

Question 1

1 MARITIME AND OTHER CONVENTIONS

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

Argentina	These conventions have not been ratified by the Argentine Republic.
Australia	Australia is not a party to either convention. Its domestic law has, however, been heavily influenced by the 1952 Arrest Convention. The Admiralty Act 1988 (Cth), which regulates the admiralty jurisdiction of Australian courts, was enacted in response to the recommendations contained in a report on 'Civil Admiralty Jurisdiction' prepared by the Australian Law Reform Commission in 1986. That report was, in some respects, guided by the 1952 Arrest Convention. Furthermore, the admiralty provisions of the Act were based on Part I of the Administration of Justice Act 1956 (UK), the primary purpose of which was to give domestic effect to the 1952 Arrest Convention. ¹
Brazil	Brazil has not ratified any of the Arrest Conventions.
Canada	No.
Croatia	Croatia has ratified the 1952 Arrest Convention.
Finland	Finland has ratified the International Convention relating to the Arrest of Sea-Going Ships 1952 on 21 December 1995 and it is incorporated into the Finnish Maritime Code. In addition, Finland has signed the International Convention on the Arrest of Ships 1999 on 31 August 2000 but the convention has not yet been ratified.
France	France has ratified the 1952 Arrest Convention but is not one of the 10 Nations having ratified the 1999 Arrest Convention.
Germany	Germany has ratified the 1952 Arrest Convention, but has not (yet) ratified the 1999 Arrest Convention.
Greece	Greece has ratified the 1952 Arrest Convention but not the 1999 Arrest Convention.
Ireland	Ireland has ratified the Arrest Convention 1952. The implementing legislation is the jurisdiction of the Courts (Maritime Conventions) Act, 1989 that commenced in Ireland on the 17th April 1990.
Italy	Italy is a signatory of the 1952 Brussels Convention ("1952 Convention"), ratified in 1979 with the reservation to: (i) apply the national law and not the 1952 Convention to the maritime claims under article 1 (o) (disputes as to the title to or ownership of any ship) and (p) (disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship); and (ii) not to apply first paragraph of article 3 to the arrest granted in its territory for the maritime claims secured by mortgages or hypothecation . The 1999 Arrest Convention has not been ratified yet.

¹ *Gatol International Inc v Arkwright-Boston Manufacturers Mutual Insurance Co* [1985] 1 AC 255 at 266.

Japan	Japan has ratified neither.
Malta	Malta is not a signatory to either of the 1952 and 1999 Arrest Conventions.
Netherlands	<p>The Netherlands has ratified the Arrest Convention 1952, but under both reservations allowed under Article 10 Arrest Convention 1952:</p> <p>«Les dispositions de la présente Convention ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique la loi néerlandaise; et</p> <p>Les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.»</p> <p>(Source: https://verdragenbank.overheid.nl/en/Verdrag/Details/007235)</p> <p>The Arrest Convention 1952 was not incorporated into Dutch legislation as such. As the convention is considered to be self-executing the convention text itself has the force of law and is applied as part of Dutch law.</p> <p>The Arrest Convention 1952 is in force in the Netherlands in Europe since 20 July 1983, in Aruba since 1 January 1986 and in the rest of the Dutch Caribbean since 10 October 2010.</p>
New Zealand	New Zealand is not a party to either convention. Its domestic law has, however, been heavily influenced by the 1952 Arrest Convention. The Admiralty Act 1973, which regulates the Admiralty jurisdiction of the New Zealand courts, was enacted in response to the recommendations of a 1972 law reform committee on the subject. That committee was heavily influenced by the United Kingdom's Administration of Justice Act 1956, which was in turn based on the 1952 Convention.
Nigeria	Although Nigeria has acceded to the 1952 Arrest Convention, the country is yet to promulgate same into municipal law and give it a direct force of law in Nigeria.
Norway	Norway has ratified the 1952 Arrest Convention. Norway has also signed the 1999 Arrest Convention, but the 1999 Arrest Convention has not been ratified by Norway.
Panama	No.
Spain	Spain is a State party in the 1999 Arrest Convention (hereinafter Arrest99; Instrument of Adhesion dated on May 31, 2002 –Official Journal no. 104, of May 2, 2011, at p. 44296).
Switzerland	Switzerland has ratified the 1952 Arrest Convention but is not a signatory to the 1999 Arrest Convention
UK	The U.K. ratified the 1952 Convention and this was enacted in the Administration of Justice Act 1956 and re-enacted in the Senior Courts Act 1981. The UK has not ratified the 1999 Convention.

