

Market Intelligence

SHIPPING 2020

Global interview panel led by Kevin Cooper
of MFB Solicitors

Publisher

Edward Costelloe
edward.costelloe@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Business development manager

Dan Brennan
dan.brennan@gettingthedealthrough.com

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Malta

Jotham Scerri-Diacono is partner and co-head of Ganado Advocates' ship registration team. He regularly advises clients on ship registration and shipping litigation matters as well as matters relating to maritime law generally. He also leads the firm's environmental law practice and assists clients on matters concerning shipping, corporate law and dispute resolution. Jotham sits on a number of committees and boards involved in either maritime or environmental law and is a lecturer and examiner at the University of Malta on topics dealing with shipping and advocacy. He regularly writes and contributes articles on maritime law to various local and international journals. Jotham has acted for major banks, owners and buyers in arrest and sale of vessels in Malta. He regularly assists clients with the registration of yachts under the Malta flag.

Jan Rossi is an associate and member of Ganado Advocates' ship registration team. Jan specialises in maritime and commercial law. He regularly assists clients in matters relating to ship registration, sale and purchases, company law, yachting, ship management and maritime and commercial law generally.

Ilias Theocharis is a consultant within Ganado Advocates' shipping team. He focuses on matters relating to ship registrations, sales and purchases, yachting and formation, and governance of shipping organisations and companies. Ilias also regularly assists major financial institutions and owners in the financing of vessels and advises clients on environmental law issues.

1 | What is the current state of the shipping industry in your country?

The shipping industry in Malta is generally performing well and has been consistently so for a number of years. Like other industries operating in and from the Maltese Islands, the shipping industry has been negatively impacted by the spread of covid-19. Nevertheless, the recent relaxation of measures has contributed to its recovery as, for instance, cruise liners and other passenger vessels arriving in Malta from specific countries are not banned anymore, while crew changes have now become more efficient since these are not subject to mandatory quarantine. Also, Maltese marinas are open again for yachts arriving from certain countries while transiting yachts, with only crew members on board, are allowed to berth in Malta for the purpose of refuelling, servicing, customs procedures, flagging and other necessities irrespective of their country of origin. According to a recent government paper titled 'Integrated Maritime Policy – Making Malta a Centre for Maritime Excellence', it is estimated that Malta's maritime industry contributes to the employment of more than 20,000 people, with a value-added benefit to the national GDP of approximately 14 per cent.

The traditional sectors, namely tourism, fishing and ship-register activities, will continue to flourish; however, it is also expected that new areas, such as research and development and biotechnology, will experience growth over the coming years. Clearly, the maritime and shipping industries play a key role in Malta's economy.

The shipping industry is not new to the Maltese archipelago. Owing to its strategically placed geographical position and its natural harbours, Malta has always been at the heart of the Mediterranean's commercial and mercantile activity. Providing a point of convergence between the European and African continents, Malta has developed a strong maritime tradition that has evolved into an international centre for the maritime and shipping industries.

Malta's shipping and maritime industry is spread across various sectors that vary in size, competitiveness and growth potential. Malta Marittima, a government agency created in 2016, has divided Malta's maritime industry into the following principal 'clusters':

- maritime commercial cluster – legal, financial, insurance, broking, chartering, shipowners, surveyors, adjusters, crew management;
- logistics cluster – freight forwarders, terminal operators, ship agents, warehouse operators, bunkering;
- marine engineering cluster – marine engineering, IT, ship repair, technical services mechanical and electrical, sailing and motorboat clubs, marinas, boat sales and chartering;



Jotham Scerri-Diacono



Jan Rossi



Ilias Theocharis

“The relaxation of covid-19 measures has contributed to the shipping industry's recovery.”

- fisheries and aquaculture cluster – fishing boat owners, fishing coops, fish farming, aquaculture, fish processing, fisheries management and biotechnology; and
- energy cluster – oil and gas exploitation and servicing, offshore renewable and emissions.

The above categorisations give a broad outline of the diverse sectors of the industry and illustrate Malta's attempts to offer a varied range of maritime services.

Although the current state of the aforementioned sectors can only be described as healthy, success is particularly evident in the flag-related services that are offered by Malta. In a world where there are an increasing number of available flags for ship registration, Malta has sought to become one of the world's largest ship registries.

According to recent statistics, Malta is now Europe's largest merchant flag and the sixth largest in the world. There is no doubt that the growth of Malta's maritime industry, specifically the growth of the Maltese merchant shipping register, has resulted in a host of legal professionals capitalising on the boom. The need for legal expertise in this sector has led to the proliferation of legal professionals specialising in the maritime and shipping law fields. The maritime legal industry is now mature and highly competitive. The reality today is that Malta boasts a number of highly specialised law firms and other professionals whose practice has grown around international shipping and the maritime industry in general.

