

CMI International Working Group

Ship Financing Security Practices - Questionnaire

1 MARITIME AND OTHER CONVENTIONS

1.1 Has your jurisdiction ratified the 1952 and/or the 1999 Arrest Convention or neither?

Croatia has ratified the 1952 Arrest Convention.

1.2 If your jurisdiction has not ratified either of the aforementioned conventions, what categories of claim can be brought by way of arrest¹ of a vessel?

A ship can be arrested for the maritime claims as provided by Article 1 of the 1952 Arrest Convention, but excluding bottomry and ownership claims. A ship can be arrested for claims secured by maritime liens, the hypothèque over ship or charges similar to the hypothèque over ship (such a anglo saxon mortgage). List of the maritime claims for which a vessel can be arrested is prescribed in Articles 953 of the Maritime Code.

1.3 In particular, can arrest be made:

(a) by a mortgagee of a vessel registered under the laws of your jurisdiction?

Yes.

(b) by a mortgagee of a vessel registered under the laws of a different jurisdiction?

Yes. A ship can be arrested irrespectively of vessel's flag.

1.4 Has your jurisdiction ratified the 1926 and/or the 1993 Maritime Liens and Mortgages Convention or neither?

Croatia has not ratified any convention relating to maritime liens. Provisions of the Maritime Code on maritime liens incorporates the International Convention on Maritime Liens and Mortgages, Geneva, 6 May 1993

1.5 If your jurisdiction has not ratified either Maritime Liens and Mortgages Convention does your jurisdiction recognize foreign maritime liens? If so what types of claim are recognised as maritime liens?

Yes, all of the claims as prescribed in 1993 Convention against the owner, demise charterer, manager and operator of the vessel and employer in relation of the claims set out in Art 4 par 1 (b) of the 1993 Convention.

1.6 Does the law of your jurisdiction incorporate the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents?

¹ The term 'arrest' is used throughout for convenience but it is acknowledged that this may not be a concept known to the laws of all jurisdictions. If in your jurisdiction the equivalent concept is attachment or something else, please briefly explain.

Yes

2 NATURE OF THE SHIPS' REGISTER

2.1 Is the ships' register² in your jurisdiction a register of legal title?

Yes

2.2 Does the ships' register in your jurisdiction (whether or not a register of legal title) provide for registration of the interest of a demise charterer in circumstances where legal title is registered in another jurisdiction (the 'underlying register').

No. A vessel registered in foreign ship's register can not be registered in Croatian ship's register. (Art. 191. of Maritime Code). The Croatian Ship's Register does not permit any form of dual registration.

2.3 If your jurisdiction does provide for registration of the interest of a demise charterer, does it provide for registration or notation of a mortgagee registered on the underlying register?

2.4 Does your jurisdiction allow a vessel registered in the ships register in the name of the holder of legal title also to be registered in another jurisdiction in the name of a demise charterer? If so is such registrations permitted when the vessel is subject to a mortgage registered in the ships' register in your jurisdiction and is the consent of the mortgagee required?

2.5 Please describe (briefly) the criteria for registration of a vessel on the ships' register in your jurisdiction, with particular reference to eligibility or not for registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.

In Croatian ship's register could be registered the ships owned by:

- citizen of the Republic of Croatia
- citizen of EU member state if the Company (ISM) or bareboat charterer is Croatian legal entity
- legal entity with registered office in the Republic of Croatia and legal entity with registered office in the EU member state if the Company or bare boat charterer is legal entity with registered office in the Republic of Croatia
- citizen of EU member state or legal entity incorporated under the laws of EU member state with registered office in EU member state provided that the vessel is managed by a branch office in the Republic of Croatia.
- Physical person having permanent residence outside of the Republic of Croatia or EU member state if the Company (ISM) or bare boat charterer is legal entity having registered office in the Republic of Croatia
- Legal entity having registered office outside of the Republic of Croatia or outside of EU member state if the Company (ISM) or bare boat charterer is legal entity with registered office in EU member state and that Company (ISM) or bare boat charterer has branch office in the Republic of Croatia
- Foreign legal entity with registered office outside of the Republic of Croatia or any other EU member state or European Economic Area (EEA) if such legal entity is ship owning company and a subsidiary of a legal entity having registered office in the

² The term 'ships register' means a specialist register only for ships.