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

<p>Argentina</p>	<p>Argentine vessels can be arrested in order to protect any kind of credits (art. 531, Navigation Act). Foreign flag vessels can be arrested to protect (i) privileged credits, (ii) debts incurred in Argentina for the benefit of the vessel or of any other vessel that belonged to the same owner at the time the credit was originated, and (iii) debts incurred for the vessel's activity and other credits not related to the vessel's activity provided that they can be claimed before Argentine courts (Navigation Act, art. 532).</p> <p>The word "arrest" is used just for convenience. In our legal system the approximately equivalent concept is embargo. The embargo may include the immobilization of the Argentine vessels (interdicción or prohibición de navegar), but in case of foreign flag vessels, it always implies their immobilization (Navigation Act, art. 539).</p>
<p>Australia</p>	<p>In Australia, the arrest of ships is governed by the Admiralty Act 1988 (Cth) and Part VI of the Admiralty Rules 1988 (Cth).² An application for an arrest warrant may be made if the party has commenced an action in rem against the ship (r 39).</p> <p>The Act governs when an action in rem may be commenced against a vessel (s 14). It recognises that:</p> <ol style="list-style-type: none"> 1. an action on a recognised maritime lien may be commenced in rem against the ship concerned (s 15); 2. an action on a 'proprietary maritime claim' may be commenced in rem against the ship concerned (s 16); 3. an action on a 'general maritime claim' may be commenced in rem against the ship concerned where a 'relevant person':³ <ol style="list-style-type: none"> a. was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship; and b. is, when the proceeding is commenced, the owner of the ship (s 17). 4. an action on a 'general maritime claim' or 'proprietary maritime claim' may be commenced in rem against the ship concerned where a 'relevant person': <ol style="list-style-type: none"> a. was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship; and b. is, when the proceeding is commenced, the demise charterer of the ship (s 18). 5. an action on a 'general maritime claim' concerning a ship may be commenced in rem against a second ship where: <ol style="list-style-type: none"> a. a 'relevant person' in relation to the claim was, when the cause of action arose, the owner or charterer of, or in possession or control of, the first ship; and b. that person is, when the proceeding is commenced, the owner of the second

² The *Admiralty Rules 1988* (Cth) are enacted pursuant to s 41 of the *Admiralty Act 1988* (Cth).

³ Defined in s 4 as 'a person who would be liable on the claim in a proceeding commenced as an action in personam'.

	<p>ship (s 19).</p> <p>Proprietary maritime claims generally relate to property in or possession of the ship, and an exhaustive list is contained in s 4(2). General maritime claims generally relate to the use of the ship, and an exhaustive list is contained in s 4(3).</p>
Brazil	<p>The most appropriate term would be “embargo” instead of arrest under Brazilian Law to describe the retained of a vessel in Brazilian Port but we will use the term “arrest” throughout for convenience. Brazilian Law allows the arrest in rem of a vessel, when the creditor has the privileged credit toward the vessel, but also the arrest in personam, when the credit is enforceable toward the vessel owner.</p> <p>For the arrest in rem, creditor must have a maritime lien over the vessel, properly constituted, according to section I of the 1926 Brussels Convention ratified by Brazil under Decree 351 of 1935. The maritime liens recognized by Brazilian Law are provided by the Commercial Code of 1850, as well as by the 1926 Brussels Convention, – which follows below:</p> <ol style="list-style-type: none"> 1. Federal taxes; 2. Legal costs and expenses; 3. Claims resulting from the employment of Master, crew and ship personnel; 4. Indemnities due for salvage; 5. General Average contributions; 6. Obligations undertaken by the Captain outside the port of registry for maintenance needs or continuation of the voyage; 7. Indemnities due as a result of collisions, or any other sea accident; 8. Ship mortgages; 9. Port dues; 10. Outstanding payments due to depositaries, warehouse rentals, ship equipment; 11. Expenditures for the upkeep of the ship and her appurtenances; 12. Short delivery and cargo losses; 13. Debts arising out of the construction of the vessel; 14. Expenses incurred for repairs of the vessel and appurtenances; 15. Outstanding price of the vessel. <p>However, in case the arrest is filed in personam, the claimant shall evidence a clear and undisputable credit and prove a potential risk of frustration of such credit (fumus boni iuris and periculum in mora).</p>
Canada	<p>Federal Courts Act, RSC 1985, chap.F-7 as amended, at s.22 (1) Any claim for relief may be sought under “Canadian Maritime Law”</p> <p>The Act, supra, defines “Canadian Maritime Law” in s.2 as:</p> <p>“Canadian maritime law means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the Admiralty Act, chapter A-1 of the Revised Statutes of Canada, 1970, or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this Act or any other Act of Parliament;</p> <p>Examples of relief are provided in s.22 (2) of the Act, of which, for the purposes of this Questionnaire, (c) is the most relevant:</p> <p>“(a) any claim with respect to title, possession or ownership of a ship or any part interest therein or with respect to the proceeds of sale of a ship or any part interest</p>

therein;

(b) any question arising between co-owners of a ship with respect to possession, employment or earnings of a ship;

(c) any claim in respect of a mortgage or hypothecation of, or charge on, a ship or any part interest therein or any charge in the nature of bottomry or respondentia for which a ship or part interest therein or cargo was made security;

(d) any claim for damage or for loss of life or personal injury caused by a ship either in collision or otherwise;

(e) any claim for damage sustained by, or for loss of, a ship including, without restricting the generality of the foregoing, damage to or loss of the cargo or equipment of, or any property in or on or being loaded on or off, a

ship;

(f) any claim arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading, or in respect of which a through bill of lading is intended to be issued, for loss or damage to goods occurring at any time or place during transit;

(g) any claim for loss of life or personal injury occurring in connection with the operation of a ship including, without restricting the generality of the foregoing, any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of the ship are responsible, being an act, neglect or default in the management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(h) any claim for loss of or damage to goods carried in or on a ship including, without restricting the generality of the foregoing, loss of or damage to passengers' baggage or personal effects;

