

# Shipping Finance in Malta: Overview

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A Q&A guide to shipping finance in Malta.

This Q&A provides a high level overview of key practical issues, including: applicable conventions and legislation; financing options; transfer of title; applicable forms of security; registration requirements for ships, ship mortgages, and other forms of security; transfer of security; enforcement of security; deletions of ships from the ship register and discharge of ship mortgages; reform and recent developments.

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## **Conventions and Legislation**

1. To which major maritime treaties is your jurisdiction a party?

Malta has adopted all the major international maritime conventions, including:

- United Nations Convention on the Law of the Sea.
- International Convention for the Safety of Life at Sea.
- International Convention on Load Lines.
- International Convention on Maritime Search and Rescue.
- International Convention on Oil Pollution Preparedness, Response and Co-operation.
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978.
- International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988.
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 1988.
- International Convention on Tonnage Measurement of Ships 1969.
- Convention on Facilitation of International Maritime Traffic 1965, as amended.
- Convention on the International Regulations for Preventing Collisions at Sea 1972, as amended.
- Convention on the International Mobile Satellite Organisation.
- Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976.
- Operating Agreement on the International Mobile Satellite Organisation, as amended.
- International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.
- International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001.
- Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea 1974.
- Nairobi International Convention on the Removal of Wrecks 2007 (NAIROBI WRC 2007).
- International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM) 2017.
- Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 2009.
- Maritime Labour Convention 2006.

2. What is the principal domestic legislation applicable to ship finance?

The main domestic legislation is:

- Chapter 234 of the Laws of Malta (Merchant Shipping Act).
- Chapter 12 of the Laws of Malta (Code of Organisation and Civil Procedure).

## Financing Options

3. What are the main options available for financing the purchase of a ship? How are ship purchases typically financed?

Loan agreements are mostly governed by foreign law for commercial purposes, because the bank financing the borrower and in whose favour security is granted, is, in practice, usually a foreign bank. Any alternative forms of financing (such as sale and leaseback transactions) are also often dictated by agreements that are governed by foreign laws given that the parties involved (often the lessors) tend to come from overseas jurisdictions.

The vessels registered in the Malta Ship Registry are typically financed through traditional loans, syndicated loans or finance leases. Malta has introduced provisions into the Merchant Shipping Act that facilitate the proper operation of finance leases under Maltese law.

4. What are the issues arising in relation to the various financing options?

Commercial issues that arise between the parties in relation to each financing transaction will typically not affect the taking of security over the vessel in Malta.

Under Maltese law, a mortgage can be executed and registered in favour of a security trustee. This may be useful in complex syndicated loans, to facilitate the enforcement and holding of the security. The security trustee is recognised as the mortgagee

and can exercise all the rights in relation to that mortgage that are accorded to a mortgagee. The trust arrangements do not need to be governed by Maltese law.

## Transfer of Title

### 5. How is legal title to a ship transferred?

The transfer of ownership of Maltese registered vessels (or a share of them) will only be valid if the prospective owners qualify as persons eligible to own a Maltese ship. Eligible persons include Maltese or EU citizens, as well as bodies corporate established in Malta.

However, Maltese law provides for other possibilities, including registering the vessel in the name of an international owner who then appoints a resident agent in Malta. Alternatively, a shipping organisation can be set up, where a Maltese company is created for the purpose of owning the ship and being the registered owner of the vessel.

Ownership of any kind of vessels registered under the Malta flag is generally transferred by a bill of sale containing a detailed description of the vessel and signed, in the presence of a witness, by the transferor who is the current owner. The bill of sale is filed with the Malta Ship Registry, with the date and hour of the entry endorsed on the bill of sale.

Transport Malta is a government body overseeing transport in Malta. It comes under the authority of the Maltese Ministry of Transport and Infrastructure and is responsible for all matters relating to Maritime, Aviation and Land. When dealing with vessels, Transport Malta administers the Malta Register and handles the registration of vessels and any mortgage registrations. It requests additional documents for review and consequent closure of the transfer. If the vessel is owned by a Maltese company, the registry will also need a copy of the power of attorney authorising any third-party signatory to sign the bill of sale on behalf of the company. It also needs a copy of the relevant corporate authorities under which the company resolved to transfer/acquire the vessel.