Republic of Croatia which is tax payer of Croatia tonnage tax.

Maritime Code allows registration of floating objects such as floating dock, floating warehouse, restaurant etc. and fixed off-shore objects for various purposes such as research and exploitation of seabed

3 FORMALITIES FOR MORTGAGE REGISTRATION

3.1 Does a mortgage in respect of a vessel registered in your jurisdiction need to:

- (a) attach documents, such as a loan agreement, evidencing the obligations secured?

A notarized Mortgage Agreement evidencing the obligations secured needs to be attached.

- (b) set out in detail the circumstances giving rise to a right of enforcement?

Right of enforcement accrue whenever an event of default occurs. Events of default could be set out in a mortgage agreement, loan agreement or any other security document.

3.2 Does a mortgage in respect of a vessel registered in your jurisdiction need to be notarised and/or legalised?

Only signature of the mortgagor has to be notarized.

3.3 What are the registry fees in order to have a mortgage registered against a vessel registered in your jurisdiction?

The registry fees are 110 Croatian kunas (approx. 15 Euros)

3.4 Is registration indefinite or is there any requirement for re-registration after a certain period?

There is no requirement for re- registration of an already registered mortgage.

3.5 In your jurisdiction is a mortgage of a vessel required to be registered only in the ships register or, in addition, in another register? If so, please give brief details.

A mortgage over a vessel has to be registered in the ships register only.

4 INFORMATION CONCERNING SECURITY INTERESTS IN SHIPS

4.1 Please advise if information concerning security interests in ships registered in your jurisdiction is publicly available, and if so, how it may be obtained, including the following issues, as applicable.

Yes, information concerning security interests in ships is publicly available. Ship's register is kept by Harbour Master office(s) as public books or as electronic records. Any information concerning security interests in ships are open to public inspection and extracts from the register are obtainable from the registrar. (Art. 195 of Maritime Code)

- (a) Does a person seeking such information need the authorization of the vessel

owner to get such information?

No.

(b) Does your jurisdiction certify the accuracy of the information?

Yes.

(c) How much time is generally required to obtain such information?

Any information concerning security interest is obtainable immediately upon request.

4.2 May a vessel subject to a security interest be sold by the owner prior to the release of the security interest, and if so, under what conditions or circumstances.

A Vessel over which a mortgage has been registered may be sold provided always written consent to the sale has been obtained from the mortgagee.

5 ARREST OF A CHARTERED VESSEL

5.1 Does your jurisdiction allow a mortgagee to arrest vessels on bareboat charter or time charter?

Yes.

5.2 Under the laws of your jurisdiction, could the mortgagee incur any liability in tort, delict (or similar) to charterers or cargo interests if the mortgagee arrests the vessel when it is subject to charter and/or carrying cargo (on the grounds of interfering with the contractual relationship between owner and charterer or bill of lading holder)?

No, in case of arrest of the vessel by the mortgagee, charterers or cargo interests have a claim against the mortgagor for damages suffered in relation to the mortgagee's action.

5.3 What are the procedures or requirements, if any, applied to the cargo on board a vessel that has become subject to judicial sale in your jurisdiction? Must the cargo be discharged before sale, and if so, who bears the costs and risks of such discharge?

In case of judicial sale, the court shall nominate a temporary representative of cargo on board if the person who has title over the cargo fails to report to the court within three days from the date of arrest of the vessel. There is no explicit legal requirement that the cargo on board the vessel must be discharged before the sale of the ship. However, upon proposal (i) of the person who has title on cargo or (ii) his temporary representative, (iii) defendant (owner) or (iv) master or (v) if there are justified reasons, person who safeguard the vessel, the court shall allow discharge of cargo from the vessel and its placement into a public warehouse or other appropriate place. The claimant (creditor) who applied for judicial sale bears costs and risks of such discharge. However, such costs are recoverable from the proceeds of the sale of the vessel in the first priority rank.