(i) any claim arising out of any agreement relating to the carriage of goods in or on a ship or to the use or hire of a ship whether by charter party or otherwise;

(j) any claim for salvage including, without restricting the generality of the foregoing, claims for salvage of life, cargo, equipment or other property of, from or by an aircraft to the same extent and in the same manner as if the aircraft were a ship;

(k) any claim for towage in respect of a ship or of an aircraft while the aircraft is water-borne;

(l) any claim for pilotage in respect of a ship or of an aircraft while the aircraft is water-borne;

(m) any claim in respect of goods, materials or services wherever supplied to a ship for the operation or maintenance of the ship, including, without restricting the generality of the foregoing, claims in respect of stevedoring and lighterage;

(n) any claim arising out of a contract relating to the construction, repair or

	<p>equipping of a ship;</p> <p>(o) any claim by a master, officer or member of the crew of a ship for wages, money, property or other remuneration or benefits arising out of his or her employment;</p> <p>(p) any claim by a master, charterer or agent of a ship or shipowner in respect of disbursements, or by a shipper in respect of advances, made on account of a ship;</p> <p>(q) any claim in respect of general average contribution;</p> <p>(r) any claim arising out of or in connection with a contract of marine insurance; and</p> <p>(s) any claim for dock charges, harbour dues or canal tolls including, without restricting the generality of the foregoing, charges for the use of facilities supplied in connection therewith.</p> <p>Jurisdiction applicable</p> <p>(3) For greater certainty, the jurisdiction conferred on the Federal Court by this section applies</p> <p>(a) , (b) and (c)...</p> <p>(d) in relation to all mortgages or hypothecations of, or charges by way of security on, a ship, whether registered or not, or whether legal or equitable, and whether created under foreign law or not.</p> <p>The right of arrest may be restricted in s.43 of the Act as follows:</p> <p>Jurisdiction in rem</p> <p>(2) Subject to subsection (3), the jurisdiction conferred on the Federal Court by section 22 may be exercised in rem against the ship, aircraft or other property that is the subject of the action, or against any proceeds from its sale that have been paid into court.</p> <p>Exception</p> <p>(3) Despite subsection (2), the jurisdiction conferred on the Federal Court by section 22 shall not be exercised in rem with respect to a claim mentioned in paragraph 22(2)(e), (f), (g), (h), (i), (k), (m), (n), (p) or (r) unless, at the time of the commencement of the action, the ship, aircraft or other property that is the subject of the action is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose.</p> <p>For the purposes of this Questionnaire, subject matter that falls within s.22(2)(c) re mortgages and charges on ships, would not be subject to the restriction in s.43(3).</p>
<p>Croatia</p>	<p>A ship can be arrested for the maritime claims as provided by Article 1 of the 1952 Arrest Convention, but excluding bottomry and ownership claims. A ship can be arrested for claims secured by maritime liens, the hypothec over ship or charges similar to the hypothec over ship (such a anglo saxon mortgage). List of the maritime claims for which a vessel can be arrested is prescribed in Articles 953 of the Maritime Code.</p>

Finland	N/A
France	N/A
Germany	Outside the scope of application of the 1952 Arrest Convention, any claim for money against the registered owner of a vessel can be brought by way of arrest inter alia of the vessel in Germany.
Greece	In case that the 1952 convention is not applicable or that the restriction to maritime claims does not apply, a vessel may be arrested for any type of claim.
Ireland	<p>While Ireland is a signatory to the 1952 Arrest Convention, and a reply therefore not required to the above, for the purposes of completion Ireland has the following additional arrest jurisdiction in that vessels can be arrested in Ireland pursuant to the Court of Admiralty (Ireland) Act 1867 and the Court of Admiralty (Amendment) Act 1876. These Acts permit arrests for:</p> <ul style="list-style-type: none"> • All claims whatsoever relating to salvage and to enforce the payment thereof; • All claims and demands in the nature of towage and to enforce payment thereof; • Any claims for damage received or done by any ship whether within the body of a country or not; • Any claim for the building, equipping or repairing of any ships; • Any claim for Necessaries supplied to any ship elsewhere than in the port to which the ship belongs; • Any claim by a seaman of any ship for wages earned by him on board the ship whether due under a special contract or otherwise and also over a claim by the Master of any ship for wages earned by him on board the ship and for disbursements made by him on account of the ship; • Any claim in respect of any registered mortgage, registered according to the Merchant Shipping Act 1854 whether the ship or the proceeds thereof be under arrest; • Any claim by the owner or consignee or assignee or any Bill of Lading of any goods carried into any port in Ireland in any ship shipped, or upon or about to be shipped upon or carried by any ship from any port in Ireland, for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the Owner, Master or crew of the ship; • All claims arising out of any agreement made for or in relation to the use or hire of any ship, or for or in relation to the carriage of goods in any ship, and also all claims in tort in respect of goods carried in any ship. <p>Given the application of the 1952 Convention to convention and non-conventions ships, the above provisions are more likely to have relevance to Irish registered ships.</p>
Italy	Italy is a signatory of the 1952 Convention according to which a vessel can be arrested for any of the maritime claims provided by art.1 of said Convention, while made the reservations mentioned above.

