

PANORAMIC

SHIP FINANCE 2024

Contributing Editor

Richard B Furey

Holland & Knight LLP



LEXOLOGY

Ship Finance 2024

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights into ship finance issues, including in each jurisdiction due diligence; repayment; registration of vessels; ship mortgages and other liens over vessels; collateral; tax considerations for vessel owners; insolvency and restructuring considerations; and recent trends.

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Richard B Furey, Jovi Tenev

Holland & Knight LLP

Ship Finance: Introduction

Richard B Furey and Jovi Tenev

Holland & Knight LLP

‘The greatest danger in times of turbulence is not the turbulence – it is to act with yesterday’s logic.’ Peter Drucker

‘The pessimist complains about the wind; the optimist expects it to change; the realist adjusts the sails.’ William Arthur Ward

In ship finance, as in life in general, change is constant. Changes in the ship finance market keep this field of endeavour interesting, but also challenging. Successful practitioners must stay abreast of geopolitical and environmental concerns as well as commercial developments – sometimes amounting to fundamental changes – and the ensuing legal and regulatory responses.

Much has developed since the last edition of this publication in 2023. Consider the following (among other things):

- geopolitically, the Russian war in Ukraine and the disruption caused by sanctions appear likely to remain for the foreseeable future;
- the Red Sea conflict is affecting the ship leasing and finance industry in various ways, including an increased demand for ships as the diversion of ships away from the Red Sea creates a need for more tonnage to maintain cargo flow, and operators seek more ships for short-term charters and potentially longer-term contracts to fill the gap;
- at a time of increased demand, the current charter market is challenged by a shortage of available vessels. During the supply chain crisis spawned by the covid-19 pandemic, many non-operating vessel owners demanded historically high charter rates and required liners and other charterers to take the ships on multi-year charters. Most of those pandemic-era leases are still in place;
- as a longer-term trend, increases in capital requirements and other banking reforms related to Basel IV are expected by many to lead to a further retreat by banks from lending to the shipping industry. And those banks that remain may shift their focus away from smaller and middle-tier traditional shipping companies toward those with the best credit ratings, which tend to be the larger, longer-established operators;
- at the same time, the need for capital in the shipping industry is expected to grow substantially as the industry moves away from traditional fossil fuels to more sustainable fuels and new forms and sources of propulsion, and also as vessels reach the end of useful life and must be replaced by new tonnage to meet the demands of the global economy;
-

in the years since the global financial crisis, ship finance has seen significant changes. As traditional ship-financing banks have scaled back exposure or withdrawn completely from ship finance, traditional financing has been replaced by convertible and structured debt, private equity, public offerings and private placements, bonds and sale-and-leaseback arrangements;

- in addition, the JOLCO (ie, Japanese Operating Lease with Call Option), which has been widely used in the aviation sector, is becoming an increasingly popular source of financing in shipping over recent years;
- the tightening monetary policy in the West seeking to curb inflation via high central bank interest rates remains in place (although there is hope of a reduction of rates by the end of 2024); and
- the emphasis on ESG by banks and lenders and owners continues to grow.

The purpose of this publication then is to inform and assist legal professionals working in the ship finance market and to provide the tools and information needed to be an updated and well-informed practitioner.

In the chapters that follow, we and our fellow authors have endeavored to provide the most current answers to some of the fundamental questions relating to ship finance in our various jurisdictions. The main sections cover: due diligence; repayment; vessel registration; ship mortgages and other liens; other collateral; tax considerations; insolvency and restructuring; and current trends.

We hope that this publication will be a resource for external counsel, in-house attorneys and other legal professionals looking for answers to specific questions relating to the legal framework for ship finance around the world, and allow readers to conduct efficient cross-border comparative research on relevant laws and regulations.

Holland & Knight

[Richard B Furey](#)
[Jovi Tenev](#)

richard.furey@hklaw.com
jovi.tenev@hklaw.com

Holland & Knight LLP

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Cyprus

Marion Coukidou-Madella

Chrysses Demetriades & Co LLC

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Upon the provisional or permanent registration of a vessel under the Cyprus flag, pursuant to the Cyprus Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963, as amended (the Merchant Shipping Law), the Registrar of Cyprus Ships issues a certificate of ownership evidencing, among other things, the particulars of the vessel and the name and address of its legal owner. Following the registration of a mortgage on a vessel, the Registrar also issues a certificate of ownership and encumbrances of the vessel (in the case of provisional registration of the vessel) or a transcript of register of the vessel (in the case of permanent registration of the vessel) evidencing, among other things, the legal ownership of the vessel and the details of the mortgage. Any of these certificates or transcripts constitute, by an express provision in the Merchant Shipping Law, admissible evidence relating to the matters stated therein, including the legal ownership of the vessel.

An entry in the Cyprus Ships Register (the Register) relating to the legal ownership of a vessel constitutes prima facie evidence of such ownership and any person claiming title to the vessel bears the burden of proving the defective title of the registered owner.

Law stated - 8 April 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

The Cyprus Ships Register does not maintain a register of liens over vessels that arise by operation of law, and such liens are not registrable under Cyprus law. Only mortgages can be registered on the Ships Register. The particulars of a mortgage are contained in a certificate or transcript. A member of the public can inspect the mortgage register upon payment of a search fee.

Law stated - 8 April 2024

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

Pursuant to the Cyprus Companies Law, Cap 113, as amended (the Companies Law), ship mortgages and other charges granted in connection with a vessel finance transaction (eg, assignments, pledges, fixed or floating charges) over the property or assets of a Cyprus company (or a foreign company having its principal place of business in Cyprus and having been recorded with the Companies Registry) must be registered at the Companies

Registry as charges against the assets of such a company. Upon payment of the relevant search fee, any person may conduct a search at the Companies Registry in order to trace the exist-ence of any such registered charge.

Law stated - 8 April 2024

Public registry searches

- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

A search at the Companies Registry, or a certificate of good standing issued by the Registrar of Companies upon payment of a relevant official fee, indicate that a company is recorded by the Registry and so is duly established pursuant to Cyprus law. Non-winding-up certificates may also be issued by the Department of Insolvency of the Ministry of Energy, Commerce and Industry.

Law stated - 8 April 2024

- 5 | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

A search at the Companies Registry reveals, among other things, a company's registered directors, registered shareholders and secretary, but not whether the directors are nominees. The Companies Registry also maintains a beneficial owner register and service providers (such as lawyers, accountants, banks) may, upon submission of a declaration showing a valid reason (such as KYC reasons), obtain the particulars of the beneficial owners of a company.

The records kept by the Registrar of Companies may not be up to date as they depend on company secretaries filing changes. Therefore, it is prudent for a lender to obtain an incumbency certificate issued by a company's secretary as to the current position of officers and shareholders.

A director of a Cyprus company may lack the authority to represent the company on his or her own. The authorisation of a signatory should be ascertained by examining the company's arti-cles of association and its relevant corporate authorities resolving and authorising the execution of the documents required in a ship finance transaction (for instance, resolutions in writing or the minutes of a meeting of the board of directors and, if relevant, a power of attorney in favour of any nominated attorneys-in-fact).

Law stated - 8 April 2024

Debt obligation

6 |

What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

The entry into a debt obligation by a Cyprus company as a primary obligor, guarantor or surety has to be properly resolved and authorised by the company's board of directors by means of relevant corporate authorities (either by resolutions in writing or the minutes of a meeting of the board of directors and, if relevant, a power of attorney in favour of any nominated attorneys-in-fact). Such corporate authorities must be in line with the company's memorandum and articles of association and, in general, must state that the directors have considered the debt obligation to be for the company's commercial benefit.

Shareholders' resolutions are not necessarily required unless otherwise provided in the articles of association of the company. However, as the directors have a fiduciary duty to act in the interests of the company, where the existence of a corporate benefit is not clear (for example, in the case of a guarantee for the obligations of a third party not directly connected with the company) the shareholders' approval should also be obtained.

Although of limited applicability, the prohibition of financial assistance should also be excluded.

Law stated - 8 April 2024

Obligations of foreign lenders

7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

Under Cyprus law, no consents, approvals and authorisations by, or notifications to, any public authority are required for foreign lenders to extend credit to a borrower organised in Cyprus.

Foreign lenders or creditors will not be deemed to be resident, domiciled, carrying on a business or subject to taxation in Cyprus by reason only of the negotiation, preparation, execution, performance or enforcement of any of the loan and security documents involved in a finance transaction providing a loan or credit or other facility to a Cyprus obligor (or secured by a Cyprus obligor).

Law stated - 8 April 2024

REPAYMENT

Central bank and regulatory approval

8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

Subject to any international sanctions that may be applicable to a specific currency, no central bank or other regulatory approval is required for the repayment of a loan in a foreign currency. However, compliance with anti-money laundering and anti-terrorism regulations must be ensured.

Law stated - 8 April 2024

Usury laws

9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

Usury laws in Cyprus do not limit the interest agreed to be payable on the principal amount of a loan made by a bank lender that is not regulated by the Central Bank of Cyprus. Default interest is not allowed to exceed 2 per cent per annum above the agreed interest rate, unless it is proved to be a genuine pre-estimate of loss or actual loss.

Law stated - 8 April 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

Under Cyprus law, a Cyprus obligor is not required or entitled to make any withholding or deduction in respect of any payment that it may be required to make under a facility agreement (and related security documents) with a non-resident lender.

Law stated - 8 April 2024

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

All vessels used in navigation and not propelled by oars, including mobile offshore drilling units, are eligible for registration in Cyprus, provided that they meet the age restrictions set out in the official government policy regulating the registration of old ships in the Cyprus Ships Register. Offshore drilling rigs are not classified as 'vessels' under the Merchant Shipping Law. Vessels under construction are also registrable in Cyprus.

Upon registration in the Cyprus Ships Register, the vessel is subjected to the jurisdiction of Cyprus. It acquires the right to fly the Cyprus flag as well as the right to enjoy naval and diplomatic protection and consular assistance. Registration also provides prima facie

evidence of the legal ownership of the vessel, and thus affords the owner the possibility of having the vessel mortgaged.

Law stated - 8 April 2024

12 | Who may register a vessel in your jurisdiction?

A citizen of, or a corporation or partnership established in, Cyprus, the European Union, the European Economic Area, or in a third country where its control or ownership vests in EU interests may apply to register a vessel under the Cyprus flag.

Law stated - 8 April 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

There is only one registry of ships in Cyprus, the Cyprus Ships Register, which is a public register.

Law stated - 8 April 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

14 | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

The Merchant Shipping Law prescribes two forms of mortgages: mort-gages to secure the principal sum and interest and mortgages to secure an account current.

The complexity of most financial transactions tends to make the principal sum and interest mortgage form obsolete and the account current form is now the form of mortgage regularly used by mortgagees, which desire the ability to secure further amounts, such as costs, expenses and other liabilities. Contingent liabilities, including swap obligations, can also be secured by a Cyprus mortgage in account current form, provided that the agreement to create such liabilities is in place prior to the execution of the mortgage or such liabilities are directly connected with other existing obligations that are secured by the same mortgage.

A mortgage must always be accompanied by a collateral deed of covenants that contains the contractual agreement between the owner and the mortgagee and deals with any matter relating to the mortgage, including the matters prescribed by the Merchant Shipping Law, such as:

- repayment of principal, payment of interest, insurances and renewals thereof;

- application of insurance proceeds;
- limitations on the employment of the vessel;
- events of default upon which statutory or other agreed powers of the mortgagee may be exercised; and
- powers exercisable by the mortgagee.

The deed of covenants is also registered at the Cyprus Ships Register together with the mortgage and forms part of the mortgage.

There is no standard form for a deed of covenants, as this varies depending on the nature of the underlying documents that the mortgage purports to secure (loan agreement, guarantee, etc) and reflects the basic obligations, warranties and undertakings of the owner under such underlying documents.

Law stated - 8 April 2024

Required form

15 | Give details of any required form for ship mortgages in your jurisdiction.

A statutory mortgage is either in the form of principal amount and interest (which has become obsolete) or in an account current form. There is no standard form for a deed of covenants, as these vary depending on the nature of the underlying documents that the mortgage purports to secure (loan agreement, guarantee, etc) and reflect the basic obligations, warranties and undertakings of the owner under such underlying documents.

Law stated - 8 April 2024

Registration of mortgages

16 | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

The Merchant Shipping Law entrusts the Register of Mortgages to the Registrar of Cyprus Ships. This contains a description of the vessel, the owner of the vessel, the particulars of the mortgages registered on the vessel, and the registered mortgagees. All filings relating to a mortgage are made to the Ships Register.

A registered mortgage constitutes a charge on the vessel itself, which follows the vessel, and the owner's legal title to the vessel is encumbered by and is subject to the mortgage and the mortgagee's rights thereunder. The registered mortgagee may enforce the mortgage by proceedings against the vessel in an action in rem or may exercise its statutory or other contractual powers against the owner in an action in personam.

Upon registration of a mortgage, the Registrar enters the date and time of its registration in the Register and the mortgage gains priority over any other mortgage that may be

registered at any subsequent time and over any other unregistered and equitable mortgage (in either case, irrespective of the time of creation of the other mortgage).

Law stated - 8 April 2024

- 17** | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

Neither the total amount of the mortgage nor a maturity date has to be stated in the mortgage or the deed of covenants collateral thereto. The underlying debt instrument does not have to be filed with or attached to the deed of covenants, although there is nothing to prevent the parties from doing so. However, Cyprus law does not provide for a procedure by which an amendment to a deed of covenants (which is registered together with the mortgage) can be registered to form part and parcel of the registered mortgage, and therefore it is not advisable to attach the underlying debt instrument to the deed of covenants.

Law stated - 8 April 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

Yes, a mortgage can be registered in the name of an agent or trustee for the benefit of one or more creditor parties.

Law stated - 8 April 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

Cyprus law recognises agency and trust relationships. If the mortgage is registered in favour of an agent or trustee, acting on its own behalf or for the other syndicate members, or both, no filings will be required upon transfer of a portion of the underlying debt among existing lenders (including the registered mortgagee in its separate capacity as lender) or to a new lender. Filings will only be required when the registered mortgagee ceases to act as agent or trustee.

Law stated - 8 April 2024

- 20** | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

In the case of a registered mortgagee transferring its interest to a new lender, agent or trustee, the registered mortgage should be transferred to the new mortgagee by means of filing with the Registrar of Cyprus Ships a notarised and legalised instrument of 'transfer of mortgage' executed by the outgoing mortgagee, in the form prescribed by the Merchant Shipping Law.

When such transfer results from a merger where the registered mortgagee ceases to exist, the mortgage must be transmitted to the new mortgagee by means of filing with the Registrar of Ships a notarised and legalised instrument of 'transmission of mortgage' executed by the new mortgagee in the form prescribed by the Merchant Shipping Law.

Unless otherwise provided in the deed of covenants collateral to the mortgage, the mortgagor's consent is not required in either of the above cases.

Law stated - 8 April 2024

Maritime liens

21 | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

Cyprus law recognises the following maritime liens that give rise to an action in rem against, and a right to arrest, a vessel, namely:

- collision damage to property and person (including loss of life);
- salvage;
- emoluments, that is, wages plus all fringe benefits, such as pension contributions; and
- reimbursement to the master of disbursements made by him or her out of his or her own pocket on behalf of the owners.

A maritime lien constitutes a charge on the vessel, which attaches to and follows the vessel from the time that the cause of action arises. It survives any sale of the vessel for value, even to a bona fide purchaser who has no notice of the claim.

An associated vessel to a vessel that is subject to a maritime lien may also be arrested if, at the time of the cause of action, the owner of the associated vessel was the owner, demise or bareboat charterer, or in possession or control of that vessel, and that person was also the beneficial owner of all the shares in the associated vessel at the time of commencement of the claim.

Moreover, a vessel may be arrested pursuant to any maritime claim that gives rise to a statutory right of action in rem against a vessel as provided by the English Administration of Justice Act 1956 (which is applicable in Cyprus pursuant to the Constitution of the Republic of Cyprus and the Cyprus Courts of Justice Law No. 14/60).

Law stated - 8 April 2024

22 | What maritime liens rank higher than a mortgage lien?

Maritime liens, even if they arise after the time of registration of a mortgage, rank higher than a registered mortgage. The holder of a possessory lien (eg, ship repairer) also gains priority over all claims, including those of a registered mortgagee, except for maritime liens attached to the vessel prior to the creation of the possessory lien.

Law stated - 8 April 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

It is not possible to record or register in the Ships Register any non-mortgage liens or encumbrances on a vessel. Court orders or injunctions, which may be obtained in a proper case preventing dealings with a vessel (such as the sale or further mortgaging of a vessel), are recorded on the Register, but they are not charges on the vessel and cannot stand by themselves or have any priority over a mortgage.

Law stated - 8 April 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

A non-Cyprus mortgage that is properly registered or recorded under the laws of the 'foreign' flag vessel is capable of being recognised by a competent court in Cyprus. Once recognised, such a mortgage may share the same priority with a mortgage registered in the Cyprus Ships Register.

Law stated - 8 April 2024

Enforcement of mortgages

25 | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

Provided that the owner is in default under the mortgage documents, the mortgagee may issue a writ in an action in rem before the competent admiralty court claiming that certain money is immediately due and payable by the owner. Simultaneously with the issue of the writ, an application can be made for the arrest of the vessel, provided that the vessel (either a Cyprus or a 'foreign' vessel) calls at a port of Cyprus. The application is a simple

document and is accompanied by an affidavit setting out the existence of the mortgage and giving details of the alleged default. A warrant of arrest may be issued immediately and will be executed once security for the arrest is given by or on behalf of the mortgagee. Security is usually demanded in the form of a bank guarantee, but other forms of security may also be considered by the court.

Following the arrest, the vessel will remain in the custody of the Admiralty Marshal until it is released or sold by the court. The action on the mortgage will then proceed and, unless the owner settles or secures the claim, the action will result in the sale of the vessel by public auction or private treaty pursuant to an order of the court. Such sale by order of the court is made by the Admiralty Marshal and gives the purchaser a clean title in the vessel, free of claims worldwide, and the proceeds of the sale are paid to the court and are first applied towards the expenses of the Admiralty Marshal, and thereafter towards any maritime liens and the mortgagee's claim.

Depending on whether the mortgagee's claim is contested, the procedure may take from three to four months to three years. Court costs are calculated on the basis of the scale of the claim and the number of appearances to be made before the court.

Law stated - 8 April 2024

Sale by mortgagee

26 | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

A power of sale of a mortgaged vessel is conferred on every registered mortgagee by the Merchant Shipping Law. Every registered mortgagee shall have the absolute power to dispose of the vessel and to give effectual receipts for the purchase money; but where there is more than one registered mortgagee of the same vessel, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the vessel without the concurrence of every prior registered mortgagee. The mortgagee may exercise its power of sale, by private treaty or public auction, at any time after taking possession (actual or constructive) of the vessel.

A sale of the vessel by the mortgagee by private treaty will not discharge liens over the vessel unless they are discharged from the proceeds of sale.

Law stated - 8 April 2024

Default under mortgage

27 | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

Yes, provided that such provisions do not confer on the receiver powers that are more extensive than the mortgagee's powers under the mortgage and collateral deed of covenants.

Law stated - 8 April 2024

Limitations on rights of self-help

28 | What are the limitations on rights of self-help by a mortgagee?

In addition to the rights of a registered mortgagee, the mortgagee also has the rights set forth in the deed of covenants. However, it is advisable for a mortgagee to arrest the vessel in order to have it sold through the court, as a mortgagee who sells at a price demonstrably below the market price is vulnerable to attack from the owner or other creditors, and also a mortgagee who sells privately will be liable to indemnify the purchaser against any losses that he or she may suffer in consequence of claims being enforced against the vessel that arose prior to the delivery of the vessel to the purchaser. Under a court sale, the vessel is sold free of claims, and thus the mortgagee has no residual liability.

Law stated - 8 April 2024

Duties to owner or third-party creditors

29 | What duties does a mortgagee owe to an owner or third-party creditors?

On enforcement of the mortgage, the mortgagee has, unless otherwise provided in the deed of covenants, a (general) duty to mitigate its loss, whereas it may be liable, as mortgagee in possession, for liabilities incurred to third parties. In the case of sale by private treaty, the mortgagee has a duty to take reasonable steps to obtain the best price obtainable for the particular vessel under the circumstances prevailing at the time of the sale and account to the owner for any surplus following the discharge of the amounts due.

Law stated - 8 April 2024

COLLATERAL

Finance leases

30 | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

Finance leases or other charters are not capable of being recorded over vessels in the Cyprus Ships Register.

Law stated - 8 April 2024

31 | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

The possibility of a Cyprus court recharacterising a finance lease, where the seller of the vessel leases it back with a right (or obligation) to retake title to the vessel at the end of the lease (usually by paying an option price) as a secured financing loan agreement cannot be excluded. However, strong evidence will be required to show that the finance lease documents do not record the commercial intention of the parties. The lessor may obtain an indemnity from the lessee in order to protect the lessor's interest against third-party creditors.

Law stated - 8 April 2024

Security interests

32 | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Security interests over, for example, the earnings of a vessel, charter contracts and insurances are created by means of an (equitable) assignment. Under Cyprus law there are no legal assignments and, consequently, in so far as such assignment effects an assignment of a chose in action, such assignment of a right over sums due or becoming due from a third party will only be binding on a third-party obligor on receipt of a written notice of the assignment. Where the assignor is a Cyprus company, the assignment must also be registered at the Companies Registry as a charge against such company's assets.

Law stated - 8 April 2024

33 | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

Security interests against non-vessel collateral that create registrable charges pursuant to the Companies Law (eg, assignments of earnings, charters or insurances, account pledges, or pledges of shares in a non- Cyprus company) must be registered at the Companies Registry. Failure to register such a charge renders it void as against the liquidator or any creditor of the relevant company, but it remains valid as an agreement between the parties thereto.

It is standard practice to incorporate detailed provisions as to how a security document may be enforced by the beneficiary thereunder. For example:

- an assignee under an assignment can collect the monies or proceeds and step into the shoes of the assignor;
- a chargee of an account can collect monies from the account; or
- a chargee or pledgee under a shares charge or pledge can implement the ancillary documents delivered to it and appropriate, transfer or sell the shares.

In all cases, the proceeds must be applied in accordance with the finance documents and, depending on the provisions of the security documents, enforcement may be effected by a receiver to be appointed by the assignee, chargee or pledgee.

Mortgages over vessels (either Cyprus-flagged or not) must also be registered at the Companies Registry.

Law stated - 8 April 2024

34 | How is a security interest over a deposit account established? How is a security interest perfected?

A security interest over a deposit account is created by way of a fixed charge (where the chargee takes control over the account) or a floating charge (where the account holder or chargor can deal with the money in the charged account without the chargee's permission). Account charges must be registered at the Companies Registry, and where the account is not held with the chargee, notice of the charge has to be given to the account bank.

Law stated - 8 April 2024

35 | How are security interests in non-vessel collateral enforced?

As standard practice, the security documents in a financing transaction contain detailed provisions as to how the lender may enforce its security. For example:

- an assignee under an assignment can collect the monies or proceeds and step into the shoes of the assignor;
- a chargee of an account can collect monies from the account; or
- a chargee or pledgee under a shares charge or pledge can implement the ancillary documents delivered to it and appropriate, transfer or sell the shares.

In all cases, the proceeds must be applied in accordance with the finance documents and, depending on the provisions of the security documents, enforcement may be effected by a receiver to be appointed by the assignee, chargee or pledgee.

Law stated - 8 April 2024

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Security over the shares of an obligor is common in ship finance transactions. Cyprus law provides for certain formalities that go to the validity and enforceability of a pledge of shares in a Cyprus company, namely:

- the pledge must be expressed in writing;

- it must be signed at the end thereof by the pledgor and the pledgee; and
- the pledgor must sign the pledge in the presence of at least two witnesses who are competent to contract and must subscribe the document with their names as witnesses.

Under Cyprus law, a pledge is, by its nature, a possessory security and thus involves the delivery of possession, actual or constructive. Therefore, a pledge of shares in a Cyprus company (ie, registered shares) creates a pledge of the share certificates representing the relevant shares and a mortgage and charge by way of equitable mortgage of such shares and all rights deriving from such shares.

Apart from the delivery of the share certificates, the ancillary documents customarily required for a shares pledge are:

- blank executed instruments of transfer of the shares;
- undated signed letters of resignation from the directors and secretary of the company;
- irrevocable proxy and power of attorney by the pledgor; and
- letters of undertaking signed by the directors and secretary.

In certain cases, the pledgee may also require signed but undated board resolutions or an amendment of the articles of association of the company relating to restrictions on the transfer of shares, to curtail the directors' discretion to refuse registration of the transfer where it relates to enforcement of security. The pledge of the share certificates and the charge, assignment or mortgage in respect of the shares and the rights deriving therefrom are not registrable, since they are expressly exempted by the Companies Law.

A statutory notice of pledge must be given to the company whose secretary makes a memorandum of the pledge in the company's register of members and issues a relevant certificate in respect thereof.

Law stated - 8 April 2024

37 | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

Prior to enforcement of a shares pledge, there are no risks for the pledgee other than a remote risk of being considered as a 'shadow director'. Following enforcement, the liabilities of the company whose shares have been pledged should not extend to its shareholders, as this would amount to piercing the corporate veil. There may be tax concerns if the pledgee becomes the shareholder in the company. If the pledgee appoints directors to act on its behalf, they will have the legal duties of directors and be liable if illegality is proven.

Law stated - 8 April 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

- 38** | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

Owners of Cyprus vessels engaged in a qualifying shipping activity are not liable to income tax, but to tonnage tax.

Law stated - 8 April 2024

Tonnage tax

- 39** | Is there an optional tonnage tax exempting vessel owners from tax on income?

Cyprus applies a tonnage tax system (TTS), which has been approved by the European Commission as compatible with the requirements of the European Union acquis, in accordance with the relevant guidelines on State Aid to Maritime Transport. The TTS applies to qualifying owners of Cyprus and foreign vessels, charterers and managers of vessels engaged in a qualifying shipping activity who have opted for and are accepted to be taxed under the TTS and exempts them from income tax law.

The tonnage tax payable under the TTS annually is calculated on the basis of the net tonnage of the relevant qualifying vessels.

Law stated - 8 April 2024

Tax incentives

- 40** | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

Cyprus applies the TTS, which has been approved by the European Commission as compatible with the requirements of the European Union acquis, in accordance with the relevant guide-lines on State Aid to Maritime Transport. The TTS applies to qualifying owners of Cyprus and foreign vessels, charterers and managers of vessels engaged in a qualifying shipping activity who have opted for and are accepted to be taxed under the TTS and exempts them from the income tax law.

The tonnage tax payable under the TTS annually is calculated on the basis of the net tonnage of the relevant qualifying vessels.

Law stated - 8 April 2024

Other tax provisions

- 41** |

Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

Not applicable.

Law stated - 8 April 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

42 | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

The Companies Law provides for arrangements and reconstructions between a company and its creditors in relation to any company liable to be wound up and to any compromise or arrangement between a company and its creditors or members or any class of them. A scheme of 'compromises and arrangements', approved by a majority in value of the company's creditors, which becomes binding on all once an office copy of the court order has been delivered to the Registrar of Companies, may be of the widest character, ranging from a simple composition or moratorium to an amalgamation of various companies with a complete reorganisation of their share and loan capital.

The Companies Law provides for the ability to appoint an examiner to companies in difficulty. The examinership process reflects the proactive self-help provisions of the US Chapter 11 protection afforded to companies, with the relevant provisions modelled on the Irish Examinership Law. It is a process whereby the protection of the court is obtained to assist the survival of the company and essentially allows a company to restructure with the approval of the court.

An examiner is appointed when the company is insolvent and unable to pay its debts and demonstrates that it has a 'reasonable prospect of survival' as a going concern. The court granting an order for the appointment of an examiner places the company under court protection for a period of 120 days, which can be extended by application to 180 days. The examiner formulates a scheme of arrangement, which requires the approval of at least one class of creditors before it can be brought before the court for approval.

The disadvantages for secured creditors (including registered mortgagees of a vessel owned by the company) are that during the protection period the secured creditors cannot take steps to enforce their security, while in the case of a scheme of arrangement sanctioned by the court their unassailable security may in certain circumstances be compromised.

Law stated - 8 April 2024

Foreign court rulings

43 | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

In the case of a European court's judgments or rulings, matters are governed mainly by EU Regulation 1215/2012. In the case of an English court judgment, matters are governed mainly by the Reciprocal Enforcement of Certain Judgments of Courts of the Commonwealth Countries Law, Cap. 10, as amended. In the case of other non-European judgments or rulings, matters are governed by the common law and the Foreign Judgments (Reciprocal Enforcement) Law, as well as by bilateral or multilateral treaties between Cyprus and foreign jurisdictions relating to the reciprocal provision of legal assistance between contracting states.

Law stated - 8 April 2024

Model Law on Cross-Border Insolvency

- 44 | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

No.

Law stated - 8 April 2024

Order of priority

- 45 | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

Certain debts are expressly given preference and must be paid *pari passu* between themselves, before others. Mainly, these relate to payments to the revenue or to employees, but also include money advanced, normally by a bank, for the purposes of paying current wages where the lender is subrogated for the priority of the recipient.

Law stated - 8 April 2024

Security provision by vessel owner

- 46 | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

A Cyprus ship-owning company may provide security on behalf of other related or unrelated companies provided that its memorandum of association provides for an express or implied power to grant such security.

Law stated - 8 April 2024

Law of fraudulent transfer

I

- 47** | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Any conveyance, charge, mortgage, payment or other disposition made within six months of the winding-up, at a time when the company was unable to pay its debts as they fell due, with the intention of giving a creditor a preference over the other creditors, may be void. It is, however, difficult to invoke this rule, because the onus is on the liquidator to prove that the disposition was made with the dominant motive of preferring a creditor and not, for example, to quieten a particularly demanding creditor or to remain on good terms with him or her in the hope of future financial assistance.

The Merchant Shipping Law expressly provides that a registered mortgagee of a vessel shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the registration of the mortgage.

Law stated - 8 April 2024

Petitions by creditors

- 48** | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

The company, any creditor, any member or an examiner may petition the court to wind up a company on any of the grounds specified in the Companies Law. The most-used ground is where the company is unable to pay its debts.

The Companies Law facilitates proof of the company's inability to pay its debts by providing that it shall be deemed unable to do so if it defaults in complying within three weeks with a written demand for payment served by a creditor to whom more than €5,000 is due or if unsatisfied execution is levied. The court may, however, accept other evidence, such as a company's contingent and prospective liabilities.

Law stated - 8 April 2024

Model Netting Act

- 49** | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

ISDA master agreements are regularly used by Cyprus companies. Pursuant to the ISDA provisions, close-out netting provisions are given effect.

Law stated - 8 April 2024



UPDATE AND TRENDS

Current developments

50 | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

The Shipping Limited Liability Company Law No. 161(I)/2022 provides for the creation of new corporate entities registered at the Shipping Deputy Ministry through simplified procedures. The aim of this legislation is to render the Cyprus Shipping Deputy Ministry a 'one-shop-stop' for Cyprus ship owning companies and Cyprus vessels, but the regulations setting the framework for the operation of this Law are still to be enacted.

The Establishment of the Court and Admiralty Court Law No. 69(I)/2022 provides for the establishment of a new Admiralty Court having exclusive first instance jurisdiction over admiralty cases. Following the establishment of this new Admiralty Court, admiralty cases are expected to be completed fast, whereas upon the application of a party to such proceedings, if the interests of justice so require, the court may allow the proceedings to be conducted, documents to be filed and judgment to be delivered in English.

Law stated - 8 April 2024


CHRYSSSES DEMETRIADES
& CO LLC

Marion Coukidou-Madella

marion.madella@demetriades.com

Chrysses Demetriades & Co LLC

[Read more from this firm on Lexology](#)

Japan

Norio Nakamura, Kenji Sayama

Yoshida & Partners

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UPDATE AND TRENDS

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Vessels with a gross tonnage of 20 tons or more must be registered at a competent office of the Legal Affairs Bureau. Registration of vessels in this context is intended to announce the legal position (rights and obligations) of the parties involved in the vessels in view of private law. Besides, vessels must also be registered at a competent office of the Transport Bureau for the purpose of administrative supervision. The Transport Bureau then issues the Certificate of Vessel's Nationality upon the vessel being duly registered for both above-mentioned purposes. In these contexts, vessels do not include vessels' tenders or boats steered solely or mainly using oars or paddles.

Title to or legal ownership of a vessel is demonstrated by a transcript of the ship register issued by the Legal Affairs Bureau, in which the name and address of the shipowners and the date and the cause of acquisition of the title are stated.

Law stated - 15 April 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

A mortgage on a vessel can be recognised in a transcript of the ship register, but there are no means of determining whether there are any liens over a vessel because non-registered liens (for example, maritime liens or other liens on a vessel) are not entered in the ship register.

Law stated - 15 April 2024

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

One can determine the nature and amount of credit that has been secured by a mortgage upon viewing a ship registry transcript. However, security agreements, liens, charges or other encumbrances are neither registered in the ship register nor disclosed to the public by the Legal Affairs Bureau. Only those who have interests are allowed to review the relevant documents submitted to the Legal Affairs Bureau.

Law stated - 15 April 2024

Public registry searches

- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

Examining the certified commercial register makes it possible to determine whether an entity has been duly organised and is in good standing. Anyone can obtain a transcript of the commercial register at the Legal Affairs Bureau with an application fee of ¥600 in case of the written application.

Law stated - 15 April 2024

- 5 | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Only the name and address of the representative director and the name of the other directors of the entity in question can be determined by viewing a transcript of the commercial register issued by the Legal Affairs Bureau. Shareholders or other equity interest holders, officers or other authorised signatories of an obligor organised in Japan are neither registered nor determined.

Law stated - 15 April 2024

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Any guarantee to secure the debts or obligations of the principal must be given in writing pursuant to the Civil Code and be made before the principal debts or obligations cease to exist.

If the guarantee is made by a corporation with a board of directors, a certain internal procedure is required. If the amount of guarantee to be made by a corporation would result in it falling into 'a large amount of debt', as stipulated in the Companies Act, prior approval by a corporation's board of directors is required. A company may devolve the authorisation for such approval to a resolution of the shareholders' meeting if it specifies the provision in the articles of incorporation.

Law stated - 15 April 2024

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as

| a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

If the lending of money falls into 'inward direct investment or an equivalent action' under the Foreign Exchange and Foreign Trade Act, foreign lenders seeking to extend credit to a borrower organised in Japan must file a prior notification of the business purpose of it, its amount, its timing and any other relevant information with the Minister of Finance and the competent minister for the business. Under the Banking Act and the Money Lending Business Act, foreign lenders (banks and other lenders) must meet requirements mandated by these Acts to do business in Japan or to extend credit to a borrower organised in Japan if the finance is made there during the course of business.