Alongside the bill of sale, a declaration of ownership must be signed by the transferee at Transport Malta or in front of a Commissioner for Oaths or a Maltese Consul. Where the transferee is an individual, their identity card or passport, and documentary evidence of residence must be presented. Where the transferee is a body corporate, the Memorandum and Articles of Association must be filed with proof that the signatory has the power to sign on behalf of the entity.

The vessel can also be transferred following a discharge of any mortgages registered over it, or following consent from the mortgagee authorising the transfer to the new owner.

The transferor must ensure that there are no outstanding fees due to Transport Malta. Transport Malta may request that an inspection is carried out on the vessel before or after ownership is transferred.

## Security

## Mortgages

6. What types of ship mortgage are available? What requirements must be met to ensure a ship mortgage is valid?

The Merchant Shipping Act provides for a statutory form of mortgage, which must be used for all types of mortgages, whether principal and interest or account current mortgages. Although the mortgage can be drawn up in either English or Maltese, it has become standard practice for Maltese mortgages to be drawn up in English.

A mortgage registered under the Merchant Shipping Act can be drawn up to secure payment of:

- A principal sum and interest.
- An account current.
- The performance of any other obligation, including a future obligation due by the debtor to the creditor.

It is not necessary to indicate the monetary value of indebtedness in the mortgage instrument, unless the intention is to secure a future obligation, in which case a maximum sum by way of principal for which the mortgage is granted must be expressly outlined in the mortgage instrument. A future obligation can only be granted in favour of a credit institution in an approved jurisdiction or another organisation permitted through a notice issued by the minister responsible for shipping.

When the mortgagor is a body corporate, the person signing the form on behalf of the mortgagor must have authority to sign by virtue of one of:

- The Memorandum and Articles of Association of the company.
- Resolutions of the board of directors.
- A power of attorney issued under the resolutions or the Memorandum and Articles of Association.

The mortgagor must execute the mortgage in the presence of a named witness on the statutory form. Mortgagors, whether Maltese or foreign corporate bodies, for the sake of practicality, will typically appoint attorneys in Malta to execute the statutory mortgage form.

Board resolutions and powers of attorney appointing attorneys to execute a Maltese mortgage must be notarised and legalised by apostille. Where this is not possible, the registrar can accept lawyers and Honorary Consuls of Malta as witnesses to signatures, as long as they have the authority for legalisation.

Scanned copies of the corporate authorities are accepted as long as the originals have been notarised and legalised. Where the mortgagor is a Maltese company, the Malta Ship Registry also requires a good standing certificate from the Malta Business Registry stating the names of the directors and shareholders, issued as of the date of the relevant resolutions.

Mortgages are registered only at the Malta Ship Registry. To register the mortgage, the registrar needs the original executed mortgage form and a copy of the notarised and apostilled corporate authority (where the mortgagor is an international owner).

The registry only needs one original statutory mortgage form to be delivered and registered. A copy of the mortgage form will be retained by the registrar and certified copies of them are made. The original version is then returned to the mortgagee.

A vessel under construction can be registered under the flag of Malta provided that, once eventually built or equipped, it qualifies as a registerable ship under the Merchant Shipping Act. Where a declaration of ownership has been completed to register a vessel under construction, and registration in the name and ownership of a particular party has occurred, a mortgage can be registered over the vessel while it is still under construction. The documents required to register a mortgage over a vessel under construction are substantially the same as those required to register a mortgage over a completed vessel.

7. Will a registered mortgage take priority over other mortgages and charges over the ship?

A first priority mortgage over a ship gives the mortgagee a high ranking. The following will not be affected by the subsequent bankruptcy of the mortgagor or the shipowner:

- All registered mortgages.
- Any special privileges.
- Possessory liens.
- All actions and claims.

The above claims will take preference over all other debts, claims or interests of any other bankruptcy creditor or any curator, trustee or receiver acting on behalf of any other creditors.