	<p>In addition to the above, a vessel may be arrested in Italy to satisfy any other credit or claim for debt of a contractual or non - contractual nature whether the vessel is owned by the debtor. However, in these cases, the applicant must prove the "periculum in mora" (i.e. the risk of the irreparable damage to the applicant in case the arrest is not granted). For instance, a vessel may be arrested in Italy for claims arising from insurance premium even if insurance premium are not included into the "maritime claim" list under 1952 Convention.</p> <p>Italy is a signatory of the 1952 Brussels Convention ("1952 Convention"), ratified in 1979 with the reservation to: (i) apply the national law and not the 1952 Convention to the maritime claims under article 1 (o) and (p); and (ii) not to apply first paragraph of article 3 to the arrest granted in its territory for the maritime claims under article 1 (q).</p> <p>The 1999 Arrest Convention has not been ratified yet.</p> <p>They answered this question twice. See below for second answer</p> <p>Italy is a signatory of the 1952 Convention according to which a vessel can be arrested for any of the following maritime claim:</p> <ul style="list-style-type: none"> (a) damage caused by any ship either in collision or otherwise; (b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship; (c) salvage; (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise; (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise; (f) loss of or damage to goods including baggage carried in any ship; (g) general average; (h) bottomry; (i) towage; (j) pilotage; (k) goods or materials wherever supplied to a ship for her operation or maintenance; (l) construction, repair or equipment of any ship or dock charges and dues; (m) wages of Masters, Officers, or crew; (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner; (o) disputes as to the title to or ownership of any ship; (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship; (q) the mortgage or hypothecation of any ship. <p>In addition to the above, a vessel may be arrested in Italy to satisfy any other credit or claim for debt of a contractual or non - contractual nature whether the vessel is owned by the debtor. However, in these cases, the applicant must prove the "periculum in mora" (i.e. the risk of the irreparable damage to the applicant in case the arrest is not granted).</p> <p>For instance, a vessel may be arrested in Italy for claims arising from insurance premium even if insurance premium are not included into the "maritime claim" list under 1952 Convention.</p>
Japan	Any claim can.

<p>Malta</p>	<p>Article 742B of the Maltese Code of Organisation and Civil Procedure Maltese lists a total of 25 maritime claims giving the Maltese Courts jurisdiction in rem against vessels on basis of which a vessel may be arrested. These grounds incorporate both the Arrest Conventions of 1952 and 1999. The claims may be summarized as follows:</p> <ul style="list-style-type: none"> (a) claims to possession, ownership or title to a ship to or of a ship or to the ownership of any share therein; (b) questions arising between co-owners as to the ownership, possession, employment or earnings of a ship; (c) claims in respect of a mortgage or hypothec or charge on a ship or on any share therein; (d) claims arising out of a contract of sale for the ship; (e) claims for damages received by a ship; (f) claims for damage done or caused by a ship, either in collision or otherwise; (g) claims for loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship or sustained in consequence of any defect in a ship or in her apparel or equipment or in consequence of the wrongful act, neglect or default of - <ul style="list-style-type: none"> (i) the owners, charterers or persons in possession or control of a ship; or (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods in, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship; (h) claims for loss or damage to goods carried in a ship; (i) claims arising out of an agreement for the carriage of goods or use or hire of a ship whether by charter party or otherwise; (j) claims for salvage or any salvage agreement including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment; (k) claims for damage to environment by a ship; (l) claims relating to wrecks; (m) claims for towage; (n) claims for pilotage; (o) claims for supplies or services rendered to a ship; (p) claims for construction, repair, conversion or equipping of a ship;
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	<p>(q) claims for port, dock or harbour dues;</p> <p>(r) claims by crew for wages or repatriation;</p> <p>(s) claims for disbursements made;</p> <p>(t) claims for commissions, brokerage or agency fees;</p> <p>(u) claims arising out of an act of general average;</p> <p>(v) claims arising out of bottomry;</p> <p>(w) claims for forfeiture of a ship;</p> <p>(x) claims for insurance premiums; and</p> <p>(y) claims for fees due to the registrar or tonnage dues.</p> <p>In cases concerning any one of the maritime claims listed in (a), (b) and (c) above, an action in rem may only be brought against that ship in connection with which the claim arises.</p> <p>In all other cases concerning the remaining maritime claims listed in (d) to (y), an action in rem may be brought against that ship, where the person who would be liable on the claim for an action in personam (the relevant person) is, when the cause of action arose, an owner or charterer of, or is in possession or in control of, the ship and if, at the time when the action is brought, the relevant person is either an owner or beneficial owner of that ship or the bareboat charterer of it. In such cases, an action in rem may also be brought against any other ship of which, at the time when the action is brought, the relevant person is the owner or beneficial owner as respects all shares in it.</p>
<p>Netherlands</p>	<p>(In response to the question raised in footnote nr. 1:) The 'action in rem' type of 'arrest' is unknown in the Netherlands. We will use the term 'attachment' (beslag) to emphasize that distinction. Dutch law has two types of attachment: (1) the conservatoir beslag (≈ the saisie conservatoire of the French text of the Arrest Convention 1952; or the precautionary arrest of the 1933 Rome Convention on the Precautionary Arrest of Aircraft) and the executoriaal beslag (≈ saisie exécutoire; the 'seizure in execution or satisfaction of a judgment' of Article 1 sub (2) Arrest Convention 1952). Under Dutch law enforcement (executie) can take place on the basis of an executoriale titel (enforceable title), which will generally mean a court judgment or a notarial instrument with an enforceable character. A Dutch ship mortgage, hypotheek (hypothec), is created by such a notarial instrument, followed by the entry of the instrument in the public registers. However, it should be noted that under Dutch law the hypothecary creditor enjoys the right of ready or immediate enforcement (parate executie) meaning that the hypothec can be enforced without using the notarial instrument as an enforceable title and/or by effecting an attachment in execution. But in practice, the hypothecary creditor often does attach the vessel as it gives better safeguards against the vessel escaping the enforcement by sailing away.</p> <p>(In response to question nr 1.2:) Although the Netherlands has indeed ratified the Arrest Convention 1952, this does not mean that there may not be questions in determining for what categories of claim an attachment may be effected, particularly as the Netherlands has made the reservations under Article 10 Arrest Convention 1952. So it seems better to answer this question nevertheless.</p>