Foreign creditors will not be deemed resident as a consequence of making a loan or other extension of credit to an obligor within Japan.

Law stated - 15 April 2024

REPAYMENT

Central bank and regulatory approval

8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

Repayment of a loan is effective in the currency designated in the loan agreement. If the agreement designates a foreign currency for repayment, no particular regulatory approval is required, other than certain requirements under the Foreign Exchange and Foreign Trade Act, such as an ex post facto report.

Law stated - 15 April 2024

Usury laws

9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

If Japanese law is designated as a governing law of a finance agreement, the Interest Rate Restriction Act applies, which limits the interest to up to 15 per cent per annum where the amount of the principal credit is ¥1 million or more.

Law stated - 15 April 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

Non-resident lenders are required to pay a withholding tax, in principle, at 20 per cent on the interest to be earned from the domestic borrower. Where the tax convention is applied, the rate may be reduced. From 2013 to 2037, withholding tax of 20.42 per cent is payable, owing to the requirement for the special reconstruction income tax.

Law stated - 15 April 2024

REGISTRATION OF VESSELS

Eligibility for registration

- 11** | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

Vessels with a gross tonnage of 20 tons or more are eligible for registration. Vessels of less than 20 gross tons, vessel's tenders and boats solely or mainly propelled by oars or paddles are excluded from the vessels which are required to be registered under the Ship Act.

Although the Ship Act does not define the term 'vessel', a dredger is excluded from the term 'vessel' because it does not have self-propulsion. Given that position of the Ship Act, it would be arguable that offshore drilling rigs or mobile offshore drilling units, which do not have self-propulsion, are excluded from the concept of a 'vessel' under the Ship Act. Under the Act, vessel registration is the prerequisite for issuing the Certificate of Vessel's Nationality to the subject vessel as a Japan-flagged vessel.

Law stated - 15 April 2024

- 12** | Who may register a vessel in your jurisdiction?

The following parties may register a vessel:

- the Japanese government or a Japanese government authority;
- a Japanese national; or
- a legal entity incorporated under Japanese law, of which the representative director and two-thirds of executive officers are Japanese nationals.

Law stated - 15 April 2024

Registry for international shipping operations

- 13** | Is there an alternate registry for international shipping operations?

There is no alternate registry in Japan for international shipping operations, such as an offshore register, for foreign owners to have their vessels registered.

Law stated - 15 April 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

- 14** | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

Japan has two types of ship mortgage:

- the standard mortgage, which secures a specified credit together with its interest that has fallen due in the past two years; and
- a revolving mortgage, which secures unspecified credits created in a specific contract with the obligor for continuous transactions or are created in certain kinds of transactions with the obligor, up to the limit of a maximum amount specified.

Contingent or swap obligations may be secured by a standard mortgage, as far as the obligation is specified when the mortgage is provided. Unspecified obligations may be the target of a revolving mortgage.

There are no particular standardised forms for registering a mortgage, and a comprehensive English-style deed of covenants is not required.

Law stated - 15 April 2024

Required form

- 15** | Give details of any required form for ship mortgages in your jurisdiction.

There is no particular required form. In a mortgage deed, creditors, debtors and the secured credit must be identified at least. The principal amount must be stated in Japanese currency.

Law stated - 15 April 2024

Registration of mortgages

- 16** | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

The register of mortgages is maintained by the competent Legal Affairs Bureau. The register of mortgage contains the:

- date of filing;

- secured credit;
- kind of mortgage;
- amount of the secured credit at the time of registration; and
- name and address of the mortgagee and debtor.

Upon a mortgage on the vessel being registered, it holds priority over the rights of third parties, such as subordinated mortgagees or new owners of the vessel, but it ranks below maritime liens created on the vessel.

Law stated - 15 April 2024

- 17** | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

The amount of credit secured by a mortgage is stated for a standard mortgage, and the maximum amount of the mortgage is stated for a revolving mortgage. A maturity date is not recorded in the mortgage.

The underlying debt instrument, such as the loan agreement and the mortgage deed, must be provided to the Legal Affairs Bureau when filing the mortgage, but these instruments are not filed with or attached to the recorded mortgage.

Law stated - 15 April 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

A mortgage can be registered in the name of a trustee for the benefit of multiple lenders, such as in the case of syndicated financing using a security trust.

Law stated - 15 April 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

No filings are required upon transferring a portion of the underlying debt among existing lenders or to a new lender. In the case of syndicated financing with security trust, the change of creditor caused by that transfer of the underlying debt does not necessarily bring about a change of registered mortgagee, which namely is the trustee.

Law stated - 15 April 2024

20 | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

In the case other than syndicated financing using the security trust, generally, if the mortgagee assigns the credit secured by the mortgage to a third party, the mortgage is also assigned to that third party following the transfer of the secured credit. The mortgagor's consent is not required. From the perspective of private law, this transfer of mortgage must be registered before the Legal Affairs Bureau in order to be asserted against any third parties involved.

To perfect the assignment of the credit, the notice of the assignment or the acknowledgement of the assignment must be made. Under the Civil Code, assignment of credit may not be asserted to the obligor or any other third party unless the assignor gives notice of assignment to the obligor or the obligor has acknowledged the same. Such notice or acknowledgement must be made using an instrument bearing a certified date to assert the assignment against a third party other than the obligor. An instrument bearing a certified date is obtainable, for example, by content-certified mail or certification by a notary public. Concerning the perfection of the assignment made by corporations, the Act on Special Provisions for the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims provides for an alternative method of perfection by way of recording on the registration file before the Legal Affairs Bureau.

Law stated - 15 April 2024

Maritime liens

21 | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

The following claims would create a maritime lien by which the vessel may be arrested:

- claims for personal injury or death directly arising from the performance of her voyage;
- salvage and general average;
- tax and other dues for her voyage, and pilotage and towage;
- claims arising out of necessity to continue her voyage;
- crew's claim under the employment contract;
- claims under the Act on Shipowner Liability, which is based on the LLMC Convention; and
- claims under the Act on Liability for Oil Pollution Damage, which has given the force of law to the CLC Convention 1992, the Fund Convention 1992, and the protocol 2003, the Nairobi Convention 2007 and the Bunker Convention 2001.

Associated ships may be arrested by way of 'provisional attachment' under the Civil Provisional Remedies Act, similar to the Mareva injunction (freezing order) under English law, but not on maritime liens. A provisional attachment is only to preserve the assets (eg, vessels) of the debtor as the owner from being disposed of until the judgment or arbitration award becomes enforceable. The arrestor must provide counter security to the court in cash or by a bond issued by parties such as a bank, a foreign bank and an insurance company admitted by Japanese law.

Law stated - 15 April 2024

22 | What maritime liens rank higher than a mortgage lien?

Maritime liens on a vessel have priority over a vessel's mortgage, even if the liens are created after the vessel's mortgage is registered.

Law stated - 15 April 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

There are no means of recording non-mortgage liens over a vessel.

Law stated - 15 April 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

There is a legal dispute over the issue of whether a mortgage on a foreign flag vessel is recognised in Japan. Most Japanese courts have accepted enforcement of foreign ship mortgages in many ship-arrest cases, but a few refuse to recognise this, reasoning that the enforcement action does not have any ground in Japanese law. If a foreign ship mortgage is recognised it has the same priority as those mortgages registered under Japanese law.

Law stated - 15 April 2024

Enforcement of mortgages

25 | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

If a debtor is in default under a loan agreement or other contracts, the mortgagee may apply for a judicial auction sale of the vessel.

The mortgagee first needs to arrest a vessel in Japan as a precondition for the court to order the commencement of the judicial auction sale proceedings, for which a vessel must be put in possession of the court-martial. After the court orders the commencement of the proceedings, the vessel is physically maintained by a ship manager appointed by the court until she is sold. In the meantime, the court inspects and makes a valuation of the vessel to determine the minimum price for bidding. A judicial auction is made by way of open bids or tender bids upon consultation with the financier as mortgagee.

Interlocutory sales are not provided for under Japanese law. It usually takes several months to complete a judicial sale. Costs that the applicant must bear are the deposit ordered by the court for the vessel's expected maintenance and preservation costs or expenses, including port charges, crew wages, insurance and bunker, for several months until the vessel is sold.

Law stated - 15 April 2024

Sale by mortgagee

26 | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

A vessel may be sold out of court privately by a mortgagee, according to the terms and conditions provided in a mortgage deed. However, in a private sale, liens over the vessel are not discharged without settling lien claims, while liens are discharged through a judicial auction sale. Thus, if a vessel is subject to a lien, the financiers must bear risks of a lien in selling a vessel by a private sale.

Law stated - 15 April 2024

Default under mortgage

27 | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

The court will not appoint a receiver to enforce mortgage provision on default under the mortgage but conduct the proceeding by itself. Under Japanese law, besides, the execution against earnings from secured real property is not allowable for vessels under mortgages.

Law stated - 15 April 2024

Limitations on rights of self-help

28 | What are the limitations on rights of self-help by a mortgagee?

As a principle, a mortgagee cannot resort to any self-help remedies but must enforce its rights through judicial proceedings. However, a mortgagee is usually allowed under the mortgage deed to bid for and purchase a vessel by itself in the same way as the law normally requires. In such a case, there is no particular limitation on the rights of self-help.

Law stated - 15 April 2024

Duties to owner or third-party creditors

29 | What duties does a mortgagee owe to an owner or third-party creditors?

A mortgagee does not obtain any possession of the vessel and the owner is allowed to use the vessel. Thus, a mortgagee does not owe any duties or responsibility to the owner or other third-party creditors in connection with the use of the vessel.

Law stated - 15 April 2024

COLLATERAL

Finance leases

30 | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

The rights that can be registered over vessels under Japanese law are ownership, mortgage and lease only. In certain schemes for finance leases, where a finance lessor holds the right of ownership of the vessel, he or she is registered as owner and the right to the lease of the vessel may be registered in the name of a lessee. Where a finance lessee obtains the right of ownership of the vessel, he or she is registered as the owner, but the lessor's credit is not registered as security because there are no means to register such interests in Japan.

The title to lease by a bareboat charter may be recorded as a lease if it falls in the meaning of 'lease' under Japanese law.

Law stated - 15 April 2024

31 | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

Though a finance lease contract has not been specifically characterised with clear provisions in the Civil Code even after its great reform effective since April 1st 2020, it has generally been recognised by courts as a contract intending to give the lessee financial benefits, as shown in the Supreme Court judgments rendered in 1995 and 2010, which dealt with a finance lease contract with a full-payout scheme that was part of a dispute regarding corporate reorganisation and civil rehabilitation proceedings. It is thought that in the lessee's bankruptcy, civil rehabilitation or corporate reorganisation proceedings,

the unpaid credits under a finance lease may be categorised in a secured claim, not an unsecured claim.

Law stated - 15 April 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Assignment of a charter contract (eg, earnings of a vessel or charter hire) or insurance is often created as a security interest through a contract between the financier and the owner.

A charter party or charter hire may be assigned by the assignment concluded between the assignor and assignee with perfection by a notice of assignment issued by the assignor to the obligor or an acknowledgement of the same by the obligor. To perfect the said assignment, a notice of the assignment by the assignor or an acknowledgement by the obligor must be made using an instrument bearing a certified date. An instrument bearing a certified date is obtainable, for example, by content-certified mail or certification by a notary public. Concerning the perfection of the assignment made by corporations, the Act on Special Provisions for the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims provides for an alternative method of perfection by way of recording on the registration file before the Legal Affairs Bureau.

Security interests over insurance can be created by a pledge or a mortgage by transfer with the same perfection procedures as required in the case of assignment of claim mentioned above.

Law stated - 15 April 2024

- 33** | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

One of the typical security interests against non-vessel collateral for ship finance other than a mortgage is a pledge of corporate shares that the borrower owns.

In Japan, financiers often require a borrower to provide a personal guarantee issued by directors of the borrower or a corporate guarantee issued by affiliated companies. No register filings are required.

Law stated - 15 April 2024

- 34** | How is a security interest over a deposit account established? How is a security interest perfected?

A security interest over a deposit account may be established by way of a pledge agreement between a financier as pledgee and a borrower as pledgor. In order to perfect the said pledge of a deposit account, a notice of the pledge by a pledgor or an acknowledgement

by a bank of the said deposit account provided by it is required. Under the Civil Code, the pledge of a claim may not be accepted by the obligor or any other third party unless the pledgor gives notice of the pledge to the obligor or the obligor has acknowledged the same. Such notice or acknowledgement must be made using an instrument bearing a certified date to assert the pledge against a third party other than the obligor. An instrument bearing a certified date is obtainable, for example, by content-certified mail or certification by a notary public. Concerning the perfection of the pledge made by corporations, the Act on Special Provisions for the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims provides for an alternative method of perfection by way of recording on the registration file before the Legal Affairs Bureau.

Law stated - 15 April 2024

35 | How are security interests in non-vessel collateral enforced?

Security interests in non-vessel collateral are enforceable according to the contracts between the financier and the borrower or by the law of the place where each security interest exists or is located.

A share pledge is enforceable by the law under which the company is incorporated.

Enforcement of security interests in non-vessel collateral depends on the nature and character of the security interest and the collateral. For instance, a share pledge is enforceable through judicial proceedings such as one under the Civil Execution Act or immediate appropriation under the Civil Code. In the case of pledge over claims, a pledgee may, in addition to going through the abovementioned proceedings, directly collect the claim that is the subject of the pledge.

Law stated - 15 April 2024

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Share pledges or transferable mortgages over the share are available for financiers as security of the loan credit. It is construed under the international conflict law of Japan, named the Act on General Rules of Application of Laws, that share pledges for vessel financings may be established by the law under which the company is incorporated, and Japanese law is applicable when it is designated as a governing law of the share pledges.

In Japan, a share pledge is established by:

- physical delivery of the share certificate if it is issued by the company;
- recording the pledgee in the book-entry transfer form if the share certificate is not issued by the company but the book-entry transfer system has been adopted; or
- recording the pledgee in the shareholder list of the company.

Law stated - 15 April 2024

- 37** | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

A pledgee would not be exposed to the risk of having debt or liabilities of the pledged company beyond the value of the shares before or after exercise of the share pledge.

Law stated - 15 April 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

- 38** | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

The parties permitted to own Japanese-flagged vessels are the Japanese government, Japanese nationals, and companies incorporated by Japanese law, of which the representative directors and two-thirds of executive officers are Japanese nationals.

Assuming a Japanese vessel makes a profit, the owner as a corporate body (which must be a Japanese entity) must bear a fixed property tax for vessels, a corporation inhabitant tax or a business income tax as local taxes and, in addition, a corporate tax as a national tax.

The corporate tax rate (for an income of ¥8 million or more) is currently 23.2 per cent, and the total effective tax rate for companies with headquarters in Tokyo would be 30.62 per cent.

Law stated - 15 April 2024

Tonnage tax

- 39** | Is there an optional tonnage tax exempting vessel owners from tax on income?

Japan adopted the tonnage tax regime in 2008, and this is currently an alternative standard corporate tax regime. The taxable profit would be calculated basically on the net tonnage of the trading vessels.

Law stated - 15 April 2024

Tax incentives

- 40** | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

Vessels can be registered as Japanese-flagged vessels if they are owned by the Japanese government, Japanese nationals and companies incorporated by Japanese law, of which the representative directors and two-thirds of executive officers of which are Japanese nationals. Japan's tonnage tax regime applies to Japanese-flagged vessels and vessels of another flag owned by subsidiaries of the Japanese ocean vessel operating company (such as FOC vessels) actually operating them.

Law stated - 15 April 2024

Other tax provisions

- 41** | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

There is no further particular tax regime specifically favourable to shipowners incorporated in other jurisdictions.

Law stated - 15 April 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

- 42** | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Procedures for reorganisation or insolvency are stipulated in different laws. For example, the Bankruptcy Act provides for the bankruptcy of an individual or a corporation that wishes to close its business; the Civil Rehabilitation Act provides for the rehabilitation of an individual or a corporation; and the Corporate Reorganisation Act provides for reorganisation of a corporation only.

In proceedings under the Civil Rehabilitation Act, a corporation's current executives may continue to retain management of the company. But in proceedings under the Corporate Reorganisation Act, the company's management is fully succeeded by the trustee.

In bankruptcy or civil rehabilitation proceedings, the credits secured by a ship mortgage are enforceable at any time outside of the proceedings, but in corporate reorganisation proceedings, even the ship mortgage must follow the reorganisation plan and may not be enforced voluntarily out of the proceedings.

Law stated - 15 April 2024

Foreign court rulings

- 43** | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

Japan has legislation concerning the recognition of and assistance towards foreign insolvency proceedings, following the UNCITRAL Model Law on Cross-Border Insolvency. That is the Act on Recognition of and Assistance for Foreign Insolvency Proceedings.

Under The Act, the Tokyo District Court has exclusive jurisdiction over this matter. An applicant is required to put up a deposit decided by the court. The court may order a suspension of the attachment or other proceedings over the property in Japan and, if necessary, prohibit the disposal of the property to assist foreign proceedings.

Law stated - 15 April 2024

Model Law on Cross-Border Insolvency

44 | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

The Model Law on Cross-Border Insolvency was adopted and implemented in Japanese law in 2001 in the form of enactment of the Act on Recognition of and Assistance for Foreign Insolvency Proceedings. However, the Act has a slight difference from the position of the Model Law. For instance, if domestic insolvency proceedings have already been commenced on the debtor, an application for recognition of foreign insolvency proceedings on the same debtor is, in principle, dismissed. Exceptionally, on the other hand, the court shall dismiss the domestic proceedings and accept the application for recognition of foreign insolvency proceedings, if such proceedings are primary foreign proceedings and will assist the foreign insolvency proceedings to conform to the common interests of creditors, only if the creditors' interests in the Japanese jurisdiction will not be unreasonably prejudiced.

Law stated - 15 April 2024

Order of priority

45 | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

Some kinds of claims, such as the following claims, are given priority to recover from the bankruptcy estate before the liquidating distribution is made to relevant bankruptcy creditors:

- expenses for court proceedings performed for the common interest of bankruptcy creditors;
- expenses for the administration, realisation and liquidating distribution of the bankruptcy estate;
- tax, etc, arising from a cause that has occurred before the commencement of the bankruptcy proceedings, for which, by the time of the commencement of the

bankruptcy proceedings, the due date of payment has not yet arrived, or one year has not yet elapsed after the due date of payment; and

- claims arising from an act conducted by a bankruptcy trustee concerning the bankruptcy estate.

The following bankruptcy claims, for which a general statutory lien or any other general priority exists over property that belongs to the bankruptcy estate, have a priority over other general bankruptcy claims, such as:

- tax, etc, arising from a cause that has occurred before the commencement of the bankruptcy proceedings, for which, by the time of commencement of the bankruptcy proceedings, more than one year has elapsed after the due date of payment;
- unpaid fees for pension insurance or health insurance; and
- unpaid wages.

Under the Bankruptcy Act, a creditor may be required to disgorge payments from an insolvent company if the payment was made by the insolvent company after it became unable to pay debts or a petition for commencement of bankruptcy proceedings was filed, and the creditor knew that the fact:

- that the insolvent company was unable to pay debts or suspended payment, in the case where the insolvent company made that payment after it became unable to pay debts; or
- that a petition for commencement of bankruptcy proceedings was filed, in the case where the insolvent company made that payment after a petition for commencement of bankruptcy proceedings was filed.

Law stated - 15 April 2024

Security provision by vessel owner

- 46** | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

An owner of a vessel may provide security on behalf of other related or unrelated companies – no particular relationship between the owner and debtor or borrower is required. To enforce the mortgage on the vessel in such cases, upon the event of default occurring on the principal debtor or borrower, the vessel must first be arrested by the mortgagee as a creditor in Japan to put her in possession of the court-martial.

Law stated - 15 April 2024

Law of fraudulent transfer

- 47** | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or

insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

The Bankruptcy Act has a legal effect when a fraudulent transfer (a prejudicial act to creditors) has been made by a debtor, mortgagor or others. The following acts should be avoided by a bankruptcy trustee after the commencement of the bankruptcy proceedings is declared:

- acts conducted by the debtor, having knowledge that said acts would prejudice creditors, or acts that prejudice creditors and have been conducted after the payment was suspended or filing of the bankruptcy proceedings had taken place;
- gratuitous acts, or onerous acts equal to gratuitous acts conducted by the debtor after, or six months before, the payment was suspended; or
- acts conducted to give security for a debt or to settle a debt after the debtor became insolvent or the bankruptcy proceedings were filed, provided that a creditor knew the fact that the debtor was insolvent, payment had been suspended or the bankruptcy proceedings had been filed.

The above rights of avoidance may not be exercised after two years have elapsed since the bankruptcy proceedings were commenced.

Law stated - 15 April 2024

Petitions by creditors

48 | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

Any creditors may apply for a debtor to be declared bankrupt upon putting up a deposit to the court. The court will order a much higher deposit for a debtor application than for a bankruptcy case. The applicant creditor must provide prima facie proof as to the applicant's credit and debtor's insolvency. The court will hold a hearing with both the applicant and the debtor before declaring the commencement of the bankruptcy proceedings.

Law stated - 15 April 2024

Model Netting Act

49 | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

Japan has not adopted the Model Netting Act of the ISDA. However, there are some provisions that reflect the netting regime for certain transactions in the Bankruptcy Act, the Civil Rehabilitation Act, the Corporate Reorganisation Act and the special act called the Act on Close-Out Netting of Specified Financial Transactions Conducted by Financial

Institutions. These provisions are applicable to the netting between two parties but not among multiple parties.

Law stated - 15 April 2024

UPDATE AND TRENDS

Current developments

50 | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

The great reform of the Civil Code (Amendments on credit-related provisions) has been effective from 1 April 2020. Among various amendments, the following may be pointed out as influencing the ship finance practice, namely:

- Protection of guarantors in case of personal guarantee has been amplified. In the case of personal guarantee by third parties other than related individuals, such as directors and executive officers of the corporation as being a principal obligor of a loan obligation assumed for business, a guarantee contract must be made together with the notary instruments prepared within one month before the date of conclusion of the contract, in which the guarantor manifests the intention to perform the guarantee obligation.
- Securitisation of claims with restriction on assignment has been enhanced. It has been clearly provided in the amended Civil Code that even if a party to claim manifests the intention to prohibit or restrict the assignment of the claim, the assignment of that claim is in principle legally valid. Upon this principle, the obligor may refuse to perform the obligation to the assignee actually knowing or did not know due to gross negligence the restriction on the assignment and, may duly assert against such third party any event resulting in extinguishment of the obligation such as payment to the assignor.

Law stated - 15 April 2024

Yoshida & Partners

Norio Nakamura
Kenji Sayama

norio@japanlaw.co.jp
sayama@japanlaw.co.jp

Read more from this firm on Lexology

Malta

Kevin F Dingli, Suzanne Shaw, Louisa Bencini Dingli

Dingli & Dingli Law Firm

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Registration of a vessel, as supported by a certificate of registry, constitutes prima facie evidence of holding ownership title. Legal ownership of a vessel registered under Maltese law is demonstrated through a builder's certificate, bill of sale or another document of title, such as an adjudication order pursuant to a judicial sale by auction through which ownership of a vessel is transferred.

Although a shipowner is obliged to provide the Maltese Registrar of Ships with the original builder's certificate, the original bill of sale or another document of title within one month of the provisional registration (this period can be extended to two months), in practice the registrar accepts scanned copies.

The Merchant Shipping Act stipulates that a registered ship (or a share of a ship) must be transferred by a bill of sale, and requires the bill of sale to be produced to the registrar, who enters the name of the transferee in the vessel's register as the vessel's owner and endorses the bill of sale with the date and time the entry was made.

If a vessel is transferred causa mortis owing to the death of an owner, the beneficiary, provided he or she is qualified to own a Maltese ship, must sign a declaration of transmission. The declaration must be accompanied by evidence of the transfer that a competent court would accept as proof. As with a bill of sale, the declaration must be produced to the registrar, who enters the identity of the recipient in the vessel's register as the new owner.

These entries in a vessel's register are ascertainable on a search of the vessel's public register. The current ownership position would feature in a transcript of the register issued by the registrar.

Law stated - 18 April 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

Maltese law refers to mortgages, certain possessory liens and special privileges over vessels. In addition, there is also the privilege granted to the seller for the price of an item sold under the provisions of article 2009(d) of the Civil Code.

Special privileges

Special privileges are akin to maritime liens, in that:

-

they attach to the vessel and enjoy a droit de suite in the event of a private sale of the vessel;

- they constitute a maritime claim in rem against the vessel; and
- they also give rise to an established ranking priority.

As special privileges are not recorded in the vessel's register, there is no objective way to ascertain whether a vessel is subject to a particular special privilege. Special privileges are temporal, so a maritime claim that constitutes a special privilege over a vessel can, with the passage of time and change of circumstances, no longer constitute a special privilege. Therefore, whether or not a maritime claim gives rise to a special privilege must be determined on a case-by-case basis, as and when the claim is advanced.

Mortgages

Mortgages and any privilege granted by law in favour of the unpaid seller must be drawn up on the applicable statutory forms and registered according to law. Therefore, their existence may be determined upon a search of the vessel's register, and they feature in a transcript of the shipping register.

If a vessel is entered into the Maltese bareboat charter registry, details of any registered encumbrances must be ascertained from that vessel's underlying or principal registry.

Law stated - 18 April 2024

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

Only mortgages and privileges granted to an unpaid seller as security for the balance of a vessel's price are recorded in the vessel's register.

A mortgage would refer to the underlying documents, such as a loan or guarantee agreement, the obligations that are secured by the mortgage, and the mortgagee concerned in whose favour the mortgage is executed.

The law requires that to be effectual regarding the vessel concerned, a privilege in favour of the unpaid seller has to be entered into the register of the vessel within two days of the date of the sale.

A power of attorney or a mandate (irrevocable or otherwise) issued by the mortgagor, granting powers relating to the exercising of rights relating to the vessel or the closure of the register on behalf of the registered owner or grantor, can be recorded in the register.

Additionally, if a pledge of shares affecting the securities of a Maltese-registered company is made, a notice of pledge is recorded in that company's public register, as maintained by the Registrar of Companies. This contains the date of the pledge, names of the pledgor and the pledgee, and details of the pledged securities. As Maltese company law does not

provide for a register of charges, no other charges are recorded in a company's public register.

Law stated - 18 April 2024

Public registry searches

- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

If the obligor is a Maltese-registered company, a search may be carried out on that company's public register, which is maintained by the Registrar of Companies. An official certificate of good standing may also be obtained.

The company's public register may contain other information, such as:

- the existence of a pledge of shares, which the Registrar of Companies may have been notified about, from which time the pledge would affect third parties;
- whether a voluntary dissolution has been filed, and a liquidator appointed;
- whether an injunction preventing the transfer of shares in the company has been issued by a competent court at the request of a creditor, and whether the Registrar of Companies has been notified; or
- whether a court application has been filed by a creditor for the dissolution and winding up of the company, and the Registrar of Companies has been so notified.

Law stated - 18 April 2024

- 5 | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Malta does not operate an offshore regime. The names of all registered shareholders, debenture holders, directors, legal representatives and appointed secretaries are recorded in the company's register entry, where required, and so can be determined from a search of the public registry. Such searches can be carried out online. For fiduciary shareholders, the names of the ultimate beneficial owners will not appear.

However, since 1 January 2018, pursuant to the Companies Act (Register of Beneficial Owners) Regulations (S L 386.19), details of relevant ultimate beneficial owners of companies have been recorded in a Register of Beneficial Owners maintained by the Registrar of Companies, except in cases of listed companies or companies whose shareholders are natural persons. The Maltese national authorities can access this register, in accordance with data protection requirements. The register can also be accessed by subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations providing services in or from Malta under the Prevention of Money Laundering and Financing of Terrorism Regulations for the purpose of conducting their due diligence obligations.

Law stated - 18 April 2024

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Much will depend upon the particular provisions of the memorandum and articles of association of the company concerned. Typically, legal representation of a Maltese company would be vested in the board of directors or one or more directors. In all cases, it would be prudent to procure the appropriate resolutions from the directors, resolving to enter into an obligation and to appoint one or more persons as the company's attorneys to execute the authorised transactions.

Shareholders are not required to approve guarantees unless the company's memorandum and articles of association make such provisions necessary. However, it is prudent to obtain shareholder approval, and, especially when dealing with third-party debt guarantees, to check that the objects clause in the memorandum of association authorises the company to make the security available.

Law stated - 18 April 2024

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

Foreign lenders do not have to qualify to do business in Malta in order to extend credit to a borrower who may be organised and established in Malta, unless the lender wishes to operate as a financial institution in or from Malta. However, a mortgage to secure a future obligation can only be granted in favour of a credit institution in an approved jurisdiction or such other organisation as permitted by means of a notice issued by the minister responsible for shipping.

Foreign creditors will not be deemed to be resident or to have a permanent establishment in Malta as a result of making a loan or extending credit to an obligor organised and established in Malta.

Law stated - 18 April 2024

REPAYMENT

Central bank and regulatory approval

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8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

Malta is a member state of the European Union and does not operate an exchange control system. Therefore, no central bank or other regulatory approval is required to repay any loan expressed in a foreign currency.

Law stated - 18 April 2024

Usury laws

9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

The Interest Rate (Exemption) Regulations make it clear that the relevant provisions of the Civil Code limiting or restricting the charging or compounding of interest do not to apply to any debts or other obligations secured by a mortgage over a ship, or to debts or obligations that are due under a ship's lease (whether the vessel is registered in Malta or elsewhere and is governed by Maltese law or another jurisdiction).

Law stated - 18 April 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

There are no withholding taxes payable on principal or interest to non-resident lenders.

The Income Tax Act provides that any interest, discount, premium or royalties accruing to or derived by any person not resident in Malta are exempt from income tax in Malta, unless the person concerned is engaged in trade or business in Malta through a permanent establishment situated in Malta and, where royalties or a debt claim's interest, discount or premium are paid, is connected with the permanent establishment.

Law stated - 18 April 2024

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

The Merchant Shipping Act (MSA) defines the term 'ship' as vessels used in navigation, whether self-propelled or not. The term also specifically includes barges, pontoons, floating establishments, installations or structures, oil rigs and similar vessels, as well as ships

under construction. So, for purposes of registration, offshore drilling rigs or mobile offshore drilling units are considered vessels, even if they do not fall under the definition of a tonnage tax ship as they are not considered to be vessels engaged in 'shipping activities', meaning the international carriage of goods or passengers by sea. In general, there is an age restriction of 25 years unless in exceptional circumstances involving a vessel forming part of a larger and younger fleet, always subject to the paramount consideration of seaworthiness. Once registered, a vessel is considered to be a Maltese ship.

Law stated - 18 April 2024

12 | Who may register a vessel in your jurisdiction?

A vessel shall only be eligible for registration under the MSA if it is wholly owned by persons of the following description:

- citizens of Malta;
- bodies corporate:
- established under and subject to the laws of Malta;
- having their principal place of business in Malta; or
- having a place of business in Malta and satisfying the minister responsible for shipping that they can and will observe Maltese law relating to merchant shipping; or
- such other persons as the minister responsible for shipping may prescribe.

Under the Ships Eligible for Registration Regulations, the minister has extended ownership eligibility to foreign companies and entities with legal personalities where they are constituted, and citizens of the EU, the European Economic Area, Switzerland and the United Kingdom not resident in Malta. However, such people must register as international owners with the Registrar of Shipping and appoint a resident agent in Malta. This registration and appointment do not establish a permanent establishment in Malta.

Any registered vessel ceasing to be owned wholly by persons qualified to own a Maltese ship ceases to be a Maltese ship.

Law stated - 18 April 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

There is only a national register operative in Malta, which also caters for bareboat charter registration. However, the foreign ownership of vessels may be registered in it. This is achieved by registering the foreign corporate or individual owner concerned as an 'international owner' with the Registrar of Shipping in Malta, pursuant to the Ships Eligible for Registration Regulations.

Law stated - 18 April 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

- 14** | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

A registered ship (or a share of such a vessel) may become security for any debt or other obligation by means of an instrument creating the security (the Merchant Shipping Act (MSA) terms this a 'mortgage').

A mortgage must be executed by the mortgagor in favour of the mortgagee in the presence of and attested by witnesses. It may be drawn up to secure:

- the payment of a principal sum and interest;
- an account current; and
- the performance of an obligation, including future obligations by the debtor to the creditor.

A mortgage to secure a future obligation may only be granted in favour of a credit institution in an approved jurisdiction, or to another organisation so permitted by means of a notice issued by the minister. In such cases, the maximum sum the mortgage is granted for (the principal) must be expressly stated in the registered instrument. This is recorded in the register by the registrar.

Contingent obligations, including swap obligations, may also be secured.

There is a statutory form of mortgage that must be employed, which is based closely on the English model of a short-form mortgage. This is typically supported by a collateral deed of covenants.

Law stated - 18 April 2024

Required form

- 15** | Give details of any required form for ship mortgages in your jurisdiction.

There is a statutory form of mortgage that must be employed. This is found in the Second Schedule of the MSA.

Law stated - 18 April 2024

Registration of mortgages

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16 | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

Mortgages are recorded in the vessel's register, which is available for inspection by any person. The Registrar of Shipping records a synopsis of the mortgage and prohibitions on the creation of further mortgages, or to transfer the ship being mortgaged as stated in the mortgage instrument. Mortgages are entered in the vessel's register by both date and time. This registration is required for a mortgage to be effective concerning third parties.

The vessel's register also indicates powers of attorney or mandates (irrevocable or not), granted as part of the security by the mortgagor and registered with the registrar.

Any agreement or unilateral declaration, made by means of an annotation pursuant to article 1996A of the Civil Code, enabling a mortgagee's existing or future rights of payment to be modified, subrogated, postponed or waived, or their rights regarding enforcement and ranking (or similar) put in favour of another person registered at the ship registry, by any party to the agreement or by the maker of the declaration, would also appear on a search of the vessel's register. Such an agreement or declaration would take effect in relation to third parties.

A vessel's register entry will also record caveats prohibiting any further dealings in it. A competent court may issue such a caveat at the instance of any creditor of a security of a maritime claim on that vessel.

Any transfer or discharge of a registered mortgage is recorded in the vessel's register when it is registered.

Mortgages provided by a Maltese-registered company are not recorded in the company's entry in the Companies Register.