Other specialised sectors forming part of the Maltese maritime industry that are currently doing particularly well are the yachting marinas and offshore bunkering sectors that have all seen tremendous steady growth in the past few years, encouraging the government to continue focusing both its attention and resources on these areas.

Malta also hosts a number of international maritime institutions including the International Maritime Organization's (IMO) International Maritime Law Institute located within the grounds of the University of Malta, the International Ocean Institute and the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea.

2 | What are the prevailing shipping market trends affecting your country?

The increased reluctance of international banks to provide traditional finance to shipowners is a downside of the recession caused by the pandemic, while many national economy policies have started following a path towards austerity, which has resulted in a negative impact on ship mortgage activity and consequently on the flag registration of new builds.



Domestic shipping trends have, likewise, left their mark on Malta. Indeed, the past few years have seen a general willingness by local maritime industry stakeholders and the government to strengthen Malta's existing maritime industry and advance it further. The intention is for this industry to grow into one of the major pillars of Malta's economy.

Malta's maritime industry has faced tough competition from other sectors within the Maltese economy. It may be argued that, although in previous generations a career path in one of the maritime sectors was considered to be one of the more natural, accessible and advantageous career paths to follow, this has now changed with the advent of many IT and 'desk-based' jobs in other economic areas.

Fortunately, this is not the case for all of the maritime sectors comprising Malta's maritime industry. The service-oriented sectors have grown considerably in recent years. As previously mentioned, Malta is now Europe's largest merchant flag and is the sixth largest in the world. According to recent statistics, at end of December 2019, the number of ships registered in Malta's shipping register was increased to 8,594 vessels with a total gross tonnage of 82.93 million gross tonnes and the average age of the vessels registered under the Maltese flag was 13.7 years.

Moreover, during 2019, the Malta flag registered an increase over the previous year in the registration of super yachts over 24 metres in length, as over 806 super yachts were flying the Maltese flag. Malta's comprehensive legislation on shipping and maritime matters has greatly contributed to the expansion and success of Malta's merchant flag. The legal industry has now developed into a mature sector of the economy assisting shipowners, ship operators, financiers, port operators, yacht owners, insurers, carriers and many other players within the maritime industry.

3 | Are there any recent domestic or international political or legislative developments that may have an impact on your country's shipping market?

The European Commission's decision to propose an unprecedented fiscal stimulus of €750 billion will, of course, have a positive impact on the Maltese shipping industry and will, in general, assist the country's economy to overcome the financial crisis caused by the pandemic.

Legal Notice 31 of 2020 has also brought about a novel faculty for Maltese shipping companies as foreign shipping companies wishing to re-domicile in Malta are now in a position to do so without first continuing their corporate existence as non-shipping companies and subsequently converting into shipping companies post re-domiciling, which was the case until recently.

Furthermore, by virtue of Legal Notice 248 of 2020, shipowners have an additional option when incorporating a company in Malta, as companies carrying on or engaged in shipping business are now in a position to either create or be converted into cell companies and create within themselves cells for the purpose of segregating and protecting their cellular assets of the company.

Another domestic legislative development is the upgrade of the procedures for an arrest of a vessel in Malta as not only court officials but also privately-engaged bailiffs can now formally serve a warrant of arrest on ships that are in Maltese territorial seas. The new procedure is specifically intended to facilitate arrests in difficult weather conditions, particularly where ships are miles away from Maltese shores, on anchorage and when sea conditions are bad.

As one of the leading maritime nations in Europe and as Europe's largest maritime flag, Malta is acutely aware of the essential role the maritime industry plays in its own domestic economy as well as in the economy of the EU as a whole. Maintaining competitiveness in the industry, including through the offering of beneficial fiscal legislation to shipowners and operators, is key for the European Union's maritime industry, as referred to in many EU papers on the subject.

“The policy decision taken to adhere to all major international maritime conventions ensures that Malta remains an attractive flag.”

4 | What are the key regulatory and compliance issues for your country's shipping market? What's coming up in the near future?

Malta's legal and regulatory framework for all maritime-related activities is now well established. Although perhaps even more important are the constant initiatives to amend and update Malta's existing maritime legislation, as well as to create new legislative and regulatory instruments that reflect and accommodate the industry's developments. It is essential that Maltese law is constantly updated and is amended where necessary, in line with the needs and requirements of the international shipping community and the maritime industry at large.

Indeed, the enactment of the proper legislative instruments has been fundamental for Malta to establish itself as a hub of maritime services, including for ship registration activities. In this area of the law, Malta has looked towards the common law legislative legacy and towards the various regional and international conventions, to be able to draft into its statute book the proper tools for its success. The policy decision taken to adhere to all major international maritime conventions ensures that Malta remains an attractive flag to shipowners, managers and other operators.