Obviously, subject to the reservation noted under 1.1. above, a ship flying the flag of a Contracting State may be attached for the maritime claims set out in Article 1 pursuant to Article 2 Arrest Convention 1952.

Pursuant to Article 8 sub (2) Arrest Convention 1952 a ship flying the flag of a non-Contracting State may be attached in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of (the different jurisdictions within the Kingdom of) the Netherlands permits arrest. It could be argued that this subparagraph itself contains a conflict of law rule which would require the application of the *lex fori* of the Netherlands (except where the reservation of Article 10 heading and sub (a) would lead to non-applicability of the Arrest Convention 1952). But the *travaux préparatoires* seem to indicate that the drafters were more concerned with the application of the convention to all ships flying the flag of a non-Convention state and allowing arrest for non-maritime claims than they were concerned with determining the choice for a particular law. In practice in the Netherlands, the parties and the courts first tend to apply national conflict of law rules in order to determine whether which (foreign) claims can be brought by way of attachment.

Dutch civil law distinguishes between the law of property (real rights/rights in rem) and the law of obligations. If purely Dutch law is to be applied a vessel can be attached for claims arising out of the law of property, including but not limited to *rei vindicatio*, hypothec, and pledge/pawn (*pignus*), or for claims arising out of the law of obligations provided there is a right to recover (*verhaalsrecht*) the latter type of claims against the ship simply (1) because the ship owner is the debtor of the claim (normal *verhaalsrecht*) or (2) because statute law gives a specific right to recover the claim against the ship even when the ship is not the property of the debtor (special *verhaalsrecht*, usually connected to privileged claims, i.e. claims with preference/priority).

But if there are foreign elements (foreign ship; foreign claimant or debtor) the courts will first need to determine the applicable law. There are different conflict of law rules that may apply. In the Netherlands in Europe these conflict of law rules are codified in Book 10 of the Dutch Civil Code (DCC). (No such codified conflict of law rules exist in the Dutch Caribbean at this moment.)

Article 10:127 DCC provides for the basic conflict of law rule for issues of property law. It reads:

1. Except as provided otherwise in paragraphs (2) and (3), the property law regime relating to objects shall be the law of the State in whose territory the object is situated.
2. Except as provided in Article 160 of this Book, the property law regime relating to registered vessels shall be governed by the law of the State where the vessel is registered.
3. The property law regime relating to registered aircraft and aircraft exclusively registered in a nationality register as referred to in Article 17 of the International Civil Aviation Convention of Chicago of 7 December 1944 (Staatsblad 1947, H 165) shall be the law of the State of registration of the aircraft or the law of the State of its registration in its Nationality Register.
4. The law referred to in the preceding paragraphs shall determine in particular:
 - a. whether an object is movable or immovable;

- b. what forms a component part of the object;
- c. whether the object is transferable or whether a right can be created therein;
- d. which requirements may be set for a transfer or creation of rights therein;
- e. which rights may be vested in respect of an object and the nature and content of such rights;
- f. the manner in which such rights may arise, be modified, be transmitted and are extinguished, and the relationship between such rights.

5. For the application of the provisions of the preceding paragraph, as regards the acquisition, the establishment, the transmission, the modification or the extinction of rights in respect of a thing, the time of occurrence of the legal facts required for such purpose shall be conclusive.

6. The provisions of the preceding paragraphs apply, *mutatis mutandis*, in the case of a transfer or creation of rights in respect of rights in rem.

So under Article 10:127 DCC the property law regime generally is that of the *lex rei sitae*. However, the property law regime of registered ships is the law of the ship's (underlying) register (the *lex registrationis*), not to be confused with the law of the ship's flag (*lex vexilli*; *droit du pavillon*) which may be different in case of bareboat registration. (With one notable exception: where the Convention between the Kingdom of the Netherlands and the Kingdom of Belgium concerning Territorial Jurisdiction, Bankruptcy and the Authority and Execution of Judgements, Arbitral Awards, and Notarial Acts, Brussels, 28 March 1925 is applicable Article 23 of the Convention would lead to the application of the law of the flag of the ship on questions relating to hypothec (and privileges) in bankruptcy situations. But it is arguable that this Convention has been replaced on this issue by the Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.)