6 PRIORITY ISSUES BETWEEN MORTGAGES REGISTERED IN THE SHIPS' REGISTER IN YOUR JURISDICTION

6.1 Does your jurisdiction have a system of "priority notice" to enable priority to be reserved for a period before actual registration of the mortgage?

Yes.

6.2 Once a mortgage is registered in your jurisdiction is it possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee?

Yes, a subsequent mortgage can be register without the consent of the first registered mortgagee unless otherwise provided in the deed of the first mortgage. The first registered mortgage has priority over the subsequent mortgage.

6.3 When there are two or more registered mortgages what determines their priority?

The respective times of receipt of the applications for registration by Harbour Master Office determine priority of the mortgages. If the applications received at the same time, they will have same priority. (Art. 266 of Maritime Code)

6.4 Is there any doctrine of notice such that the priority of a registered mortgage is deferred to that of an earlier but unregistered mortgage of which the registered mortgagee has notice?

A pre-registration note (provisional registration) could be entered in the Ship's register securing priority of a un-registered mortgage pending its proper registration within a period of 15 days from the date of pre-registration note entry (which can be extended).

6.5 Can a second registered mortgagee exercise enforcement remedies without the consent of the first registered mortgagee?

A second registered mortgagee can exercise enforcement remedy by judicial sale of the ship without the consent of the first registered mortgagee, but for other remedies such as taking possession of a vessel and /or out-of –court sale of a vessel he would need such consent. (Art. 226 of Maritime Code)

6.6 Does your jurisdiction have a system for registration of security or liens other than mortgages, whether consensual or non-consensual? If so, please describe.

Croatia law allows registration of liens and securities other than mortgages.

7 GENERAL ENFORCEMENT ISSUES

7.1 Does your jurisdiction make a distinction between the enforcement of mortgages registered under the flag of your jurisdiction and the enforcement of any other foreign mortgages?

No

7.2 Is it necessary for the mortgagee to obtain a judgment in your jurisdiction on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage?

Mortgage can be enforced directly without obtaining a judgment if Mortgage Agreement contains consent of a mortgagor that in event of default listed in loan agreement or other security document, the mortgagee may directly enforce remedies

over the vessel.

- 7.3** If so, how long is it likely to take to obtain a judgment if the claim is contested? Will the local court expedite the proceedings having regard to the ongoing costs of maintaining the vessel?

It depends of the merits of the case and evidence admitted to hearing. It is up to the judge to determine schedule of trial. He might in his own discretion take into consideration costs of maintaining the vessel against quality preparation of the trial including submitting the evidence.

- 7.4** Will the court in your jurisdiction accept jurisdiction for the mortgage claim under Article 7 1952 Arrest Convention, or equivalent domestic legislation in your jurisdiction?

Croatian court shall have jurisdiction to decide upon the merits of the case if the arrest is made in Croatia. (Art. 988 Maritime Code)

8 JUDICIAL DECISIONS AND APPEALS

- 8.1** Do all courts in your jurisdiction have authority to sell vessels free of maritime liens and prior claims, or is such authority limited to special courts, such as admiralty courts?

Only four commercial courts specialized in maritime matters have such authority – the courts are in the cities of Rijeka; Split; Osijek and Zagreb.

- 8.2** What formalities, including evidence of claim, or evidence of notice, are required to affect the sale of a vessel free of liens and prior claims?

The claimant submits to the court “proposal” for sale that, *inter alia*, identifies owner of the ship, amount of the claim and the document which gives grounds for judicial sale (like judgment of a court, deed of mortgage etc.) If the court finds the “proposal” justified it passes order on execution of sale.

- 8.3** If the owner presents an appeal against judgment, will the court make an order for sale of the vessel before that appeal has been heard and decided?

If the appeal against the order on execution of sale is timely, the court of appeal shall decide whether the appeal should be allowed or dismissed before proceeding with the sale.