Additionally, the presence of provisions in Maltese law that enable financiers to register their security interests (namely mortgages) and to enforce such security rights, has greatly contributed to the popularity of the Maltese flag. Financiers are comfortable when the undertakings they finance own or operate vessels that are registered in Malta. The Maltese statutory mortgage has repeatedly proven to be a very effective tool in the hands of banks and other financiers. Moreover, Maltese courts have not hesitated in applying the full brunt of the law against defaulting mortgagors.

In seeking to enact the appropriate legislation, the legislature has always understood that any legislation enacted must consider the realistic needs of the industry. In an extremely competitive trade, where large sums of money are transacted across the globe on a daily basis and where multiple factors continuously come into play to create a dynamic and complex environment, it is essential that legislation is user-friendly and addresses the commercial needs of the industry operators it seeks to regulate. It must act as a tool, and not an obstacle, to industry operators.

The aim was, and still is, for Malta to offer comprehensive but not necessarily complex legislation and regulations that permit the carrying out of swift and practical solutions on the ground. This being said, the intent to provide a comfortable legislative environment should not be mistaken for a lack of scrutiny. The legislation in force today has resulted in the Maltese flag being recognised and respected as a serious flag that encompasses a wide variety of regulations ranging from technical management and seafarers' rights, to matters concerning the environment and maritime pollution, and matters dealing with the financing of vessels and their operators.

Malta's flag administration provides the technical, organisational and administrative support required for the running of Malta's ship registry. The Maltese flag administration has largely succeeded in striking a balance between the requirements of the international maritime law conventions and the demands of the market. The attainment of such balance is considered essential for maintaining the amount of tonnage registered under the Maltese flag.

Other administrative and governmental authorities, such as the Malta Business Registry, which recently demerged from the Malta Financial Services Authority in order to be a standalone agency and increase its functionality, have also played a significant part in the growth of the international shipping services industry in Malta. The Malta Business Registry handles the incorporation of Maltese corporate vehicles that are often used to own and operate ships. The local courts provide an efficient forum in which players within the maritime industry, notably enforcing financiers and owners, find recourse.

With regard to recent regulatory matters, the Companies Act (Register of Beneficial Owners) (Amendment) Regulations have introduced changes to the



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Companies Act (Register of Beneficial Owners) Regulations which, inter alia, seek to provide further investigative powers to the Registrar of Companies, introduce an annual filing requirement and implement certain suggestions made by the industry. Also, starting from financial year 2020, shipping companies will need to prepare financial statements in accordance with the relevant regulations and applicable financial reporting standards such as the General Accounting Principles for Small and Medium Enterprises and the International Financial Reporting Standards, and submit these audited financial statements to the Malta Business Registry.

The IMO's 2020 Sulphur Limit began applying in Malta as from 1 January 2020, reducing the sulphur content of bunker fuel from 3.5 per cent to a maximum of 0.5 per cent. The IMO Marine Environment Protection Committee, in its 74th meeting in 2019, adopted a set of guidelines supporting the implementation of this sulphur limit, under MARPOL Annex VI, and a set of guidelines for port state control, under MARPOL Annex VI. The guidelines include, inter alia, an indicative template for an 'implementation plan' and verification control mechanisms to be implemented by flag state and port state administrations.

“Maltese banks do not generally finance large merchant vessel acquisitions or operations.”

- 5 | What are the shipping industry's current sources of finance? How do you predict they will develop, and what are the advantages and challenges to financing a vessel in your country?

The shipping finance landscape has changed over the past decade or so. Two such changes are concerned with the geographical location of the sources of ship finance and the increase in popularity of alternative means of raising finance. It is now common knowledge that many traditional European banks have either exited the shipping finance market or have downsized their shipping finance operations. Asian banks and export credit agencies in Asian shipbuilding nations have stepped in to fill in the financing gap, with many shipping enterprises consequently looking east for financing. Some players within the industry have and still are resorting to the capital markets, others have sought financing from private equity interests.

From a local perspective, Maltese banks do not generally finance large merchant vessel acquisitions or operations. However, some foreign financial institutions and financiers in the international shipping industry are present in Malta.

The enthusiasm for alternative means of ship finance has led to an increased interest in the set up and use of Maltese collective investment vehicles (funds) in the shipping finance arena. Fund structures provide a vehicle for investing in equity and debt instruments issued by shipping enterprises. For the smaller operators, such fund structures may be used to gather the required amount of private equity that is now being sought as an alternative means of financing shipping activities.

There are advantages to financing a vessel registered in Malta and its creditor-friendly shipping legislation has proved to be popular with financiers.