Under Article 10:127 DCC the law of the (underlying) register will therefore determine whether a mortgage or hypothec may have been vested in the ship and the nature and content of such mortgage or hypothec. The same should perhaps be said of common law (maritime) liens, as these maritime liens are often characterized as a form of hypothecation (see e.g. the historical analysis in the opinions in the recent Australian case of *The Ship "Sam Hawk" v Reiter Petroleum Inc* [2016] FCAFC 26; [2016] 2 Lloyd's Rep. 639).

The foreign right recognized by applying Article 10:127 DCC should however not be exercised in a manner incompatible with the *lex rei sitae* (in this case Dutch law). Article 10:130 DCC provides:

Rights to an object acquired or created in accordance with the law applicable pursuant to this Title shall continue to vest therein even if the object is transferred to another State. No rights may be exercised in a manner incompatible with the law of the State in whose territory the object is situated at the time such rights are exercised.

So generally foreign security rights/interests of this nature are compared to security rights existing under the *lex rei sitae* to determine the ways in which the foreign right may be exercised locally.

With respect to recovery against the ship for claims the conflict of law rule of Article

	<p>10:160 of the Dutch Civil Code (DCC) would be applied. It provides:</p> <ol style="list-style-type: none"> 1. If, in the event of a bankruptcy or judicial sale, the proceeds of a registered ship are to be distributed in the Netherlands by the court, the question whether a claim submitted in such proceedings exists and, if so, in what amount, shall be governed by the law which is applicable to that claim. 2. Whether a claim as referred to in the preceding paragraph is privileged and, if so, the scope, rank and consequences of such privilege, are to be decided by the law of State where the ship was registered upon commencement of the bankruptcy or sale. In determining the ranking of claims, however, priority over claims secured by hypothec shall only be attributed to those claims which have such priority under Dutch law. 3. No priority shall be attributed to a claim which, under the law applicable thereto, is not privileged on the ship. 4. Subparagraphs 2 and 3 apply mutatis mutandis to the recoverability of a claim against the ship. <p>On the basis of this article both the <i>lex causae</i> (the law applying to the claim itself) and the <i>lex registrationis</i> would have to be applied.</p> <p>The boundary between Article 10:127 and 10:160 DCC is not entirely clear. It would seem that issues relating to attachment, forced sale and the ranking of claims (including claims subject to mortgage, hypothec and liens) are subject to Article 10:160 DCC, whereas other issues of a property law nature may be covered by Article 10:127 DCC, e.g. the self-help remedies as referred to under 12 below.</p> <p>So depending on the nature of the claim (proprietary interest or obligation) the categories of claim which can be brought by way of attachment of a vessel in the Netherlands in Europe are generally thought to be determined by the <i>lex registrationis</i> and <i>lex causae</i> jointly (Article 10:160 DCC).</p> <p>The situation in the Dutch Caribbean is a little less clear. Article 10:127 DCC and its predecessor (Article 2 of the Act of 18 March 1993 containing some provisions of private international law with regard to maritime and inland shipping law) codify principles which were already applied by the courts before that time. The conflict of law rules with regard to property law will therefore be similar throughout the Kingdom. (Confirmed by the Court of First Instance Sint Maarten, 9 Febr. 2016, ECLI:NL:OGEAM:2016:5.)</p> <p>The same cannot be said for Article 10:160 DCC. This article, or rather its almost identical predecessor (Article 3 of the Act of 18 March 1993 containing some provisions of private international law with regard to maritime and inland shipping law) replaced a two tier system of the <i>lex causae</i> and the <i>lex fori</i> which was developed in court judgments. The question therefore is whether the latter system still applies in the Dutch Caribbean, or whether the courts there will – on the basis of the principle of concordance – shift to applying the same principles rules as laid down in Article 10:160 DCC as it applies in the Netherlands in Europe.</p>
<p>New Zealand</p>	<p>The arrest of ships is governed by the Admiralty Act 1973 and Part 25 of the High Court Rules. An application for arrest may be made if the party has commenced an action in rem against the vessel.⁴</p>

⁴ High Court Rules, r 25.34.

	<p>A list of claims which can be brought against a vessel is set out in s 4 of the Act:</p> <ul style="list-style-type: none"> (a) Possession or ownership of a ship (b) Disputes between co-owners of a ship (c) Mortgages and charges over ships (d) Damage done by a ship (e) Damage received by a ship (f) Ship-related loss of life or personal injury (g) Loss or damage to goods carried by a ship (h) Agreements for the carriage of goods (i) Salvage (j) Towage (k) Pilotage (l) Goods or services supplied to a ship (m) Port or harbour charges or Construction or repair of a ship (o) Wages owed to masters or crew (p) Any claim by a master, shipper, charterer for disbursements (q) General average (r) Bottomry (s) Forfeiture or condemnation of a ship <p>The s 4 claims dealing with property in vessels ((a), (b), (c) and (s) above) can only be invoked by an action in rem against the particular vessel in question. The others can be invoked in rem against the particular vessel in question, or against a "sister ship".⁵</p> <p>In addition, s 5(1) of the Act permits an action in rem in "any case in which there is a maritime lien or other charge on any ship" to be invoked against that particular ship.</p>
Nigeria	<p>All claims enforceable in rem can be brought by way of arrest. These will include: claims for possession, ownership and mortgage of a ship or its freight as well as maritime liens. It also includes claims arising in connection with a ship where the person who would be liable on the claim in an action in personam is the owner or charterer of or in possession or in control of the ship at the time the when the cause of action arose - Section 2, Admiralty Jurisdiction Act (AJA) 1991.</p>
Norway	<p>Norway has ratified the 1952 Arrest Convention. The terms of the 1952 Arrest Convention have been incorporated to the Norwegian Maritime Code of 1994 (the "NMC"), see in particular Chapter 4 of the NMC. Please, however, note that</p>