Law stated - 18 April 2024

- 17** | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

Unless it is taken out to secure a principal amount and interest, the amount secured by a mortgage expressed in current account form and those securing the performance of another obligation need not be stated, provided that the amount can be ascertained by referring to the underlying documents secured by the mortgage. If a mortgage secures an underlying debt up to a capped amount, the maximum limit secured by that mortgage must be stated in the mortgage instrument. Furthermore, if a mortgage is taken out to secure a future obligation, the maximum sum of the mortgage granted must be expressly stated and recorded in the vessel's register.

The mortgage does not need to contain a maturity date. The underlying debt instrument is not a registrable document, so it is not filed with the mortgage. In rare instances, the underlying debt instrument is attached as a document to the mortgage deed, but this is not necessary and is not industry practice.

Law stated - 18 April 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

Maltese law allows for a mortgage to be registered in the name of a security trustee for the benefit of multiple lenders. This is very useful in a syndicated financing. However, a mortgage cannot be registered in favour of an agent.

Law stated - 18 April 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

When a mortgage is taken out in favour of a security trustee, there is no requirement for any filings to be made upon any transfer of a portion of the underlying debt among existing lenders, or even to a new lender.

Law stated - 18 April 2024

- 20** | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

To transfer a mortgage, the statutory instrument of transfer that features on the flip side of the statutory instrument of mortgage must be executed by the transferring mortgagee in

favour of the transferee mortgagee. The transfer is then recorded in the vessel's register, as maintained by the registrar of shipping. The transfer does not require the mortgagor's consent.

Law stated - 18 April 2024

Maritime liens

- 21** | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

Maltese law recognises possessory liens, the privilege granted by law to the unpaid seller of a vessel as a security for the balance of price, and special privileges on vessels.

Possessory liens

Possessory liens over a vessel are recognised in favour of any ship repairer, shipbuilder or other creditors into whose care and authority a vessel has been placed for the execution of works or other purposes. Such possessory liens entitle the creditor to retain possession over the vessel on which he or she has worked or carried out activity until they are paid the debts due to him or her for such building, repairs or activity. The voluntary release of the vessel from the possession of the creditor serves to extinguish the lien.

The law grants a privilege in favour of the unpaid seller of a vessel as a security for the balance of the price and requires the privilege to be recorded in the vessel's register within two days of the date of the sale for it to be effective.

Special privileges

The law lists certain debts that are secured by a special privilege on the vessel, as well as any proceeds from any indemnity arising from collisions and other mishaps in addition to any insurance proceeds.

The particular special privileges recognised by law that rank in priority to claims secured by a registered mortgage are as follows:

1. judicial costs incurred in respect of the sale of the ship and the distribution of the proceeds thereof;
2. fees and other charges due to the Registrar of Shipping arising under the MSA;
3. any debt secured by a possessory lien or privilege (according to article 54 of the MSA) over a ship, provided that such debt arose before the debts of the creditors enjoying any one of the special privileges listed in paragraphs (4) to (11), otherwise such debt ranks immediately after such special privilege;
4. tonnage dues;
5. wages and expenses for assistance, recovery of salvage and pilotage;



6. the wages of watchmen, and the expenses of watching the ship from the time of her entry into port up to the time of her sale;
7. rent of the warehouses in which the ship's tackle and apparel are stored;
8. the expenses incurred for the preservation of the ship and of her tackle, including supplies and provisions to her crew incurred after her last entry into port;
9. wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
10. damages and interest due to any seaman for death or personal injury and expenses attendant on the illness, hurt or injury of any seaman;
11. monies due to creditors for labour, work and repairs made before the ship departed on her last voyage, provided the debt has been contracted directly by the owner of the ship, or by the master, or by an authorised agent of the owner; and
12. ship agency fees due for the ship after her last entry into port, following port tariffs, and any disbursements incurred during such period not enjoying a privilege in (1), (2) and (4) to (10) above, although in any case for a sum in the aggregate not exceeding 4,000 units.

The following claims also give rise to special privileges, but rank lower than a registered mortgage:

- monies lent to the master for the necessary expenses of the vessel during her last voyage and the reimbursement of the price of goods sold by him or her for the same purpose;
- monies due to creditors for provisions, victuals, outfits and apparel, previously to the departure of the ship on her last voyage (as long as the debt has been contracted directly by the owner of the ship, or by the master, or by an authorised agent of the owner);
- damages and interest due to the freighters for non-delivery of the goods shipped, and for injuries sustained by such goods through the fault of the master or the crew;
- damages and interest due to another vessel or to her cargo in cases of a collision between vessels; and
- unpaid balance of the price from the sale of a ship.

All of the above claims constitute maritime claims and give rise to a right to arrest the vessel concerned. However, the in rem jurisdiction of the Maltese courts is somewhat wider than this, as article 742B of the Code of Organisation and Civil Procedure lists maritime claims that give rise to such jurisdiction, and therefore to the right to arrest a vessel. In summary, these are:

1. claims to possession, ownership or title to ship;
2. questions arising between co-owners;
3. claims in respect of mortgage, hypothec or charge on a ship;

4. claims arising out of a contract of sale;
5. claims for damages received by the ship;
6. claims for damage caused by ship;
7. claims for loss of life or personal injury caused by ship;
8. claims for loss of or damage to goods carried in a ship;
9. claims arising out of an agreement for carriage of goods or use or hire of the ship;
10. claims for salvage;
11. claims for damage to the environment by ship;
12. claims relating to wrecks;
13. claims for towage;
14. claims for pilotage;
15. claims for supplies or services rendered to ship;
16. claims for construction, repair, conversion or equipping ship;
17. claims for port, dock or harbour dues;
18. claims by crew for wages or repatriation;
19. claims for disbursements made;
20. claims for commissions, brokerage or agency fees;
21. claims arising out of the general average act;
22. claims arising out of bottomry;
23. claims for forfeiture of the ship;
24. claims for insurance premia; and
25. claims for fees due to the Registrar or tonnage dues.

In cases concerning any one of the maritime claims listed in (1) to (3), an action in rem may only be brought against the particular ship in connection with which the claim arose.

In the remaining maritime claims listed in (4) to (25), an action in rem may be brought against that ship when the person liable for the action in personam (the relevant person) was:

- the owner or charterer, or was in possession or control, of the vessel at the time the cause arose; or
- the owner, beneficial owner or the bareboat charterer of the ship when the action was brought.

The requirement for the relevant person to be the owner, beneficial owner or the bareboat charterer of the ship when the action is brought does not apply to maritime claims secured by special privilege and that survive the voluntary sale of the vessel by up to one year.

If the relevant person is the owner, beneficial owner or the bareboat charterer of another ship, or the owner or beneficial owner concerning shares when the action is brought, the arrest of the sister and associated ships is possible.

Law stated - 18 April 2024

22 | What maritime liens rank higher than a mortgage lien?

Maritime claims secured by the following special privileges and possessory liens rank in priority to claims secured by a registered mortgage:

1. judicial costs incurred in respect of the sale of the ship and the distribution of the proceeds thereof;
2. fees and other charges due to the Registrar of Shipping arising under the MSA;
3. any debt secured by a possessory lien or privilege (according to article 54 of the MSA) over a ship, provided that such debt arose before the debts of the creditors enjoying any one of the special privileges listed in paragraphs (4) to (11), otherwise such debt ranks immediately after such special privilege;
4. tonnage dues;
5. wages and expenses for assistance, recovery of salvage and pilotage;
6. the wages of watchmen, and the expenses of watching the ship from the time of her entry into port up to the time of her sale;
7. rent of the warehouses in which the ship's tackle and apparel are stored;
8. the expenses incurred for the preservation of the ship and of her tackle, including supplies and provisions to her crew incurred after her last entry into port;
9. wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
10. damages and interest due to any seaman for death or personal injury and expenses attendant on the illness, hurt or injury of any seaman;
11. monies due to creditors for labour, work and repairs made before the ship departed on her last voyage, provided the debt has been contracted directly by the owner of the ship, or by the master, or by an authorised agent of the owner; and
12. ship agency fees due for the ship after her last entry into port, following port tariffs, and any disbursements incurred during such period not enjoying a privilege in paragraphs (1), (2) and (4) to (10) above, although in any case for a sum in the aggregate not exceeding 4,000 units.

Law stated - 18 April 2024

Non-mortgage liens

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23 | May non-mortgage liens be recorded over a vessel?

Non-mortgage liens may not be recorded over a vessel. The only exception relates to a privilege granted to an unpaid seller as security of the payment of the balance of the price of a vessel taken out pursuant to the provisions of article 2009(d) of the Civil Code. This privilege must be recorded in the vessel's register within two days of its sale. This is done by delivering the prescribed form, completed and signed by the seller, to the registrar. Furthermore, the privilege is not effective against the seller's other vessels, unless the claim for the price is also registered in the Public Registry within two days of the date of the sale.

Maltese law provides for any creditor having a separate privilege or charges over any part, appurtenance or accessory of a ship to register the privilege or charge in a ship's register using an instrument executed by the owner in the presence of a witness in the form specified by the minister. On production of this instrument to the registrar, the registrar notifies each charge that has been recorded, stating the day and hour of the record.

Although it is not tantamount to a lien, a seller reserving ownership rights in any part, appurtenance or accessory of a ship may also record his or her interest in the ship's register at any time prior to the registration of a mortgage. The registration of such a charge or reservation of ownership rights preserves the creditor's rights on that part, appurtenance or accessory in relation to any subsequent mortgagee.

Finally, a person claiming a right in or over a vessel pursuant to the provisions of section 37 of the MSA may petition the competent court by Sworn Application for an order prohibiting, for a specified time which cannot exceed one year, any further dealings with that vessel. The applicant may also request the issuance of a provisional order pendente lite that the Court will issue on an ex parte application. The registrar is obliged to comply with any such order, once served with it. He is also obligated to enter a note in the vessel's register recording the order, which would be seen by a third party searching the vessel's register. Claims of a right in or over a vessel are based on:

- a right of ownership;
- being secured by a mortgage;
- being secured by a registered encumbrance;
- being secured by a privilege or a lien over the ship arising by operation of Maltese law or the law applicable to the claim; or
- any other claim that gives rise to a claim in rem against a vessel under Maltese law.

Law stated - 18 April 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Mortgages on foreign flag vessels are recognised under Maltese law, provided that they meet the following conditions:

- the mortgage is validly recorded in the registry of ships of the country under whose laws the ship is documented;
- that the registry is public;
- the mortgage appears upon a search of the registry; and
- the mortgage is granted a preferential and generally equivalent status as a mortgage under the MSA, under the laws of the country where the mortgage is registered.

Once recognised, such mortgages on foreign flag vessels have the same status, rights and priority as mortgages registered on Maltese vessels.

Law stated - 18 April 2024

Enforcement of mortgages

- 25** | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

A mortgage gives rise to various rights in favour of a mortgagee in the event of default, and upon giving notice of default in writing to the mortgagor. These include the rights to take possession of the ship and to sell the ship privately. By virtue of recent amendments to the Aircraft Registration Act and other related laws that apply to shipping, the mortgagee may also ask the court for an order authorising or directing the taking of possession of a vessel, and the court is bound to render full support to the mortgagee as expeditiously as possible.

The notice of default is deemed to have been received by and notified to the mortgagee if it is sent by registered post to the owner's last address that is held by the registrar.

Alternatively, the mortgagee may opt to enforce the mortgage by judicial means, following the precautionary arrest of the mortgaged vessel. The vessel must be physically present within Maltese territorial waters to vest the competent Maltese court with the requisite jurisdiction. A mortgage constitutes an executive title according to law. As such, in the event of default, it becomes enforceable by the mortgagee two days after an official letter or other judicial act (accompanied, in appropriate cases, by an affidavit quantifying the amount due) is served on the mortgagor. Once this time has passed, the mortgagee may proceed to apply for the judicial sale by auction of the arrested vessel.

The mortgagee in possession of an enforceable executive title may ask the court's approval for the private sale of the vessel in favour of an identified buyer, in consideration of a determined price. This application must be supported by appraisals by two independent and reputable valuers, and evidence that the sale is in the interest of all known creditors and that the price offered is reasonable in the circumstances. Such an application will receive a hearing date within 10 days of filing, but the court will not make any order before the application has been served on such persons that the court, based on circumstances and

information given by the applicant, wishes to make submissions. In the decree accepting the application, the court nominates a person entitled to transfer the vessel, following terms and conditions approved by the court, as though he or she were the vessel's registered owner. This person is required to deposit the price realised with the court within seven days of the sale being completed. A court-approved private sale is an efficient tool for enforcing mortgages under Maltese law.

As an estimate, the process of judicial enforcement of a registered mortgage, starting from the precautionary arrest and culminating in the judicial sale of the vessel, takes four months. If multiple creditors file demands for payment from the proceeds, the court will commence additional proceedings, according to the creditors' rankings as established by law. The mortgagee, being a creditor to whom a liquidated debt is due under an executive title, can apply to the court for authorisation to bid in the judicial auction *animo compensandi* (that is, bid for the vessel, with the original amount owed to the bidder being set off and, should the vessel's sale price exceed the total amount of the bidder's debts and costs, deposit the surplus monies with the court).

Associated costs include all fees and costs relating to the filing and service of all necessary judicial acts, including the precautionary warrant of arrest, the judicial letter rendering the mortgage enforceable and the application demanding the judicial sale by auction or the court-approved private sale of the vessel, including all publication costs and expenses for obtaining any necessary valuations. Such fees and costs are determined on a case-by-case basis and depend upon the amount being claimed as well as any complexities for service arising from the vessel's physical location.

Ultimately, all judicial fees and costs are taxable by the Registrar of Courts, which may be asked to issue a taxed bill of costs. Such officially taxed judicial fees and costs would be recoverable together with the mortgagee's claim. In addition, fees of up to €585 (exclusive of VAT at 18 per cent) are payable to any curator appointed by the court to execute the eventual bill of sale in favour of the successful bidder or buyer.

Finally, court fees calculated at 1 per cent of the price realised at judicial auction, auctioneer's fees at 0.2 per cent of the purchase price and VAT at 18 per cent are payable by the successful bidder.

Also, the buyer in a court-approved private sale pays court fees calculated at:

- 1 per cent, on the first €1 million of the price);
- 0.5 per cent (on the next €4 million to €5 million of the price);
- 0.1 per cent (on the next €5 million to €10 million of the price); and
- 0.01 per cent (on the balance of the price above €10 million).

Interlocutory sales of vessels are permitted under Maltese law. Indeed, the court may order the sale of an arrested ship, depending on the outcome of litigation if, on the creditor's application, it appears that the debtor is insolvent or is unlikely to be able to continue trading and to maintain the asset. In reaching its conclusion, the court will have regard to all the circumstances, including the nature of the claim and of the defence, as well as such steps as the defendant shipowner may have taken to secure the claim or otherwise to preserve the ship.

Law stated - 18 April 2024

Sale by mortgagee

- 26** | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

Once a notice of default has been given to the mortgagor, the mortgagee has the right to sell the vessel privately. However, such a sale would not discharge unsatisfied special privileges over the vessel; these enjoy a *droit de suite* over that vessel for a period of one year from the date on which the private sale is recorded in the vessel's register. Only court-approved private sales discharge all special privileges over a vessel. However, these require the vessel to be physically present within Maltese territorial waters for the competent court to have jurisdiction.

Law stated - 18 April 2024

Default under mortgage

- 27** | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

There are no statutory provisions under Maltese law that regulate the appointment of a receiver in the event of a default under a mortgage, or that lay down the duties and powers of a receiver appointed under applicable mortgage provisions. In practice, due to the form of statutory mortgage that is mandated under Maltese law, contractual provisions stipulating a receiver's appointment are provided for in a collateral deed of covenant. While this point has never been tested before a court of law in Malta, a court would probably respect the established principle of freedom of contract, and so would probably uphold such provisions, if they were not offensive to principles of public policy. However, if similar provisions were to be contained in deeds of covenants that are regulated by foreign law, any references to the receiver's powers granted by law, and any reliance made thereon, would require proof of the relevant foreign law, following the applicable principles of conflicts between laws.

Law stated - 18 April 2024

Limitations on rights of self-help

- 28** | What are the limitations on rights of self-help by a mortgagee?

Mortgagees have various rights of self-help in the event of a default of any term or condition of a registered mortgage or of any document or agreement referred to therein. The rights are exercisable upon giving the mortgagor prior notice in writing.

A mortgagee's entitlement to take possession of the vessel subject to the mortgage is one of the main rights available to them. However, this is not an absolute right, since the law

provides that a mortgagee is not the owner of a ship or a share, and the mortgagor does not cease to be owner, except as far as is necessary to make the vessel available as a security for the mortgage debt.

Another important right is the mortgagee's power to sell the mortgaged vessel. However, where more than one person is registered as a mortgagee of the same vessel, a mortgagee cannot sell the ship or share without the agreement of the other mortgagees, except under the order of a court of competent jurisdiction. Furthermore, if the proceeds of sale show a surplus after discharging the mortgage debt, the mortgagee is obliged to deposit the surplus for the benefit of other creditors as well as the mortgagor.

The rights of the mortgagee are not affected by orders issued by a competent court, at the request of a person claiming a right in or over a vessel, that prohibit the mortgagee from having any further dealings with a vessel.

Law stated - 18 April 2024

Duties to owner or third-party creditors

29 | What duties does a mortgagee owe to an owner or third-party creditors?

While the law speaks of the mortgagee's rights, it does not specify any particular statutory duties that the mortgagee owes towards the owner or third-party creditors, other than the obligation to deposit any surplus proceeds of a sale to the court for the benefit of other creditors and the mortgagee, if the mortgagee exercises its power to sell a mortgaged vessel. However, a mortgagee would owe a duty of care towards the owner and third-party creditors. Therefore, a mortgagee exercising his or her rights is required to act with the diligence and prudence of a bonus paterfamilias. Furthermore, when exercising his or her rights, the mortgagee must act lawfully within the ambits of established law and procedure.

Thus, for example, in connection with any procedures undertaken by the mortgagee seeking the judicial sale of a mortgaged vessel in cases where the obligation secured by the mortgage is not a debt certain, liquidated and due, or where the security instrument does not state the maximum sum secured by the mortgage and this amount is not recorded in the register for public notice, to determine the amount certain, liquidated and due or the actual sum due when the mortgage secures a future debt, the mortgagee is required to specify the sum due at the time of enforcement using an affidavit served on the mortgagor. This gives the mortgagee and third-party creditors the opportunity to contest the amount as interested parties.

In a court-approved private sale, along with its application, the mortgagee must provide a court with two appraisals by independent and reputable valuers confirming the vessel's value, and evidence that a private sale is in the interest of all known creditors and the price being offered is reasonable under the circumstances.

Finally, while a registered mortgage is attached to the mortgaged vessel until it is discharged, if a mortgaged vessel is forfeited for any reason permissible at law, the mortgagee's interest in the vessel terminates if they have authorised, consented to or conspired in the act, failure or omission leading to the vessel's forfeiture.

Law stated - 18 April 2024

COLLATERAL

Finance leases

- 30** | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

Finance leases cannot be registered in Malta. However, if the following conditions are satisfied, the Registrar of Shipping can issue a certificate of registry in the name of the charterer or lessee if a Maltese-flagged vessel is operated under a charter or lease:

- payment by the charterer or lessee of annual registration fees in respect of the vessel, in addition to that paid by the owner;
- such a ship not being bareboat charter registered in a foreign registry;
- submission to the Registrar General of an application made by such charterer or lessee, accompanied by a copy of the charter agreement or the lease agreement; and
- procurement of written consent of the owners of the ship and all registered mortgagees.

Law stated - 18 April 2024

- 31** | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

We are not aware of any decision by the Maltese courts recharacterising a 'finance lease' as a 'financing contract'. There are no known provisions in Maltese law enabling a court to recharacterise a 'finance lease' as a 'financing contract'. However, when interpreting contracts, the courts look at the transaction's object and substance and are not influenced by what the parties involved call it.

Law stated - 18 April 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

A shipowner enters into a general assignment of earnings, insurance and requisition compensation in favour of the mortgagee, formed by a private contract between the parties. The debtor must be notified of any general assignment unless the debtor has acknowledged it. There are no additional requirements to be satisfied for a general assignment to be perfected.

If a general assignment is regulated by a foreign law, that law's requirements regarding validity would override Maltese law and would need to be satisfied. Unlike a mortgage, or a privilege in favour of the unpaid seller, such a general assignment is not a registrable document, and neither are any charges registered against the shipowner in the registry of companies. Therefore, such a general assignment does not constitute a security interest under Maltese law.

Law stated - 18 April 2024

33 | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

The only security interests against non-vessel collateral that must be registered to be enforceable are pledges of securities of Maltese-registered companies. This is done by filing a Notice of Pledge on the statutory form with the Registrar of Companies within 14 days of the pledge being granted. However, if a security interest is taken out as a general hypothec over all the property of a Maltese debtor or another obligee, or if any security interests are taken out in the form of special hypothecs or special privileges on any specified immovable property situated in Malta, then such securities must be granted as a public notarial deed to be valid.

In addition, if the property concerned is situated within a compulsory land registration area, the security interests must be recorded in the Public Registry and the Land Registry to be enforceable.

Law stated - 18 April 2024

34 | How is a security interest over a deposit account established? How is a security interest perfected?

A security interest over a bank account in Malta may be established by the granting of a pledge. Such a pledge is affected by an instrument in writing, pursuant to the applicable provisions of the Civil Code. The execution of such a pledge serves as a written acknowledgement of the pledge, giving rise to a cause of preference. Although such a pledge constitutes a security interest in the thing pledged, it does not have to be registered.

These pledges confer the creditor with the right to obtain payment out of the thing pledged, with privilege over other creditors as provided by Title XXIII of the Civil Code. The debt due to a pledgee over the thing that he or she holds as a pledge constitutes one of the special privileged debts over particular movables, conferring the pledgee with a right of preference over the other creditors, including hypothecary creditors.

Law stated - 18 April 2024

35 | How are security interests in non-vessel collateral enforced?

Enforcement of a pledge of shares

In the event of a default, a pledgee may apply for the judicial sale of the shares and, after giving notice by a judicial act to the pledgor and the company, dispose of the pledged shares or appropriate them as settlement of the debt due. In cases where the Financial Collateral Arrangements Regulations apply, the provisions contained in the relevant agreement will be followed.

Enforcement of a pledge over a deposit account

The law provides that where the thing pledged is a debt, the pledgee shall be responsible for the collection of the debt on its maturity and shall place the monies (or other things received) as agreed or as the court determines, failing such agreement. Furthermore, if the debt is due, the pledgee may retain, from any monies received, an amount sufficient to satisfy his or her rights and deliver the remainder to the pledger.

In the case of other security interests in non-vessel collateral, typically in the form of a general assignment of earnings, insurance and requisition compensation, these would be enforceable under their own governing law.

General hypothec over all the property

In the event of any general hypothec over the property of a Maltese debtor or another obligee, or in the event of any security interests being taken out in the form of a special hypothec or a special privilege on specified immovable property situated in Malta, provided that the debt referred to in the deed is certain, liquidated and due and does not consist of the performance of an act, a creditor can enforce the pledge by filing a recognised executive act (such as a judicial sale by auction of the immovable property concerned), two days after serving the debtor with an intimation for payment through a judicial act.

Law stated - 18 April 2024

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Pledges of securities are established by written instruments. For securities in a Maltese company to be pledged, that company's memorandum and articles of association should expressly permit this. Maltese law provides for complete freedom of contract, with no statutory form or other formality required. While it is not necessary to deliver physical share certificates (Maltese law does not allow the issuance of bearer share certificates) since the share certificates are not documents of title, in practice, it is usual for the share certificates of shares being pledged to be delivered to the pledgee whilst the pledge is in force.

A Notice of Pledge with the Registrar of Companies must be filed. This is recorded in the register of the company whose securities are pledged. Share pledges are commonly sought after by lenders as part of the total security package in a ship-financing transaction involving a Maltese company as a borrower or obligee.

Law stated - 18 April 2024

- 37** | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

There is no risk that a pledgee may be exposed to any debts or other liabilities of the company whose shares are pledged in its favour, whether prior or subsequent to the enforcement of the share pledge. No such liability arises at law.

Law stated - 18 April 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

- 38** | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

A company that is registered in, and effectively managed and controlled from, Malta, is deemed to be resident and domiciled in Malta for the Income Tax Act. It is liable for corporate tax on any taxable income, wherever derived, resulting from its Maltese audited accounts. Malta's corporate tax rate is 35 per cent on taxable profits. A company's tax burden can be reduced by applying relief available under double tax treaties and provisions for unilateral relief from double taxation, including the flat rate foreign tax credit. In addition, Malta's tax imputation system allows shareholders in Maltese companies to claim refunds of six-sevenths (85.71 per cent) or two-thirds (66.67 per cent) on corporate-level taxes (depending on whether double-taxation relief has been claimed).

If a Maltese-registered company owns and operates a Maltese-registered ship, provided the vessel is declared a tonnage tax ship and all applicable conditions, including the payment of tonnage taxes, are satisfied, under the provisions of the Merchant Shipping (Taxation and Other Matters Relating to Shipping Organisations) Regulations (the Tax Regulations), any profits derived by the owner from operating that vessel's shipping activities, whether under charter or another commercial arrangement (except for bareboat charters), are not subject to domestic taxation in Malta.

A foreign company may register a vessel in Malta by registering as an international owner with the Registrar of Shipping and appointing a resident agent in Malta. Foreign owners are not subject to Malta's domestic taxes as they are not tax-resident. Registering a vessel in this way does not establish a branch of a company or another permanent establishment in Malta. However, if a foreign company does register a branch in Malta, only its income arising in or remitted to Malta is subject to domestic taxes, and these are subject to provisions in double taxation treaties concerning the taxation of shipping income. These provisions typically provide that profits from the operation of ships in international traffic are only taxable in the contracting state where the enterprise's effective management is situated.

The Tax Regulations were recently updated following an investigation into Malta's tonnage tax regime by the European Commission.

Law stated - 18 April 2024

Tonnage tax

39 | Is there an optional tonnage tax exempting vessel owners from tax on income?

A tonnage tax system is available for organisations owning or operating vessels as tonnage tax ships.

For the Tax Regulations, such organisations must be organised in and exist under the laws of a European Union or European Economic Area member state (a union state) and the ship must be registered under the laws of a union state (a union ship). A union ship qualifies as a tonnage tax ship if all applicable conditions relating to the tonnage tax system are satisfied. A non-union ship may qualify if the strategic and commercial management of all of the ships owned, managed or operated by its organisation is carried out from within the EU, and the minister responsible for shipping is satisfied with the relevant thresholds relating to the organisation's ownership and operation of a Union State-flagged fleet.

The tonnage tax system exempts vessel owners from paying domestic tax on profits derived from shipping activities involving such vessels. 'Shipping activities' refers to:

- the international carriage of goods or passengers by sea in terms of the EU Maritime State Aid Guidelines;
- activities that are eligible for tonnage tax purposes by the European Commission; and
- activities that are integral or directly linked to the business of operating tonnage tax ships, when carried out in conjunction with the above-described activities.

This system does not apply to ships chartered under bareboat terms unless the ship is chartered to a shipping organisation within the same group, or is chartered owing to short-term overcapacity and the charter's term is less than three years.

To benefit from the tonnage tax regime, vessel owners apply to the Registrar General. The application must include the name and registered office of the shipping organisation, and the name and tonnage of the vessel the organisation wishes to own, manage or operate. The vessel's tonnage tax status, irrespective of its net tonnage, is then declared by the shipping minister and the minister of finance. If this application is not made, or if a vessel's owner opts out of this regime, Malta's standard corporate tax regime would apply to the company.

A vessel owner may opt out of the tonnage tax regime by tendering notice in writing to the Registrar General. Once notice is given, the vessel owner irrevocably waives all concessions, exemptions, privileges and other benefits granted or allowed by the Tax Regulations.

Law stated - 18 April 2024

Tax incentives

40 | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

If a non-Maltese registered ship is declared a tonnage tax ship, the Tax Regulations grant relief for any tonnage tax imposed under the laws of the vessel's flag state subject to the minimum payment of 25 per cent of the applicable Malta tonnage tax.

The Tax Regulations also provide that no further taxes under the Income Tax Act are payable on a shipping organisation's income, profits or gains derived from the sale or transfer of a tonnage tax ship that was acquired and sold, or from the disposal of any rights to acquire a ship that would qualify as a tonnage tax ship when delivered or completed.

Furthermore, the distribution of profits derived from shipping activities to shareholders is exempt from tax if the recipient is a company (the second company). Any dividend paid to members of the second company shall, to the extent that such a dividend is paid out of profits derived from shipping activities, not be charged tax. If the member is a company, these provisions apply mutatis mutandis, as though references to the licensed shipping organisation are references to the second company and references to the second company are references to that member. This proviso continues to apply for as long as profits derived from shipping activities are distributed by dividends.

In addition, under the Duty on Documents and Transfers Act, a company that is registered in Malta, or a company that has the majority of its business interests outside Malta (which is determined by the Commissioner of Inland Revenue) can apply for an exemption from duty on documents on acquisitions or disposals of marketable securities in or by it. These are cases where more than 50 per cent of the ordinary share capital, voting rights and rights to profits in a company are held by a person who:

- is not resident in Malta;
- is not directly or indirectly owned and controlled by an individual who is ordinarily resident and domiciled in Malta; or
- acts on behalf of an individual who is ordinarily resident and domiciled in Malta.

Finally, the External Transactions Act (which applies to external transactions arising from the transfer or movement of capital) empowers the Minister of Finance to impose restrictions on capital transactions and related payments, whether of a specific or a generic nature, on the recommendation of the Central Bank of Malta and in exceptional circumstances. These restrictions cannot be imposed in relation to an EU member state; or to transactions connected with a shipping company's ownership, operation, administration, management, purchase or financing of a tonnage tax ship; or to any other shipping activity or ancillary transaction.

No person may receive a benefit from the Tax Regulations exceeding those allowed in terms of the Community Guidelines on State Aid to Maritime Transport, including, but not limited to, section 11 of the Guidelines.

Law stated - 18 April 2024

Other tax provisions

- 41** | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

Tax provisions applicable to income derived from shipping activities, including income derived by a ship manager from ship management activities, are contained in the Merchant Shipping Act and the Tax Regulations.

The Income Tax Act exempts any interest, discount, premium or royalties accruing to or derived by any person not resident in Malta from domestic income tax unless that person was engaged in trade or business in Malta through a permanent establishment situated in Malta, where the royalties or the debt claim, in respect of which the interest, discount or premium is paid, are effectively connected with such permanent establishment.

Law stated - 18 April 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

- 42** | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Shipping companies in Malta are generally regulated by the special provisions of the Merchant Shipping (Shipping Organisations – Private Company) Regulations. Article 164 refers to provisions in the Companies Act dealing with company reconstructions, which also apply to shipping companies and may have the effect of avoiding the need to resort to winding-up procedures.

Where a compromise or arrangement is proposed between a company and its creditors or members (or a class of either), the company, a creditor, a member or a liquidator (in the case of the company being wound up) may apply to a court to order a meeting of the creditors, members of the company or a class of members.

Alternatively, the company or a creditor (having the support of at least two-thirds of the creditors or class of creditors), may seek the appointment of a mediator, under article 20 of the Mediation Act. Such a mediator would organise a meeting of the creditors, for the creditors and the company to reach an arrangement.

Any time after the filing of a winding-up application, the competent court may appoint a provisional administrator who will enjoy the powers the appointing court provides. This administrator would hold office until the application is dismissed or the winding-up order is made. The court may also order a stay of proceedings at any time between the filing of a winding-up application and the winding-up order being made, upon an application by the company or its creditors.

Once the court makes a winding-up order, a liquidator is appointed. The liquidator will take custody or control of all the property and rights to which he or she has reasonable cause

to believe the company is entitled. However, the law expressly provides that the liquidator cannot:

- dispossess a mortgagee in possession of a ship subject to a registered mortgage;
- dispossess the holder of any recognised possessory lien; or
- hinder or obstruct a registered mortgagee from exercising their rights, including taking possession of the ship according to law.

The law furthermore provides that any disposition of the company's property, except a ship by a mortgagee, transfer of shares (other than of pledged shares by the pledgee), or any transaction involving the closing out of a netting provision in terms of the Set-off and Netting on Insolvency Act, made after the date of filing of the winding-up application (the 'deemed date of dissolution') will be void unless the court orders otherwise.

Finally, any time after the filing of a winding-up application and before a winding-up order is made, the court may order a stay of any judicial proceeding pending against the company, on such terms and conditions it deems fit, upon an application by the company or a creditor. However, proceedings instituted by the holder of a registered mortgage or a privileged creditor over a ship owned by the company may not be stayed.

Law stated - 18 April 2024

Foreign court rulings

43 | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

Except where the Council Regulation (EC) 1346/2000 on Insolvency Proceedings (the Regulation) applies, the liquidation or reorganisation of Maltese-registered companies falls under the jurisdiction of competent Maltese courts. Liquidation proceedings are regulated under the Maltese laws that a company is incorporated under and consequently subject to and regulated by. The Regulation was superseded by the Recast Insolvency Regulation (Regulation (EU) No. 2015/848) (the Recast Regulation) on 26 June 2015, which applies to insolvency proceedings beginning from 26 June 2017.

As Malta is an EU member state, the provisions of the Regulation and the Recast Regulation have a direct effect on the law. Under the Regulation, the courts of the member state where the debtor's main interests are located have jurisdiction to open insolvency proceedings (the primary member state). Secondary proceedings may be opened in other member states within which the debtor has an establishment, although the law of the primary member state governs the opening, conduct and closure of insolvency proceedings, including the determination of claims. Therefore, Maltese courts are obliged to recognise the opening of insolvency proceedings by a competent court in any other EU member state.

Reorganisation and insolvency proceedings that commence outside the EU, and proceedings concerning non-Maltese-registered companies, are subject to the Code of Organisation's and Civil Procedure's provisions regarding the recognition and enforcement

of foreign judgments; therefore, an exequatur by the competent Maltese court would need to be obtained.

Law stated - 18 April 2024

Model Law on Cross-Border Insolvency

- 44** | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

Malta has not adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law.

However, the Regulation and the Recast Regulation have a direct effect, as Malta is an EU member state. They apply to proceedings where the centre of the debtor's main interests is located within the EU. Any judgment opening insolvency proceedings handed down by a court in an EU member state that has jurisdiction is recognised by other member states from the time that it becomes effective during the opening of proceedings. Otherwise, any judgment given in the context of foreign insolvency proceedings must be recognised and enforced in Malta under national law.