If there is more than one mortgage registered over the same ship, the mortgagees are entitled to priority, one over the other, according to the date and time at which each mortgage was recorded in the register.

There are a number of special privileges that rank higher than a mortgage, however, a mortgage still ranks high (see [Question 18](#)).

## Other Forms of Security

8. What forms of security, other than a mortgage, can be taken over a ship?

A ship can be security for a debt or other obligation (other than a mortgage) either by agreement or by operation of law, including:

- By a general hypothec, which attaches to all the assets of a debtor, including any vessel the debtor may own.

- By a special privilege over the vessel (these are listed in Article 50 of the Merchant Shipping Act (Chapter 243 of the Laws of Malta)). A privilege will only arise as a matter of law and no debt or other obligations other than those specified by law can be secured by a special privilege.

## Transaction Security

9. What forms of transaction security can be taken in a ship finance transaction?

There are various forms of security a Maltese borrower can provide to a creditor, but none are as powerful as a mortgage over a Malta registered vessel.

It is possible for a bank to take out other securities as part of a package, such as a pledge of shares or a pledge of earnings and insurances. Pledges over earnings, insurances, requisition compensation, charter contracts or a ship building contract for a ship under construction can be created as a security for an obligation. They cannot be registered with the Malta Ship Registry (see [Question 13](#)). The privilege over the thing being pledged will only exist if the document relating to it has been delivered to the creditor in accordance with Maltese law.

A pledge over the borrower's shares must be registered with the Malta Business Registry and a notice of registration of a pledge of securities must be served on the borrower (see [Question 16](#)). Where a pledge is registered before a mortgage, it will outrank a mortgagee.

## Registration Requirements

10. What is the procedure for registration of a ship?

All types of vessels, from pleasure yachts to oil rigs, including vessels under construction, can be registered, provided that they are wholly owned by:

- Legally constituted corporate bodies or entities irrespective of nationality.
- EU citizens.

A Maltese ship can also be bareboat charter registered under another flag.

There are no trading restrictions or age restrictions. However, ships over ten but under 15 years must pass an inspection by an authorised flag state inspector before or within a month of provisional registration. Ships over 15 years must pass an inspection by an authorised flag state inspector before being provisionally registered. As a rule, trading ships over 25 years old are not registered.

A vessel is first registered provisionally under the Malta flag for six months (extendible for a further period, or periods, not exceeding six months) during which all documentation must be finalised. This includes evidence of ownership and of cancellation of any former registry. Authority to operate remains linked to conformity with the relative manning, safety and pollution prevention international standards.

The requirements for provisional registration include:

- An application for registration by the owner or an authorised representative including, if required, an application for a change of name of the ship.
- Proof of qualification to own a Maltese ship. In the case of a body corporate, the Memorandum and Articles of Association.
- In the case of non-resident owners, appointment of a resident agent.
- A copy of the ship's International Tonnage Certificate, where applicable.
- A declaration of ownership made in front of the registrar by the owner or an authorised representative.
- Evidence of seaworthiness. In the case of trading ships, confirmation of class, with a recognised organisation and information of the ship's statutory certification including company International Safety Management (ISM) Code Compliance. The ISM Code provides for the safe operation of ships and for pollution prevention.
- Where applicable, a request for the administration to authorise the appropriate recognised classification society to issue the ship's certification.
- Where applicable, an application for Minimum Safe Manning Certificate.
- An application for a Ship Radio Station Licence.
- Payment of initial registration fees and annual tonnage tax.

The documents submitted during provisional registration include:

- A builder's certificate, if the vessel has not been registered elsewhere, or a bill of sale.
- A cancellation of the registry certificate from the last country of registry, showing the vessel to be free from encumbrances.
- Where the International Convention for the Safety of Life at Sea (SOLAS) applies (whose main objective is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety), a copy of the last updated Continuous Synopsis Record issued by the administration where the ship was last documented.
- A Certificate of Survey and a copy of the International Tonnage Certificate issued by an approved surveyor of ships.
- Evidence that the vessel has been marked in accordance with the law.

Where valid appropriate convention certificates are not in place, the ship will be issued with a non-operational certificate of registry. A certificate from the Malta registry must be renewed once a year.

