Border Protection, and the Department of Homeland Security, share information related to maritime security threats and incidents.
- ii. There is a need to standardize information sharing protocols that should be implemented to ensure seamless information sharing among agencies, reducing fragmentation and improving interoperability.
- iii. There is a need to facilitate the capacity building and training to enhance the skills and knowledge of personnel handling maritime security threats and related information.
- iv. There is a need to review and update the existing national laws and regulations to address gaps and inconsistencies, ensuring

alignment with the current maritime security situations such as cyber security attacks, automated sailing vessels and international best practices. Example, the Territorial Sea and Exclusive Economic Zone Act of 1989 should be revised and the other domestic maritime laws.

- v. There is a need to implement strongly security communication channels to protect sensitive information and prevent unauthorized access in ships and port facility.
- vi. There is a need to establish the Admiralty Court within the country for those caught committing offences on maritime security threats and other maritime disputes rather than taking to the High Court or Commercial Division of the High Court.

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