Law stated - 18 April 2024

Order of priority

- 45** | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

The general rule is that ships and other vessels, including all equipment, machinery and accessories belonging thereto, whether onboard or temporarily removed, constitute a class of movables that form separate and distinct assets within the owner's estate for the security of actions and claims to which the vessel is subject. In the case of a ship owner's insolvency, all actions and claims a ship is subject to take preference over the owner's other debts.

Following the judicial sale of an arrested vessel or a court-approved private sale, all claims against the vessel are transferred to the resulting fund that is deposited under the court's authority.

Registered mortgages are ranked among themselves in order of priority of date and time. All other maritime claims that do not enjoy a ranking preference rank *pari passu*.

Concerning fraudulent preferences, the provisions of law that apply to the winding-up antecedent transactions, which, in the writers' opinion applies to shipping companies, extend to any payment, execution or other act relating to property or rights made or done by or against a company, and any obligation incurred by the company within six months before its dissolution. Such payments are deemed to be fraudulent preferences against the company's creditors, whether they are of a gratuitous or onerous nature, if they constitute an undervaluation or if a preference is given as defined by the Companies Act.

Law stated - 18 April 2024

Security provision by vessel owner

- 46** | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

A vessel owner may provide security in favour of a related or unrelated company, provided the transaction falls within the guarantor's memorandum of association, and the provision of the security is authorised by its memorandum and articles of association. There are no requirements beyond ensuring such authorisation exists, but it would be prudent to establish a commercial interest in the vessel owner. Such security is typically granted by a guarantee agreement secured by a mortgage over the guarantor's vessel. Such a guarantee can be granted by a mortgage on the guarantor's vessel without requiring an underlying guarantee agreement. There are no requisites for the enforcement of such a third security, but if a mortgage is involved then the normal procedures used to enforce a mortgage would apply.

Law stated - 18 April 2024

Law of fraudulent transfer

- 47** | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Article 303(1) of the Companies Act applies to shipping companies due to a lacuna in the Merchant Shipping (Shipping Organisations – Private Companies) Regulations in this matter. The Act provides that the granting of, among other things, a privilege, hypothec or another charge (including a mortgage) by a company and any obligation incurred by a company within six months before its dissolution is a fraudulent preference against the dissolved company's creditors. This is the case whether it is of a gratuitous or onerous nature, or if it constitutes an undervalued transaction or a preference is given, unless the person in whose favour the grant was made or incurred proves he or she did not know and did not have reason to believe the company was likely to be dissolved. In the event of a company being dissolved, every fraudulent preference is considered void. The law provides details as to when a company is considered to have entered into an undervalued transaction and is considered to have given preferential treatment to a person.

Third-party creditors can challenge the granting of a mortgage by instituting an *actio pauliana*, under article 1144 of the Civil Code, as creditors can impeach fraudulent acts made by a debtor regarding their claims. In these cases, as a mortgage is considered to be an act under an onerous title, despite a mortgage being executed unilaterally by the mortgagor, the creditor would need to prove there was fraud by both contracting parties.

Otherwise, the law provides that a registered mortgage is not affected by the insolvency of the mortgagor occurring after the mortgage's date of registration, and such mortgages,

privileges, actions or claims shall take preference on the said vessel, over all other debts, claims or interests of any of the bankrupt's creditors or any curator, trustee or receiver acting on behalf of creditors.

Law stated - 18 April 2024

Petitions by creditors

- 48** | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

Any creditor having a debt due and unpaid over €23,000 may apply for the winding up of the company before a competent court. On hearing the application, the court may either dismiss it or make a winding-up order (together with such other orders, including provisional orders, it deems fit).

When the company's sole asset is a ship subject to a registered mortgage or other maritime claims, and the outstanding sums due under the mortgage or claims exceed the ship's value, the court will not issue a winding-up order in respect of the debtor company until it is satisfied that there are excess funds deriving to the company in Malta concerning which a winding-up order may usefully be made. Furthermore, the court may only determine the issue after enforcement proceedings instituted by the mortgagee or maritime claimants, whether they are private or public and carried out in Malta or overseas, are complete.

Law stated - 18 April 2024

Model Netting Act

- 49** | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

In 2003, the Set-off and Netting on Insolvency Act (chapter 459, Laws of Malta) was introduced into Maltese law. Although this act did not directly adopt the ISDA Model Netting Act, an ISDA master agreement would be enforceable in Malta, as the Act's provisions and regulations reflect the ISDA's provisions. They allow for the enforcement of close-out netting provisions, before or after a bankruptcy or insolvency, in respect of mutual debts, credits or dealings that arose or occurred before a party's insolvency against the other contracting party, a security provider, the liquidator and the parties' creditors.

Law stated - 18 April 2024

UPDATE AND TRENDS

Current developments

- 50** | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

Amendments to the Companies Act enacted in 2020 empowered the minister responsible for making regulations to form, constitute, authorise and regulate cell companies carrying on or engaged in shipping or aviation business, and enable a company carrying on or engaged in shipping or aviation business to convert into a cell company.

'Shipping business' for this purpose means:

1. the ownership, operation (under charter, lease or otherwise), administration and management (including personnel engagement, employment or management, whether onboard or otherwise) of any ship and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith;
2. the holding of shares or other equity interests in any undertaking, whether Maltese or otherwise, established solely or mainly for the carrying on, or carrying out of any one or more of, the activities referred to in (1) and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith;
3. the activities of a parent company holding shares or other equity interests in undertakings, whether Maltese or otherwise, where any one or some of these undertakings is established solely or mainly for the carrying on or carrying out of any one or more of the activities referred to in (1), and the carrying on of all ancillary financial, security, commercial and other activities in connection therewith;
4. the raising of capital through loans, the issuing of guarantees or the issuing of securities by an undertaking when the purpose of such activity is to achieve the objects or activities mentioned in (1) to (3); and
5. the carrying on of such other objects or activities within the maritime sector, and related or connected matters that the minister may, on the advice of the Malta Financial Services Authority, prescribe.

The amendments also empowered the Minister to make regulations to form, constitute, authorise and regulate incorporated cell companies and incorporated cells as limited liability companies with separate legal personalities, which makes it possible for such companies to carry on or be engaged in shipping or aviation business.

Pursuant to these enabling provisions the Minister has now promulgated the Companies Act (Shipping and Aviation Cell Companies) Regulations thereby allowing players in the shipping and aviation industries to incorporate cell companies within their corporate structures and/or to convert existing companies into cell companies.

Cell companies have long been regulated by Maltese legislation, but until the aforementioned amendments and regulations, the formation and conversion of cell companies were confined to the remits of the insurance and securitisation sectors.

The use of such alternative structures is an innovation that will further enhance Malta's reputation as a leading jurisdiction in the shipping sector.

Law stated - 18 April 2024



Kevin F Dingli
Suzanne Shaw
Louisa Bencini Dingli

kevin@dingli.com.mt
suzanne@dingli.com.mt
louisa@dingli.com.mt

Dingli & Dingli Law Firm

[Read more from this firm on Lexology](#)

Marshall Islands

[John Imhof](#)

[Vedder Price PC](#)

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Marshall Islands law establishes the requirements for a vessel owner to demonstrate and affirm the facts of direct ownership of a vessel coming into the Marshall Islands flag. Although these requirements do not address ultimate or intermediate tiers of ownership, such as identification of parent entities in ownership structures, amendments to the Marshall Islands Associations Law that became effective in November 2017 require all Marshall Islands corporations, partnerships, limited partnerships and limited liability companies that are not publicly traded to maintain records of their ultimate beneficial ownership, and if they are non-resident domestic entities, to produce these records if requested by certain Marshall Islands authorities (eg, the [Business Corporations Act](#) (BCA), section 80, as to corporations, and the [Limited Liability Company Act](#), section 22, as to limited liability companies). The same amendments require domestic Marshall Islands corporations that have issued bearer shares to record the ultimate beneficial ownership of such bearer shares with the registered agent for non-resident domestic entities for such bearer shares to maintain their validity (BCA, section 80(3)(c)).

To register a vessel in the Marshall Islands, the owner must 'furnish proof satisfactory to' the Commissioner or any Deputy Commissioner of Maritime Affairs demonstrating, among other things, the ownership of the vessel (the [Documentation and Identification of Vessels Act](#), section 208). Section 209(1) of the Documentation and Identification of Vessels Act requires that a written oath by sworn affidavit be submitted by an owner or owner's authorised representative for registration 'declaring [. . .] the name and residence of any other owner and his citizenship, each owner's proportion, and the name of the affiant and his citizenship'.

Whenever a vessel operating under the Marshall Islands flag is sold or transferred, section 225(1) of the Documentation and Identification of Vessels Act requires that the sale or transfer be evidenced 'by a written instrument in the nature of a bill of sale to which is attached a true copy of the vessel's latest Certificate of Registry'. For registration of a new building, the registrant must provide a builder's certificate from the shipbuilder, certifying, among other things, that the builder constructed or directed the construction of the vessel, the person for whom it was built and the date of delivery (see the Documentation and Identification of Vessels Act, section 226).

Law stated - 24 May 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

The only maritime liens that can be recorded against a vessel in the Marshall Islands registry are preferred mortgage liens, which can be found by searching the record, or more

practically, by requesting a certificate of ownership and encumbrance with respect to the vessel from the office of the Deputy Commissioner of Maritime Affairs. Marshall Islands law does not provide a vehicle for the registration of other maritime liens.

Law stated - 24 May 2024

- 3** | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

One can determine whether there are any preferred mortgage liens registered against a specific vessel by searching the record, or more practically, by requesting a certificate of ownership and encumbrance from the office of the Deputy Commissioner of Maritime Affairs. A lien or charge against a vessel arising from something other than a preferred mortgage need not be filed under Marshall Islands law. There is no filing office for such liens to be registered or recorded. Security interests, liens, charges or other encumbrances may be granted by an owner or disponent owner over charter hire, freights and other earnings of a vessel or other collateral, such as stock and other ownership interests, as credit support in a ship finance transaction. These are usually recorded in the domicile of the assignor or pledgor, for example, as charges registered in the assignor or pledgor's company register or as financing statements filed under the Uniform Commercial Code in the United States.

Law stated - 24 May 2024

Public registry searches

- 4** | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

The obligor's due organisation can be determined by reviewing certified copies of its organisational documents and company records, including, for example, its certificate and articles of incorporation and by-laws, in the case of a corporation, and its certificate of formation, in the case of a limited liability company. The obligor's good standing can be determined by obtaining a certificate of goodstanding as to the obligor from the Trust Company of the Marshall Islands, Inc, through International Registries, Inc.

Law stated - 24 May 2024

- 5** | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Marshall Islands law does not require the identities of equity interest holders, directors, officers or authorised signatories to be disclosed in a public registry. In ship finance transactions, this information is often made available in officer's certificates. Additional information and supporting documentation are often required to be disclosed in ship

finance transactions, including, in the case of corporations, share transfer ledgers, shareholder resolutions electing directors, and board resolutions appointing officers.

Law stated - 24 May 2024

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Each Marshall Islands corporation is empowered to guarantee the obligations of others unless specifically limited in the BCA or in the articles of incorporation of the corporation (BCA, section 15(g)) provided the guarantee is in furtherance of its corporate purposes. If that is not the case, or to avoid the 'corporate purposes' issue entirely, section 16 of the BCA allows a corporation to issue a guarantee, regardless of whether it is in furtherance of its corporate purposes, by obtaining the affirmative vote of the holders of a majority of the corporation's outstanding shares at a shareholders' meeting, the written consent of all shareholders, or if the corporation's articles of incorporation so provide, the written consent of the holders of a majority of the corporation's outstanding shares (see BCA, sections 16 and 67). The same procedure can be used to authorise the corporation to secure the guarantee with a grant of a security interest in corporate property (see BCA, sections 16 and 67).

Law stated - 24 May 2024

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

There is no requirement that a foreign lender qualify to do business in the Marshall Islands to extend credit to Marshall Islands persons in respect of vessels registered under the Documentation and Identification of Vessels Act. Lenders seeking to make loans internally in the territory of the Marshall Islands must comply with local laws affecting banks and other business operations.

Law stated - 24 May 2024

REPAYMENT

Central bank and regulatory approval

- 8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

There is no such requirement in Marshall Islands law with respect to non-resident domestic borrowers repaying loans outside the Marshall Islands. Section 310 of the [Preferred Ship Mortgage and Maritime Liens Act](#) permits obligations secured by a preferred mortgage to be denominated in any unit or units of account or currency as the parties may agree.

Law stated - 24 May 2024

Usury laws

9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

Section 312 of the Preferred Ship Mortgage and Maritime Liens Act specifically provides that 'a Preferred Mortgage may secure such interest, including interest on interest, on an obligation secured by the mortgage as the parties may agree'. This provision is based on a similar provision in the US Commercial Instruments and Maritime Liens Act. See [46 USC section 31322\(b\)](#). Bearing in mind that few Marshall Islands-flagged vessels in foreign trade are arrested and foreclosed upon in the Marshall Islands, it will generally fall to the jurisdiction in which a vessel is arrested to foreclose a preferred mortgage to determine whether section 312 would be enforceable or against public policy in the place of arrest. We know of no reported cases in which a court has upheld a usury defence in the face of provisions such as section 312 of the Preferred Ship Mortgage and Maritime Liens Act.

Law stated - 24 May 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

There are no withholding taxes imposed by the Marshall Islands on the repayment of principal or the payment of interest to non-resident lenders. This is not surprising, as most, if not all, non-resident domestic corporate income is exempt from income tax (see the Business Corporations Act, section 12).

Law stated - 24 May 2024

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

Pursuant to the [Domestic Water Crafts Act 1992](#), as amended, the Marshall Islands has one registry for vessels operated exclusively within Marshall Islands waters. Vessel

documentation for seagoing vessels engaged in foreign trade is done through Part I of the Documentation and Identification of Vessels Act. This registry is considered an open registry, sometimes referred to as a flag of convenience.

Section 203 of the Documentation and Identification of Vessels Act sets out minimum threshold requirements for registration under the Act. Any seagoing vessel engaged in foreign trade is eligible, as are decked commercial fishing vessels of at least 24 metres in length, commercial yachts of at least 24 metres and private yachts of at least 12 metres. Additionally, there is a maximum vessel age limit of 20 years (see section 203(e)), which can be waived under certain conditions. Section 203 also permits the registration of vessels under construction, provided the registrant has title to the vessel under construction and there is no restriction against such registration in the jurisdiction in which the vessel is being built.

The Maritime Act does not define the term 'vessel'. Instead, section 113 of the [Maritime Administration Act](#) contains a provision that adopts the non-statutory general maritime law of the United States as the general maritime law of the Marshall Islands to the extent that it does not conflict with any other provision of Marshall Islands law. The term 'vessel' in United States maritime law, once a part of the general maritime law of the United States, was codified in the mid-19th century, so that the United States statutory definition of 'vessel' may be useful or even persuasive, but is not a definite part of Marshall Islands law. Mobile offshore drilling units have been registered as vessels under the Documentation and Identification of Vessels Act.

Law stated - 24 May 2024

12 | Who may register a vessel in your jurisdiction?

Under section 203 of the Documentation and Identification of Vessels Act, a vessel may be documented if owned by a citizen or national of the Marshall Islands or by a foreign maritime entity qualified in the Marshall Islands. Entities formed under the Associations Law (including the Business Corporations Act (BCA)) are considered nationals. Qualification as a registered foreign maritime entity is achieved under Division 13 of the BCA. These provisions allow foreign entities, otherwise empowered under their home jurisdictions to own vessels, to apply for the registration of, register and then document Marshall Islands-flagged vessels. Section 119(2) of the BCA and its implementing Maritime Regulations require applicants to state, among other things, the nature and powers of the applicant, the address of its principal place of business and the names and addresses of its management. As a practical matter, the threshold for qualification is not significant and numerous Marshall Islands vessels are documented in the names of qualified foreign maritime entities.

Law stated - 24 May 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

The dominant registry in the Marshall Islands is the open international registry. The Documentation and Identification of Vessels Act governs the registration and mortgaging of vessels in foreign trade. This registry dwarfs the purely domestic vessel registry in the Marshall Islands, which is regulated by the Domestic Water Crafts Act 1992, as amended. The international registry requires that the owner of a Marshall Islands vessel be a Marshall Islands citizen, national or qualified foreign maritime entity (the Documentation and Identification of Vessels Act, section 203), but imposes no citizenship requirements on the ownership of such an entity.

Law stated - 24 May 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

- 14** | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

The Marshall Islands follows the American model of ship mortgages, unifying the essential features of a mortgage grant with covenants, representations, warranties, events of default and other provisions. While there are requirements to establish a preferred mortgage, there is no required form as such. A Marshall Islands preferred mortgage is flexible enough to secure any obligation of the mortgagor debtor. A preferred mortgage may secure a term loan, future advances and contingent obligations, including guaranties, swap obligations and other obligations, under present commitments or agreements. A preferred mortgage may secure an agreed-upon maximum amount representing all debts or obligations arising or that may arise between a debtor and a creditor within a specified time period, whether or not such debt or obligations arise pursuant to commitments under the relevant agreement between the debtor and the creditor existing at the time of the mortgage is recorded, provided that the mortgage sets forth, in addition to other terms and conditions, the maximum amount and the maturity date, or a statement of the date of termination if it is other than the maturity date thereof (see the Preferred Ship Mortgage and Maritime Liens Act, section 309).

Under the financing charter provisions enacted in the Marshall Islands in March 2013, the Marshall Islands registry became the first registry to permit the registered owner in a financing charter to record the financing charter as a type of preferred mortgage. These provisions, as further amended, allow the registered owner, typically a financial institution or affiliate, to hold title and be deemed a preferred mortgagee up to 'the maximum aggregate of the nominal amount of all charter hire payments, termination payments, and purchase or put option amounts which could under any circumstances be due and payable under such financing charter, exclusive of any interest, indemnities, expenses, or fees' (the Preferred Ship Mortgage and Maritime Liens Act, section 302A).

Section 302A of the Preferred Ship Mortgage and Maritime Liens Act permits financing structures similar to those used for aircraft and railcar net lease financing. As of 31 December 2022, the Marshall Islands had recorded 257 financing charters as preferred mortgages pursuant to these provisions.

Law stated - 24 May 2024

Required form

15 | Give details of any required form for ship mortgages in your jurisdiction.

There is no required form of Marshall Islands preferred mortgage, as such. Marshall Islands mortgages follow the American model, similar in some respects to what a red-ensign system might include in a deed of covenants. There are, however, elements that must be included in a Marshall Islands mortgage for it to be deemed a 'preferred mortgage.' These elements are more particularly described in the Preferred Ship Mortgage and Maritime Liens Act.

Law stated - 24 May 2024

Registration of mortgages

16 | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

All instruments of 'sale, conveyance, hypothecation, mortgage or assignment of mortgage of any vessel' as well as financing charters are recorded and maintained in the central office of the Marshall Islands Maritime Administrator, in the United States, or by its duly authorised agent elsewhere (the Preferred Ship Mortgage and Maritime Liens Act, sections 302(1) and 302A(1)). A vessel mortgage or financing charter is not valid against any person other than the mortgagor or the charterer, his heirs or devisees and persons having actual notice thereof until the mortgage or financing charter is so recorded (see the Preferred Ship Mortgage and Maritime Liens Act, sections 302(1) and 302A(1)). If the vessel mortgage or financing charter meets all the requirements for recordation, the Maritime Administrator or its duly authorised agent shall record the instrument in an index showing, among other information, the name of the vessel, the names of the parties, the date and time that the vessel mortgage or financing charter was received for recordation and the amount or amounts secured (see the Preferred Ship Mortgage and Maritime Liens Act, sections 302(3) and 302A(1)). As a practical matter, the functions of the Maritime Administrator are delegated to and performed by the Commissioner of Maritime Affairs and various deputy commissioners in New York, London and elsewhere around the world. However, the central repository of all document filings related to vessels is in the United States.

Law stated - 24 May 2024

17 | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

Section 302(3)(e) of the Preferred Ship Mortgage and Maritime Liens Act requires that a mortgage state 'the amount or amounts of the direct or contingent obligations [. . .] that are or may become secured by the mortgage.' In the case of revolver facilities or committed facilities not fully drawn at closing, the mortgage may either be stated as the maximum amount that may be outstanding at any time or as the 'aggregate of all possible advances' (the Preferred Ship Mortgage and Maritime Liens Act, section 309). A mortgage may also secure an agreed-upon maximum amount representing all debts or obligations arising or that may arise between a debtor and a creditor within a specified period, whether or not such debt or obligations arise pursuant to commitments under the relevant agreement between the debtor and the creditor existing at the time the mortgage is recorded (see the Preferred Ship Mortgage and Maritime Liens Act, section 309). Only indebtedness incurred on or before the maturity date or date of termination of a preferred mortgage made 'pursuant to agreement' shall retain its status and ranking as a preferred maritime lien, and a preferred mortgage made 'by agreement' must set forth, in addition to other terms and conditions, the maturity date or a statement of the date of termination if it is other than the maturity date (see the Preferred Ship Mortgage and Maritime Liens Act, section 309). '[W]ritten proof' of the amounts and dates of any documents or evidence of debts must also be submitted in support of the mortgage, and the requirement for written proof or evidence of debts may be satisfied by attaching to the mortgage the documents evidencing such debt (whether in whole, in part or with or without redactions) or 'by describing the terms of the debt in the mortgage, including the total amount' (the Preferred Ship Mortgage and Maritime Liens Act, section 307).

Law stated - 24 May 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

Mortgages are generally registered in favour of a security trustee acting on behalf of lenders in all transactions in which more than one lender is or may become party to the credit agreement that the mortgage is intended to secure.

Law stated - 24 May 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

By use of the security trustee, transfers of the underlying debt positions need not be registered in the Marshall Islands registry.

Law stated - 24 May 2024

- 20** | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

The filing of an instrument transferring the mortgagee's interest is not required to maintain the validity of the mortgage, but should be done to avoid difficulties and delays in establishing the assignee's right to foreclose on the mortgage at some future time. Marshall Islands law does not require the consent of the mortgagor for the assignment of a mortgage, but the mortgagor and mortgagee may agree that the mortgagor's consent is required.

Law stated - 24 May 2024

Maritime liens

21 | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

The Preferred Ship Mortgage and Maritime Liens Act recognises certain maritime liens over vessels, including, among others, maritime liens for damages arising out of tort, crew's wages, general average, salvage, necessities and certain other expenses, fees and costs (eg, the Preferred Ship Mortgage and Maritime Liens Act, sections 318 and 319).

Other than in the case of vessels operating only in the Marshall Islands, it would be highly unusual to arrest a Marshall Islands- or foreign-flagged vessel under the jurisdiction of the Marshall Islands High Court. It is doubtful that any significant number of Marshall Islands-flagged vessels engaged in foreign trade ever call at the Marshall Islands during their service life.

A maritime lien creditor's ability to arrest and foreclose on a vessel in satisfaction of a lien on or an amount owed in respect of an associated or sister vessel will depend on the law of the jurisdiction in which the vessel is arrested, the nature of the lien and the relationship between the vessels.

Law stated - 24 May 2024

22 | What maritime liens rank higher than a mortgage lien?

Although rankings may vary from jurisdiction to jurisdiction, section 318 of the Preferred Ship Mortgage and Maritime Liens Act, which may or may not apply depending on where lien enforcement is sought, states that a preferred mortgage would have priority over all claims except preferred maritime liens for:

- damages arising out of tort;
- certain 'unpaid tonnage taxes, fees, penalties and other charges' (the Documentation and Identification of Vessels Act, section 238(3));
- crew's wages;
- general average;
- salvage (including contract salvage); and

- 'expenses and fees allowed and costs taxed by the court'.

In addition, and depending on the jurisdiction in which lien enforcement is sought, any maritime lien claim for necessities against a vessel could have priority over or be subordinate to the lien of a preferred mortgage on such vessel regardless of when the preferred mortgage was recorded.

As between mortgages, the rule is 'first in time, first in right,' subject to any consensual subordination or intercreditor arrangement between mortgagees.

Law stated - 24 May 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

Only preferred mortgage maritime liens can be recorded against vessels in the Marshall Islands registry. There is no facility or procedure for filing evidence of any other type of lien, maritime or otherwise, against a vessel. In practice, lawyers may file charges in a company's register or file Uniform Commercial Code financing statements against a foreign owner. Such filings are only in the nature of 'belt and braces', and are usually not expected to be relied upon.

Law stated - 24 May 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Section 317 of the Preferred Ship Mortgage and Maritime Liens Act provides that foreign mortgages, hypothecations or similar charges 'created as security upon any documented foreign vessel' are also recognised in the Marshall Islands courts as 'preferred mortgages' if they are 'duly and validly executed and registered' under the laws of the nation in which the foreign vessel's ownership is documented. Marshall Islands law does not distinguish between preferred mortgages on Marshall Islands vessels and foreign preferred mortgages on foreign vessels either in terms of mortgage foreclosure procedures or in the ranking and priority of liens. Differences might arise, however, depending on the jurisdiction in which the liens arose. This goes more to the question of whether a maritime lien is recognised in the place it is claimed to have arisen, such as a bunker lien, which is not universally recognised.

Law stated - 24 May 2024

Enforcement of mortgages

- 25** | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

Other than in the case of vessels operating only in the Marshall Islands, it would be highly unusual to arrest or foreclose on a Marshall Islands- or foreign-flagged vessel under the jurisdiction of the Marshall Islands High Court. It is doubtful that any significant number of Marshall Islands-flagged vessels engaged in foreign trade ever call at the Marshall Islands during their service life.

Law stated - 24 May 2024

Sale by mortgagee

- 26** | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

The Preferred Ship Mortgage and Maritime Liens Act is silent on whether a mortgagee may sell a vessel privately in the Marshall Islands and what effect that would have on claims against the vessel. Section 318 of the Preferred Ship Mortgage and Maritime Liens Act provides that the sale of a vessel in an in rem suit in the Marshall Islands High Court would terminate all pre-existing claims on the vessel. The proceeds would be applied to pay creditor claims.

Section 316(2) of the Preferred Ship Mortgage and Maritime Liens Act does provide that a preferred mortgage on a Marshall Islands vessel may be enforced 'in rem in Admiralty or otherwise in any foreign country in which the vessel shall be found' and defers to the enforcement procedures in the country of arrest.

Generally speaking, a vessel will be 'free and clear' of all liens and claims whatsoever following an arrest and foreclosure sale in a public auction overseas. In the United States it is possible, but highly unusual outside of the bankruptcy context, for a mortgagee to arrange the sale of a vessel privately after arrest subject to confirmation by a federal court. It is unclear at best whether such sales, even if valid in the United States, would be given wide recognition in other countries.

Law stated - 24 May 2024

Default under mortgage

- 27** | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

Section 316 of the Preferred Ship Mortgage and Maritime Liens Act provides that the lien of a preferred mortgage may be enforced in rem against a vessel in the Marshall Islands courts and also provides for in personam action against a shipowner on default of a preferred mortgage on a Marshall Islands vessel. This section also specifically permits

the initiation of in rem proceedings in foreign courts. Any request for the appointment of a receiver would be grounded in the law of the forum in which the vessel is arrested or there is jurisdiction over the person of the shipowner. So, for example, a Marshall Islands vessel might be arrested in the United States under [46 USC section 31325\(b\)\(1\)](#) and a US District Court, acting under 46 USC section 31325(e)(1), might 'appoint a receiver and authorize the receiver to operate the mortgaged vessel'.

Law stated - 24 May 2024

Limitations on rights of self-help

28 | What are the limitations on rights of self-help by a mortgagee?

Most nations insist on the sale of arrested vessels by or through specialised courts, admiralty or otherwise, as a predicate to the discharge of all liens and encumbrances. Resort to self-help remedies as an aid in advance of foreclosure has long been in use in many countries in the enforcement of ship mortgages, including Marshall Islands preferred mortgages. Since Marshall Islands law adopts the non-statutory general maritime law of the United States (see the Maritime Administration Act, section 113), the exercise of self-help remedies pursuant to a mortgage cannot breach the peace.

Law stated - 24 May 2024

Duties to owner or third-party creditors

29 | What duties does a mortgagee owe to an owner or third-party creditors?

Marshall Islands law states the notice requirements for the arrest and foreclosure of vessels by the Marshall Islands High Court. Section 316(1) of the Preferred Ship Mortgage and Maritime Liens Act provides that:

In addition to any notice by publication, actual notice of the commencement of suit shall be given by the libellant, in such manner as the Court directs, to the Master, other ranking officer, or caretaker of the vessel, and to any person who has recorded a notice of claim of an undischarged lien upon the vessel, unless after search by the libellant satisfactory to the Court such person is not found within the [Marshall Islands]. Failure to give such notice shall not constitute a jurisdictional defect, but the libellant shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit.

The provision does not indicate where the libellant might search for any recorded notice of such a claim, and the Preferred Ship Mortgage and Maritime Liens Act, which provides for the registration of vessels and recordation of mortgages, does not provide for the recordation of claims of liens.

Law stated - 24 May 2024

COLLATERAL

Finance leases

- 30** | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

Since early 2013, Marshall Islands law has permitted the recordation of financing charters and elevated their status to a species of preferred mortgage. Section 302A of the Preferred Ship Mortgage and Maritime Liens Act provides that a bareboat or demise charter can be registered for recordation by either the documented owner or the charterer. For the charter to be registered, the charter must be signed and acknowledged by both parties; include the name and official number of the vessel, the date of the charter and the names and addresses of both parties; and state, among other things, the total 'nominal amount of all charter hire payments and termination payments, termination payments, and purchase and put option amounts which could under any circumstances be due and payable under such financing charter, exclusive of any interest, indemnities, expenses, or fees.' Merely registering or recording a document as a financing charter does not make it a financing charter. A court asked to enforce a registered financing charter could determine based on the evidence that the charter is not a financing charter or does not create a security interest in favour of the documented owner under applicable law.

Section 302A also allows a documented owner under a financing charter to mortgage the vessel under more conventional mortgages. In this manner, if a charter is found not to be a 'financing charter' and, therefore, does not create a mortgage lien on the vessel, at least the conventional mortgage would secure the debt on the vessel.

Law stated - 24 May 2024

- 31** | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

A court could determine that a charter registered as a 'financing lease' is not in fact a financing lease because of its economic characteristics and thereupon recharacterise the charter as a true lease, operating agreement or otherwise, leaving the documented owner to be characterised as the true owner and not a secured party. If the documented owner is found to be a true owner, its claim to the vessel would fall behind all creditors. In any case in which this result would seem to be a significant risk, the parties should structure the transaction at the outset to include back-leverage secured by conventional preferred mortgages, however, the concerns that drove the creation of section 302A of the Maritime Act 1990, as recodified at section 302A of the Preferred Ship Mortgage and Maritime Liens Act, as amended, came from the opposite direction — the fears of a titleholder that his or her charter would be recharacterised as an unperfected security interest.

Law stated - 24 May 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

These security interests are rarely created or perfected under Marshall Islands law, but are more often created under the law of another jurisdiction and perfected by filing or other action in the jurisdiction in which the pledgor is organised or deemed located. With regard to charter hire, earnings and other revenue streams, a financial institution, lender or lessor would generally require the payment of all receipts into a designated account controlled by the secured party. This usually, but not always, includes notice of the assignment to the payment obligor, such as a charterer, and the payment obligor's acknowledgement of the pledge.

Law stated - 24 May 2024

- 33** | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

This will depend on several factors, including the nature and location of the collateral or the pledgor of the collateral. In no case is the filing location likely to be in the Marshall Islands. International shipping operating under the Marshall Islands flag will use money centre banks to deposit escrowed funds and to collect charter hire and freights. These types of property will not touch the Marshall Islands. Under the Uniform Commercial Code in the United States, pledges of shares or limited liability company interests issued by Marshall Islands shipowners can be perfected by the delivery of certificated shares or interests into the [possession](#) or control of the secured party. In the United States, there are also provisions for filing financing statements with respect to certain collateral owned by pledgors not present in the United States.

Law stated - 24 May 2024

34 | How is a security interest over a deposit account established? How is a security interest perfected?

Security interests in deposit accounts are rarely created or perfected under Marshall Islands law unless the account is maintained with a bank in the Marshall Islands. These security interests are most often created under the law of another jurisdiction and perfected under the law of the jurisdiction in which the deposit account is located through a pledge and some form of account control agreement in which the pledgor, the deposit bank and the secured party agree that funds in the deposit account will not be released from the account without the consent of the secured party. In the United States, a financing statement may be filed in the jurisdiction in which the debtor is deemed located for the purposes of the Uniform Commercial Code.

Law stated - 24 May 2024

35 | How are security interests in non-vessel collateral enforced?

The method of enforcement will vary according to the collateral type, the jurisdiction in which the collateral is found and the powers that the collateral owner has contractually granted to the secured party in the remedies provisions of the loan, pledge or guaranty documents. The remedies will normally include self-help remedies by statute or by contract as well as foreclosure through the courts, followed by public auction or another approved sale method.

Law stated - 24 May 2024

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Pledges of shares or other equity interests are established by a pledge agreement. The pledge agreement is usually accompanied by the delivery of the original certificates evidencing the pledged securities to the secured party together with signed and undated blank instruments of transfer and undated resignation letters from the board or other management body. If the securities are not certificated, provisions prohibiting the subsequent issuance of certificates are usually included in the pledge agreement or a separate uncertificated securities agreement. Pledges of shares or membership interests issued by Marshall Islands entities are commonly required in connection with loans made to Marshall Islands shipowners.

Law stated - 24 May 2024

37 | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

There is a risk of exposure when the pledgee assumes, in one way or another, the active management of the company whose shares have been pledged. The law that determines that liability will often be that applicable to the underlying tort or civil wrong, whether in connection with a vessel disaster, fraudulent conveyance, defaulted statutory obligation or some other basis for liability.

Law stated - 24 May 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

38 | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

Income earned by non-resident entities (either domestic or foreign) from any source, including the operation of Marshall Islands-flagged vessels registered under the Documentation and Identification of Vessels Act, is exempt from Marshall Islands taxation (see the Business Corporations Act (BCA), section 12). Section 12 of the BCA provides that a non-resident domestic or foreign corporation, partnership, trust, unincorporated association or limited liability company shall be exempt from:

[A]ny corporate tax, net income tax on unincorporated businesses, corporate profit tax, income tax, withholding tax on revenues of the entity, asset tax, tax reporting requirement on revenues of the entity, stamp duty, exchange controls or other fees or taxes other than those imposed by sections 8 [fees on filing articles of incorporation and other documents] and 9 [annual registration fee] [of the BCA].

See also the [Marshall Islands Revised Partnership Act](#), section 73, and the Marshall Islands Limited Partnership Act, section 73.