11. How are registered vessel interests certified?

Vessel interests are not registered and/or certified. When registering a vessel in Malta, the Ship Registry requires the title documents as evidence of ownership. The registration documents are not available to the public.

12. What is the procedure for registration of ship mortgages?

A mortgage instrument (which is a statutory form) must be executed by the mortgagor in favour of the mortgagee (either a natural person or a body corporate) in the presence of and attested by a witness or witnesses. It must then be registered over a ship, irrespective of whether it is provisional or permanent, in the Malta Register of Ships. All entries required by law relating to the vessel must be recorded in the vessel register, with information including:

- The name of the ship.
- Details of the registered owner and resident agent (if required).
- Details contained in the surveyor's certificates (where applicable).
- Particulars in respect of the ship's origin.
- Any registered encumbrances over the vessel.
- Details of any mandate or power of attorney granted by way of security to a mortgagee.

Only one original mortgage instrument is delivered and registered in the Malta Ship Registry. A copy is retained by the registrar and certified copies are issued. The original is returned to the mortgagee.

The mortgage is filed in the vessel's register which is maintained by the registrar-general. The information in the mortgage form includes the details of the vessel (such as its name, IMO number, length, depth, net and gross tonnage and a description of the obligation being secured by the mortgage). A mortgage can be registered over a provisionally registered ship and even if it is deleted from the Maltese register, the Maltese mortgage still attaches to the vessel and will be valid and enforceable.

There are limitations on who may be considered to be a mortgagee only if the mortgage is securing future obligations, in which case the mortgagee must be a credit institution in an approved jurisdiction.

13. What other forms of security over a ship can be registered?

The only form of security registerable over a ship is a mortgage. All pledges over receivables, charters and insurances are governed by English Law and are therefore not registerable over a ship in Malta.

14. What is the effect of registering those other forms of security?

Not applicable.

15. Can finance leases or other charters be registered? If so, what is the procedure for registration?

Section 19A of the Merchant Shipping Act permits the registration of finance leases. A registered owner can register title over the ship as its owner while simultaneously allowing the lessee to have an operational interest in its name. This is subject to the lessee providing certain documents and subject to any conditions that the ship registry deems necessary. The mortgagor can register mortgages in favour of the mortgagee and allow it to enforce the mortgage and take possession of the vessel in case of default.

The lessee or the charterer must pay an amount equal to the annual registration fee for that year, in addition to the fee paid by the registered owner. The law also permits both the registered owner and the registered mortgagee to withdraw their consent for the certificate to be issued in the name of the lessee at any time and on doing so the certificate will effectively cease to have effect.

Maltese law also provides that certain ships are eligible for bareboat charter registration, notwithstanding the registration requirements under Maltese law, and provided that:

- The ship is bareboat chartered to a citizen of Malta or to bodies corporate or other persons qualified to own a Maltese ship under Maltese law.
- The ship is not a Maltese ship, and is registered in a compatible registry.
- It is not registered in another bareboat charter registry.
- The following certified documents are submitted to the registrar's satisfaction:

- an application by the charterer or their authorised agent containing any relevant information that the registrar requires;
- a declaration of bareboat charter made by the charterer, accompanied by a copy of the charter agreement (this will not be made publicly available);
- a transcript/extract of the underlying registration of the vessel; and
- the consent in writing permitting the ship to be bareboat charter registered in Malta.

(Article 84C, Merchant Shipping Act.)

16. How is registration of a security interest certified?

Certifying the registration of a security interest varies depending on the interest being registered:

- **Mortgage.** The registration of a mortgage is deemed certified once the registrar records it in the vessel register. The registrar records the mortgages in the order in which they are produced to them for that purpose.
- **Pledge of shares.** A pledge over the shares of the vessel-owning entity is carried out using an instrument in writing entered into between the pledgee and pledgor. The pledgor or the pledgee must deliver notice of the pledge to the registrar of companies within 14 days from it being granted. Failure to deliver the notice of pledge to the registrar of companies does not render the pledge invalid, however, the pledge will only be effective in relation to third parties once the notice has been duly registered.