⁵ Admiralty Act 1973, s 5(2).

	additional requirements apply, most importantly a general requirement that the claimant can show a probable cause for the arrest, i.e., it is not sufficient merely to have a claim falling into the category "maritime claim" in order for the court to accept an arrest in Norway.
Panama	In-rem and in-personam. Maritime liens are taxatively set out in Law No.55 of August 6,2008 as amended by Law No.27 of October 28,2014 in its articles: <ul style="list-style-type: none"> • Over the vessel - article 244 • Preferred liens on the freight - article 247 • Preferred liens on the cargo - article 248
Spain	N/A
Switzerland	N/A
UK	N/A

1.3 In particular, can arrest be made:

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

Argentina	Yes
Australia	Under s 4(2) of the Act, a claim relating to 'a mortgage of a ship or of a share in a ship' is a proprietary maritime claim. As explained in the answer to 1.2, this would allow a mortgagee to commence proceedings in rem against the mortgaged vessel and then to apply for an arrest warrant.
Brazil	Yes it can. In case the creditor has a maritime lien over a vessel, its credit is considered privileged if properly construed according to article I of the 1926 Brussels Convention and, therefore, the creditor may seek the arrest in rem of the vessel. All the mortgages related Brazilian vessels should be made by a public deed and afterwards registered at the Admiralty Court which is located in Rio de Janeiro..
Canada	Yes
Croatia	Yes
Finland	Yes. However, an arrest is not applicable if the applicant is domiciled in Finland and the vessel in question is registered in the Finnish Register of Ships or if the claim is of a public nature.
France	Arrest may be made both by a maritime hypothecary creditor of a vessel registered under the laws of France and by a maritime hypothecary creditor of a vessel registered under the laws of a different jurisdiction.
Germany	Yes
Greece	A mortgagee may arrest a vessel whether registered (a)in Greece or (b)in any other jurisdiction.
Ireland	Yes
Italy	Yes, under Italian law a mortgagee of a vessel may secure its action by arresting the vessel within Italian Jurisdiction irrespectively of her flag. Indeed, a mortgage legally constituted according to the flag of ship and duly registered in a public register, or central compartment, it is recognized for all purposes also in the other Contracting States of the 1926 Convention on Maritime Liens and Mortgages ("1926 Convention") and takes rank in the after the special privileges of the ship and freight.
Japan	Yes
Malta	Yes
Netherlands	A mortgagee could effect a conservatoir beslag (saisie conservatoire) or an executorial beslag (seizure in execution), but it is not necessary in view of the right of ready or immediate enforcement (parate executie).
New Zealand	Yes, this is a proprietary maritime claim and a mortgagee would be able to commence proceedings under s 4(1)(c) and 5(2) of the Admiralty Act 1973 and apply for arrest under the High Court Rules.
Nigeria	Yes

Norway	Yes, see section 92(2)(p) of the NMC.
Panama	Affirmative.
Spain	N/A
Switzerland	<p>Yes</p> <p>Please be aware that Switzerland is landlocked and therefore seagoing vessels will, apart maybe from yachts and similar small vessels, never be in the jurisdiction of Swiss courts/authorities. As a consequence, Swiss courts/authorities will never have the opportunity to arrest/attach a seagoing vessel.</p>
UK	A mortgagee has the right to arrest a ship within the jurisdiction of the Admiralty Court irrespective of the country of registration. This jurisdiction was given in the Admiralty Courts Act 1840 in relation to UK registered ships and extended to all ships by the AJA 1956.