Law stated - 24 May 2024

Tonnage tax

39 | Is there an optional tonnage tax exempting vessel owners from tax on income?

There is a tonnage tax on vessels registered in the Marshall Islands. However, the tonnage tax is not paid to gain an exemption from income tax, which generally does not apply to non-resident domestic or foreign companies.

Law stated - 24 May 2024

Tax incentives

40 | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

Income earned by non-resident entities (either domestic or foreign) from the operation of Marshall Islands-flagged vessels registered under the Maritime Act is exempt from Marshall Islands taxation (see BCA, section 12; see also the Marshall Islands Revised Partnership Act, section 73, and the Marshall Islands Limited Partnership Act, section 73).

Law stated - 24 May 2024

Other tax provisions

41 | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

To assist the European Union and the Organisation for Economic Cooperation and Development in their efforts to limit the use of preferential tax regimes, the Marshall Islands Registrar responsible for non-resident domestic entities promulgated the [Economic Substance Regulations, 2018](#) (as amended, the ESR).

The ESR apply to all non-resident Marshall Islands corporations, partnerships, limited partnerships and limited liability companies unless their businesses are centrally managed and controlled from outside of the Marshall Islands and they are tax resident outside of the Marshall Islands, and to all Marshall Islands foreign maritime entities whose businesses are centrally managed and controlled in the Marshall Islands unless they are tax resident outside of the Marshall Islands (relevant entities) (the ESR, sections 2(s) and 4). The ESR require that relevant entities engaged in certain relevant activities, including the ownership, operation or chartering of Marshall Islands-flagged vessels, satisfy an economic substance test in relation to those activities (the ESR, sections 2(u) and 4). Although special provisions apply to relevant entities engaged in certain businesses, including pure equity holding companies, a relevant entity will generally satisfy this test if:

- the relevant entity is directed and managed in the Marshall Islands in relation to each relevant activity in accordance with the ESR;
- having regard to the level of each relevant activity carried out in the Marshall Islands, the relevant entity has an adequate number of qualified employees in the Marshall Islands, has an adequate physical presence in the Marshall Islands, and has an adequate amount of expenditure incurred in the Marshall Islands; and
- the relevant entity carries out core income-generating activity in the Marshall Islands in relation to each relevant activity in accordance with the ESR (see the ESR, section 4(2)).

A relevant entity that violates this economic substance test can be liable for a fine of up to US\$50,000, revocation of its formation documents and dissolution, or both, and a relevant entity that violates the economic substance test for two or more consecutive financial periods can be liable for a fine of up to US\$100,000, revocation of its formation documents and dissolution, or both (the ESR, section 7).

Each non-resident domestic Marshall Islands corporation, partnership, limited partnership and limited liability company, as well as each Marshall Islands foreign maritime entity, is required to submit an annual economic substance declaration to the Registrar not later than 12 months after each anniversary of its incorporation, organisation, formation or registration occurring after 1 July 2020 (the ESR, section 6; section 12 of [Guidance and Frequently Asked Questions on Economic Substance](#), published by the Registrar on 17 October 2019, as amended; and [ESR FAQs – What Is the ESR Report Deadline?](#) by International Registries, Inc).

Law stated - 24 May 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

42 | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

No, the Marshall Islands has no such procedure. We understand that it has an internal procedure in the nature of an assignment for the benefit of creditors, but that it is not adequate to work through a shipping insolvency when worldwide jurisdiction over the debtor's assets is critical to success.

Law stated - 24 May 2024

Foreign court rulings

43 | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

There is not much jurisprudence to say definitively, but it is believed that the Marshall Islands would respect such orders assuming the proceedings were not conducted in a manner that violates public policy.

Law stated - 24 May 2024

Model Law on Cross-Border Insolvency

44 | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

Yes, see the [UNCITRAL Model Law on Cross-Border Insolvency Implementation Act](#).

Law stated - 24 May 2024

Order of priority

- 45** | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

The order of priority among creditors is not apparent because no significant bankruptcy proceedings have occurred or are expected to occur in the Marshall Islands and the statutory infrastructure for bankruptcy is not present.

Law stated - 24 May 2024

Security provision by vessel owner

- 46** | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

A Marshall Islands corporation may guarantee the obligations of another entity or provide a security interest in the corporation's property, including a mortgage over the corporation's vessels, to secure the obligations of another in furtherance of the corporate purposes of the corporation, or if not in furtherance of its corporate purposes, by obtaining the affirmative vote of the holders of a majority of the outstanding shares in the corporation at a shareholders' meeting, the written consent of all shareholders, or if the corporation's articles of incorporation so provide, the written consent of the holders of a majority of the outstanding shares (see the Business Corporations Act (BCA), sections 15(g), 16 and 67). The same procedure can be used to authorise the corporation to secure the guarantee with a grant of a security interest in corporate property (see BCA, sections 16 and 67). A lender or other guaranteed party should take care that any such guaranty or grant of security is grounded in the guarantor's corporate purposes and approved by shareholders. The guaranty or grant should recite with some particularity the relevant corporate purposes if any, and related business interests and the reliance of the guaranteed party or secured party on the guaranty or security grant.

Parties relying on the security interest should also be aware that other creditors of the security interest grantor could make arguments that the grant of a security interest could in certain circumstances constitute a fraudulent conveyance, especially when there is no demonstrable benefit to the grantor and the assets of the grantor prove insufficient to satisfy other creditors of the grantor.

Law stated - 24 May 2024

Law of fraudulent transfer

- 47** | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

The applicable law of fraudulent conveyance is not likely to be that of the Marshall Islands. Since a challenge based on a fraudulent conveyance will no doubt come from an adversely affected creditor, the applicable law might be that of the jurisdiction in which the transfer took place or its effects occurred. Several bankruptcy cases begun by Marshall Islands companies have been filed and conducted in the United States, and the United States law of fraudulent conveyances might apply. The commercial civil law of the Marshall Islands is, in any event, largely consistent with United States law. In the unlikely event that a creditor challenged a transfer as fraudulent, there is no reason to believe the analysis or result would be different than that which would occur in United States courts.

Law stated - 24 May 2024

Petitions by creditors

- 48** | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

This chapter is confined to the activities of non-resident Marshall Islands shipping companies doing business with creditors around the world; it is highly unlikely that the troubled debtor or its pursuing creditors would resort to the courts of the Marshall Islands. The overwhelming evidence is that bankruptcy and insolvency proceedings in which survival or reorganisation is sought are brought in United States Bankruptcy Courts by the filing of either a voluntary petition by the debtor or an involuntary petition by a group of creditors.

Law stated - 24 May 2024

Model Netting Act

- 49** | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

The Netting Act, 2023, enacted the 2018 ISDA Model Netting Act with certain modifications.

Law stated - 24 May 2024

UPDATE AND TRENDS

Current developments

- 50** | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

To the author's knowledge, there are no emerging trends or hot topics that would materially affect shipping finance law and regulation in the Republic of the Marshall Islands in the immediate foreseeable future.



The author would like to acknowledge the contributions of John Geager to this chapter.

Law stated - 24 May 2024

VedderPrice

John Imhof

jimhof@vedderprice.com

Vedder Price PC

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Norway

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Title to or legal ownership of a vessel registered in the Norwegian Ordinary Ship Register, the Norwegian International Ship Register (NIS) or the Shipbuilding Register may be demonstrated through an online search engine provided by the Norwegian Maritime Authority, the administrator of the [Ship Registries](#), where all registered information regarding a vessel is available free of charge.

An official transcript of registry or certificate of ownership and encumbrances can be requested by email to the Ship Registries subject to payment of a fee.

Vessels smaller than 15 metres are not required to be registered (with certain exceptions). Information on title to such vessels can be found in the Moveable Property Register.

Law stated - 15 April 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

Mortgages recorded over vessels registered in one of the Ship Registries will appear using the online search engine provided by the [Norwegian Maritime Authority](#). Maritime liens are not required to be registered and must be uncovered by other means.

Law stated - 15 April 2024

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

A search of the Ship Registries will provide information on mortgages recorded over a vessel. Information on any other securities granted in connection with a finance transaction must be obtained by other means (eg, by contacting the relevant credit party). If the credit party is a Norwegian company, information on certain liens (such as a pledge of the company's receivables (factoring pant)) and other legal rights can be obtained by searching the [Company Register](#). Key [documents](#) (such as annual accounts) are available to order.

Law stated - 15 April 2024

Public registry searches

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- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

One can order certain certificates from the Company Register, including a certificate of good standing, transcript from the bankruptcy register and insurance certificates. These certificates can confirm, inter alia, that the obligor is duly organised and registered, that it has not been taken under bankruptcy proceedings and that it has delivered its annual accounts in accordance with the Accounting Act. However, one cannot definitively conclude whether a Norwegian obligor is in good standing solely by a search of public registers or by reliance on such certificates.

Law stated - 15 April 2024

- 5 | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

The Company Register provides information regarding obligors' board members, managers, accountants and auditors (as applicable), including the registered authorised signatories.

All private limited companies are required to keep a shareholder register, which should contain an updated overview of all the company's shareholders. There is no public register of shareholders.

Law stated - 15 April 2024

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Incurrence of guarantee obligations or other actual or contingent debt liabilities by a Norwegian corporation must be approved by the appropriate corporate body of the corporation and signed by a duly authorised person on behalf of the corporation. The most practical example is the Norwegian limited company (AS) where the board of directors has the authority to make decisions on all matters that have not been specifically delegated elsewhere by reason of law or the company's own articles of association. As such, approval of any matters not specifically reserved for the decision of other parties, such as the shareholders, falls within the scope of the board of directors' competence. The company's general manager (CEO) has the competence to decide on matters that fall within the company's day to day business. Ordinarily, this means that guarantees and other debt obligations of minor significance can be approved by and entered into by the general manager on behalf of the company, while more important and significant guarantees and debt liabilities should be approved by the board of directors and signed by an authorised signatory.

Certain related-party transactions require additional documentation to be provided and additional procedures to be followed, and certain transactions such as upstream guarantees for acquisition financings may require approval by the shareholders' meeting.

Law stated - 15 April 2024

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

Foreign lenders with no other presence in Norway do not need to qualify under Norwegian law to extend credit to a Norwegian borrower.

A foreign creditor will not be deemed a Norwegian resident for tax purposes or to have taxable presence through a permanent establishment in Norway solely due to making a loan or extending a credit to a Norwegian obligor.

Law stated - 15 April 2024

REPAYMENT

Central bank and regulatory approval

- 8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

No specific approval is required for the repayment of a loan in foreign currency under Norwegian law. Borrower compliance with any relevant international sanctions regarding the currency in question is required, as well as compliance with general legislation on antiterrorism and money-laundering. Financial institutions are required to report cross-border transactions in and out of Norway.

Law stated - 15 April 2024

Usury laws

- 9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

A contractual provision may be fully or partially set aside if its effects would be unreasonable or contrary to good business practices, as per the Contract Act.

Terms in credit agreements regarding the interest payable or other forms of remuneration that are in obvious disparity with the credit provided, or that take advantage of a relationship of dependency, debt issues or financial distress, are non-binding, as per the Act on Financial Contracts and Financial Assignments.

The threshold for any of these provisions to apply is very high, and only under particular and unusual circumstances could these provisions potentially be relevant in a vessel financing.

Law stated - 15 April 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

A Norwegian obligor will be required to make a withholding or deduction in respect of interest and royalty payments to a non-resident lender when such lender is (1) tax resident in a low-tax jurisdiction, (2) not genuinely established and performing real business activities in an EEA state, and (3) considered a 'related party' to the borrower.

The ordinary withholding tax rate is 15 per cent, which may be reduced or subject to exemption under an applicable tax treaty.

There are no withholding taxes payable on principal payments.

Law stated - 15 April 2024

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

All vessels deemed Norwegian with an overall length of 15 metres or more shall be entered in the Norwegian Ordinary Ship Register or the Norwegian International Ship Register if the conditions for registration are met. A Norwegian vessel of less than 15 metres in overall length may be registered on certain conditions.

To qualify for registration under Norwegian flag, a vessel must fall within the legal definition of 'ship'. The Maritime Code does not include a definition of 'ship'. The common practice has been to apply the traditional maritime understanding, namely a floating facility of a certain size intended or able to move on or through water. It need not be able to move by reason of its own machinery. The assessment is discretionary and determined on a case-by-case basis.

Vessels under construction may be registered in the Shipbuilding Register.

The Norwegian International Ship Register opens for bareboat registration of vessels registered under foreign flag for a period of up to 10 years on certain conditions.

Offshore drilling rigs and mobile offshore drilling units may be considered 'ships' for the purpose of the Maritime Code. A distinction is made between rigs that are permanently fixed and movable structures. If a rig or unit is not considered a 'ship', the owner may still

have a duty to register it, as per section 507 of the Maritime Code. The owner may in certain cases register the rig or unit on a voluntary basis, as per sections 33 and 39 of the Maritime Code.

[Registration](#) provides evidence of title and allows others to acquire information regarding the vessel and the owner.

Law stated - 15 April 2024

12 | Who may register a vessel in your jurisdiction?

A vessel is deemed Norwegian and eligible for registration in the Norwegian Ordinary Ship Register if it is owned by:

- a Norwegian citizen;
- a shipping partnership or other Norwegian company where the members have unlimited liability for the company's obligations provided that Norwegian nationals are part-owners of at least 6/10;
- a limited partnership, provided that Norwegian nationals hold at least 6/10 of the capital invested by the general partners and at least 6/10 of the capital invested by the limited partners; or
- a limited liability company, provided the company's head office and the office of the board are in Norway and the majority of the directors, including the chairperson, are Norwegian nationals resident in Norway for the past two years, and Norwegian nationals own shares or holdings corresponding to at least 6/10 of the share capital and are entitled to exercise at least 6/10 of the voting rights.

Vessels owned by persons or companies encompassed by the EEA Agreement may also be registered under the Norwegian flag provided that the vessel is operated from Norway and is part of economic activities established in Norway. A recreational vessel may be owned by a person residing in Norway and having citizenship of another EEA member state.

The Ministry of Industry and Fisheries may make exceptions from the nationality requirements and allow ships owned by a foreign citizen (not EEA) to be registered under the Norwegian flag.

Vessels that do not satisfy the above requirements may be registered in the Norwegian International Ship Register (NIS) subject to the conditions in section 1 of the NIS Act. A foreign owner may register its vessels in NIS provided it is a limited company, public limited company or a limited partnership with its head office in Norway, a ship-owning partnership with a managing owner (reder) who satisfies the provisions for such position in Chapter 5 of the Maritime Code or it has appointed a process agent who is authorised to accept writs on behalf of the owner and who satisfies the nationality requirements in section 103 of the Maritime Code. NIS-registered vessels must be operated by Norwegian shipping companies (technically or commercially, or both) having their head office in Norway.

The nationality requirements for vessels used in a stationary manner for drilling or exploitation of underwater natural resources and vessels with gross tonnage below 1,000

metric tons (mt) are more relaxed, see section 4 of the Maritime Code. The same applies to certain facilities that are not considered 'ships' and may be registered on a voluntary basis.

Vessels under construction in Norway that will, once built, be at least 10 metres long, or a contract for construction of such vessel in Norway, may upon request by the owner or buyer be registered in the Shipbuilding Register, as per section 31 of the Maritime Code.

Law stated - 15 April 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

On certain conditions, vessels may be registered in the Norwegian International Ship Register, allowing for international shipping operations and foreign ownership.

Law stated - 15 April 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

14 | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

Other than execution liens and maritime liens, Norwegian law does not differentiate between different categories of voluntary mortgages. A mortgage can secure various debt obligations, including contingent obligations and swap obligations, subject to always including a fixed amount for the mortgaged debt or the maximum sum thereby secured.

There is no mandatory form of mortgage; however, the documents must include specific information to be valid and accepted by the Ship Register for registration. Many Norwegian ship mortgages are made in a short standard form format, available online for a small fee. No memorandum of particulars, deed of covenant or similar is required.

More information on the mortgaging of vessels and registration thereof may be found online on the [websites](#) of the Norwegian Maritime Authority.

Law stated - 15 April 2024

Required form

15 | Give details of any required form for ship mortgages in your jurisdiction.

There is no mandatory form of mortgage. However, there are certain content requirements that must be met for validity and eligibility for registration, including, inter alia, a requirement

for a fixed mortgage amount, specific details on the vessel and parties and normal requirements regarding the clarity of the document. Many Norwegian ship mortgages are made on short, three pages only, standard forms available online.

There is no requirement under Norwegian law for a ship mortgage form to be supplemented by a memorandum of particulars, deed of covenants or similar.

Law stated - 15 April 2024

Registration of mortgages

- 16** | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

The Norwegian Maritime Authority maintains the register of mortgages.

This register contains information such as the name of the mortgagee, its organisation number and address. Often, it will also include information on the priority of the mortgage and whether there are any clauses prohibiting the sale of the vessel or a further creation of charges. The details of a mortgage over a vessel can be found by doing a ship search online at the Norwegian Maritime Authorities [website](#).

Only contracted mortgages or execution liens may be registered in the Ship Register, and the effect of such registration is to grant the relevant right legal protection. The registered mortgage may have priority over other unregistered encumbrances, as well as encumbrances registered at a later time.

Law stated - 15 April 2024

- 17** | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

A Norwegian law mortgage document must contain a total, fixed amount for the secured debt or the maximum sum secured thereby. The amount may be stated either in Norwegian or foreign currency. The mortgage does not need to contain a maturity date or be filed with or attach the underlying debt instrument.

Law stated - 15 April 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

A mortgage can be registered in the name of an agent for the benefit of other parties.

Law stated - 15 April 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

If the mortgagee acts as an agent for a lending syndicate, the mortgagee will be registered as the right holder in the Ship Register. Any contractual relationship the lenders may have established within the lending syndicate, as well as any changes to this, does not affect the registration of the mortgage, as long as the agent is to remain the registered mortgagee.

Law stated - 15 April 2024

- 20** | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

Unless contractually required to do so, the mortgagee need not seek the mortgagor's consent in order to transfer its interest to a new lender or agent. The transfer must be registered with the Ship Register.

Law stated - 15 April 2024

Maritime liens

- 21** | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

Other than contractual mortgages and execution liens (mortgages imposed by legal authorities), Norwegian law recognises maritime liens as security for the following monetary claims against the managing owner (reder) or others with managing positions of the vessel (in order of priority):

- master and crew wages;
- transportation fees such as canal fees;
- damages for personal injury arising directly in connection with the activities of the vessel;
- damages for property damage arising directly in connection with the activities of the vessel, provided that claim cannot be resolved contractually; and
- salvage compensation, removal of shipwrecks and contribution to general average.

Maritime liens do not require registration and have priority above any recorded mortgage or execution lien.

A right to arrest a vessel only arises when the claim is a maritime claim as defined in section 92 of the Maritime Code. Claims constituting maritime liens are largely covered, but the



definition of maritime claims is more extensive and covers other claims that may give the debtor a right to arrest the vessel subject to satisfaction of certain conditions.

Where the owner of a vessel to which a claim relates is personally liable for the claim, any other vessel that such owner owned at the time the claim arose may be arrested. Where a person other than the owner of a vessel to which a claim relates is personally liable for the claim, one may arrest any other vessel owned by the person personally liable.

Law stated - 15 April 2024

22 | What maritime liens rank higher than a mortgage lien?

All maritime liens rank higher than a mortgage lien under Norwegian law and are followed by the builder's or repairer's possessory lien over a vessel. The mortgage ranks thereafter.

Law stated - 15 April 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

Execution liens (ie, mortgages created by the legal authorities) must be registered in the Ship Register to obtain legal protection.

Other non-mortgage liens, such as maritime liens, cannot be registered in the Ship Register, but rank higher than all other encumbrances without registration.

Law stated - 15 April 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Mortgages on 'foreign' flag vessels are recognised provided that:

- the mortgage is established and registered according to the legislation of the state of registry;
- the register and documents that, according to the legislation of the state of registry, are to be kept by the registrar are publicly available and transcripts of registry and documents can be obtained from the registrar; and
- the register or document states:
 - the original mortgagee's name and address or that the document is issued to the holder of the document;

- the specific sum for which the mortgage provides security; and
- the date and other circumstances that according to the legislation of the state of registry determines the priority of the mortgage.

Mortgages over vessels being built or that shall be built abroad, are recognised under Norwegian law provided that the mortgage is registered in accordance with the laws of the country where the ship is built.

Foreign registered mortgages rank after maritime liens and retention rights in a similar manner as Norwegian mortgages. The priority of foreign registered mortgages towards other registered encumbrances, the effect such mortgages may otherwise have on third parties and the priority of any statutory encumbrances ranking after registered encumbrances, are determined according to the laws of the state where the vessel is registered.

Law stated - 15 April 2024

Enforcement of mortgages

- 25** | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

A request for enforcement must be addressed to the district court of the area where the ship is situated or expected to be situated in the near future. The request must be presented to the mortgagor, and the mortgagor is granted one month to give a statement regarding any matters of significance to the enforcement. The sale can be avoided by the mortgagor paying off the relevant debt within that same month.

An enforcement sale may be conducted by an administrator or through auction (determined by the district court). A sale by an administrator is advertised and the vessel viewed by potential buyers in the manner common for a voluntary sale of vessels. An auction is conducted either by the district court itself or the Execution and Enforcement Commissioner. The process may take a few months or more, depending on, inter alia, individual circumstances such as possibilities for appeal. Interlocutory sales are not permitted.

Court costs are calculated on the basis of the Court Fee Act and administrator's fee is calculated on the basis of the Regulation on Foreclosure Sales with and Administrator.

Law stated - 15 April 2024

Sale by mortgagee

- 26** | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

A vessel may be sold privately only if agreed upon between the mortgagor and the mortgagee by separate agreement after the relevant event of default has occurred. The sale will not discharge liens unless settled with proceeds of sale.

Law stated - 15 April 2024

Default under mortgage

- 27** | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

The appointment of receivers outside of judicial insolvency proceedings is not a common mechanism under Norwegian law. Whether a Norwegian court will enforce provisions regarding a receiver in a foreign law mortgage will depend on a number of factors, including whether the shipowner is subject to insolvency proceedings, the content of the role of the receiver and the nature of the clause being invoked or action being taken.

Law stated - 15 April 2024

Limitations on rights of self-help

- 28** | What are the limitations on rights of self-help by a mortgagee?

Upon default of the mortgage, the parties may solve the dispute between themselves through agreement (eg by an agreed sale of the vessel). Before such default, the mortgagee must respect the limitations provided by the Maritime Code and the Enforcement Act regarding the process of enforcing mortgages.

Law stated - 15 April 2024

Duties to owner or third-party creditors

- 29** | What duties does a mortgagee owe to an owner or third-party creditors?

The mortgagee's duties to an owner are determined mainly by their contractual agreement (mortgage/security agreement) and mandatory law regarding enforcement of security. As for third-party creditors, Norwegian law contains mandatory rules regarding priority and settlement of claims in insolvency and enforcement scenarios in addition to general provisions regarding liability in connection with, for example, fraudulent actions in insolvency scenarios.

Law stated - 15 April 2024

COLLATERAL

Finance leases

- 30** | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

Pursuant to section 20 of the Maritime Code, finance leases or charters may not be recorded in the Ship Registries.

Law stated - 15 April 2024

- 31** | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

Although possible in theory, if the lessor of a vessel has been duly registered with legal title for the vessel in a recognised ship register a Norwegian court is not likely to recharacterise a vessel lease solely on such grounds in relation to the lessee's creditors.

Law stated - 15 April 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Security interest over the earnings of a vessel, charter contracts, insurances and are provided by way of security over monetary claims payable under the charter, etc. Outright security assignment of entire contracts such as a charter is not permitted under the Pledge Act.

Security over monetary claims can be granted by way of agreement using two different routes:

An ordinary fixed security interest can be created over identifiable existing monetary claims and identifiable future monetary claims against named debtors. The security is perfected by providing a notice of pledge to the debtor of the claim.

A floating security interest can be created over a company's accounts receivables, which will ordinarily include receivables against the charterer under a charter. The security is perfected by way of registration in the Moveable Property Register.

Law stated - 15 April 2024

- 33** | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

There is no general security register in Norway, registration is only required to perfect certain types of security, such as floating charges over accounts receivables and operating

assets (registration in the Moveable Property Register) and security over shares registered in a central securities depository (registration in the central securities depository).

Law stated - 15 April 2024

34 | How is a security interest over a deposit account established? How is a security interest perfected?

Security over bank accounts is established by way of an agreement between the pledgor and pledgee, which must be made in written form and identify the account number or numbers in question. There is no perfection requirement if the pledgee and account bank is the same entity. If the pledgee and account bank are not the same entity there is an additional perfection requirement in the form sending of a notice of pledge to the account bank.

Law stated - 15 April 2024

35 | How are security interests in non-vessel collateral enforced?

Enforcement is done by way of a request for enforcement filed with the Execution and Enforcement Authority, and the enforcement will follow the procedure set out in the Enforcement Act of, which is governed by the Execution and Enforcement Authority or the local courts. Security over shares is enforced by sale of the shares through a broker appointed by the Enforcement Authority. On enforcement of security over monetary claims, such as earnings, insurances and bank account deposits, the pledgee is granted possession of the claim in question so that the pledgee is personally responsible for its collection. Norway has implemented the EU financial collateral directive, and security over financial collateral, such as share pledges, can be enforced in accordance with the security agreement (eg, private sale or appropriation).

Law stated - 15 April 2024

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Share pledges are established by way of agreement between the pledgor and the pledgee. The perfection requirement is either sending of a notice of pledge to the company or (in the case of security over shares registered in a central securities depository) registration in the central securities depository. There are no share certificates for Norwegian limited liability companies, and bearer certificates for Norwegian limited liability companies have no legal effects. Ancillary documents are a shareholder register that includes security interests and a power of attorney for the pledgee to convene and vote in shareholders' meetings after an event of default.

Share pledges are common in Norway.

Law stated - 15 April 2024

- 37** | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

Under Norwegian law, a limited liability company and its shareholders are separate entities, and shareholders cannot be held liable by the creditors for the company's obligations (the corporate veil).

Shareholders (or pledgees) may incur liability on tortious grounds (eg, by intentionally or negligently causing or contributing to a company's economic losses). Norwegian courts may pierce the corporate veil (so as to hold a shareholder (or in this case a pledgee) liable for the company's obligations) if proven that the corporate veil had been intentionally misused by the shareholders (or pledgee) in order to circumvent personal liability.

Law stated - 15 April 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

- 38** | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

Legal and physical persons that are tax resident in Norway are in general liable to pay income taxes in Norway for its global income at an ordinary tax rate of 22 per cent. Owners of vessels may qualify for the optional tonnage tax regime.

Law stated - 15 April 2024

Tonnage tax

- 39** | Is there an optional tonnage tax exempting vessel owners from tax on income?

Norway has an optional tonnage tax regime that has been approved by the EFTA Surveillance Authority (ESA) up to 2027. Qualifying entities may under the tonnage tax regime, subject to certain criteria being met, register under the Norwegian tonnage tax regime and pay income taxes based on the net tonnage of the relevant entity's vessels as opposed to income taxes based on net income, based on the following thresholds (as of 2024):

- 0.90 kroner per day per 100 net tonnes for the first 1,000 net tonnes;
 - 0.18 kroner per day per 1,000 net tonnes exceeding 1,000 up to 10,000 net tonnes;
 - 0.12 kroner per day per 1,000 net tonnes exceeding 10,000 up to 25,000 net tonnes;
- and

- 0.06 kroner per day per 1,000 net tonnes exceeding 25,000 net tonnes.

Financial income, such as interest income, is not covered by the tonnage tax regime and taxed ordinarily. The right to deduct interest costs are limited to the ratio between the qualifying entity's financial capital and total capital. The right to deduct interest costs may also be limited through interest deduction limitation rules.

Law stated - 15 April 2024

Tax incentives

- 40** | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

No special tax incentives other than the tonnage tax regime are granted to shipowners registering vessels in Norway.

Law stated - 15 April 2024

Other tax provisions

- 41** | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

The Norwegian government offers a crew subsidy to employers. For an operator to qualify for the subsidy, the crew needs to work on Norwegian-flagged vessels that are subject to international competition. For the subsidy to apply, a range of conditions needs to be met.

Law stated - 15 April 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

- 42** | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Yes, under the Reconstruction Act, a debtor who is or will within the near future be facing serious financial issues may become the subject of court administered restructuring negotiations.

During the process the company is ordinarily protected against other creditor actions such as other bankruptcy petitions, attachments against assets and enforced sales. Mortgages and other security cannot be enforced during this time without the reconstructor's consent. There are certain exceptions to this, inter alia, enforcement of financial collateral or if the court finds that the debtor has no real need to retain the asset in question.

Law stated - 15 April 2024

Foreign court rulings

- 43** | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

Norwegian courts will recognise opening of certain foreign insolvency proceedings and will respect and enforce rulings in connection with such insolvency proceedings, on certain conditions.

Norway is a member of the Nordic Insolvency Convention 1933, under which insolvency proceedings (except voluntary debt negotiations) opened in the other member states are recognised.

Rulings of a foreign court that are subject to the 2007 Lugano Convention, and that do not fall within the 'bankruptcy exception' of the Convention, will also be respected by Norwegian courts.

Law stated - 15 April 2024

Model Law on Cross-Border Insolvency

- 44** | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

Some of the provisions in the Bankruptcy Act regarding recognition of foreign bankruptcy proceedings have been inspired by the UNCITRAL Model Law on Cross-Border Insolvency, but Norway has not adopted the Model Law.

Law stated - 15 April 2024

Order of priority

- 45** | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

The priority of creditors under Norwegian law is largely determined by the provisions in Chapter 9 of the Creditors Security Act. The order of priority is:

- secured claims;
- mass claims (largely expenses of the estate, including remuneration for the administrator);
- preferential claims of the first degree (salary and other remuneration to employees);
- preferential claims of the second degree (taxes and duties);

- ordinary unsecured claims; and
- subordinated claims.

Creditors may be under a duty to disgorge payments and other assets received (and transactions may be set aside that have been completed) prior to the opening of insolvency proceedings in certain instances, including gifts, extraordinary payments, granting of security, set-off and other adverse transactions.

Law stated - 15 April 2024

Security provision by vessel owner

46 | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

Generally, a Norwegian vessel owner is free to provide security on behalf of other related or unrelated companies, subject to Norwegian financial assistance limitations and subject to the transaction being in compliance with the company's articles of association and in the best interest of the company.

Law stated - 15 April 2024

Law of fraudulent transfer

47 | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Generally, Norwegian law does not recognise the necessity for consideration in contractual agreements.

Third-party creditors may indirectly, through action by the bankruptcy administrator and the bankruptcy estate, on certain conditions challenge the grant of a mortgage due to the insolvency of the mortgagor by reason of by having been provided inside certain (short) hardening periods prior to the insolvency proceedings, by reason of having adverse effects on the debtor or the creditors or by reason of giving preference to one creditor over the others.

Alternatively, a creditor may seek recovery for losses and claim the board of directors, management or others for damages on tortious grounds.

Law stated - 15 April 2024

Petitions by creditors

48 |

How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

A creditor can petition for the initiation of bankruptcy proceedings where the debtor is insolvent (ie, where the value of the debtor's assets is lower than its debt and where it can no longer fulfil its obligations as they fall due (unless temporary). Insolvency may also be presumed in certain instances.

The petition must be addressed to the district court in written form and explain the circumstances for the petition. The petitioner must cover certain fees tied to the proceedings. The petition will, if possible, be tried by the court within one week, and if successful, bankruptcy proceedings will be initiated, and an administrator appointed. Ordinarily, a hearing is held regarding the petition before any decision is made.

Law stated - 15 April 2024

Model Netting Act

49 | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

Norway has adopted netting legislation, inter alia, through the implementation of the EU financial collateral directive.

Law stated - 15 April 2024

UPDATE AND TRENDS

Current developments

50 | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

As in many other jurisdictions, there is an increased focus on ESG, both from lenders and owners.

Law stated - 15 April 2024



Ole Johan Stensli
Katinka Wikborg
Håkon Hellerud
Bernhard Getz-Jeffreys

ojs@rosom.no
kw@rosom.no
hh@rosom.no
bg@rosom.no

[Read more from this firm on Lexology](#)

Panama

Jorge Loaiza III

Arias, Fábrega & Fábrega

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Ownership documents must be registered at the Public Registry of Vessels (PRV) of the Panama Maritime Authority in order to become effective in relation to third parties. A certificate from the PRV is the usual document used to show ownership.

Law stated - 26 April 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

As with ownership documents, recordable liens – mostly naval mortgages – must also be registered at the PRV, and thus a search of the PRV would be the means of determining whether there are any liens recorded over a vessel.

Law stated - 26 April 2024

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

Apart from mortgages, court orders from the Panamanian courts or a promise to sell, there would be no direct means of ascertaining the existence of such other obligations.

Law stated - 26 April 2024

Public registry searches

- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

The Panama Public Registry Office (PPR) is the public office where corporate entities must be recorded to acquire their legal status with regard to third parties and where searches can be made for such purposes.

Law stated - 26 April 2024

5 |

Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Generally, the identity of and powers that may be granted to the directors and officers under a company's articles of incorporation or amendments could be ascertained by searching the PPR. General powers of attorney that are recordable could also evidence the authorised signatories. The shareholders or similar interest holders and other authorised, but non-recorded authorisations, would have to be verified by inspecting the share register or minute books, respectively, which are private in nature and would require a judicial order to be disclosed in the case of corporations. In relation to limited liability companies, the partners would be evidenced on records at the PPR.

Law stated - 26 April 2024

Debt obligation

6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Generally, subject to what the articles of incorporation may provide (and which must be recorded at the PPR), the board of directors or similar body of the entity would have to provide for such authorisation. This is without prejudice to any broad or general powers of attorney granted in favour of a third party or members of the board or officers, or similar parties within the governing bodies of the company or entity; and that, in the case of obligations of third parties, the shareholders' consent may be required.

Law stated - 26 April 2024

Obligations of foreign lenders

7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

Not necessarily; in particular, if the funds are to be used outside Panama for companies or other entities or persons not residing or carrying out business in Panama.

Law stated - 26 April 2024

REPAYMENT

Central bank and regulatory approval

8 |

Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

There is no central bank and there are no currency exchange controls per se in Panama, and the US dollar is legal tender. Most international commercial transactions are made in US dollars.

Law stated - 26 April 2024

Usury laws

9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

Law 5 of 1933 (Law 5) and Law 4 of 1935 (Law 4) set out certain limits on the maximum level of interest chargeable. However, pursuant to article 223A of the Code of Commerce of Panama, interest on transactions perfected, consummated or with effects outside Panama is expressly excluded from the application of such limits. Further, Law 4 has also been abrogated in relation to onshore transactions and the same may be argued with respect to Law 5.