9 SALE PROCEDURE

- 9.1** Can a mortgagee enforce his mortgage in your jurisdiction by applying for a judicial sale by auction?

Yes

- 9.2** What are the criteria for an application for a judicial sale by auction and what is the procedure and timetable for such an application and sale?

The regular method of the court’s sale is by a public auction. Public auction has to take place latest 30 days after the public announcement of the sale.

- 9.3** Will the court in your jurisdiction order a sale of the vessel pending judgment

(*pendent lite*), recognising that the vessel is a wasting asset?

The Croatian law has no concept of the vessel as a wasting asset.

However, it recognizes such a concept in relation to the cargo when it allows selling of the cargo prior to the expiry of prescribed period of time provided selling of the cargo under the timeframe of regular procedure (i) would not generate sufficient proceeds to cover the claim and the costs of safeguarding the cargo or (ii) the cargo is of perishable nature or is already under decay.

It could be argued that in order to achieve accelerated sale of the ship the above concept (related to the cargo) should be applied by analogy in case there is a pending risk that the ship might sink and/or that she creates a threat to the environment. In such circumstances the proceeds shall be put by the court in an escrow account pending the outcome of the case.

However, practice of the courts shows that they are very reluctant to execute such an accelerated sale under the argument that the value of the ship is too low to cover the costs and expenses of the sale procedure and upkeep of the ship by the end of the regular sale procedure.

- 9.4** Will the court in your jurisdiction fix a minimum bid price (reserve price) for the vessel and will the amount of that minimum bid price be disclosed to interested parties? What happens if the maximum amount bid for the vessel is lower than the reserve price?

Yes, the price shall not be lower than 1/2 of the assessed market price (answer to 1st question). In case the ship is not sold at the auction, new auction shall be fixed for the sale. At the new auction the ship cannot be sold below 1/3 of the assessed ship's market price. (answer to 2nd question)

- 9.5** Can the owner or other creditors influence the amount of the reserve price?

The starting bidding price for the auction sale is determined by the court based on the evaluation of the appointed expert, and it might also take in consideration proposals of the parties.

- 9.6** What arrangements will be made for public advertisement of the sale?

The public auction shall be publicly announced and the bidders who put down required deposit shall participate in the auction where the selling price shall be determined by the highest bid.

- 9.7** To what extent is it possible for the owner or other creditors to influence the timetable or procedure for sale?

The owner and the creditors alike can influence the time table only by appealing the court's decision (against which appeal is allowed) during the process which would prolong the procedure.

- 9.8** Can a mortgagee enforce its mortgage in your jurisdiction by applying for a court approved private sale? If so, what are the criteria for an application requesting the court to approve a private sale and what is the procedure and timetable for such an

application and sale?

The private sale is done without court's intervention.

- 9.9 Can a mortgagee bid its debt (*animo compensandi*) so as to allow a set off of the debt against the purchase price (and provide security for the claims of potential prior lien holders)? Or does a mortgagee (or its preferred bidder or buyer) have to pay the full price in cash?

There is no provision in the Maritime Code or Enforcement Act which would allow a bidder to set off the purchase price against its debt.

10 SALE PROCEEDS

- 10.1 Will the sale proceeds be held in an interest bearing account?

The court's account into which the proceeds shall be paid does not bear interest.

- (a) Will they be held in the currency of the sale or will they be converted into local currency?

If the creditor is a foreigner or the mortgage is registered in a foreign currency the sale shall be ordered in such foreign currency and proceeds shall be kept in currency of the sale.

- (b) Will the proceeds of sale ultimately be subject to any exchange control or similar restrictions (and/or court fees) when they are paid out? If so, what is the procedure and likely timetable for obtaining permission to remove the funds?

The proceeds shall not be subject to exchange control, but the court fees and expenses shall be deducted.

11 PRIORITIES GENERALLY

- 11.1 Are priorities determined under local law (*lex fori*), or the law of the jurisdiction in which the claim arose (*lex causae*), or the law of the flag of the vessel?