17. What is the effect of registering a ship?

Where vessels are registered largely depends on the rules and regulations that a particular jurisdiction decides to impose on vessels as requisites for registration. The conditions for entry of vessels into a register can be viewed as pre-conditions for the attribution of that country's nationality to the vessel, the hoisting of its flag and the issue of documents attesting its nationality.

Registering vessels also serves a number of public and private law functions, including:

- Publicity.
- The right to engage in certain activities within the territorial waters of the flag state.

- The protection of the title of the registered owner.
- The protection of title and preservation of any ranking of priorities between persons holding securities over the ship.

18. What is the effect of registering a ship mortgage?

Once a ship mortgage is successfully registered at the Malta Ship Registry, the holder of the mortgage is offered the advantages below, making it particularly attractive to financiers:

- A mortgage constitutes an executive title (where the secured obligation is a debt certain, liquid and due) and can be enforced immediately on default without the need for a court judgment or order to that effect. The mortgagee can therefore proceed directly with enforcement without applying to the Maltese courts.
- Mortgages rank among themselves from the date and time of their registration in the vessel register.
- Claims secured by a mortgage enjoy a relatively high ranking at law. The Merchant Shipping Act provides that registered mortgages will rank only after the following specified privileged claims:
  - tonnage dues;
  - wages and expenses for assistance, recovery of salvage and for pilotage;
  - wages of watchmen and related expenses;
  - rent of warehouses;
  - expenses for preservation of the ship;
  - wages due to the master, the officers and the members of the vessel's complement;
  - damages due to seamen for death or personal injury;
  - moneys due to creditors for labour, work and repairs before departure of the ship on its most recent voyage;
  - ship agency fees due for the ship after its most recent entry into port; and
  - debts due to the ship repairer or shipbuilder for building or repairs.
- Vessels subject to a registered mortgage cannot be deleted from the vessel register by the owner without the mortgagee's prior written consent.
- A vessel cannot be struck off its register by the competent authorities without at least one month's notice being given to the mortgagee by the Registrar-General of Shipping and Seamen. If the vessel is deleted in these circumstances, it is done except for any registered encumbrances, and consequently the mortgage continues to attach to the vessel.
- Further mortgages or transfers of vessels without the prior written consent of the mortgagee can be prohibited by a specific clause in the mortgage instrument.

- The mortgage attaches to the insurance proceeds and to the proceeds from indemnities for mishaps.
- Once a mortgage is registered, special privileges or liens not previously recorded on appurtenances or accessories of a vessel do not affect the mortgagee's position.
- A mortgage can be registered in favour of a security trustee acting on behalf of a person or a syndicate to whom a debt or other obligation is due.
- A registered mortgagee can register the assignment of part of a debt or other obligation secured by a registered mortgage.

Registration of a mortgage protects the mortgagee against all late secured creditors of the mortgagee and unregistered mortgages. Maltese law affords mortgagees several self-help remedies and, in the event of default of any term or condition of a registered mortgage or of any document or agreements referred to in it, the mortgagee is authorised and entitled, on giving notice to the mortgagor:

- To take possession of the ship or share of it in respect of which it is registered. Except where it might be necessary for making a mortgaged ship or share of it available as a security for the mortgage debt, by reason of the mortgage:
  - the mortgagee cannot be deemed to be the owner of the ship or the share;
  - the mortgagor cannot be deemed to have ceased to be the owner.
- To sell the ship or share of it in respect of which the mortgagee is registered. Where there are more persons than one registered as mortgagees of the same ship or share, however, a subsequent mortgagee cannot, except with an order from a court with competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee. If the proceeds of sale, after discharging the mortgage debt, show a surplus, the mortgagee must deposit it for the benefit of other creditors and of the mortgagor.
- Have power to apply for any extensions, pay fees, receive certificates and generally do all the things in the name of the owner as are required to maintain the status and validity of the registration of the ship.

## Transfer of Security

19. Is it possible to transfer security interests over a ship? Are there specific issues of local law when transferring security interests?

A mortgage registered over a ship can be transferred to any person or entity through an instrument of transfer executed by the transferor in the presence of a witness.