In any case, however, a maximum of 2 per cent per month exists pursuant to a decree of the National Banking Commission, and interest above that could be deemed usury as a matter of public policy. Therefore, it is arguable that a local court enforcing a foreign judgment obtained against a Panamanian corporation may limit the scope of the judgment if it involves interest payable at a higher monthly rate than 2 per cent.

Law stated - 26 April 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

Generally not, but it is also a matter of determining whether the proceeds have been used to generate taxable income in Panama.

Law stated - 26 April 2024

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

The definition of 'vessel' is broad, and offshore drilling rigs, mobile offshore drilling units and other offshore structures, such as floating production, storage and offloading units and mobile offshore drilling units, may be registered. Law 57 of 2008 provides the following definition of a vessel:

Any vessel engaged in the transportation of cargo or persons; pontoons, dredgers, floating docks, oil drilling platforms or any other hulls engaged in or which may engage in maritime trade, as well as any other structure recognised as a vessel by the Panama Maritime Authority.

The effect of the registration is to allow the vessel to fly the Panamanian flag and to grant it the protection of rights under the laws of Panama, as provided in Law 57 of 2008.

Law stated - 26 April 2024

12 | Who may register a vessel in your jurisdiction?

Pursuant to article 3 of Law 57 of 2008, regardless of nationality and provided the prescribed formalities and requirements are complied with, any individual, corporate entity or a combination of these may register a vessel.

Law stated - 26 April 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

No. The Panama Maritime Authority's Directorate General of Merchant Marine (Digemar) maintains a single register regardless of the place of operation or nationality of the owners of a vessel. Vessels are classified as engaged in either coastal or internal service; or international service, which includes vessels that do not operate in Panamanian ports or territorial waters.

There are also special categories within the register, such as temporary registration, dual registration for vessels under bareboat charter and pleasure boats.

Law stated - 26 April 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

14 | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

Under Panamanian law the naval mortgage may secure any type of obligation, be it an existing, simple, conditional, contingent or even future obligation. For example, unadvanced tranches, rotating credit facilities, obligations subject to alternative currency or multi-currency clauses and other types of complex financing may generally be secured without the need to execute or register supplementary deeds when the conditions occur or the future obligation is perfected.

In addition, from a Panamanian law perspective the naval mortgage can secure obligations of third parties (ie, other than those of the owner).

The law contemplates mortgage agreements; this implies the execution of an agreement by both parties.

When drafting a mortgage agreement, lawyers will incorporate provisions relating to the operation of the vessel as regards the intent contained in the financing documentation, as well as other matters relating to the legality and proper operation of the vessel and any special remedies availing to the mortgagee under Panamanian law.

Law stated - 26 April 2024

Required form

15 | Give details of any required form for ship mortgages in your jurisdiction.

The law provides for the following essential requirements (article 260 of Law 55 of 2008), which include:

- the names and domiciles of the mortgagor and mortgagee;
- the fixed or maximum amount of the principal or of the obligation secured;
- the dates of payment of principal or of compliance of the obligations secured, and of interest, or the method to determine such dates, except when the obligation secured is payable on demand or is a conditional or future obligation;
- if subject to interest, the agreed rate or the method for computing the same must be stated. The rate may be stated with reference to a specific market, costs of funding, fluctuating elements or floating formulas; and
- a description of the mortgaged vessel, in the terms of its registry certificate or licence number, radio call signs (if assigned), register tonnages (gross and net) and measurements (length, width and depth).

Law stated - 26 April 2024

Registration of mortgages

16 | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

The Public Registry of Vessels is the organisation with which ownership documents and naval mortgages, as well as their cancellation, amendment or assignment and other recordable encumbrances can be registered.

Registration has the effect of making the document effective in relation to third parties (ie, rights or obligations are owed toward all).

Law stated - 26 April 2024

- 17** | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

The law requires that the mortgage states the fixed or maximum amount of the principal or of the obligation secured.

It is not necessary to attach the debt instrument, but the mortgage must provide for the terms required under article 260 of Law 55.

Law stated - 26 April 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

The party named as the mortgagee in the mortgage would be deemed to have the rights to enforce the mortgage in respect of the obligations secured.

The concept of obligations in favour of a group in solidum secured by a naval mortgage could also be deemed subject to the agreement or legal relationship between the creditors or lenders under such an obligation. Therefore, when an agent, security agent or security trustee is so appointed and then enters the mortgage agreement, the underlying relationship, even if subject to foreign law, should be accepted in respect of the actions that would be carried out by the mortgagee, but maintaining the rights of the mortgagee as exclusive in respect to other creditors or lenders who are not. While the rights of the mortgagee would be deemed in rem against the vessel, those of the other creditors or lenders would be deemed in personam against the mortgagee. In other words, while the rights of the mortgagee would be in accordance with Panamanian law with regard to the mortgage, the relationship of agency or security trust between the mortgagee and the other creditors or lenders would be deemed as ruled under the laws that are chosen to govern such relationships among them and to determine the rights and obligations that arise between them in respect to, for instance, the proceeds from the enforcement of the mortgage.

Law stated - 26 April 2024

Filings on transfer

- 19** |

If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

Generally, and depending on the drafting of the mortgage as to such changes, a change in lender who is not the mortgagee could be made without further filings, so long as the obligation secured subsists notwithstanding the change.

Law stated - 26 April 2024

20 | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

An assignment of mortgage must be in writing, and to be effective against third parties must also be registered.

The consent of the mortgagor would be required if the mortgage agreement so provides.

Law stated - 26 April 2024

Maritime liens

21 | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

Under Panamanian law, a vessel is subject to arrest as an asset of the owner, for debts or for enforcement of maritime liens. Under article 244 of Law 55, the following are listed as maritime liens against vessels:

The following maritime credits shall enjoy a lien against the vessel and shall concur in respect to its price in the order of preference expressed in this article, to wit:

1. *Judicial costs incurred in the common interest of maritime creditors.*
2. *Expenses, indemnities and wages for aid and salvage.*
3. *Wages, compensations and indemnities of the master and crew members.*
4. *The naval mortgage.*
5. *Amounts due to the Panamanian government for the annual tax and rates of the vessel.*
6. *Wages and stipends due to stevedores and other wharfmen engaged directly by the owner, operator or master of the vessel for the loading and unloading of the vessel.*
7. *Compensation for damages caused by fault or negligence.*
8. *Contributions to general average.*
9. *Amounts due on obligations incurred for the necessities and supplies of the vessel.*



10. *Amounts taken in bottomry over the hull of the vessel and its apparel for supplies, equipment and tackle if the contract were entered into and executed prior to departure of the vessel from the port where such obligations were contracted; and the insurance premiums.*
11. *Wages of pilots and watchmen and expenses of conservation and custody of the vessel, its apparel and supplies.*
12. *Indemnities due to shippers and passengers for failure to deliver the cargo or effects loaded or for damage thereto, attributable to the master or crew.*
13. *The price of the last acquisition of the vessel and interest due.*

Law stated - 26 April 2024

22 | What maritime liens rank higher than a mortgage lien?

Law 55 provides that the following liens rank higher than a mortgage lien:

- judicial costs incurred in the common interest of maritime creditors;
- expenses, indemnities and wages for aid and salvage; and
- wages, compensations and indemnities of the master and crew members.

Law stated - 26 April 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

Under certain circumstances a promise of sale can be recorded as a limitation to the right to sell.

There are no other express recordable liens (per se) in the law.

Law stated - 26 April 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Generally, a foreign mortgage would be registered against a vessel of foreign registry. The Code of Maritime Procedure (Law 8 of 1982) provides for special proceedings for enforcement of mortgages, and the procedure is similar for vessels of Panamanian and foreign registry.

Law stated - 26 April 2024

Enforcement of mortgages

- 25** | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

The procedure includes arrest of the vessel, filing a complaint together with the petition for arrest and evidence regarding the registration of the mortgage and amount overdue for the purposes of enforcement.

An interlocutory sale would be available if the complaint is not answered in a timely fashion (ie, within 30 days of the arrest, which would have the effect of notification of the complaint) and where the vessel is deemed abandoned or that it may be lost if not promptly sold. On average, the process of judicial sale takes between three and six months.

Costs for the arrest are calculated depending on the area in which the vessel is kept while being arrested. The plaintiff would bear such costs of maintenance, which would be requested from time to time by the court's marshal. Upon requesting the arrest, a liability bond of US\$1,000 and initial marshal's costs would have to be posted with the court.

Law stated - 26 April 2024

Sale by mortgagee

- 26** | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

It is possible to agree in a naval mortgage that the mortgagee may sell the vessel out of court in the case of default. Such sale would only extinguish the mortgage lien under which it was made.

Law stated - 26 April 2024

Default under mortgage

- 27** | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

Panamanian courts may have to assess whether the appointment of a receiver would be compatible with an enforcement per se of the mortgage, since by law the marshal would be deemed as depository of the vessel, which for purposes of enforcement of the mortgage would have to be, in principle, arrested by the court before which enforcement is being sought, to begin with. The law provides that a third party, at the request of the marshal, may be appointed as depository of the asset subject to arrest.

Law stated - 26 April 2024

Limitations on rights of self-help

28 | What are the limitations on rights of self-help by a mortgagee?

Panamanian law provides for ample powers that could be granted in the mortgage. Limitations would be mostly for liability caused by wilful misconduct or reckless disregard, which would not be deemed waived by contract.

Law stated - 26 April 2024

Duties to owner or third-party creditors

29 | What duties does a mortgagee owe to an owner or third-party creditors?

If the mortgagee were to take possession of the vessel or exercise rights to sell the vessel out of court proceedings, the mortgagee would be deemed liable to the owner to the extent that the same has not been excluded in the mortgage (except for wilful misconduct or reckless disregard) and under general rules of liability for damages caused to third parties, including creditors, if the vessel is deemed affected in its value in relation to such creditors and in detriment of their potential claims.

In the event of a non-judicial sale, if such powers are allowed in the mortgage, the law provides that the mortgagee would have to notify the owner and any other registered mortgagees of its intention to so sell the vessel.

Law stated - 26 April 2024

COLLATERAL

Finance leases

30 | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

Financial leases may be recorded and there is a special law for this type of contract.

Law stated - 26 April 2024

31 | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

Commercial law principles provide that in determining the nature of a commercial contract the intent of the parties shall prevail.

It is, therefore, advisable to draft relevant contracts on a case-by-case basis with proper assurances to prevent possible challenges, depending on the type of operation of the vessel in question.

Law stated - 26 April 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Such security interests would be created and perfected pursuant to an assignment agreement. Panamanian law requires further that the debtor be notified.

Law stated - 26 April 2024

- 33** | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

The enforcement of security interests arising against a vessel under the law or contract, other than those arising from per se security instruments and that are not eligible for registration, would have to be claimed before a court of law in connection with a debt of the owner or otherwise arising from applicable laws.

Law stated - 26 April 2024

- 34** | How is a security interest over a deposit account established? How is a security interest perfected?

This would have to be effected through a pledge agreement and, in principle, a depository, which could be the pledgee, appointed to keep control of the pledged account.

General rules for pledges are contained in the Code of Commerce and the Civil Code.

On the other hand, pursuant to Law 129 of 2013, the requirements for mortgages over movable or chattel property, including cash, are more flexible, which would, in principle, allow the mortgagor the use of the asset subject to the mortgage. Thus, it may also be a matter of practicality to ensure an efficient security instrument in relation to cash deposits.

Law stated - 26 April 2024

- 35** | How are security interests in non-vessel collateral enforced?

By suing the owner or grantor and attaching assets of its property.

Law stated - 26 April 2024

Share pledges

- 36** | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

This would have to be created through a pledge agreement and, in principle, a depository, which could be the pledgee, appointed to keep control the pledged shares.

This kind of security is commonly seen in financings, and how the pledgor may exercise certain rights over the shares may be regulated in the pledge agreement. To that end, it is recommended practice that the officers and directors of the corresponding corporation keep a copy of the pledge agreement and make relevant notations in the share register of the corporation as appropriate.

Law stated - 26 April 2024

- 37** | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

In principle, no such risk would exist other than if the pledged shares have been issued partially unpaid (when possible) or have been subject to another type of security affecting the shares. Generally, a pledge asset would be excluded from a concursus in favour of the pledgee.

Law stated - 26 April 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

- 38** | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

The Panamanian tax system is territorial. Accordingly, the income from owners of vessels engaged in international trade is not subject to income tax. Likewise, for income derived from coastal trade, income tax shall apply. The flat rate (subject to alternative calculation depending on the income) would be 25 per cent.

Law stated - 26 April 2024

Tonnage tax

- 39** | Is there an optional tonnage tax exempting vessel owners from tax on income?

In the case of vessels registered as being engaged in international trade, the registration charge and annual tax and other similar rates are calculated on the bases of the gross and

net tonnages and the type of vessel. However, we would not consider this as an alternative to income tax.

Law stated - 26 April 2024

Tax incentives

40 | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

There are no tax incentives per se. The income tax applicable depends on the place of operation. There are special reductions in the registration charge and annual tonnage tax and rates for vessels that are:

- new builds;
- less than five years old;
- registered as part of a group or an already registered group; and
- have no record of port state control detentions.

Law stated - 26 April 2024

Other tax provisions

41 | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

Panama has special petroleum free trade zones created by law, which will apply to vessels engaged in such operations.

Law stated - 26 April 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

42 | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Yes. Pursuant to Law 12 of 2016 (Law 12) effective as of 2 January 2017, a new regime of reorganisation and insolvency rules replaced the former bankruptcy provisions of the Code of Commerce.

Law stated - 26 April 2024

Foreign court rulings

- 43** | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

Generally, there are provisions in Law 12 to cooperate with and assist in foreign insolvency proceedings.

Law stated - 26 April 2024

Model Law on Cross-Border Insolvency

- 44** | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

Law 12 takes into consideration cross-border insolvency and provides for certain rules to unify the process. Likewise, Law 51 of 2015 (Law 51) provides for certain conflict of law rules to determine the relevant forum, although this still refers to bankruptcy.

Law stated - 26 April 2024

Order of priority

- 45** | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

Secured obligations would be preferred, and other obligations that can be classified by date, under a public deed, final court or arbitral judgment or a private instrument certified by notary, would be paid in a creditors' reorganisation or liquidation concursus in preference to all other unsecured obligations, ranking among themselves in the order of their dates, with the oldest in preference to the more recent.

Law stated - 26 April 2024

Security provision by vessel owner

- 46** | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

Panamanian law provides that a mortgage may be granted to secure the obligations of third parties.

As part of the enforceability of the mortgage, the mortgagee would have to provide evidence of the secured obligation being defaulted.

Law stated - 26 April 2024

Law of fraudulent transfer

- 47 | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

The law provides certain circumstances in which a mortgage or similar security granted to cover existing debts, so as to give the secured creditor preference over other existing or subsequent obligations, may be disregarded.

Law stated - 26 April 2024

Petitions by creditors

- 48 | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

Law 12 and the Code of Civil Procedure provide for the rights of a creditor to request insolvency and further liquidation, without prejudice to a possible reorganisation process. For such purposes, the creditor would have to prove that the credit is overdue on the corresponding debt agreement or, otherwise, prove the failure of the debtor to fulfil its obligations under the debt agreement.

Law stated - 26 April 2024

Model Netting Act

- 49 | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

The Model Netting Act has not been adopted. Any netting rights or similar claims corresponding to unsecured creditors in respect to debtors in reorganisation, insolvency or liquidation proceedings would have to be approved before the competent court trying the same.

Otherwise, claims under an ISDA master agreement could be included as part of the obligations secured under a naval mortgage and be claimed in rem against the vessel.

Law stated - 26 April 2024

UPDATE AND TRENDS

Current developments

50 |



Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

There are no updates at this time.

Law stated - 26 April 2024



Jorge Loaiza III

jloaiza@arifa.com

Arias, Fábrega & Fábrega

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Haridass Ho & Partners

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Title or legal ownership of a vessel can be verified by a search of the vessel's records at the Maritime and Port Authority of Singapore (MPA) and by examining the documentary evidence of delivery of the vessel to the owner, usually in the form of a protocol of delivery and acceptance executed between the builder or seller of the vessel and the owner.

Law stated - 21 March 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

One can determine whether mortgages are recorded over a vessel by conducting an ownership and encumbrance search of the vessel at the MPA. The transcript issued by the MPA will reveal the details of mortgages recorded against the vessel.

Law stated - 21 March 2024

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

Where the vessel owner or affiliated party is a company, and where the charges created by such documents are registrable under section 131 of the [Companies Act](#), any liens and encumbrances can be discovered through a search of the Accounting and Corporate Regulatory Authority (ACRA) business profile printout on the company or the affiliated party.

Law stated - 21 March 2024

Public registry searches

- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

This information can be determined from a business profile search of the ACRA's records and by obtaining a certificate of good standing regarding the obligor from the ACRA.

Law stated - 21 March 2024

- 5 | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Where the company is a private limited company, the names of the shareholders, directors and company secretary can be determined from the ACRA business profile search of the company. Where the company is a public company, only the names of the directors and company secretary can be determined by such a search.

Law stated - 21 March 2024

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Provided that the company constitution of the obligor permits it to issue guarantees, the board of directors' resolutions of the obligor authorising the issuance and execution of the guarantee are required. Shareholders need not approve the giving of a guarantee, although in a situation where the obligor has no relationship with the borrower, obtaining a shareholders' resolution of the obligor, approving the issuance of the guarantee, may be prudent.

Law stated - 21 March 2024

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

No, foreign lenders do not have to qualify to do business in Singapore to extend credit to a borrower organised in Singapore. Foreign creditors will not be deemed resident in Singapore as a consequence of making a loan or other extension of credit to an obligor within Singapore.

Law stated - 21 March 2024

REPAYMENT

Central bank and regulatory approval

- 8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

No central bank or other regulatory approval is required.

Law stated - 21 March 2024

Usury laws

- 9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

There is no limit, but the courts will strike down interest rates that they consider unconscionable given the circumstances of the case. Practically, there is a general acceptance that any interest rate in excess of 24 per cent a year is unconscionable.

Law stated - 21 March 2024

Withholding taxes

- 10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

Owners of vessels registered with the Maritime and Port Authority of Singapore (MPA) under the Block Transfer Scheme and owners that are registered as approved international shipping enterprises with the MPA are exempt from having to pay withholding tax on interest to non-resident lenders. In all other cases, withholding tax is payable on interest to non-resident lenders. The tax rate will depend on the terms of any double taxation treaties that Singapore may have with the country where such a non-resident lender is tax resident. However, it may be possible to obtain a waiver of the withholding tax from the MPA upon application through the prescribed form. Factors that the MPA will consider will include the quantum of the loan, the number of vessels that the owner is contemplating registering with the MPA in the near future, and whether the interest rate offered by the non-resident lender is lower than that offered by financial institutions in Singapore.

Law stated - 21 March 2024

REGISTRATION OF VESSELS

Eligibility for registration

- 11 |

What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

Except for fishing vessels, hydrofoils and wooden vessels, all types of vessel are eligible for registration with the Maritime and Port Authority of Singapore (MPA). Offshore drilling rigs or mobile offshore drilling units are considered vessels under Singapore law. Registration provides a vessel with Singaporean nationality when it goes on overseas voyages, protects a vessel's name for as long as it is registered, provides proof of ownership, and makes it possible to register mortgages on the vessel. Further, as a consequence of such registration, the owner of the vessel becomes subject to the terms of Singapore legislation, giving various international maritime conventions the force of law in Singapore in respect of the vessel.

Law stated - 21 March 2024

12 | Who may register a vessel in your jurisdiction?

Singapore citizens or Singapore-incorporated companies may register vessels with the MPA. Where the tonnage of the vessel to be registered is in excess of 1,600 gross tonnage and the vessel is self-propelled, all of the shareholders in such companies may be non-Singaporean.

Law stated - 21 March 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

There is no such alternate registry in Singapore.

Law stated - 21 March 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

14 | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

Mortgage instruments take a prescribed form: they are short mortgage forms, similar to the English model, accompanied by a deed of covenants. Mortgages can secure principal, interest, default interest, commission fees and any other amounts due. Contingent obligations, including swap obligations, may also be secured.

Law stated - 21 March 2024

Required form

15 | Give details of any required form for ship mortgages in your jurisdiction.

Ship mortgages follow a standard form as set out in the [Merchant Shipping Act](#) and the regulations passed thereunder. There are two types of forms: one to secure the principal sum and interest and one to secure accounts current, etc. If more details need to be incorporated, these may be included in the deed of covenant.

Law stated - 21 March 2024

Registration of mortgages

16 | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

The register of mortgages is maintained by the Maritime and Port Authority of Singapore (MPA). The register contains:

- the name and address of the mortgagor;
- the name and address of the mortgagee;
- the date of the mortgage;
- date of registration of the mortgage; and
- the ranking of the mortgage.

Filings are made with the MPA. Such registration creates a legal mortgage of the vessel in favour of the mortgagee and is accorded the ranking as it appears in the register.

Law stated - 21 March 2024

17 | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

No, the total amount of the mortgage need not be stated. The mortgage does not need to contain a maturity date, nor does the underlying debt instrument need to be filed, except that where the mortgage is registered to secure a debt due from a third party to the mortgagee, a certified true copy of the deed of covenant must be registered with the MPA.

Law stated - 21 March 2024

18 | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

Yes, a mortgage can be registered in the name of an agent or trustee for the benefit of multiple lenders.

Law stated - 21 March 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

No, there is no filing to be done if the agent or trustee transfers a portion of the underlying debt among existing lenders or to a new lender.

Law stated - 21 March 2024

- 20** | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

The prospective new mortgagee must file the transmission of mortgage executed by the previous mortgagee in its favour, which appears on the reverse side of the mortgage instrument, with the MPA. The mortgagor's consent is not required, unless the loan and security documents expressly require such consent to be given.

Law stated - 21 March 2024

Maritime liens

- 21** | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

Singapore recognises crew claims, collision claims and salvage claims as maritime liens. These claims do give rise to a right to arrest the vessel. Associated ships may be arrested if the claim falls under section 4(4) of the [High Court \(Admiralty Jurisdiction\) Act of Singapore](#) (HCAJA).

Law stated - 21 March 2024

- 22** | What maritime liens rank higher than a mortgage lien?

Maritime liens for crew wages, collision claims and salvage claims rank higher than a mortgage lien.

Law stated - 21 March 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

Non-mortgage liens cannot be recorded over a vessel at the MPA.

Law stated - 21 March 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Yes, mortgages on foreign flag vessels will be recognised in Singapore and they share the same priority as vessels registered under Singaporean law.

Law stated - 21 March 2024

Enforcement of mortgages

25 | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

To start with, the claim of the arresting party must fall within the permitted claims listed in the HCAJA. If it does, then the procedure for enforcing any mortgage in Singapore is by way of ship arrest, pursuant to a warrant of arrest issued by the Singapore High Court to be obtained by the arresting party upon application to the Court. Interlocutory sales are permitted. Judicial sales can be effected as quickly as three months from the date of arrest, provided there are bids during the first tender exercise that meet or exceed the reserve price set by the Singapore High Court. Associated costs will include sheriff's guard charges and port charges (which are both based on a scale), and the sheriff's expenses for appraisal and sale of the vessel, which will be the aggregate of 5 per cent of the first S\$1,000 of the sale price of the vessel and 2.5 per cent of the balance sale price of the vessel.

Law stated - 21 March 2024

Sale by mortgagee

26 | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

A vessel may be sold privately by the mortgagee. However, such a sale does not discharge liens over the vessel.

Law stated - 21 March 2024

Default under mortgage

- 27 | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

Yes, the courts in Singapore will enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage, provided that such an appointment is appropriate under the circumstances of the case.

Law stated - 21 March 2024

Limitations on rights of self-help

- 28 | What are the limitations on rights of self-help by a mortgagee?

The mortgagee may not sell the vessel to itself or its nominees (for example, solicitors acting for the mortgagee in the sale). However, the mortgagee may sell the vessel to a company that the mortgagee directly or indirectly controls, provided that the mortgagee has acted in good faith.

Law stated - 21 March 2024

Duties to owner or third-party creditors

- 29 | What duties does a mortgagee owe to an owner or third-party creditors?

The mortgagee's duties require a reasonable balancing of the interests of the owner, the mortgagee and other third-party creditors. The mortgagee must make efforts to obtain a fair price for the vessel and may not act in an arbitrary manner. Further, where the security of the mortgagee is not impaired, the mortgagee has the liability to complete the existing charter or voyage that the vessel had undertaken.

Law stated - 21 March 2024

COLLATERAL

Finance leases

- 30 | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

No, finance leases or other charters may not be recorded over Singapore-flagged vessels at the Maritime and Port Authority of Singapore.

Law stated - 21 March 2024

- 31** | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

To date, the Singapore courts have not recharacterised a finance lease as a financing contract.

Law stated - 21 March 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Security interests are created by way of an assignment. Where the assignor is a company, a security interest may be perfected by filing notification of the charge created by the assignment with the Accounting and Corporate Regulatory Authority (ACRA), within the period prescribed by the Companies Act (30 days of the date of creation of the charge).

Law stated - 21 March 2024

- 33** | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

A security interest on land or real property may be recorded at the Singapore Land Authority. Where any type of security interest is created by a company, the notification of the charge arising from such a security interest can be filed at the ACRA, within the period prescribed by the Companies Act (30 days of the date of creation of the charge).

Law stated - 21 March 2024

- 34** | How is a security interest over a deposit account established? How is a security interest perfected?

The security interest is created by a memorandum of charge. Where the charge is a company, the security interest is perfected by filing a notification of the charge created by the memorandum of charge with ACRA within the period prescribed by the Companies Act (30 days of the date of creation of the charge).

Law stated - 21 March 2024

35 | How are security interests in non-vessel collateral enforced?

Mortgages on land may be enforced by possession and sale. Charges on equipment may be foreclosed, pursuant to the court foreclosure order. As for other security interests, enforcement is by way of writ action.

Law stated - 21 March 2024

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

By way of a share pledge or share charge agreement. However, share pledges or share charges in connection with vessel financing are not common in Singapore.

Law stated - 21 March 2024

37 | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

No, there is no risk of the pledgee, before or after exercise of the share pledge, being exposed to debts or other liabilities of the pledged company.

Law stated - 21 March 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

38 | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

Pursuant to section 13(A) of the [Income Tax Act](#), income earned by a Singapore-registered vessel from operating outside Singapore port limits is exempt from tax. Any other shipping income will become part of the general income of the company, and if the company makes a profit such profit will be taxed at the prevailing corporate tax rate applicable in Singapore, which at present is 17 per cent, subject to relevant tax exemptions given by the Inland Revenue Authority of Singapore.

Law stated - 21 March 2024

Tonnage tax

39 | Is there an optional tonnage tax exempting vessel owners from tax on income?

All Singapore-registered vessels must pay tonnage tax annually at the rate of S\$0.20 per net ton. The fact that tonnage tax is payable has no correlation to the owner's liability for income tax.

Law stated - 21 March 2024

Tax incentives

40 | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

Special tax incentive schemes in Singapore include the Block Transfer Scheme and the Maritime Sector Incentive Scheme (the MSI Scheme). The MSI Scheme itself is divided into three sections, namely:

- international shipping operations (including the approved international shipping enterprise scheme and the maritime finance incentive scheme);
- maritime leasing arrangements; and
- shipping support services.

Under the approved international shipping enterprise scheme, there is a 100 per cent tax exemption on qualifying income derived from operating foreign-flagged ships. Under the maritime finance incentive, a tax exemption or concessionary tax rate (5 or 10 per cent depending on the type of activities carried out) can be obtained on qualifying income derived from leasing ships or containers and managing an approved shipping or container investment enterprise.

The Maritime and Port Authority of Singapore provides incentives to shipowners who adopt energy efficient ship design that reduces fuel consumption and carbon dioxide emission. Singapore flag ships which go beyond the requirements of the International Maritime Organisation's (IMO) Energy Efficiency Design Index (EEDI) will enjoy 50 per cent reduction on the initial registration fees. They will also enjoy a 20 per cent rebate on annual tonnage tax payable every year until the ship ceases to exceed the requirements of IMO's EEDI, based on the phase-in time period.

Law stated - 21 March 2024

Other tax provisions

41 | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

No, there are no noteworthy tax provisions other than income earned by a Singapore-registered vessel when operating outside Singapore port limits being exempt from tax (pursuant to section 13(A) of the Income Tax Act) and Singapore's tax incentive schemes, such as the Block Transfer Scheme and the MSI Scheme.

Law stated - 21 March 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

- 42** | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Yes, it is known as 'judicial management'. Once a company is placed on judicial management (which will be for a specific period of time, for example, one year) the creditors cannot enforce the company's debt obligation. In such a situation, a ship mortgage created by the company cannot be enforced.

Law stated - 21 March 2024

Foreign court rulings

- 43** | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

The Singapore courts will respect the rulings of a foreign court presiding over reorganisation or liquidation proceeding in accordance with, and subject to, the provisions of the Third Schedule to the [Insolvency, Restructuring and Dissolution Act](#) (IRD Act) pursuant to which the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law is applicable in Singapore.

Law stated - 21 March 2024

Model Law on Cross-Border Insolvency

- 44** | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

Yes, Singapore has adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law as the Third Schedule to the IRD Act.

Law stated - 21 March 2024

Order of priority

- 45** | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

The order of priorities is contained in section 203 of the IRD Act. Preferred creditors include the petitioner who petitioned for the winding-up (in respect of its costs and expenses for the winding-up), employees and secured creditors. Creditors will be required to disgorge payments from an insolvent company where payments are deemed an unfair preference under section 225 of the IRD Act.

Law stated - 21 March 2024

Security provision by vessel owner

- 46** | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

Yes, a vessel owner may provide security on behalf of other related or unrelated companies. There is no difference in enforcement requirements than if the vessel owner had granted the security directly.

Law stated - 21 March 2024

Law of fraudulent transfer

- 47** | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Yes, a third-party creditor may challenge such a transaction. The law prohibiting undervalue transactions and undue preference appears at section 224 and section 225 respectively of the IRD Act.

Law stated - 21 March 2024

Petitions by creditors

- 48** | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

The creditor must first issue a statutory notice to the debtor to pay the moneys due within a prescribed period of time. If the debtor fails to pay, the creditor may petition the Singaporean court to declare the debtor bankrupt, or to compel liquidation of an insolvent obligor. To file a petition to declare a person bankrupt, the debt must exceed S\$15,000. To wind up a company, the debt must exceed S\$10,000.

Law stated - 21 March 2024



Model Netting Act

- 49 | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

Yes, Singapore has adopted the ISDA Model Netting Act by way of the [Payment and Settlement Systems \(Finality and Netting\) Act 2002](#).

Law stated - 21 March 2024

UPDATE AND TRENDS

Current developments

- 50 | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

Law stated - 21 March 2024

Haridass Ho & Partners
ADVOCATES & SOLICITORS • COMMISSIONERS FOR TAXES • NOTARIES PUBLIC
V. Hariharan and Partners
+65-65330223
hariharan@hhp.com.sg
www.hhp.com.sg

V Hariharan

hariharan@hhp.com.sg

Haridass Ho & Partners

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UPDATE AND TRENDS

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Title to or legal ownership of a vessel registered to National Ship Registry (NSR) or Turkish International Ship Registry (TISR) is demonstrated by a ship's registry certificate obtained from the relevant ship registry.

Law stated - 15 April 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

Any mortgages recorded over the vessel or other encumbrance are shown on the ship's registry certificate. Maritime liens are not subject to registry; thus, they could not be determined from the look of the registry certificate, but they can still exist.

If the ship's registry certificate at hand is not a recently dated document, the ship registry can be examined by physical attendance to the relevant ship registry where the vessel is registered. Turkish Commercial Law No. 6102 (TCL) regulates a special ship mortgage that can be established for vessels registered to ship registry.

Law stated - 15 April 2024

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

Any mortgages or encumbrances recorded over the vessel are shown on the ship's registry certificate and at the records before the registry. Maritime liens are not subject to registry; thus, they could not be determined from the look of the registry certificate, but they can still exist.

Law stated - 15 April 2024

Public registry searches

- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

A search at the Trade Registry Gazette can be made to obtain basic information such as when the company is incorporated, capital, articles of association, directors, authorised signatories, whether an announcement of bankruptcy or concordat is made, or any other information that is registered with the trade registry. Also, upon payment of a fee to the trade registry, a good standing certificate indicating the field of activity of the company, its address and capital can be obtained.

Law stated - 15 April 2024

- 5 | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Yes, from the search of every announced resolution published at the Trade Registry Gazette. However, for the joint stock companies, since the transfer of shares is not required to be registered, the latest shareholding structure cannot be traced unless the company has a sole shareholder structure. In such a case, the shareholders cannot be identified formally. From the review of the latest general assembly's attendees list, the shareholders may be identified at the time of that relevant general assembly meeting. Accordingly, it may not be reflecting the current shareholders' structure. A further search may be made before the relevant trade registry to clarify whether there was any information on bankruptcy, postponement of bankruptcy or concordat proceedings notified by Turkish courts.

Law stated - 15 April 2024

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

The answer will depend by examination of the articles of association of the relevant company. Upon adoption of the TCL, which entered into force on 1 July 2012, ultra vires principle is abolished, and the companies are considered to have the capacity to be indebted for daily matters of business and matters not falling under their field of activity and purpose. For valid conclusion of surety agreements by proxy, or to the guarantee agreements by analogy, special authorisation is sought under Turkish Obligations Law numbered 6098 article 504/3. Although its implementation to corporations is controversial, it is advisable to review the articles of association. If there is a particular clause under the articles of association requiring the company to obtain a general assembly resolution or board of directors' resolution to become indebted or enter into a guarantee agreement under a loan agreement, then the relevant agreement may not be valid unless it is approved by the relevant authority of the company.

Law stated - 15 April 2024

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

Turkish residents lending money from Türkiye or abroad are regulated under the Protection of the Value of the Turkish Currency Law numbered 1567, Decree No. 32 regarding the Protection of the Value of the Turkish Currency (Decree No. 32) and Capital Movements Circular (CMC). Lending foreign currency from foreign lenders to Turkish residents is subject to restrictions under Decree No. 32. A Turkish resident may lend Turkish lira from a foreign institution or financial institution freely in Turkish Lira via an intermediary Turkish bank. Turkish resident legal entities are not allowed to obtain foreign currency-denominated loans from abroad unless they have either a foreign currency income or fulfill certain criteria for benefitting from exemptions listed under Decree No. 32 and the CMC.