The priorities are determined under the applicable law for a particular issue. Which law is applicable depends on the circumstances of each case.

- 11.2 If local law, where does the mortgagee rank amongst other maritime claims in the order of priority and which are those claims which rank prior to the mortgagee. Do the claims which rank ahead of a mortgage in your jurisdiction vary depending on whether the mortgage is:

- (a) a mortgage of a vessel registered under the laws of your jurisdiction?
(b) a mortgage of a vessel registered under the laws of a different jurisdiction?

In the enforcement proceedings over the vessel before the Courts of Croatia, a Court will apply the law of the vessel's flag to determine which claims are considered as maritime liens. However, priority rank of the claims would be considered as the procedural issue, and consequently governed by the Croatian law. Under Croatian law ranking is 1. claims of the state for removal of wreck 2. maritime liens 3. creditors

with the right for retention (ship repairers in possession of the ship) 4. mortgages 5. other creditors. The fees and expenses of the sale procedure have priority over all other claims.

11.3 Are there any special rules on priority for local creditors?

No. Except under for the claims of the state for removal of wreck.

11.4 Is it necessary for claimants to introduce their claims prior to the date of sale or within some specified period thereafter?

The registered creditors do not have to introduce their claims, and unregistered creditors must do that latest at hearing at which the auction is carried out.

11.5 What is the timetable leading up to the distribution of the proceeds of sale?

Time table is set up by the court depending circumstances of the case.

11.6 Is the distribution order decided by the court?

Yes.

11.7 Is that order subject to a right of appeal?

Yes

12 MORTGAGEE'S SELF-HELP REMEDIES

12.1 Under the laws of your jurisdiction does a vessel mortgage governed by and registered in accordance with such laws give the right to take the following enforcement steps without a court order in your jurisdiction?

- (a) to take possession of the vessel; Yes
- (b) to appoint a receiver, manager or other party to operate the vessel; Yes
- (c) to sell the vessel as mortgagee; Yes
- (d) to sell the vessel as attorney in fact of the owner.

Yes, if contracted for with the mortgagor.

12.2 If, under the law of the ships' register (where that is a different law from the law of your jurisdiction) a mortgagee is given the right to take the enforcement steps referred to at (a) – (d) of 11.1 without a court order would its right to do so be recognised or prohibited in each case in respect of a vessel physically located in your jurisdiction?

Yes, it would be recognized.

12.3 Where answers to the questions in 11.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ships' register?

13 INSOLVENCY PROCESSES³

13.1 Has your jurisdiction adopted the UNCITRAL Model Law on Cross-Border Insolvency?

Croatia has not adopted any specific rules on cross-border insolvency (not UNCITRAL Model Law nor i.e. Convention on Insolvency Proceedings of 23 November 1995, nor European Convention on Certain International Aspects of Bankruptcy of 09 June 1990 (signed by 8 countries, ratified by 1 country) and is not a party to the specific bilateral instrument.

The matter of cross-border insolvency is regulated by the Croatian Insolvency Act (Official Gazette No. 71/15 - entered into force on 01 September 2015) - thereafter referred to as "IA" - in the Section entitled "Cross-Border Insolvency" (Please see answer under below 13.2. for more details).

Additionally, on the 01 July 2013 (the date of Croatian entry into the European Union) the European Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings) came into force in Croatia and constitutes an integral part of the Croatian legal system.

13.2 Do the laws of your jurisdiction provide for recognition of foreign insolvency proceedings? (if the UNCITRAL Model Law has been adopted, in addition to its provisions)

Yes they do. Articles 392-427 of IA contain provisions:

a) on the international jurisdiction of the courts of the Republic of Croatia

b) on general matters

c) on preconditions and the procedure on recognition of foreign decision at the commencement of the insolvency proceeding

d) on the effect of the recognition of foreign decision on commencement of the insolvency proceeding

e) on commencement of the special insolvency proceeding as a result of a recognition of the foreign decision on commencement of the insolvency proceeding

f) on denial of recognition of the foreign decision on commencement of the insolvency proceeding and

g) on foreign compulsory settlement or foreign insolvency plan.

