

Ship Finance

Contributing editor
Lawrence Rutkowski



2016

GETTING THE
DEAL THROUGH

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Ship Finance 2016

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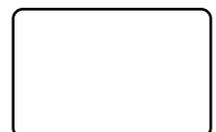


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

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First published 2014
Third edition
ISSN 2056-4015

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Cyprus

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Due diligence

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 (Merchant Shipping Law), the Registrar of Cyprus Ships issues a certificate of ownership evidencing (inter alia) the particulars of the vessel and the name and address of the legal owner of the vessel. 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 (inter alia) the legal ownership of the vessel and the details of the mortgage. Any of these certificates or transcript 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 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.

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

The Cyprus Ships Registry does not maintain a register of liens over a vessel that arise by operation of law and such liens are not registrable under Cyprus law; only mortgages are registrable at the Ships Registry, and particulars of the same are revealed by a certificate or transcript as explained in question 1, whereas the mortgage Register is open to inspection by the public upon payment of a search fee.

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 (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 records with the Companies Registry) have to be registered at the Companies Registry as charges against the assets of such company. Upon the payment of the relevant search fee, any person may conduct a search at the Companies Registry in order to trace the existence of any such registered charge.

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 may reveal that a company is still on the records kept by the said Registry and, thus, it may be presumed that such a company has been duly established pursuant to Cyprus law. Non-winding-up certificates may also be issued by the Registrar of Companies.

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 (inter alia) the registered directors, registered shareholders and the secretary of a company, but not whether the directors or shareholders are nominees, nor any beneficial ownership of the shares in a company.

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

A director of a Cyprus company may not be authorised to represent the company on his or her own. The authorisation of a signatory should be ascertained by examining the company's articles of association and its relevant corporate authorities resolving and authorising the execution of the documents required in a ship finance transaction.

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 either as a primary obligor, guarantor or surety has to be properly resolved and authorised by its board of directors by means of relevant corporate authorities (either by resolutions in writing or 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 have to be in line with the company's memorandum and articles of association and, in general, have to 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 (eg, 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.

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 or authorisations or notification 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 the Republic of 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).

Repayment**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 has to be ensured.

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 to a bank lender. Default interest is not allowed to exceed 2 per cent per annum, unless it is proved to be a genuine pre-estimate of loss or actual loss.

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.

Registration of vessels**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 Registry, the vessel is subjected to the jurisdiction of the Republic 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.

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 (which includes Norway, Iceland or Liechtenstein) or in a third country where its control or ownership vests in EU interests may apply to register a vessel under the Cyprus flag.

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.

Ship mortgages and other liens over vessels**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, a mortgage to secure the principal sum and interest and a mortgage to secure an account current. The complexity of most financial transactions tends to make the principal sum and interest mortgage form rather obsolete and the account current form is, nowadays, more often than not, the form of mortgage used by mortgagees who are always desirous of securing 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 containing the contractual agreement between the owner and the mortgagee and dealing 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 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 and parcel of the mortgage.

There is no standard form of a deed of covenants as the same 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.

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

See question 14.

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 entrusted by the Merchant Shipping Law to the Registrar of Cyprus Ships and 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 Registry.

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).

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 in order 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.

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.

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 behalf of itself and the other syndicate members, 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.

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, together with the payment of the prescribed mortgage transfer fees (calculated on the basis of the gross tonnage of the mortgaged vessel).

When such transfer results from a merger where the registered mortgagee ceases to exist, the mortgage will have to 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, together with the payment of the prescribed mortgage transmission fees.

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.

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, etc; 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 as from the time 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).

22 What maritime liens rank higher than a mortgage lien?

The maritime liens listed in question 21, even if they arise after the date 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.

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.

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-Cypriot mortgage, which 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.

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 has the right to issue a writ in an action in rem before the Supreme Court of Cyprus in its admiralty jurisdiction 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 the Republic 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 effected by the Admiralty Marshal and gives the purchaser a clean title in the vessel, free of claims worldwide, and the proceeds of sale are paid to the court for application, first 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 up to two 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.

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 are 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.

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

In addition to the rights of a registered mortgagee described under question 26, 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; the main reasons being that 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.

28 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.

Collateral**29 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.

30 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.

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

Security interests over the earnings of a vessel, charter contracts, insurances, etc, 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 will also have to be registered at the Companies Registry as a charge against such company's assets.

32 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-Cypriot company) have to be registered at the Companies Registry (see question 3). 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. As for pledges of shares in a Cyprus company, see question 35. Mortgages over vessels (either Cyprus-flagged or not) also have to be registered at the Companies Registry.

33 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 have to be registered at the Companies Registry (see question 32) and where the account is not held with the chargee, notice of the charge has to be given to the account bank.

34 How are security interests in non-vessel collateral enforced?

As a standard practice, the security documents in a finance 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 have to 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.

35 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 quite 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 has to sign the pledge in the presence of at least two witnesses who are competent to contract and who have to subscribe the document with their names as witnesses. Under Cyprus law, a pledge is in 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 in order to curtail the directors' discretion to refuse registration of the transfer where it relates to enforcement of security. The pledge of the share certificates is not registrable at the Companies Registry since the pledgor will not retain possession of the same. The charge and mortgage over the shares and the rights deriving therefrom is registrable, but since enforcement under a shares pledge is effected through implementation of the ancillary documents delivered to the pledgee, such registration may not be necessary.

A statutory notice of pledge has to 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.

36 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. In the case where the pledgee appoints directors to act on its behalf, they will have the legal duties of directors and be liable if illegality is proven.

Tax considerations for vessel owners**37 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 (see question 38).

38 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 EU *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.

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

See question 38.

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

Not applicable.

Insolvency and restructuring

41 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.

42 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 non-European judgments or rulings, matters are governed by the common law and the Foreign Judgments (Reciprocal Enforcement) Law, as well as by bilateral treaties between Cyprus and foreign jurisdictions relating to the reciprocal provision of legal assistance between contracting states.

43 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.

44 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 shipowning 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. See also question 6 relating to corporate action.

45 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, for 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 keep on good terms with him or her in the hope of future financial assistance.

It is noteworthy that 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.

46 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.

47 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?

ISDAs are regularly used by Cypriot companies. Pursuant to the ISDA provisions, close-out netting provisions are given effect.



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Ship Finance
ISSN 2056-4015



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