Under the Communiqué numbered 2008-32/34 that has been adopted in accordance with Decree No. 32, the loans that are borrowed for ship finance of the vessels imported from abroad by Turkish residents are exempted from these restrictions and can lend foreign currency directly from the foreign bank (article 11/1/ç).

Foreign creditors will not be deemed as resident for providing a loan or other extension of credit to an obligor within Türkiye.

Law stated - 15 April 2024

REPAYMENT

Central bank and regulatory approval

- 8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

Regulatory approval is generally not required for repayments of a loan in foreign currencies. Subject to the type of the transaction, there may be a requirement of notification by the relevant bank to the Turkish Republic Central Bank just to keep records, and not for approval.

Law stated - 15 April 2024

Usury laws

- 9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

Under Turkish law, for transactions between merchants, the interest rate may be freely agreed under the scope of the freedom of contract. In principle, agreement on compound

interest is prohibited unless the period between the account terms is at least three months and the case at hand meets the requirements of one of the two exceptions foreseen under the Turkish Commercial Law, article 8/2; (1) the parties conclude a running account agreement or (2) a loan agreement having a commercial affair nature.

Law stated - 15 April 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

The examination shall be made on a case-by-case basis. In principle, the withholding tax for the income received abroad shall be subject to tax law of that relevant lender's country. However, if the relevant lender has a branch in Türkiye and the loan is provided from this branch, then withholding tax may arise in Türkiye. Also, the double taxation treaties between the lender and the borrower's countries must be examined for eliminating or reducing the rate of the tax.

Law stated - 15 April 2024

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

'Any vehicle that is not too small, and its purpose requires movement on the water, able to float is considered as a vessel even if it does not have the ability to inherently move' (article 931/1 of the the Turkish Commercial Law (TCL)). Seismic research vessels are registered with the Turkish International Ship Registry (TISR) in Türkiye. Offshore drilling rigs or mobile offshore drilling units would be classified as ships if they comply this vessel definition under the law. In accordance with this definition, a ship does not necessarily have to be in ship form but can be a vehicle. Also, they should not be allocated to public service.

'Any vessels the purpose of which is an economic benefit or actually used upon such purpose is considered as a merchant vessel regardless of who uses, and it is used on whoever's name or account.' (article 931/2 of the TCL.)

The following types of vessels may be registered to the National Ship Registry (NSR):

- Turkish merchant vessels;
- vessels allocated for pleasure, sport, education, training and science such as yachts, mariner training vessels; and
- vessels built in Türkiye in the name or on behalf of a foreign government or its nationals.

Merchant vessels of 18 gross tons or bigger must be registered.

The vessels not allowed to be registered under the ship registry are foreign vessels, Turkish vessels registered under a foreign registry, warships of navy, tenders and vessels allocated for the public service of the government, municipality or special provincial administration.

Merchant vessels smaller than 18 gross tons, sea and inland waters vessels and private vessels are registered to a special registry named mooring registry.

In accordance with article 974/1 of TLC, the person registered as the owner in the ship registry is considered the owner of the ship.

Law stated - 15 April 2024

12 | Who may register a vessel in your jurisdiction?

Turkish real persons and legal entities may register a vessel. The following are considered Turkish vessels and may be registered to the NSR and enjoy the cabotage rights to sail and trade in Turkish waters under the Cabotage Law numbered 815. Vessels owned by:

- a Turkish citizen;
- joint owners with the majority of shares owned by Turkish citizens;
- a majority of Turkish citizen co-owners;
- a Turkish entity, association or foundation the management board of which consists of a majority of Turkish citizens;
- a Turkish company managed by Turkish citizens in majority and the majority votes are with the Turkish shareholders as per the articles of association of the company (if a joint stock company or a limited partnership, the capital of which is divided in shares, are concerned, the majority of the shares shall be nominative and the transfer of the company shall be subject to approval of the company's board of directors); or
- an association of shipowners registered to Turkish trade registry, the shareholders of which consist Turkish citizens in majority and authorised shipowners to manage the company consist of Turkish citizens in majority.

A Turkish entity or company should be established under the laws of Türkiye with principal place of business in Türkiye.

Law stated - 15 April 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

Yes. The following may be registered to the TISR:

- any vessels and yachts registered to the NSR;
- regardless of its tonnage, ships, yachts and all private purpose vessels built within Türkiye;
- any kinds of cargo and fishing vessels allocated for commercial purposes and over 3,000 deadweight tonnage; and
- passenger and private purpose vessels over 300 gross tons.

Law stated - 15 April 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

- 14** | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

A special ship mortgage is foreseen under the Turkish Commercial Law (TCL) for the vessels registered to the ship registry. Two types of mortgages can be established to secure (1) principal amount and interest only, and (2) upper limit mortgage to secure an uncertain amount of debt. Ship mortgage secures the principal debt, interest, enforcement proceeding expenses (such as charges), notice expenses, announcement fees, legal fees, compulsory expenses to secure the ship against any hazardous circumstances, insurance premiums, secondary obligations foreseen under the mortgage agreement such as penalties, and expert fees for valuation of the vessel.

Contingent obligations, including swap obligations can be secured via upper limit mortgage which is mostly used in ship finance transactions.

There are no standardised forms of agreement.

Law stated - 15 April 2024

Required form

- 15** | Give details of any required form for ship mortgages in your jurisdiction.

A mortgage agreement prepared by the parties must be signed in writing between the mortgagor and the mortgagee, followed by authentication of their signatures before the notary public. The agreement may also be signed before the registry. However, in practice, the registry still requires authentication of the signatures by the notary public.

The mortgage must be registered before the ship registry. The request is made by either of the parties individually or mutually. For mortgage agreements signed with foreign real or legal persons abroad, original apostilled copies and their translations by the sworn translator must be provided.

Law stated - 15 April 2024

Registration of mortgages

- 16** | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

There are regional ship registries in the areas where the Maritime General Directorate established harbour masters. Filings are made online on a platform named 'Umurbey' followed by attendance to the relevant ship registry where the vessel is registered. The registration is constituent for the mortgage is validly established. The request for registry may be made by either party. However, the acknowledgment of the mortgagor is necessary. Restriction of the mortgagor would not invalidate the registry of the mortgage. Filings contain information on the title of the mortgagee and the mortgagor, the mortgage amount, the amount of the mortgage in Turkish lira (for foreign currencies, the exchange rate is the forex buying price announced by the Turkish Republic Central Bank on the day of the calculation), subject of the mortgage and rank of the mortgage. Only mortgages in one currency can be assigned to the same rank. The registration of the mortgage has an explanatory effect.

Law stated - 15 April 2024

- 17** | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

The total amount of the mortgage must be stated. The mortgage does not have to contain a maturity date. The underlying documents must not be filed.

Law stated - 15 April 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

In a syndicated financing, a security agent bank can be appointed, and the entire amount may be mortgaged under the name of this bank or other financial institution. The terms will be agreed between the lenders. In practice, usually all parties to the financing establish a pro-rata mortgage over the property.

Law stated - 15 April 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

No. The agent will be registered as the mortgagee before the ship registry and the terms of the security will be determined between the lenders themselves.

Law stated - 15 April 2024

20 | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

It will be considered as assignment of the receivables, which in principle does not require the consent of the mortgagor. Subject to the terms of the loan documents, the consent may be required by agreement. A written agreement between the new and ex lenders must be signed for assignment of receivables followed by filing the same to the ship registry.

Law stated - 15 April 2024

Maritime liens

21 | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

The following claims arising against the owner, demise charterer, manager or operator of the vessel grants maritime lien right and an action in rem on the vessel to their creditors (article 1320 of the TCL):

- seamen's wages, costs of repatriation and social insurance contributions;
- loss of life or physical injury;
- salvage;
- port, canal, other waterway, quarantine and pilotage dues;
- tort arising out of physical loss or damage; or
- general average.

Maritime liens give rise to a right to arrest a vessel.

Under the article 1352 of the TCL, a vessel can be arrested for a maritime claim, which consists of claims arising out of:

- loss or damage caused by the operation of the vessel;
- loss of life or other personal injury;
- salvage;
- damage or threat of damage caused by the vessel to the environment, coastline or related interests;
- costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, grounded or abandoned,



including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and to seamen's subsistence;

- any agreement concluded for the purpose of using or leasing the vessel, whether a charter party is issued or not;
- any agreement concluded for the purpose of carrying goods or passengers in the vessel, whether a charter party is issued or not;
- loss of or damage to or in connection with goods, including luggage, carried in the vessel;
- general average;
- towage;
- pilotage;
- goods, materials, provisions, bunkers, equipment including containers supplied or services rendered to the vessel for its operation, management, safeguard or maintenance;
- construction, reconstruction, repair, equipping or conversion of the vessel;
- port, canal, dock, pier and harbour and other waterway dues and other charges, and those payable for quarantine;
- wages and other sums due to the seamen in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf, along with claims for other amounts due to them;
- disbursements incurred on behalf of the vessel or its owners, including loans taken out for the vessel;
- insurance premiums, including mutual insurance calls, payable by or for the account of the vessel owner;
- any and all commission, brokerage or agency fee payable in respect of the vessel by or for the account of the vessel owner;
- any dispute as to ownership or possession of the vessel;
- any dispute between co-owners of the vessel as to the management or earnings of the vessel;
- a vessel lien, vessel mortgage or a charge of the same nature on the vessel; or
- any dispute arising out of a contract with respect to the sale of the vessel.

The arrest of a ship for a maritime claim can only be possible if (according to article 1369/1 of the TCL):

- the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the ship when the arrest is enforced;
- the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the vessel when the arrest is enforced;



- the claim is based upon a ship lien, ship mortgage or any in rem encumbrance of the same nature on the ship;
- the claim relates to the ownership or possession of the ship; or
- the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien that is granted or arises under the law of the state where the arrest is applied for.

Associated ship arrest is only possible if the owner of the ship requested to be arrested is liable for that maritime claim and when the cause of action arose this owner was either the owner or demise charterer, time charterer or voyage charterer of the vessel on which the maritime claim arose (article 1369/2 of the TCL).

Law stated - 15 April 2024

22 | What maritime liens rank higher than a mortgage lien?

Maritime liens that are referred to under articles 1390 – 1392 of the TCL rank higher than a registered mortgage regardless of whether registry date of the mortgage is earlier than the claim date of the maritime lien.

Higher-ranking maritime liens than a mortgage lien and their ranks are as follows.

First rank

All expenses arising out of the attachment of the vessel, maintenance, guard and alimentary for the seamen, liquidation of ship, division of sale amounts throughout the attachment period and sale of vessel.

The expenses occurred by the time passing during attachment of the receivables for loss or damage caused by the operation of the vessel.

Second rank

Expenses arising from salvage of the sold ship that has been salvaged by public authorities for the security of navigation or protection of marine environment when it was stranded or submerged shall be registered in second rank of creditors ranking list.

Third rank

- claims for loss of life or physical injury;
- claims for salvage;
- claims for port, canal, other waterway, quarantine and pilotage dues; and
- claims based on tort arising out of physical loss or damage.

Mortgage lien comes in the fourth rank. Although constituting a maritime lien general average claim comes after any legal or contractual liens either registered or not (article 1323 and 1324 of the TCL). However, in the event that a ship that is stranded or sunk is removed by public institutions for the purpose of navigational safety or the protection of the marine environment, its expenses are paid before all ship receivables. (article 1323/3)

Law stated - 15 April 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

Yes, right of usufruct and precautionary attachments or definitive attachments may be recorded by the courts or enforcement offices.

Law stated - 15 April 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Yes. Turkish Republic codified the terms of International Convention on Maritime Liens and Mortgages 1993 into the TCL and the former was later ratified on 25 March 2017. Therefore, mortgages over the foreign vessels are recognised and enforceable in Türkiye.

Law stated - 15 April 2024

Enforcement of mortgages

25 | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

Under article 1381 of the TCL, creditors of a contractual or by law ship mortgage may commence an enforcement proceeding for foreclosure of the mortgage for both Turkish flag vessels and foreign flag vessels. Under the Enforcement and Bankruptcy Law (EBL), in principle there are two types of enforcement proceedings that can be followed: (1) ordinary proceedings without judgment (2) proceedings with judgment.

From the mortgage agreement, if presence of an unconditional pecuniary debt can be determined or the right of receivable also constitutes a judgment, or it is accepted under the documents considered as judgment (article 38 of the EBL), then proceedings with judgment for foreclosure of the mortgage may be followed. It provides a procedure facilitating the foreclosure of the mortgage as it is considered as having a court judgment. In

addition, pursuant to article 1378 of the TCL, a mortgagee can also commence bankruptcy proceedings directly.

Before commencing enforcement proceedings, the mortgagee may arrest the vessel. Upon obtaining the arrest order, the enforcement proceedings must be commenced within three business days of the date of the arrest order. Otherwise, the arrest order is lifted ex officio. (article 1364 of the TCL).

For ordinary proceedings, the debtor has the right to object to the payment order sent by the enforcement office within seven days of receipt of it. If the debtor objects, the proceedings will stay, and the mortgagee must commence the cancellation of objections proceedings before the courts. If the debtor neither objects nor makes the due payment in 30 days, the mortgagee may proceed with request of sale of the vessel.

For proceedings with judgment, there are three alternative methods to follow:

1. Upon submission of a judgment or one of the documents pursuant to article 38 of the EBL, the enforcement office will send an enforcement order to the debtor; if the debtor does not make a payment within seven days following the receipt of the order or obtains a set aside decision of enforcement, the creditor may proceed with the sale of the vessel (article 150/h of the EBL).
2. If the debt amount was ascertained unconditionally under the mortgage agreement, upon filing the enforcement request and the underlying document constituting an unconditional debt, the enforcement office will send an enforcement order to the debtor; if the debtor does not make a payment within 30 days of following the receipt of the order or obtains a set aside decision of enforcement, the creditor may proceed with the sale of the vessel (article 149, 149/a of the EBL).
3. Pursuant to article 150/1, the special regulation for financial institutions, it is mandatory to send notice of closure to the debtor and mortgagors, which shall include an account statement indicating the outstanding amount and interests accrues periodically in respect of the loan documents (68/b of EBL). The opposing party may send an objection notice within eight calendar days of the date of service of the notice and request the enforcement court to set aside the enforcement. If the financial institution proves its receivable with other loan documents, this objection is dismissed by the enforcement court and the vessel can be sold upon continuing the enforcement proceedings.

For ordinary proceedings (without judgment) an application charge of 0.5 per cent of the enforcement amount shall be deposited. An additional 1.5 per cent must be deposited if a case will be commenced to lift any objections.

For proceedings with judgment only fixed charges are applicable. Together with the initial expenses (ie, notice to the debtors) approximately €100 will be requested.

The following costs will incur for both the ordinary and with judgment proceedings:

- the expenses that will arise during the enforcement period such as valuation, notices (internal and international), publishing of auction announcement (in both national and international gazettes), trustee fees and maintenance of the vessel, among others;



- upon the sale of the vessel via auction, the below mentioned taxes shall be deducted from the collected amount:
- collection fee – 11.38 per cent;
- brokerage fee – 1 per cent or 2 per cent depending on the sale price of the vessel; and
- prison fee – 2 per cent;
- in practice, it is seen that the enforcement offices request advance payment (around €1,000) for the expenses that may arise due to implementation of the arrest order.

Interlocutory sales are not permitted. However, there are two other possibilities for sale of the vessel if all of the interested parties consent to this type of sales or the conditions are met under the article 1386 of the TCL: (1) the sale of the vessel before completing all the procedures of auction or (2) a private auction sale of the vessel (article 1387 of the TCL). Depending on the objections of the mortgagor' or the principal debtor' (if any) objections completion of a judicial sale may take from one to six years.

Law stated - 15 April 2024

Sale by mortgagee

26 | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

The matter remains controversial. Many of the scholars opine that it does not fall within the prohibition of the lex commissoria, provided that the mortgagee is not the purchaser if the debt has not become due and payable. However, implementation in practice would create an issue since a mere clause under the mortgage agreement cannot be considered as a duly proxy for the sale of a vessel. Private sale will not discharge liens over the vessel.

Law stated - 15 April 2024

Default under mortgage

27 | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

If the receiver is not the mortgagee itself, then the majority of the scholars opine that these kinds of provisions are enforceable. The lex commissoria prohibition shall be cared.

Law stated - 15 April 2024

Limitations on rights of self-help

28 | What are the limitations on rights of self-help by a mortgagee?

Upon the debt becomes due and payable, the parties may agree on the sale of the vessel to the mortgagee or a third party. If the vessel is transferred to the mortgagee, right of redemption for repurchase of the vessel in the future may be foreseen. If the debt is not due and payable, the sale of the mortgaged vessel to the mortgagee is not possible under the *lex commissoria* prohibition. Also, a provision ensuring the mortgagor that the exceeding amount of the debt from the sale price of the vessel will be returned to the mortgagor. Otherwise, the provision will be void.

Law stated - 15 April 2024

Duties to owner or third-party creditors

29 | What duties does a mortgagee owe to an owner or third-party creditors?

The mortgagee as other parties under Turkish law have the duty to act in good faith.

Law stated - 15 April 2024

COLLATERAL

Finance leases

30 | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

Finance leases and bareboat charters may be recorded to the registry.

Law stated - 15 April 2024

31 | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

Turkish courts have the discretion to characterise a contract between the parties regardless of its title if the content of the document prove a commercial motivation other than the title of that contract. The financial lease agreements shall be registered to the ship registry under the Financial Lease, Factoring, Finance, and Savings Finance Company's Law numbered 6361. Under article 28 of this law, if the third-party creditors commence an enforcement proceeding against the lessee, the enforcement officer shall order to keep the leased assets out of the enforcement proceedings. This order can be challenged in seven days and the enforcement court shall decide on the matter within a month.

Law stated - 15 April 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Security interest created over earnings of a vessel, charter contracts, insurances may be created by means of an assignment. Assignment of the receivables is subject to written form under Turkish Obligation Law article 184 to be valid and enforceable. An agreement between the mortgagor and mortgagee for assignment of the security interest to the mortgagee is signed in practice. Notification of assignments to be signed or endorsed by the relevant third party (ie, insurer, charterer, bank etc) are usually annexed to this agreement.

Law stated - 15 April 2024

- 33** | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

Most common security interests against non-vessel collateral are pledge of the borrower's shares, surety agreements, and security over a bank account. They do not have to be registered.

Law stated - 15 April 2024

- 34** | How is a security interest over a deposit account established? How is a security interest perfected?

Assignment of the receivables is subject to written form under Turkish Obligation Law to be valid and enforceable. The relevant bank is notified of the security interest over a deposit account by the notification of assignment signed by the mortgagor or borrower. In practice, endorsement of the notification of assignment by the bank is usually requested by the mortgagee.

Law stated - 15 April 2024

- 35** | How are security interests in non-vessel collateral enforced?

The security documents and loan agreements usually determine the conditions of enforcing non-vessel collaterals. If the relevant party does not abide by these provisions, enforcement proceedings or actions before the courts may be commenced by the mortgagee.

Law stated - 15 April 2024

Share pledges

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36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Share pledges are common in Türkiye. If the vessel owner's company is registered in one of the trade registries located within Türkiye, the company records (ie, articles of association, directors or authorised signatories) may be searched online from the Turkish Trade Registry Gazette. The distinction between a joint stock company and limited liability company shall be made. Establishing a lien or transferring a joint stock company's shares are not subject to registry unless the company has a sole shareholder structure. If the shares are nominative, the lien is established by delivering and endorsing the share certificates. If the shares are bearer, the lien is established by delivery of the share certificates. If the shares are not bound to a share certificate, then a lien agreement is sufficient. However, this agreement is not required to be registered.

Under the Turkish Commercial Law (TCL), a distinction is foreseen for establishing a lien right depending on whether the articles of association of the company require approval of the general assembly. If a general assembly resolution is required, then establishing a lien right is subject to the transfer of the shares and is established validly upon the signature of a lien agreement and acknowledgment of the signatures before a notary public followed by approval of the general assembly. If a general assembly resolution is not required, establishing a lien right will be subject to Turkish Civil Law numbered 4721. By reference to the relevant article to the TCL, the procedure is again subject to the procedure of transfer of the rights of the share. Accordingly, a lien right is established validly upon the signature of a lien agreement and acknowledgment of the signatures before a notary public. However, there is a controversy among scholars about whether a subsequent general assembly resolution will be required or not. Also, the shares are recorded for both types of companies in a share book by the board.

Law stated - 15 April 2024

37 | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

Yes. Under Turkish corporate law, the shareholders cannot be held liable for the companies' (with capital) debts. As to the limited liability companies, the shareholders are only liable with their personal assets for the public receivables. The board of directors of a joint stock company may be held liable for the company's debts arising out of a transaction where the directors are found liable faulty in their management. These latter cases are exceptional, and the court seeks solid evidence for holding the directors liable of their actions, which has resulted in a burden of debt for the company.

Law stated - 15 April 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

38 |

Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

If the owner is an entity, corporate tax is payable over the profit of the owner of a vessel registered under the National Ship Registry (NSR). Corporate tax rate applicable to earnings in 2023 and subsequent taxation periods is 25 per cent. However, the applicable rate is 30 per cent on the corporate earnings of banks, companies within the scope of the Law numbered 6361, electronic payment and money institutions, authorized foreign exchange institutions, asset management companies, capital market institutions, insurance and reinsurance companies and pension companies. If the owner of a vessel registered under NSR is a real person, income tax is payable. The rate depends on the tax band they are subject to; a case-by-case analysis shall be made.

Profits derived from the management and transfer of ships and yachts registered to TISR are exempt from income and corporate taxes and funds.

Law stated - 15 April 2024

Tonnage tax

39 | Is there an optional tonnage tax exempting vessel owners from tax on income?

Tonnage tax is not applicable for the vessels registered to NSR. The vessels registered to the Turkish International Ship Registry (TISR) are only subject to tonnage tax. The registry charge of US\$10,000 shall be paid at the time of the ship's registry. For yachts, the registry charge is US\$5,000. Tonnage tax is charged annually and Turkish lira equivalent of US\$1 per net ton of the ship, or yacht is collected. If the ships are classed directly or dually from Turkish Lloyd, tonnage tax and annual tonnage tax are reduced 50 per cent. The exchange rate is the selling price the Turkish Republic Central Bank announced on the day of the calculation.

Law stated - 15 April 2024

Tax incentives

40 | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

Earning from management and transfer of the ships and yachts registered to TISR are exempted from income and corporate tax.

Purchase, sale mortgage, registry, loan, charter parties related to ships and yachts to be registered to TISR are exempted from stamp duty, charges, banking and insurance tax. They will, however, be subject to motor vehicles tax, if applicable to the relevant vessel.

Wages of crew working in ships or yachts registered to TISR are exempted of income tax.

Cargo and passenger ships having cabotage right, merchant yachts and fishing vessels are exempted of excise duty by fulfilling the requirements of the decree number 2003/5868.

Law stated - 15 April 2024

Other tax provisions

- 41** | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

Under the value added tax (VAT) law, transport ships are exempted from VAT applicable for services obtained at the ports. Ships that make international journeys are also exempted from VAT for services of ship operation, seamen's administration and services of marine information and marine technique.

The banks, financial institutions, foreign loan institutions and international institutions are exempted of the fees (except court or enforcement office fees) applicable to the transactions regarding loans, securities of the loans and repayment of the loans pursuant to article 123 of the Fees' Law numbered 492 where court fees, notary fees, title deed fees, consulate fees, ship and port dues, stamp tax, traffic fees, passport fees, work permit fees and foreign affairs ministry attestation fees are regulated.

Law stated - 15 April 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

- 42** | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Yes, concordat proceedings are regulated under article 285 et seq of the Enforcement and Bankruptcy Law (EBL). The purpose of the concordat institution is to relieve the debtors, who cannot or who are in danger not to pay their mature debts, from the bankruptcy by allowing them to pay their debts with extra maturity and/or reduction (article 285 of the EBL) and aims to prevent the merchant from bankruptcy. Concordat may be demanded by the debtor as well as by any creditor that may claim bankruptcy.

The concordat process consists of five fundamental stages: (1) application to concordat, (2) temporary moratorium, (3) definitive moratorium, (4) creditors' meeting (if applicable) and (5) the court's examination and approval of the concordat.

Once the temporary moratorium order is rendered, the court assigns temporary concordat commissaire(s) to examine whether concordat can succeed or not. The temporary moratorium can be ordered for three months and may be extended at most for two months (article 287/4 of the EBL). Based on the opinion and reports of the commissaires, if the court deems that the concordat project would succeed, it orders definitive moratorium for one year (article 289 of the EBL). This term may be extended for another six months. If

the court deems that the project submitted will not succeed, it rejects the application of the definitive moratorium.

Article 288 of the EBL regulates that the temporary moratorium generates the same legal consequences as the definitive moratorium. These legal consequences are:

- No proceedings may be carried out against the debtor within the moratorium, including the proceedings that are done in accordance with the Law on the Collection of Public Receivables numbered 6183 and the proceedings that have previously started stay. No precautionary injunctions and precautionary attachment decisions apply. The limitation periods and period of prescriptions that are cut with an enforcement proceeding cease to run.
- Attachment proceedings may be made for the privileged receivables.
- Unless the approved concordat project contains a provision otherwise, interest will cease to accrue on any receivables not secured by pledge as of the definitive moratorium date.

Foreclosure of lien or mortgage proceedings may be commenced during the moratorium and already commenced proceedings may continue. However, sale of the vessel will not be possible unless (1) the use of the vessel is not foreseen within the scope of the concordat project, or (2) its value will decrease, (3) safeguarding the vessel will be costly.

Law stated - 15 April 2024

Foreign court rulings

43 | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

The bankruptcy and enforcement offices at the place of the registry address of the debtor have the jurisdiction for bankruptcy proceedings and the commercial courts at the place of the registry address of the debtor for the bankruptcy action (article 154 of the EBL). This is an exclusive jurisdiction rule for the enforcement actions. As to the entities that have a place of business located abroad, the bankruptcy and enforcement offices at the place of the Turkish branch's registry address have the jurisdiction.

A foreign court's ruling on bankruptcy may be subject to recognition and enforcement of the foreign judgment procedure in Türkiye. Pursuant to article 54 of International Private and Procedural Law No. 5718 (IPPL), a foreign court's decisions can be recognised and enforced in Türkiye if:

- the foreign court's decision is finalised, and all legal remedies are exhausted;
- there is reciprocity between Türkiye and the relevant the decision is rendered;
- the decision is not given on a subject falling under the exclusive jurisdiction of Turkish courts;
- the decision is not against Turkish public policy; and
-

the decision did not jeopardise the due process rights of the defendant (the defendant should be duly informed of the dispute, given the right to be represented and present its case and that the decision should not be given in its absence.

Law stated - 15 April 2024

Model Law on Cross-Border Insolvency

44 | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

No.

Law stated - 15 April 2024

Order of priority

45 | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

The priority between the ordinary and lien right holders' creditors are stipulated under the EBL as follows:

- the lien right holders have the priority after payment of the sale expenses of the property;
- workers' wages, severance and notice pay;
- aliment compensation in relation to family law;
- all receivables left to the debtor's management due to guardianship and curatorship;
- receivables having priority under special laws; and
- all remaining receivables.

It should be noted that the time of the action of cause arose matters. So, case-by-case analysis should be made. The creditors of each rank have equal rights among themselves. Unless the creditors in the previous rank are satisfied in full, the later ranks do not receive any payments.

Foreclosure of the vessels are subject to special regulations under the Turkish Commercial Law (TCL).

Law stated - 15 April 2024

Security provision by vessel owner

46 |

May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

Yes, unless it is prohibited under the articles of association of the relevant company. In general security agreements are defined as undertaking a third party's obligation. Although there is not a clear reference as to how the form of this agreement should be under article 128 of Turkish Obligations Law (TOL), these types of agreements appear as surety agreement in practice. Pursuant to article 603 of the TOL, the formal requirements of surety agreements are also applicable to any agreement of this kind providing with a personal security under whatsoever name (ie, guarantee agreements). So, the validity and enforceability requirements aligned hereunder shall also be applicable to guarantee agreements or agreements of this kind. Execution or any amendment to surety shall be in written form and pursuant to article 583 of the TOL, the maximum amount of the surety's liability, the commencement date of the surety and any statement indicating the solidarity nature of the surety when it is a joint surety, shall be written by hand by the surety themselves and signed by the real person surety. In addition to these, pursuant to the article 584 of TOL, if a real person surety is married, he or she can enter into the surety agreement with the written consent of the other spouse, unless a split or separation order has been issued by a court. Such consent shall be granted prior to or at the time of signature of the agreement. Any failure in obtaining the consent of the other spouse will result with the invalidity of the surety agreement and if the other spouse grants the consent to the surety after the moment of signature of the contract, the given consent shall not regenerate the contract.

However, there is an exception regulated under article 584/3 of TOL. If the surety is given for the debts of a company to which the surety is either director, shareholder, or member of the board of directors, spouse consent is not required.

Law stated - 15 April 2024

Law of fraudulent transfer

47 | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Yes, cancellation of transaction procedure is foreseen under article 277 of the EBL.

There is no limitation on disposition of the property and the rights of the debtor prior to the attachment or upon opening of bankruptcy. To prevent the debtor from fraudulent transfer of its property, creditors can apply for provisional attachment. The challenge for a transaction can be made before the courts within five years from the date of the relevant transfer and automatic cancellations are not available. The following circumstances provide with a ground for challenge of a transfer:

1. The assets granted within two years prior of insolvency or bankruptcy and even if not granted the following transactions are considered as gratuitous:

- - transactions between spouses, ascendants and descendants, relatives (from at least third degree), adopted and adoptive;
 - undervalue transactions; and
 - contracts for lifelong support or providing a usufruct right for life.
1. The assets sold or pledged within one year prior of insolvency, bankruptcy or the date of the transcript of attachment if the debtor was deeply indebted, and their assets are not sufficient to their debts:
- - payments made for an undue debt;
 - annotations given before the title deed;
 - pledging an asset whereas there was no prior commitment for a pledge; and
 - payments made via methods other than money or ordinary payment methods.

The assets sold or pledged within five years prior the commencement of the enforcement or bankruptcy proceedings in case the transfer was intentionally made to harm the creditor and within the knowledge (or reasonably can be assumed) of the party the property was sold or pledged to.

Law stated - 15 April 2024

Petitions by creditors

48 | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

In Türkiye, there is a general rule to first apply against the pledged property (enforcement proceedings for foreclosure of a pledged property) unless the receivable is also secured by a bill of exchange. A creditor may either commence (1) bankruptcy enforcement proceeding or (2) apply to courts for bankruptcy:

1. The creditor must first apply to the bankruptcy office and request the bankruptcy payment order sent to the debtor. The bankruptcy proceeding can be initiated in two different ways, namely, general bankruptcy proceeding and proceeding specific to bills of exchange, depending on the documents on which the creditor bases its receivable. The creditor must file a bankruptcy lawsuit before the commercial court of first instance at the place of the debtor's registered address. If the debtor had objected to the payment order, the lawsuit would have the nature of an annulment of the objection and the court must consider whether the receivable exists. If the debtor has not objected to the payment order and the proceeding is finalised, then

the court will make a brief procedural review.

2. If the following reasons for bankruptcy exist, the creditor may directly apply to the commercial court of first instance and request the bankruptcy of the debtor followed by a direct bankruptcy proceeding:

- - debtor's place of residence is unknown;
 - debtor abandoned its place of residence with the aim of escaping its undertakings;
 - debtor commits or attempts fraudulent acts that violate the rights of its creditor;
 - debtor retains of his or her goods during the attachment proceedings;
 - debtor has suspended his or her payments;
 - proposed concordat project is not approved, or the concordat moratorium is lifted, or the concordat process is terminated completely;
 - termination of restructuring by compromise and breach of restructuring project; or
 - receivable based on a judgment has not been paid despite being requested by the enforcement order.

Law stated - 15 April 2024

Model Netting Act

49 | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

No, Türkiye has not adopted the Model Netting Act of ISDA. Based on freedom of contract, ISDA agreements and close-out netting are thought to be enforceable in Türkiye under general principles such as Enforcement and Bankruptcy Law No. 2004 or Capital Markets Law No. 6362. The courts tend to accept the close-out netting arguments if evidenced properly.

Law stated - 15 April 2024

UPDATE AND TRENDS

Current developments

50 | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

Recent developments over the past years in relation to the protection of the value of the Turkish lira have been a hot topic for the finance sector. As to shipping finance, there are notable exceptions from the general restrictions of the use of foreign currency, which allow shipping finance to be affected minimally by the restrictions on the use of foreign currency and foreign currency loans. For instance, it is possible to agree on the contract price of the financial leasing contracts and other payment obligations arising from thereof as foreign currency or indexed to foreign currency for vessels defined under the Turkish International Ship Registry Law numbered 4490 and the Law on Amendments to the Decree Law numbered 491. Also, it is not required to use the credits through banks for the loans provided within the scope of imports by residents in Türkiye to purchase vessels from abroad.

As to the registry of the vessels, mortgages and other encumbrances, the online platform 'Umurbey' introduced by the Maritime Affairs Directorate of the Transport and Infrastructure Ministry is effectively used. Depending on the transaction, it is possible to have the applications approved and provided with a rendezvous within the same day. With this development, the aim is to conclude all transactions related to the vessels online without attendance to the registries in the future. There has been an increase in the applications made recently through Umurbey regarding the establishment of mortgages.

Following the approval by the European Commission of the Maritime Decarbonisation and Green Shipping project of the Directorate General for Maritime Affairs of the Ministry of Transport and Infrastructure, all stakeholders of the Turkish maritime sector were invited to share their project proposals to ensure within the scope of the programme, in which grants will be provided with the financing of the European Bank for Reconstruction and Development and other co-financiers for investments in alternative fuels and the implementation of energy-efficient solutions in ships and ports within the Turkish maritime sector.

Another development that may affect the shipping finance by increasing new buildings is the amendments introduced to the Regulation on Encouragement of the Construction of New Ships to Replace Scrapped Turkish Flag Vessels (Regulation) on 23 March 2024. One of the amendments is the tenfold increase in the upper limit of 5,000 GT for commercial vessels, marine and inland watercraft 20 years old and over to be scrapped to 50,000 GT. Another amendment is the increase of the upper limit for the incentive applications that can be made for a maximum of ten ships not exceeding 50,000 GT, which was previously stipulated as not to exceed 25,000 GT. Also, the requirement to apply in June each year has been abolished for those who wish to benefit from the incentives, throughout the year. These amendments aim to rejuvenate Türkiye's average vessel fleet by reducing its age.

