

Market
Intelligence

SHIPPING 2022

Global interview panel led by MFB Solicitors



LEXOLOGY

Getting the Deal Through



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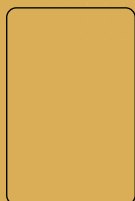
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Malta

Jotham Scerri-Diacono is a partner within Ganado Advocates' shipping team, with particular focus on ship registration, shipping litigation and maritime law generally. Jotham also regularly advises clients on corporate law and dispute resolution.

Jotham sits on a number of committees and boards involved in maritime and environmental law. He lectures and is an examiner at the University of Malta on topics dealing with shipping and advocacy. He regularly writes and contributes articles on maritime law in 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 a senior associate. He specialises in maritime law, with a particular focus on advisory and transactional matters. Jan acts for shipowners, ship managers and other maritime operators on Malta flag issues and related subjects, including ship and superyacht registrations, tonnage tax, port operations, corporate structures and maritime and commercial law issues generally. He regularly assists clients on ship management arrangements, vessel financings and corporate matters arising during client operations.

Ilias Theocharis is an associate within Ganado Advocates' shipping team. He particularly 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 significantly contributes to the Maltese economy and continues to perform well, especially since the negative impact caused by the spread of covid-19 has been substantially reduced. The further relaxation of measures has contributed to its recovery as Maltese ports and marinas are now far more accessible to passenger vessels and yachts respectively, while crew changes have become even more efficient and cruise liners have again started to offload a considerable number of tourists in Malta. It is estimated that Malta's maritime industry provides the local economy with approximately 20,000 employment positions, with a significant value-added benefit to the national GDP.

Ship and yacht registration activities are expected to continue growing; however, it is also expected that new areas, such as research and development and biotechnology, may experience growth over the coming years. 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's maritime industry can be divided into the following principal 'clusters':

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



Ilias Theocharis



Jan Rossi



Jotham Scerri-Diacono

“The maritime and shipping industries play a key role in Malta’s economy.”

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 and the largest registry of superyachts in the world. According to recent statistics, Malta has remained 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? What has been the impact of the covid-19 pandemic?

All state economies around the world have been impacted by the pandemic and Malta would not be an exception. Nevertheless, the reduction in spread of covid-19 combined with quite a few initiatives taken up by the Maltese Shipping Directorate concerning, inter alia, the digitalisation of certain services provided by the Registry of Ships and the increased activity of international banks that provide traditional finance to shipowners and were reluctant to invest in the shipping industry while the pandemic was at its peak, resulted in the recovery of the Maltese shipping industry. Also, financial assistance granted by the European Union to its members has had a positive impact on the industry and has helped the country's economy to be in a better position to handle the financial implications caused by the pandemic.

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, which is also reflected in the recent establishment of MaritimeMT,

“All state economies around the world have been impacted by the pandemic and Malta would not be an exception.”

a maritime training institution that provides training to seafarers and land-based personnel through its Merchant Navy, Superyacht and Small Crafts Academies. 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 Europe's largest merchant flag and the sixth largest in the world. In 2021, the total dead-weight tonnage of the Maltese-flagged vessels has increased while Malta still retains one of the youngest fleets at a global level.

Moreover, at the end of 2021, more than 1,000 superyachts were registered in Malta, up from 850 in 2020. 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?

It is evident that the Russian-Ukrainian war has significantly impacted the global shipping market while Malta has felt its sprawl due to the sanctions imposed against Russia. This decision comes from the fact that many states have taken a stance due to Russia's decision to attack Ukraine. This has led to the Sanctions Monitoring Board in Malta publishing guidelines on how to deal with and adhere to these sanctions, which come into force at high speed. These are important to follow because the sanctions have come into force at a rapid rate under Maltese law and, admittedly, professionals in this industry have lost some sleep to keep themselves up to date with this new reality. In Malta, the Merchant Shipping Directorate has also issued a number of notices with regard to the sanctions that have been imposed. These include the freezing of assets, travel bans, financial restrictions on Russia, import bans from areas in Ukraine that are non-government controlled, as well as suspension on Ukrainian seaports in Ukraine due to safety concerns. Maltese ships are urged to comply with all these measures, and this point has been emphasised in a recent Port Notice issued by the Ports and Yachting Directorate. The European Union has published a Regulation in connection with the prohibition of Russian-flagged vessels, which is directly applicable under Maltese law. Unsurprisingly, this has caused quite an impact on Malta's shipping market due to the considerable number of Russian clients that use the Maltese flag.

With regard to recent domestic legislative developments, procedures for an arrest of vessel in Malta have been recently upgraded to enable, for the first time in Maltese legislative history, privately engaged bailiffs to formally serve a warrant of arrest on ships that are in Maltese territorial seas. The new law changes the traditional rule that required that service of warrants of arrest must necessarily be done by a court official, typically the court marshal. The new law introduces flexibility into the procedure for service of an arrest in that it enables the creditor to engage a private bailiff to physically serve upon and notify the warrant of arrest to the ship's master and proceed to seize the ship's papers for them to be lodged in court, while working hand-in-hand with court officials to ensure that all steps remain subject to court scrutiny. The new procedure is specifically intended to facilitate the arrest of ships in difficult weather conditions, particularly where ships are miles away from Maltese shores, on anchorage, and sea conditions are bad – rather than having court personnel shipped out to vessels to enable notification of an arrest warrant,



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lawyers acting for creditors can tap the private sector to engage individuals that are able to go out at sea in such weather conditions in place of the court marshal.