Article 394 of IA provides that the above provisions on the international insolvency do not apply to the insolvency procedures on which provisions of the European Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings) is applicable.

13.3 Do the laws of your jurisdiction provide that the enforcement of rights of secured creditors (such as the mortgagee of a vessel) can be stayed or suspended during applicable insolvency proceedings?

³ If your jurisdiction is subject to the EU Insolvency Regulation and will be subject to the 'Recast' EU Insolvency Regulation, please so indicate – but also respond to the questions.

IA has changed previous law under which secured creditors were entitled to continue or commence proceeding for enforcement of their rights regardless and independently of the insolvency procedure.

Now, IA provides that creditors entitled to a separate claim settlement in enforcement proceedings or in claim security proceedings (hereinafter: "Secured Creditors") are entitled to a separate claim settlement/collection but that all procedures initiated before the commencement of the insolvency procedure shall be suspended and completed within the insolvency procedure (not independently as it was the case before 01 September 2015) on the basis of the rules for enforcement applicable to the object of enforcement, in our case the vessel. Enforcement proceedings initiated by the Secured Creditors after the commencement of the insolvency procedure (on the basis of proposal of the insolvency administrator or creditor) shall be completed in the same manner.

- 13.4** Is the answer to 13.3 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

No, save for application of the rules of IA on international insolvency which deals with recognition of the foreign decision.

Article 404 of IA provides as a general rule that from the day of the announcement of filing a proposal for recognition of the foreign decision on opening of insolvency proceeding abroad no litigation, enforcement or procedures of securing the claims are allowed to be initiated and those pending are to be suspended on the day of the announcement.

However, the above rule shall not apply in case the debtor is a foreigner and its and Secured Creditors claim against its debtor property located is in the jurisdiction of the court which recognizes the foreign decision, but only if the foreign insolvency administrator gives consent to those procedures.

Proceeds collected in enforcement procedure in Croatia in the period between commencement of the insolvency proceedings abroad and the day on announcement of filing proposal for recognition of the foreign decision (on commencement of insolvency proceedings), as well as rights of secured creditors created in the enforcement proceedings or security proceedings in Croatia in that period are without legal effect.

In case the rights accrued in Croatia lose their legal effect, the creditors have to pass all the proceeds obtained by enforcing such rights to the insolvency administrator, after deduction of the expenses incurred in the enforcement proceedings. (Article 412 of the IA).

- 13.5** If the mortgage over a vessel located in your jurisdiction is being enforced through a maritime court sale in circumstances where the owner of the vessel is subject to insolvency proceedings in your jurisdiction, do the maritime court sale proceedings take precedence over the insolvency proceedings, or vice versa?

After changes introduced by IA insolvency proceedings take precedence over maritime court sale. However, in substance the rules of (maritime) enforcement shall still apply but within the insolvency procedure and priority of the secured creditors shall be preserved.

13.6 Is the answer to 13.5 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

No.

13.7 If a vessel is sold in your jurisdiction through a maritime court sale is the mortgagee's claim to the sale proceeds subject to the risk of the mortgage being challenged or set-aside by applicable insolvency claw-back rules for transactions prior to insolvency?

Yes, if creation of the mortgage was fraudulent aimed in unjustifiably favoring one creditor against the others.

13.8 Is the answer to 13.7 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

No, if the creditors who challenge the validity of the mortgage have obtained the judgment of the competent court invalidating the mortgage.

13.9 Do the insolvency courts of your jurisdiction have, or claim, extraterritorial jurisdiction, such as over vessels located in a different jurisdiction? If so, how?

Croatian insolvency court can pass judgment concerning assets of the insolvent debtor located in a foreign country. However such judgment could be enforced in that country according to its laws on recognition and enforcement of the foreign judgments.

14 LEASING⁴

14.1 In your jurisdiction is leasing of vessels common as a method of financing?

Yes, but basically only for small pleasure crafts and yachts. Ocean going ships are not financed through leasing as the banks involved in merchant ships financing are reluctant to assume position and accompanied liabilities of the ship-owner.