Maltese law provides that the transferee cannot exercise the rights transferred to it under the mortgage except after notice of the transfer has been given to the mortgagor. Due notice in this instance includes registration of the instrument of transfer of the registered mortgage in the Malta Ship Registry.

20. Is a transfer of security subject to any registration requirements?

The transfer of mortgage must be registered in the Malta Ship Registry by entering the details of the transferee as mortgagee of the ship in the register of the vessel, stating the day and hour of the transfer.

A pledge of shares of a vessel-owning entity cannot be transferred.

## Enforcement of Security

### Mortgages

21. In what circumstances can a mortgagee take possession of or arrest the ship and sell the ship (either through a private or judicial sale)? What requirements must the mortgagee comply with?

The Code of Organisation and Civil Procedure (*Chapter 12 of the Laws of Malta*) sets out several remedies available to creditors to satisfy the debt owed to them, including the arrest of ships, judicial sales by auction and court-approved private sales.

Under Maltese law, a mortgagee can enforce its rights under the mortgage in the event of default of any term or condition of a registered mortgage, or of any document or agreement referred to in the mortgage instrument. In these circumstances, on giving notice to the mortgagor, the mortgagee can take possession of the ship and hold absolute power to sell the ship in respect of which it is registered. The mortgagee can apply for any extension, pay fees, receive certificates and do all the things in the name of the owner as may be required to maintain the status and validity of the registration of the vessel. In addition, a vessel cannot be deleted from the registry without the prior written consent of the mortgagee. If the mortgagee exercises its rights under the mortgage where there has been no event of default, the mortgagee will be held liable in damages towards the mortgagor.

22. What is the procedure for a mortgagee taking possession of or arresting a ship and selling a ship (either through a private or judicial sale)?

## Arrest

The procedure for the arrest of ships in Malta mirrors the 1952 International Convention relating to the arrest of sea-going ships and is therefore deemed to be efficient.

Ships are arrested in Malta through a warrant of arrest that is issued on the grounds outlined under Article 742B of the Code of Organisation and Civil Procedure. The warrant of arrest will be executed when:

- The executive officer of Malta's Transport Authority (which has the vessel in its possession) is served with notice.
- A copy of the warrant of arrest is served on the owner of the vessel, the master or other person in charge of the ship.

Since December 2019, service of these documents is carried out by privately engaged bailiffs rather than court bailiffs, which makes the process more efficient and flexible. The relevant ship certificates kept onboard the ship will be deposited in court and once the local authorities are served, the vessel will not be permitted to leave Maltese territorial waters.

## Sale

Maltese legislation gives the creditor the option to carry out a judicial sale through traditional court auction or by private treaty through a court-approved sale:

- **Judicial sale by auction.** These auctions are held in public, and any person is eligible to bid for the purpose of purchasing the vessel. Bids offered by participating individuals are not sealed. The highest bidder will take ownership of the vessel, free from any registered encumbrances, and must deposit the price of the sale in court. This is unless the bid is offered *animo compensandi* by an existing creditor of the ship, in which case the price of the vessel will be set-off against the relevant debt. The judicial sale is typically concluded within a few months from the ship's arrest, and the ship will be permitted to leave Maltese territorial waters in the hands of the new owners once it is sold. Any unsatisfied claims are directed against and enforced on the proceeds of the sale.
- **Court-approved private sale.** This quick procedure requires that a mortgagee applying to the courts for a private sale holds an executive title and that the sale is in favour of an identified buyer at a determined price. Two appraisals must be presented by independent and reputable valuers. The application will be appointed for hearing within ten days of being filed. It is necessary that the private sale is made in the interest of all existing creditors of the ship. The mortgagee must provide the courts with a copy of the memorandum of agreement and the valuations. The mortgagee will request that the court approves the sale of the vessel to the identified buyer and appoint a person who will transfer the vessel through a bill of sale to the new buyer for the agreed price. The vessel is then sold to the buyer who will receive the vessel free from any encumbrances.

23. Will local courts recognise a choice of foreign law in a ship mortgage? Are there any mandatory local rules that apply, despite a choice of foreign law?