6 | Have there been any recent significant domestic or foreign court decisions or arbitration awards that impact on your country's shipping market?

We cannot recall any one specific judgment delivered recently that has made a significant impact on Malta's shipping market. However, decisions on court-approved private sales of vessels are turning Malta into a major international venue for the carrying out of sales of distressed vessels.

Briefly, this is a mechanism that combines the best elements of the private sale and the traditional judicial sale by auction. The court is directly involved in approving a privately prearranged sale between the enforcing creditor having an executive title (such as a mortgage) and the prospective identified buyer while the vessel is within Malta's jurisdiction.

The creditor retains full control of the court proceedings and can see them concluded within a short time frame. The buyer is also protected as the vessel is acquired free and unencumbered. Any unsatisfied claims against the secured asset after the conclusion of the sale can only be enforced against the proceeds. Proceedings are swift and expedient, since the application is appointed for hearing within 10 days of its filing. Court intervention is minimal.

The enforcing creditor may request court authorisation enabling the creditor to acquire the secured asset itself in set-off of its debt over the asset.

Moreover, mortgages burdening vessels that are not registered in Malta may be enforced, as long the foreign mortgage is recognised under Maltese law.

7 | What is the outlook for your country's shipping market? Which sectors are likely to grow, and which not?

As previously mentioned, Malta's shipping and maritime industry is composed of various sectors including a legal sector that is largely concerned with the provision of legal products by local service providers to local and international operators

within the maritime industry, including shipowners, ship managers, ship agents, freight forwarders, ship and yacht repairers, port operators, port workers and operators in the fisheries and aquaculture industry. All of these sectors contribute to Malta's aspirations to become a leading regional and international maritime hub.

Further, the main objective of the Malta Maritime Forum, which was set up in 2015, is to provide a common platform for the local maritime industry to promote existing maritime services and to assist in the development of new maritime activities. The forum also aims to promote research, education, standards and training within the Maltese maritime industry, acting as a constituted body to consult and be consulted by government in the development of public policies that can have a bearing on the Maltese maritime industry.

These objectives have been broadly established to ensure that the forum is as inclusive as possible. Even though this initiative is largely industry-based, the government, as well as the other public authorities involved in the maritime sector, has supported this initiative, which bodes well for the future.

The industry players and the government are now looking to adopt a holistic policy and coordinated efforts to maintain and continue developing Malta's maritime industry, in and through official forums.

From the perspective of a firm within the maritime legal sector of the industry, the outlook for this sector seems positive with certain segments of the international shipping market, as well as that of yachting, steadily growing and prospering. Nonetheless, as service providers to the international shipping industry, we are exposed to the same inherent risks, volatility and market trends of the industry we serve. It is therefore essential for us to keep a close eye on developments in the industry and the direction towards which it is heading. This will allow us to serve traditional sectors that are presently doing well and tap into innovative areas.

Jotham Scerri-Diacono

jsdiacono@ganado.com

Jan Rossi

jrossi@ganado.com

Ilias Theocharis

itheocharis@ganado.com

Ganado Advocates

Valletta

www.ganado.com

The Inside Track

What are the particular skills that clients are looking for in an effective shipping lawyer?

Clients require and expect shipping lawyers to have a good understanding and working knowledge of the industry. Additionally, lawyers are required to be familiar, in the case where advice is being rendered, in respect of ship registration, for instance, with technical aspects (this will include knowledge of the main international conventions). Likewise, if advice is being rendered in respect to cargo claims, the client will expect lawyers to have insight into the logistics of international sale of goods by sea, including payment mechanisms. The ability to react swiftly and effectively to requests from clients is heightened in shipping practice given the industry's nature, with high costs (of the ship) being incurred for delays and typically tight deadlines.

What are the key considerations for clients and their lawyers when arranging finance for a shipping transaction?

In the current climate, the key consideration for ship-owning clients is ensuring that projects are presented in a manner that guarantees the availability of finance without an overly cumbersome burden being imposed upon the owner. Traditional means of finance is therefore no longer readily available to small and medium-sized owners.

The key consideration for lawyers working in this sector is keeping the related finance documentation effective (ie, concise and free of complications), ensuring that it is devoid of unnecessary complications that do not have value for the parties.

What are the most interesting and challenging cases you have dealt with in the past year?

Numerous legal issues were dealt with, including with regard to the enforcing of a mortgagee's rights against a defaulting vessel, which ultimately led to the sale of the vessel through a court-approved private sale, assisting banks' takeover of whole fleets from their defunct clients, assisting with various sale and lease back transactions acting for both financier or owner, advising on modern systems of payment of crew wages, arrest of vessels and various collisions at sea.

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

Led by MFB Solicitors, this *Shipping* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most significant cases and deals.

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