Additionally, the Malta Passenger Yacht Code came into effect on 25 May 2021 to address the need for the development of a code that specifically caters for larger commercial yachts. This was drawn up in consultation with various industry stakeholders in order for the industry to be widely represented and applies to passenger yachts that carry 12–36 passengers, that carry not more than 200 persons, that do not carry cargo and that are engaged on international voyages.

Furthermore, the revised Commercial Yacht Code, which has been effective since 1 January 2021 and is applicable to all commercial yachts, aims to address the needs of the yachting industry by focusing on the particular needs, demands and technologies of this market, in accordance with safety and international regulations and standards. It also introduces the requirements of the Ballast Water Management Convention and aims to enhance the safety of passengers at sea and improve the working conditions of seafarers. It should also be mentioned that although the possibility of shifting the yacht's certification from commercial to pleasure and vice versa was always accepted by the Maltese Ship Registry, the introduction of

“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.”

Guidelines issued on this subject by the Merchant Shipping Directorate of Transport Malta in 2021 facilitates the process. There is no cap on the number of changes that can be made to the registration status, and no limit in relation to the duration of change of registration.

Also, the Oil and Hazardous and Noxious Substances Pollution Preparedness, Response and Co-Operation Regulations came into force on 1 January 2021, and create a national system for responding to oil and HNS pollution incidents, including through the appointment of a designated national authority and the drawing up of a national contingency plan supported by response equipment, communication channels, regular training and exercises. These apply, in varying degrees, to the Authority for Transport in Malta, to operators of marine terminals and operators of marine facilities based in Malta, to yacht marinas based in Malta, and to ships, including offshore units, while in the territorial waters of Malta

Another domestic legislative development is the entry into force of the 2018 amendments to the Maritime Labour Convention 2006 (26 December 2020). Inter alia, these provide that a seafarer's employment agreement shall continue to have effect for the whole period during which a seafarer is held captive on or off a ship in the event of and as a result of acts of piracy or armed robbery against ships, and will be deemed to have full effect regardless of whether the expiration date of the contract has passed or whether either party has given notice to suspend or terminate it. The position of financiers, specifically involved in financing by way of lease, has been further strengthened by virtue of the recently amended Code of Organization and Civil Procedure (COCP), as the lessor or mortgagee of a vessel now has the right to demand the issuance of a warrant of ejection or expulsion in its favour upon the occurrence of an event of default. By virtue of this warrant, the court executing officer shall enjoin the operator, lessee or other occupants, including any members of their staff to quit the vessel indicated in the warrant in favour of the lessor or a mortgagee or his or her duly authorised representative within a period of not less than four and not more than eight days.

In addition to the above, the Tonnage Regulations were revised in 2021 to address specific needs of the shipping industry by, inter alia, providing new definitions of 'length overall' and of 'hull length' and by substituting the fourth schedule and the fifth schedule of the Regulations.

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.

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. In 2020, the Maltese Shipping Directorate finalised the implementation of the EU Funded Project under Regulation (EU) 2017/825 on the establishment of the Structural Reform Support Programme, to analyse and support the introduction of electronic services to the Maltese maritime industry. This process was done with a view to enhance competitiveness, productivity, sustainable growth, job creation as well as investment. In 2020, the Authority also secured funding for the next phase of the digitisation process of the

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operations of the Merchant Shipping Directorate, which has already initiated the digitisation of its records.

Other administrative and governmental authorities, such as the Malta Business Registry, 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 Company Service Providers Act has been amended with effect from 16 March 2021, to raise standards within the sector by extending its applicability to all types of legal persons and not just companies, removing previously applicable exemptions and de minimis rules, and imposing further reaching ongoing obligations and heftier penalties for non-compliance. Also, 2021 was the first year during which Maltese shipping companies prepared financial statements (for financial year 2020) 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 submitted these audited financial statements to the Malta Business Registry.

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 resorted 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 as 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. The Malta Maritime Law Association (MMLA), through its various sub-committees, is a notable contributor to the constant improvement of Malta's shipping legislation. The MMLA's member base consists of legal and other service professionals from different firms, which come together to address matters of common interest and is often consulted by local regulators and government.

For other industry operators, the Malta Maritime Forum, which was set up in 2015, provides 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.

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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 practical experience and an in-depth, technical understanding of the industry. Furthermore, a good shipping lawyer should be able to work under pressure and react swiftly and effectively to clients' requests. To ensure that clients are well advised and represented, lawyers are to also be familiar with the main international conventions and the technical aspects of ship registration. Likewise, the client will expect lawyers to have insight into the logistics of international sale of goods by sea, including payment mechanisms. In addition, clients will look for lawyers who have great communication skills and are able to effectively communicate their requests to the relevant authorities.

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 to ensure that projects are presented in a way that guarantees the availability of finance without imposing undue burdens upon the owner. For lawyers working in the shipping finance sector, the key consideration is to ensure that related finance documentation is kept in an uncomplicated, effective and succinct manner to avoid unnecessary complications for the parties involved. Furthermore, it is also important for lawyers to have an understanding of what each flag has to offer in terms of shipping finance.

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 and assisting with various ship sale and leaseback and sale and purchase transactions acting for both parties. We have also advised clients on the incorporation of a crew management company qualifying for Malta's tonnage tax regime and the lease of oil and petroleum storage tanks. Additionally, we have provided our advice on environmental law issues, 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 Kevin Cooper of 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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