14.2 Do the laws of your jurisdiction give effect to a lease in accordance with the form of the document (formal approach) or is there a risk they will re-characterise certain leases as security interests (functional approach)?

Formal approach is applied.

14.3 If the laws of your jurisdiction adopt a functional approach (13.2) please describe briefly how this is applied; also, please say whether your courts would adopt a functional approach even where the governing law of the lease follows the formal

⁴ ⁴ By 'leasing' is meant a demise chartering of a vessel where the holder of legal title ('lessor') is a financier rather than a commercial shipping company and the vessel is demise chartered to a shipping company ('lessee'). It might or might not involve the lessee having an option to purchase for a pre-agreed price or title automatically passing to the lessee at the end of the lease term. It covers both finance leases, where the lessee by one means or another has substantially the whole economic interest in the vessel and operating leases where the lessor retains some economic risk and interest in the vessel.

approach.

Not applicable.

- 14.4** Do the laws of your jurisdiction permit the parties to the lease of a vessel governed by that law to expand by contract the rights and remedies of the lessor on default by the lessee? Or are such rights and remedies provided for exclusively by law?

The parties may agree to grant the lessor certain rights allowed under some legal concepts (like power of attorney, etc.).

- 14.5** Do the rights and remedies of the lessor of a vessel include steps to terminate the leasing and re-take possession of the vessel through self-help or is this only possible in your jurisdiction with the assistance of the court?

Possession of the ship under a lease can only be retaken by the court's assistance.

- 14.6** Under the laws of your jurisdiction is a leased vessel considered to be an asset of the lessor or the lessee, or both?

The leased vessel is an asset of the lessor.

- 14.7** Under the laws of your jurisdiction what impact would an insolvency process (or different processes) in respect of the lessee have on the rights and remedies of the lessor of a vessel? Is this affected by the type and terms of the lease?

If the lessor has a claim against the lessee, general creditors may ask the court to include such claim in the lessee's asset against which then they will have a claim.

- 14.8** Under the laws of your jurisdiction can a lessor arrest a vessel which it leases? Can it join in arrest proceedings initiated by a third party?

The lessor can arrest the vessel which it leases only if it has a maritime claim against the vessel. Otherwise, the lessor would have to bring a law suit against the lessee and submit a request for injunction only if the lessor demonstrates to the court that the lessor has an arguable claim against the lessee and existence of danger that without the proposed injunction the lessor would not be able to enforce the final judgment due to fact that the assets would by then not be reachable.

Yes, the lessor can join the arrest proceedings initiated by a third party, provided it has a maritime claim against the vessel.

- 14.9** Under the laws of your jurisdiction what priority is given to the rights of a lessor of a leased vessel as against third parties with maritime liens/claims?

Maritime claims have priority.

- 14.10** Do the laws of your jurisdiction recognise registered leases in respect of vessels registered in a different jurisdiction? If so, please give brief details.

No.

- 14.11** In your jurisdiction is there generally a wish to promote leasing of vessels, including by reforming the law? If so please provide a brief explanation.

No.

15 RESERVATION OF TITLE⁵

15.1 Do the laws of your jurisdiction treat the holder of title under reservation of title as the holder of a security interest?

The holder of title under reservation would be treated as the owner of the ship if registered as such.

15.2 Do the laws of your jurisdiction provide for reservation of title arrangements to be registered in the ships' register in any way different from a standard registration of the holder of title as registered owner? If so, please give brief details.

No.

15.3 If the laws of your jurisdiction do provide for reservation of title arrangements to be registered as referred to in 14.2, what rights and remedies are given to the holder of title?

No

15.4 Do the laws of your jurisdiction recognise foreign reservation of title arrangements of a type referred to in 14.2? If so, please give brief details of how these arrangements would be recognised.

No.

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⁵ References to 'reservation of title' are intended to include arrangements where a seller retains title to the vessel until the buyer pays the full price in circumstances where the buyer's obligation to pay the full price is deferred over time.