In force as of 1 January 2024, the Banking Regulation and Supervision Agency has introduced the 'Regulation on Determination of Risk Groups and Loan Limits' to determine the procedures and principles regarding the determination of risk groups by banks and the calculation of credit limits on a consolidated and non-consolidated basis.

Turkish law legislation is available [online](#) in Turkish.

Law stated - 15 April 2024

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Ceren Çakırcerencakir@ecclaw.com.tr

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USA

Richard B Furey, Jovi Tenev

Holland & Knight LLP

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DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Vessels – at least most commercial vessels and, in some instances, pleasure craft – are registered under the laws of the United States with the United States Coast Guard. The title to some pleasure craft is registered with the various states, but virtually all commercial watercraft, especially those trading internationally, are documented under federal law. The Coast Guard office responsible for the registration of titles and the recording of liens is the National Vessel Documentation Center (NVDC) located in Falling Water, West Virginia. The NVDC maintains all records regarding title to US-flagged vessels. The NVDC will issue a certificate of ownership (Form CG–1330), which will indicate the identity of the registered owner of a vessel and will list any liens that have been recorded against the vessel, predominantly mortgages and notices of claims of liens (much like a transcript of registry available under the laws of those jurisdictions whose merchant marine laws are based on those of England). The NVDC will also issue abstracts of title (Form CG–1332), which will detail the history of registered ownership and all transfers and liens that have been recorded against the relevant vessel and any discharges of those liens from the date of initial issuance of the certificate of documentation for the vessel under the US flag. All transfers of title are evidenced by bills of sale.

Law stated - 21 May 2024

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

A request to the NVDC for an abstract of title or a certificate of ownership will produce a document that will list any liens that have been recorded against a vessel and that remain undischarged. Generally, the only liens recorded are preferred mortgage liens, although, unlike many other registries, US law permits the filing of a notice of claim of lien by anyone asserting a lien against a documented vessel. Most maritime liens arise by operation of law and there is no requirement that they be recorded with the NVDC, with the exception being mortgages. All vessel mortgages must be recorded with the NVDC to be valid 'preferred mortgages' that can be enforced by a foreclosure proceeding in the US federal courts. For vessels documented under state law, a search of the relevant state office records should be undertaken. For undocumented vessels, a search of the US Surface Transportation Board (STB) watercraft filings may be searched electronically via the STB Water Recordations webpage. In addition to the foregoing, a search of UCC filings against the putative owner of the vessel may also be performed.

Law stated - 21 May 2024

- 3 |

How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

For a vessel to be registered under the US flag, the vessel (among other things) must be owned by an individual, partnership, trust, association, corporation or other entity that meets certain requirements of US citizenship, the exact requirements depending, for example, in the case of a corporation or like entity, on the nature of the registry endorsement sought. While maritime liens (other than mortgages) are by their nature inchoate 'secret' liens, not normally recorded anywhere, in cases of non-maritime liens, perfection of these liens is often accomplished by the filing of a Uniform Commercial Code financing statement (Form UCC-1) in the jurisdiction in which the lien's grantor is 'located' – in the US state wherein the grantor was formed (in the case of a corporation, limited liability company or similar 'registered organization'), or has its principal place of business (in the case of certain other entities) or their principal residence (in the case of individuals).

The actual rules can be rather complex in certain circumstances but are comparatively simple in the instance most likely applicable in the case of financing a US-registered commercial vessel. In these instances, the relevant party is likely to be a corporation formed under the laws of one of the 50 states of the United States. If so, a creditor would perfect its security interest granted under a security agreement by filing a UCC-1 in the state of incorporation of the debtor. Hence, to determine whether any such security interests exist against a party, one can perform a UCC search (there are many services that perform this function for a nominal fee) in the relevant state or states. In certain circumstances, liens of bareboat charters and security interests may be recorded with the STB. STB watercraft filings may be searched electronically via the STB Water Recordations webpage.

Law stated - 21 May 2024

Public registry searches

- 4** | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

Yes. If the obligor is a corporation, limited liability company or similar entity, a request to the relevant jurisdiction's secretary of state's office (again, typically performed through a third-party service provider) can confirm if the obligor is in good standing (ie, it continues to exist as a legal entity and is current in its filing fees), or that it no longer is in good standing, in which case further due diligence will be required to determine the exact status of such entity.

Law stated - 21 May 2024

- 5** | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Generally, no. Except in certain limited circumstances, there is no requirement that a list of officers, directors or shareholders be made publicly available. This is not true, of course, in the case of a publicly traded company, which must file an annual report identifying its principal executive officers. Additionally, holders of 5 per cent or more of a publicly traded US company must make publicly accessible filings with the US Securities and Exchange Commission (SEC). Such filings with the SEC are also required by holders of more than 10 per cent or more and those intending to exercise control of the company. However, none of this information is customary in the case of a private company, in which instance the information must be obtained through due diligence or by way of a certificate from someone within the subject entity's business (ordinarily the company secretary) who will certify to this information.

Law stated - 21 May 2024

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

Historically, guarantees of third-party obligations were considered ultra vires or beyond the scope of a company's business and, therefore, beyond its corporate power. While that concept is no longer rigidly embedded in the corporate laws of many US states, the laws of some do explicitly provide that any guarantee, whether it is clearly within the intended scope of such corporation's business or not, will be enforceable if the shareholders of such corporation approve the issuance of the guarantee.

With respect to debt obligations that clearly fall within a corporation's business scope, no shareholder approval is usually required, but a determination needs to be made as to whether the incurrence of the debt obligation is within the ordinary course of the company's business and whether it can be stated that it is part of the day-to-day business of the company. Matters that are not ordinary, day-to-day matters should be approved by a company's board of directors or, if the corporation has delegated such power to an executive committee, the executive committee.

The laws of each US state are different and while many matters governing corporate law are consistent from state to state, not all such matters are, and the laws of each relevant state should be reviewed by a qualified practitioner within such state. Moreover, each corporation will have its own unique certificate or articles of incorporation and by-laws and these should be reviewed to make any authoritative determination regarding the foregoing.

Law stated - 21 May 2024

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

As a general rule, no. Simply making loans is not considered to be 'banking', which is a complex, regulated enterprise. However, the laws of each relevant state should be examined. Similarly, a lender will not ordinarily be deemed resident within the US solely by virtue of making a loan to a US-based entity or individual, but this is an area that defies generalisation and broad, sweeping conclusions of this sort are of limited value. Each case should be looked at individually.

Law stated - 21 May 2024

REPAYMENT

Central bank and regulatory approval

8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

No. However, as the legal currency of the US is the dollar, the courts of most states will only award judgments in dollars.

Law stated - 21 May 2024

Usury laws

9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

Each US state has its own usury laws, but many states do not apply such laws for commercial transactions that meet certain size thresholds. The law with respect to ship mortgages has no independent usury limitations.

Law stated - 21 May 2024

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

Interest (and original issue discount) on a debt obligation of a US corporation (or an unincorporated US entity classified as a corporation for US federal income tax purposes) or a noncorporate US resident that is payable to a non-US lender (or to a facility agent or security trustee for the benefit of a non-US lender) is subject to US federal tax withholding at the rate of 30 per cent unless the borrower receives, before the date on which the interest (or original issue discount) is paid, (1) a properly completed and executed US Internal Revenue Service (IRS) Form W-8BEN-E (or other applicable IRS form) of the lender evidencing the lender's entitlement to (a) exemption from (or reduction in the rate of) traditional US federal withholding tax under a US income tax treaty or under a statutory exemption for portfolio interest and (b) exemption from the withholding tax imposed by the

US Foreign Account Tax Compliance Act (FATCA), and (2) if the interest is payable to a non-US facility agent or security trustee for the benefit of the lender, a properly completed and executed IRS Form W-8IMY and withholding statement from the facility agent or security trustee.

Interest (and original issue discount) on a debt obligation of a non-US company classified as a corporation for US federal income tax purposes that is payable to a non-US lender (or to a non-US facility agent or security trustee for the benefit of a non-US lender) is subject to US federal tax withholding if (1) the borrower is engaged in business in the US, and (2) either (a) the debt obligation is secured predominantly by assets that produce income (and if sold would produce gain) classified as effectively connected with the borrower's US business or (b) the borrower enters the liability on a set of books reasonably contemporaneously with the time at which the liability is incurred and the liability relates to an activity that produces income which is classified as effectively connected with the borrower's US business, unless the borrower receives, before the date on which the interest is paid, the IRS forms described above.

There is a statutory exemption from US federal withholding tax for interest on a debt obligation that is in registered form (as defined in applicable US Treasury regulations) and is payable to a non-US person who delivers an applicable IRS W-8 form and an appropriate portfolio interest exemption certificate, but the exemption does not apply to interest received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its business.

Law stated - 21 May 2024

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

As defined in section 3 of Title 1 of the US Code, the word 'vessel' includes 'every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water'. Recent interpretations of that expression by the US Supreme Court have injected an element of uncertainty into what legal practitioners once thought was a well-settled area of law. Nevertheless, the prevailing view is that the definition includes offshore drilling rigs and mobile offshore drilling units, and many have been and are currently registered in the US flag.

Any 'vessel' of at least five net tons, not documented under the laws of a foreign country, is eligible for registration with the National Vessel Documentation Center (NVDC), provided it is owned by a citizen of the US. A federal registration of a vessel allows the vessel to fly the US flag and makes it eligible to become subject to a 'preferred mortgage', which is generally considered to entitle the mortgagee to superior treatment compared with state-titled vessels.

Law stated - 21 May 2024

12 | Who may register a vessel in your jurisdiction?

A US-flagged vessel must be owned by a US citizen to be documented with the NVDC. However, there are different levels of US citizen ownership required for certain entities and for the registration 'endorsement' required for certain trades. For example, a corporation seeking to register a vessel must be formed under the laws of the US or a state thereof, its chief executive officer must be a US citizen and no more of its directors may be non-citizens than a minority of the number needed to constitute a quorum of the board, but the shareholders need not be US citizens. However, if the vessel is intended to be used in the US coastwise trade (or the American fisheries trade) the corporation must be at least 75 per cent owned by US citizens, legally and beneficially at all levels in the ownership chain, with no means whatsoever by which a non-citizen may exercise control of the vessel.

The complete rules and procedures for determining when an entity (as opposed to an individual) is a US citizen are voluminous and the foregoing is a mere example. A full analysis is beyond the scope of this summary and each case must be looked at thoroughly and independently.

Law stated - 21 May 2024

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

No, there is no 'alternate' registry. Many US owners, both public and private, register commercial vessels with 'open' international registries such as the Marshall Islands, Liberia

and Panama if there is no compelling commercial need to register those vessels under the US flag.

Law stated - 21 May 2024

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

- 14** | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

Generally, ship mortgages may secure any indebtedness, including (subject to certain limitations) swaps and other contingent obligations. However, considerable care must be given to the drafting of a mortgage covering such contingent obligations as well as the methodology employed for calculating the amount of such obligations. There is no prescribed form of mortgage in the US. Unlike the English model, there is no statutory short form accompanied by a deed of covenants. Rather, a preferred mortgage typically includes the limited information required by law and the National Vessel Documentation Center (NVDC) procedures as well as whatever covenants the parties choose to include. The ship mortgage, therefore, is by practice and custom a more comprehensive document than a statutory form mortgage.

Law stated - 21 May 2024

Required form

- 15** | Give details of any required form for ship mortgages in your jurisdiction.

While no form is required, a mortgage must:

- identify the vessel;
- state the name and address of each party to the instrument;
- state the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses and fees;
- state the interest of the grantor, mortgagor or assignor in the vessel;
- state the interest mortgaged; and
- be signed and acknowledged.

Law stated - 21 May 2024

Registration of mortgages

I

- 16** | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

The NVDC maintains the register of vessels. The effect of a proper recording of a mortgage is that it becomes a 'preferred mortgage' entitled to the priority set out in the applicable statute (formerly the Ship Mortgage Act and now codified in Title 46 of the US Code section 31322 et seq).

Law stated - 21 May 2024

- 17** | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

The total amount of the mortgage must be stated therein. The underlying debt instrument does not need to be filed with or attached to the recorded mortgage, but if the debt instrument is not attached, the mortgage instrument itself should set forth sufficient information to be able to allow a court being asked to enforce the mortgage (or a third party inspecting the documents on file with the NVDC) to determine what debts are, in fact, secured by the mortgage and in what instances the mortgage can be enforced. Hence, the practice has developed that the principal debt instruments are filed as annexes to the mortgage document itself.

Law stated - 21 May 2024

- 18** | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

Yes. Because of the historical antecedents of ship mortgage law, a mortgage is generally viewed in law as being a contingent grant of title to the vessel and not a mere grant of a security interest. Since a trustee can hold property for one or more beneficiaries but an agent cannot hold title for its principal, the mortgage is usually granted in favour of the collateral agent for a syndicate of banks acting in capacity as trustee.

Law stated - 21 May 2024

Filings on transfer

- 19** | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

If a member of the syndicate is transferring its interest in the underlying debt to another party, no filing need be made with the NVDC unless the mortgagee itself is changing. If the latter is the case (which is typical in a bilateral loan transaction or if the agent or trustee

was the principal lender and is exiting the transaction), an assignment of mortgage should be recorded with the NVDC.

Law stated - 21 May 2024

- 20** | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

The mortgage assignment should contain the same formalities as those for a mortgage, other than the requirement of a reference to a total amount. Typically, a shipowner will seek customary contractual limitations on the lender or mortgagee's right to transfer the loan and security, including the mortgage; these contractual limitations will govern whether mortgagor's consent to transfer is required.

Law stated - 21 May 2024

Maritime liens

- 21** | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

The United States has one of the largest – if not the largest – sets of claims that qualify as maritime liens and thereby permit the lien claimant to arrest the vessel in rem in a federal court proceeding. To be clear, unlike 'arrests' in many other jurisdictions, which merely are used to secure a claim against the owner of the vessel, an arrest in the United States is an action brought against the vessel as the 'offending thing'. Hence, there can be instances where the vessel owner did not incur the obligation for which the claimant is bringing its claim, yet the owner's vessel nevertheless is an appropriate defendant. The most common example of such an occurrence is where a time charterer purchases bunkers for the vessel (and therefore is the in personam party liable for the bunker debt) but the vessel also is answerable as a defendant in rem for the bunker provider's claims.

The following types of maritime liens are the most common that exist under US law:

- seaman's wage liens;
- salvage and general average liens;
- tort liens, including personal injuries (vessel collisions also included in this category);
- preferred mortgage liens (US flag vessel mortgages) and foreign mortgage liens;
- liens for necessities under the Commercial Instruments and Federal Maritime Lien Act and other maritime contract liens other than seaman's wage claims and contract salvage (such as charter party claims by a charterer against a shipowner for breach of the charter party); and
- state-created liens of a maritime nature.

While many of the foregoing topics are self-explanatory, a brief word is appropriate on the term ‘necessaries’. With certain very limited exceptions, any person providing ‘necessaries’ to a vessel is entitled to a maritime lien claim enforceable by a civil action in rem in the federal courts. What comprises a ‘necessary’ has been the subject of extensive litigation in the courts. Obvious necessities are fuel oil, repairs, wharfinger services, provisions, and – more recently – insurance. But contexts give rise to more esoteric issues. For example, litigation has taken place in the courts over whether a fishfinder on a fishing vessel is a necessary; whether slot machines and roulette wheels are necessities for a casino vessel; whether a piano is a necessary on a cruise vessel; and whether seismic equipment on an oil exploration vessel is a necessary. As in the case of other areas of the law, each asserted claim must be independently examined in the context in which it arises. One can state as a rule that the supplier of goods and services to a vessel essential for the operation and navigation of that vessel is likely to have a lien for the supply of necessities. It is important to note that in many circumstances the US courts will look to the law of the jurisdiction in which the claim arose to determine the existence of the lien. Hence, notwithstanding the foregoing, if the jurisdiction where fuel oil was supplied to a vessel does not grant the supplier a lien under local law, the federal courts might not recognise it.

The United States does not permit the arrest (ie, a maritime lien claim) against associated or ‘sister’ ships. What is permitted, however, are maritime attachment claims under Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure in appropriate situations. If a vessel is part of a closely-affiliated group of companies (such as dominated by a management group, assets of the companies are commingled, or the group’s vessels are all cross-collateralised by a single fleet mortgage), such indicia may be used to try to show that the multiple vessel owning entities are alter egos of each other or the corporate veils of the companies should be pierced so as to allow a claim against one vessel owner to be brought against an associated ship, or both. A maritime attachment of a vessel, however, has no lien priority. In other words, if a vessel is seized through a maritime attachment action, a party that subsequently arrests that vessel and possesses a maritime lien will have its claim outrank the claim that the maritime attachment plaintiff may have.

Law stated - 21 May 2024

22 | What maritime liens rank higher than a mortgage lien?

As an initial matter, a lien for a mortgage recorded earlier in time than the mortgage at issue will take priority over that mortgage (ie, the first recorded mortgage will take priority over subsequent mortgages). With respect to other maritime lien claims, competing maritime liens are ranked according to class and those liens that take priority are paid out first. While there can be certain instances where the particular nature of the parties’ dispute might cause deviation, the general rule on classes of maritime lien in rank of priority are as follows:

1. expenses of justice while the vessel is under arrest (this is actually a misnomer employed by US federal courts, technically vessels under arrest cannot incur maritime liens but courts will give first priority to expenses incurred against the



- vessel – such as a substitute custodian's fees – over all lienholders with liens pre-existing the arrest proceeding);
2. seaman's wage liens;
 3. salvage and general average liens;
 4. tort liens, including personal injuries (vessel collisions also included in this category);
 5. preferred mortgage liens (US flag vessel mortgages);
 6. liens for necessities under the Commercial Instruments and Federal Maritime Lien Act and other contract related-liens;
 7. state-created liens of a maritime nature;
 8. maritime liens for penalties and forfeitures;
 9. perfected non-maritime liens, such as tax liens; and
 10. maritime attachment claims.

With respect to classes (5) and (6) above, however, there is a further distinction that exists. While a US flag vessel mortgage takes priority over any necessities claim, a claim for necessities provided in the United States will take priority over a foreign mortgage lien (while a claim for necessities supplied outside the US will be primed by the foreign mortgage lien).

Law stated - 21 May 2024

Non-mortgage liens

23 | May non-mortgage liens be recorded over a vessel?

A party asserting a maritime lien claim against a US flag vessel may file a notice of claim of lien with the NVDC. The filing of such a notice does not alter or change the priority of the claim or, by itself, create a lien. However, creditors sometimes file these notices to create procedural hurdles for future sales of the relevant vessel or to put mortgagees and other third parties on notice of the claim.

Law stated - 21 May 2024

'Foreign' flag vessels

24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Yes, assuming they were properly executed and recorded at the vessel's home port or in a central registry in accordance with the laws of such foreign jurisdiction. Except for liens for

necessaries supplied in the US, which have priority over the lien of a preferred mortgage on a foreign flagged vessel, the priorities are the same.

Law stated - 21 May 2024

Enforcement of mortgages

- 25 | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

A mortgage foreclosure proceeding is started by the mortgagee filing an ex parte motion for the arrest of the subject vessel with the federal district court of the jurisdiction wherein the vessel is found at the time the arrest is sought. If such motion is granted (upon the successful demonstration of a prima facie case), the vessel will be arrested. If the owner is unable to post a bond or other security for the mortgage claim, the vessel will remain in the custody of the court pending an interlocutory sale thereof. Once such sale occurs at a public auction any lien claims asserted against the vessel (including the mortgage lien) shall attach to the proceeds of the sale and the parties will either settle or litigate their competing claims before the court.

The length of the process is variable and will depend on the circumstances at hand, including whether the owner contests the arrest as unlawful, the court's docket and any claims brought by creditors with respect to the setting of a minimum sales price at auction. Nonetheless, while the eventual litigation over the priority of lien claims may take upwards of a year, the process from arrest to interlocutory sale is measured in months.

Law stated - 21 May 2024

Sale by mortgagee

- 26 | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

While a vessel may be sold by a mortgagee at a private sale if the mortgage instrument provides for such a right, such private sale will not be deemed to discharge liens against the vessel. Such a discharge can only occur through a judicial process.

Law stated - 21 May 2024

Default under mortgage

- 27 | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

The court in which a civil action in rem has already been commenced may appoint a receiver and authorise the receiver to operate the mortgaged vessel, but such a court shall

retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located. This procedure is seldom, if ever, used in the United States, and is different from the type of receiver that may be appointed under the laws of other jurisdictions.

Law stated - 21 May 2024

Limitations on rights of self-help

28 | What are the limitations on rights of self-help by a mortgagee?

Self-help remedies cannot be exercised if the exercise thereof would cause a breach of the peace.

Law stated - 21 May 2024

Duties to owner or third-party creditors

29 | What duties does a mortgagee owe to an owner or third-party creditors?

Generally, beyond the duty to act in good faith, a mortgagee owes no duties to an owner in default or to a third-party creditor. However, there have been cases brought in the US courts by third-party creditors that have alleged that due to its continued support of an otherwise insolvent debtor, a mortgagee was essentially a co-venturer with the vessel owner and should have its claim equitably subordinated to that of the third-party creditor. Historically, these claims have met with little success, but the risk thereof should not be completely discounted.

Law stated - 21 May 2024

COLLATERAL

Finance leases

30 | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

The National Vessel Documentation Center (NVDC) does not permit recordation of finance leases or bareboat charters. However, bareboat charters and security interests may be recorded with US Surface Transportation Board (STB) by filing a Memorandum of Bareboat Charter or Security Interest.

Law stated - 21 May 2024

31 | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

There is always a risk in a bankruptcy proceeding that a debtor, bankruptcy trustee or third-party creditor will raise the argument that a lease – depending on its characteristics – is a financing contract, not a true lease and that the asset at issue is an asset within the estate of the bankruptcy debtor. The consequences of such a claim, should it prevail, are serious. First, the lessor or creditor cannot seek to terminate the lease and repossess the asset. Second, the lessor may be deemed an unsecured creditor of the debtor since it will not have a recorded security interest anywhere. Parties to equipment leases involving equipment subject to the Uniform Commercial Code often file precautionary UCC–1 financing statements for this reason, and some do so in connection to US-registered vessels. However, the US Ship Mortgage Act does not recognise UCC filings as a means to perfect security interests in US-registered vessels. In such situations, parties to bareboat charters and finance lease security interests may file a Memorandum of Bareboat Charter or Security Interest with the STB.

Law stated - 21 May 2024

Security interests

- 32** | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

These interests are created by assignments, assignments of charters, assignments of insurances or other security agreement. The security interest granted thereunder will be perfected by the filing of UCC–1 forms under the Uniform Commercial Code to the extent the collateral or the debtor are located in the United States.

Law stated - 21 May 2024

- 33** | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

Security interests in non-vessel collateral (subject to certain exceptions such as pledges of stock, pledges of deposit accounts and certain mobile equipment subject to certificates of title) are created by a grant of security interest pursuant to a security agreement and the filing of a UCC–1 form.

Law stated - 21 May 2024

- 34** | How is a security interest over a deposit account established? How is a security interest perfected?

Security interests in deposit accounts are governed by article 9 of the Uniform Commercial Code. The security interest is granted by an assignment or pledge. Perfection is achieved by the secured party obtaining control over the account, usually by way of a 'control agreement' whereby the depositary holding the account agrees to act pursuant to the instructions of the secured party.

Law stated - 21 May 2024

35 | How are security interests in non-vessel collateral enforced?

This will depend on the nature of the collateral, particularly whether the collateral is in the possession of the secured party or a third party, or a claim. Collateral such as shares that have been certificated are usually held by the pledgee and can be sold by public auction or private sale without judicial intervention. In the case of an account pledge, notice is usually sent to the depositary with instructions to remit funds in the account to the secured party. Similarly, in the case of claims for payment, notice can be sent to the account debtor with instructions to remit proceeds of the claim to the secured party. The debtor may seek court action to prevent any action by a secured party that it sees as unlawful, but (subject to a Chapter 11 bankruptcy filing) the secured party should prevail if it has been granted a security interest and has been properly perfected.

Law stated - 21 May 2024

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Share pledges are established by the execution of a share pledge agreement. For the share pledge thereunder to be perfected, the shares being pledged must be delivered to the pledgee if in certificated form (which is preferred) or made the subject of a control agreement with a securities intermediary (such as a clearinghouse or broker) if in uncertificated form.

It is custom and practice in vessel financings in the US that share pledges also require delivery of an irrevocable proxy giving the pledgee the right to vote the shares upon default, an undated instrument of transfer empowering the pledgee to transfer the shares upon default and undated letters of resignation and authority from the directors or officers, and a covenant for their successors to provide the same on their appointment. All of this is subject to certain limitations in those instances where vesting control in a non-US pledgee could violate law limiting transfer of control of US flag vessels or give rise to tax concerns, such as causing a deemed dividend of otherwise tax-deferred income (earnings of a controlled foreign corporation engaged in international shipping).

Law stated - 21 May 2024

37 | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

The exercise of a pledge does not cause the pledgee of shares to be liable for the debts of the pledged company any more than the shareholders who pledged the shares would be in the first instance. This concern is most often raised in the oil pollution context, but

unless the pledgee is exercising operational control of the relevant vessel there is little risk of liability.

Law stated - 21 May 2024

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

38 | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

Income earned by a US corporate owner of a US-flagged vessel from the operation or chartering of the vessel is subject to US federal income tax (currently 21 per cent) unless the owner has made a valid election to pay tonnage tax with respect to its shipping income.

Income earned by a non-US corporate owner of a US-flagged vessel (owned through a fiscally transparent entity to qualify for US documentation) from the operation or chartering of the vessel is subject to US federal income tax to the extent the income is attributable to voyages that begin or end in the US (ie, inbound and outbound) unless the owner is entitled to exemption under a US income tax treaty or under section 883 of the US federal tax code and completes the required procedural formalities. The applicable tax rate and tax base depend on whether the owner has a US fixed place of business and how the vessel is employed.

US state income, corporation or franchise taxes may be payable in US states in which the vessel operates.

Law stated - 21 May 2024

Tonnage tax

39 | Is there an optional tonnage tax exempting vessel owners from tax on income?

A corporation that owns a self-propelled (or a combination self-propelled and non-self-propelled) US-flagged vessel of at least 6,000 deadweight tons used exclusively to transport passengers or cargo between US and non-US ports or between non-US ports may elect to pay US federal income tax on its notional shipping income (calculated by reference to the tonnage of the vessel) in lieu of paying US federal income tax on its actual net income from operating the vessel.

Law stated - 21 May 2024

Tax incentives

40 | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

If the owner of a US-flagged vessel is subject to US federal net income tax and does not make a tonnage tax election, the owner generally may take into account in calculating its taxable income deductions for depreciation with respect to the vessel calculated on an accelerated basis unless the owner bareboat charters the vessel to a governmental entity, a non-US entity or a tax-exempt entity for three years or more (including optional renewals), in which case deductions for depreciation must be calculated using the straight-line method and a longer cost recovery period.

A US-flagged vessel owner that is a US corporation and that satisfies applicable US citizen controlling ownership and management requirements may apply for a capital construction fund agreement with the US Maritime Administration providing for the acquisition, construction or reconstruction of one or more vessels ('agreement vessels') that are constructed or reconstructed in the US, documented under the laws of the US, and operated in the foreign or domestic trade of the US. US federal income taxation of the owner's income or gain from the operation or disposition of agreement vessels may be deferred.

No special tax credits are available for owners' investments in US-flagged vessels

Law stated - 21 May 2024

Other tax provisions

- 41** | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

Section 883 of the US federal tax code exempts US federal income tax income from the international operation of ships derived by a corporation that (1) is incorporated and resident for tax purposes in a country that provides an equivalent income tax exemption to US shipping companies, (2) is owned (directly or indirectly) by one or more qualifying shareholders, (3) does not issue bearer shares and is not owned (directly or indirectly) by a company that issues bearer shares (unless the shares are evidenced solely by book entries in a qualifying book-entry system), (4) files annual US federal income tax returns properly claiming the section 883 exemption and (5) obtains statements from direct and indirect shareholders required by applicable US Treasury regulations.

A US taxpayer owning a vessel through a 'controlled foreign corporation' may in appropriate circumstances defer US federal income taxation of shipping income earned by the controlled foreign corporation until it is distributed (or deemed distributed) to the US shareholder.

Law stated - 21 May 2024

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

- 42** | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Yes, in the US this would be the US Bankruptcy Code, a federal statute applicable in all 50 states. Proceedings under the US Bankruptcy Code are overseen by separate bankruptcy courts. There are two separate insolvency processes applicable to entities under the US Bankruptcy Code: liquidation under Chapter 7, and reorganisation under Chapter 11. Liquidations under Chapter 7 are overseen by an appointed fiduciary (a Chapter 7 Trustee), and the debtor entity typically ceases operations at or soon after the commencement of the proceedings. In cases under Chapter 11, the debtor's existing management retains control over the debtor (subject to oversight by the bankruptcy court), and the company typically continues to operate its business. Proceedings under Chapter 11 are designed to provide a debtor with 'breathing space' to reorganise its business in a manner that is fair and reasonable to all stakeholders in the company subject to reorganisation. Once an entity files a petition under the Bankruptcy Code, there is an automatic stay that prohibits creditors subject to the bankruptcy court's jurisdiction from taking any action to enforce a claim anywhere, and this would include a foreign enforcement of a ship mortgage. The Bankruptcy Code allows the debtor to assert a claim to recharacterise a lease, and to commence actions to avoid preferential or fraudulent transfers and obligations.

Law stated - 21 May 2024

Foreign court rulings

43 | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

This will depend on the facts and circumstances of each case, but Chapter 15 of the US Bankruptcy Code represents the domestic adoption of the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law (UNCITRAL) in 1997. Generally, a Chapter 15 case is ancillary to a primary proceeding brought in another country, typically the debtor's home country. As an alternative, the debtor or a creditor may commence a full Chapter 7 or Chapter 11 case in the US if the assets in the US are sufficiently complex to merit a full-blown domestic bankruptcy case. A foreign debtor in a Chapter 15 or a follow-on Chapter 11 case may file a motion seeking enforcement in the US of a ruling by the court presiding over its primary insolvency proceeding. In such cases, the bankruptcy court will consider whether such relief is consistent with principles of comity:

- provides for just treatment of claim and interest holders generally;
- protects the interests of creditors in the US;
- prevents preferential or fraudulent dispositions of the debtor's property;
- generally is in accord with US law; and
- is not manifestly contrary to US public policy.

Law stated - 21 May 2024

Model Law on Cross-Border Insolvency

- 44** | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

The United States has adopted UNCITRAL's proposed model law on insolvency through the adoption of Chapter 15 of the United States Bankruptcy Code.

Law stated - 21 May 2024

Order of priority

- 45** | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

These questions cannot be answered summarily. Creditors holding secured claims have priority with respect to the collateral securing their claims. In addition, certain categories of claims (including, among other things, claims related to the cost of administering the bankruptcy estate, certain taxes, employee wages, and claims of creditors who supplied goods to the debtors during the 20 days prior to the petition date) have priority and in a Chapter 11 case must be paid in full in order for the debtor to confirm a plan. Unless otherwise agreed, unsecured creditors must be paid in full before equity is permitted to receive a recovery on account of such interest in the debtor. The determination of whether a creditor holds a valid and enforceable lien and the value of the collateral securing such lien may require a complicated analysis that is very much dependent on the facts of the case. Such analysis is, however, often the most contentious part of a bankruptcy proceeding.

Disgorgement of payments from an insolvent company in the US is the subject of avoidance claims in a US bankruptcy proceeding. For example, a payment made outside the ordinary course of business within the 90 days preceding a Chapter 11 filing may be set aside as a preference and the party receiving such a payment may be ordered to disgorge it. An example of such a preference might be the early payment of a debt to one creditor that has the effect of granting that creditor preferential treatment with respect to others. Similarly, a pre-petition transfer of an interest of the debtor in property made for the purpose of hindering, delaying or defrauding creditors, or which is made for less than reasonably equivalent value at a time when the debtor is or as a result of the transfer becomes insolvent may be subject to avoidance and disgorgement as a fraudulent transfer. The look back period for fraudulent transfers is two years before the petition date under US federal law, and as much as four years before the petition date under applicable state law.

Law stated - 21 May 2024

Security provision by vessel owner

- 46** | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

Yes, subject to such provision of security not being ultra vires, a preference or a fraudulent conveyance.

Law stated - 21 May 2024

Law of fraudulent transfer

- 47** | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Yes. As a rule, both the US Bankruptcy Code and state law provides a mechanism by which a grant of security interest may be challenged as an intentional or constructive fraudulent transfer if the grantor intended to hinder, delay or defraud creditors or if it was insolvent at the time of the grant and did not receive a fair consideration (reasonably equivalent value). The tests for both insolvency and fair consideration can be complex. Outside of bankruptcy, any creditor may commence an action to avoid a fraudulent transfer. Once a bankruptcy case has been filed, only the debtor's estate has standing to commence such actions.

Law stated - 21 May 2024

Petitions by creditors

- 48** | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

Under the US Bankruptcy Code, in a case involving a debtor with 12 or more creditors (excluding employees), an involuntary bankruptcy petition may be filed by three or more creditors holding non-contingent, unsecured claims that are not subject to bona fide dispute and which together aggregate to at least the statutory minimum value. If the debtor has fewer than 12 creditors, an involuntary case may be filed by a single creditor holding non-contingent, unsecured claims that are not subject to bona fide dispute and that aggregate to at least the statutory minimum value.

Law stated - 21 May 2024

Model Netting Act

- 49** | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

The US Bankruptcy Code has provisions that specifically allow for netting of obligations under ISDA swap and derivatives transactions.

Law stated - 21 May 2024

UPDATE AND TRENDS

Current developments

50 | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

The US (as well as other G7 countries, the European Union and Australia) have imposed sanctions on Russian crude oil and petroleum product exports, except where such export sales are below established-price caps (the 'Russian Oil Price Cap Regime'). The US government has issued guidance with respect to its expectations for due diligence and attestations to be obtained by entities, including financial institutions and ship-owners, with respect to compliance with the Russian Oil Price Cap Regime. The US government has sanctioned numerous vessel owners and the vessels themselves for Russian Oil Price Cap Regime breaches. As a result, loan facilities related to tankers now contain specific Russian Oil Price Cap Regime representations, and often annual attestation requirements. Further, the sophisticated efforts by Russian and Iranian entities to evade sanction by disguising the origin of, or evading price controls, may require increased diligence on tanker financing transactions.

Law stated - 21 May 2024

Holland & Knight

Richard B Furey
Jovi Tenev

richard.furey@hklaw.com
jovi.tenev@hklaw.com

Holland & Knight LLP

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