Local courts will not recognise a choice of foreign law in a Maltese ship mortgage. Since a Maltese law mortgage must be registered on a Maltese law statutory form, Maltese law will apply.

24. Will local courts recognise and enforce a foreign court judgment in favour of a mortgagee?

A judgment awarded by a competent court outside Malta will be recognised as valid and enforceable in the courts of Malta without re-examination of the merits of any matters treated in it if it falls under one of the following:

- Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation). Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation) applies to judgments arising out of proceedings instituted on or after 10 January 2015 under Article 66(1).
- Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (New Lugano Convention). This applies to judgments between EU member states, Norway, Iceland and Switzerland.
- HCCH Convention on Choice of Court Agreements 2005 (Hague Choice of Court Convention).

Where judgments do not fall within any of the above, recognition and enforcement is subject to the applicable law of Malta, which imposes registration or confirmation in Malta, provided that the judgment does not contain dispositions contrary to public policy and cannot be set aside on any of the grounds for re-trial contemplated in the Civil Procedure Law.

## Other Forms of Security

25. What is the procedure for taking possession of a ship if a security interest other than a mortgage is held over that ship?

The procedure for taking possession of a ship is the same as that outlined under [Question 22](#). However, where the arrest of the vessel is *in personam* (meaning that the vessel is arrested not because of a claim personally addressed against it, but because of a claim against the vessel's owner) this can only be exercised where the Maltese courts or any court situated in an EU member state has jurisdiction to deal with the matter under the Brussels Regulation.

## Deletion and Discharge

26. What is the procedure for and effect of deletion of a ship from the ship register?

An application for deletion of a ship from the register must be made by the owner of the vessel. The application must include any particulars and information that the registrar requires.

The registry of a Maltese ship can be closed at the request of the owners, provided all liabilities and obligations in respect of the ship towards the Government of Malta have been paid and there is consent from all registered mortgagees. The ship then ceases to be Maltese.

The registrar issues a deletion certificate on closure of the registry of a vessel registered in Malta. The registrar can refuse to issue the certificate if:

- The vessel's liabilities and obligations towards the Government of Malta, and any body corporate established by law have not been paid.
- The certificate of registry has not been surrendered to it.

The law does not provide guidance on how long it will take for the deletion certificate to be issued, however, it is typically done within a few working days from submission of all documents that the registry requires.

The deletion certificate will include the reason for closure and, if provided, the deletion certificate will include a full description of any unsatisfied mortgage or privilege, together with a statement that the registry of the ship was closed except for the mortgage or privilege.

27. What is the procedure for and effect of discharge of a ship mortgage?

The discharge of a mortgage ends the obligations of the mortgagor (the ship-owning company) to the mortgagee (the bank) as far as the security is concerned (however, there may be other residual obligations under the loan agreement). All that is required to discharge a mortgage is the original mortgage deed (which will be in the possession of the mortgagee) with a receipt for the mortgage money endorsed on it, signed and attested in the requisite part specifically reserved for discharge on the back of the mortgage deed. An authorised bank representative can sign the discharge in the presence of a witness, usually a notary public or lawyer, who will in turn certify the signature and authority of the bank representative. The bank may wish to appoint lawyers to sign the discharge, in which case, a notarised and apostilled power of attorney is needed. The discharged mortgage is substantially a receipt for monies paid.

Certified true copies of the discharges are issued by the registry. Transcripts of the register with a "free from encumbrances" notation can be ordered for simultaneous issue, but arrangements must be made beforehand and comply with any time limits set by the registry.

## Reform and Recent Developments

28. Are there any proposals for reform in the area of ship finance?

There are no current proposals for reform.

29. What are the key developments (key cases, judgments and legislation) of the past year relevant to ship finance?

Locally there have been no key developments to the ship finance industry in the past year.

However, there has been a shift in the lenders providing finance to shipping clients from European-based lenders, to Asian-based lenders, and in particular, leasing houses. Maltese law is particularly attractive to Asian-based lenders because it is possible for them to be registered as the owners of the vessels and then the operator can request (with the permission of the owner) to have the certificate of registration issued in its name.

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