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

Argentina	In the case of foreign flag vessels, art. 600 of the Navigation Act recognizes the validity of foreign mortgages, but reciprocity is required.
Australia	The Act applies to 'all ships, irrespective of the places of residence or domicile of their owners' (s 5(1)(a)). As such, the answer to 1.3(a) is applicable to domestic and foreign vessels.
Brazil	<p>It is not possible to register before the Brazilian Admiralty Court a mortgage over a foreign flagged vessel.</p> <p>For an instrument that creates a mortgage over a foreign vessel to be valid in Brazil, some requirements must be complied with: (i) the signatories' signatures must be certified by a notary in the place of signature, and, any certification by a foreign notary, the notary's signature shall also be consularized and further sworn translated in Brazil; (ii) the document must be registered with the appropriate registry of deeds and documents in Brazil, to be valid towards third parties.</p> <p>If the creditor needs to execute a mortgage over a foreign vessel, assuming such vessel is in Brazilian waters, it will be necessary to follow the referred steps required to validate foreign documents in Brazil, as well as for the enforcement of foreign judicial decisions/arbitral awards (in summary, ratification by the Superior Court of Justice, as long as certain formal requirements are met, including the absence of any provisions contrary to the Brazilian legal order, public order, national sovereignty and good moral conduct). However, this is still a controversial issue before the Brazilian Courts.</p> <p>A recent decision from the Court of São Paulo (29th Civil Court –Proc 1116479-65.2014.8.26.0100) in a proceeding involving BTG- Pactual (creditor) filed an enforcement claim of USD27.391.594,01 against OSX3 Leasing B.V and requested the attachment of a FPSO owned by OSX3. Nordic Trustee who is a mortgagee of the FPSO OSX 3 due debt securities bonds issued in the capital market of Norway in the amount of USD500,000.000.00 joined lawsuit and claimed preference to the proceeds of sale of the FPSO. The São Paulo Court did not recognize the validity of the foreign mortgage among others reasons :(i) Both Bustamante Code and Brussels Convention would only apply to signatory countries and Liberia was not party to those conventions, (ii) Brazilian Admiralty Court could not register foreign vessels so the mortgagee knew the risk and it was convenient to him to opt to Liberia Flag (iii) Not applicable art 8 , Parag 1 of the Introduction Law of Civil Code that established movable assets should apply the law of the owner in this case Netherland but the fact that was not just a vessel but a plataform that would remain 20 years in Brazil change to apply the principle of " lex rei sitae" – the law of the location of the asset which means Brazilian Law (iv) the mortgage did not evidenced the existence of international customary practice that sovereign states are obliged to reciprocally recognize the effectiveness and validity of liens over vessels of their flags and in accordance with their laws. This decision is not final and might be reverted by the Superior Court of Justice.</p>
Canada	Yes
Croatia	Yes. A ship can be arrested irrespectively of vessel's flag.
Finland	Yes
France	See (a) above

Germany	Yes
Greece	See (a) above
Ireland	Yes
Italy	See (a) above
Japan	If the existence of the mortgage is affirmed under the governing law (to be determined by the private international law of Japan), yes.
Malta	<p>Yes – a foreign mortgage is recognised with the status and rights and powers of a Maltese mortgage upon the foreign mortgage satisfying certain conditions, namely:</p> <p>(a) such mortgage has been validly recorded in the registry of ships of the country under whose laws the ship is documented;</p> <p>(b) such registry is a public registry;</p> <p>(c) such mortgage appears upon a search of the registry and</p> <p>(d) such mortgage is granted a preferential and generally equivalent status as a Maltese mortgage under the laws of the country where the mortgage is registered.</p>
Netherlands	Yes, provided the claim of the mortgagee is recognized by the law to be applied on the basis of the conflict of law rules of either Article 10:127 or Article 10:160 DCC applying in the Netherlands in Europe or the unwritten conflict of law rules applying in the Dutch Caribbean.
New Zealand	Yes, the New Zealand admiralty legislation applies to all vessels regardless of the state of registration. ⁶
Nigeria	Yes. Our laws make no distinction between the places of registration of a mortgaged vessel for the purpose of enforcement by way of arrest proceedings. The admiralty jurisdiction of our Federal High Court applies to all ships, irrespective of the places of residence or domicile of their owners. Section 3 AJA.
Norway	<p>Yes, as long as the following requirements set out in section 74 of the NMC are fulfilled:</p> <p>(i) The mortgage is established and registered in accordance with the laws of the vessel;</p> <p>(ii) The foreign register is a publicly accessible register keeping the relevant documentation, and such documentation/transcripts can be provided by the keeper of the registry; and</p> <p>(iii) The foreign register and/or a transcript therefrom identifies the mortgagee or states that the mortgage is issued “for order”, includes the amount secured by the mortgage, the date of the mortgage and other information relevant to establish priority.</p>
Panama	Affirmative. Panama has an international arresti forum and Article 545- A of Law

⁶ Admiralty Act 1973, s 4(4)(a).

	No.12 of January 23, 2009 sets out the proceedings for such execution.
Spain	N/A
Switzerland	See (a) above
UK	See (a) above

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

Argentina	Only the 1926 Convention has been ratified by the Argentine Republic.
Australia	Neither Australia nor New Zealand are parties to either convention.
Brazil	Brazil is signatory to the 1926 Liens Convention (Brussels) and to the 1993 Liens Convention (Geneva). However, Brazil has not ratified the 1993 Liens Convention but only ratified the 1926 Liens Convention. As a consequence, the 1926 Liens Convention is currently the one incorporated to Brazilian law.
Canada	No, neither convention
Croatia	Croatia has not ratified any convention relating to maritime liens. Provisions of the Maritime Code on maritime liens incorporates the International Convention on Maritime Liens and Mortgages, Geneva, 6 May 1993
Finland	Finland has signed the 1993 Maritime Liens and Mortgages Convention.
France	France has ratified the 1926 Maritime Liens and Mortgages Convention but is not one of the 18 Nations that have ratified the 1993 Convention.
Germany	Germany has neither ratified the 1926 nor the 1993 Maritime Liens and Mortgages Conventions.
Greece	Greece has ratified neither the 1926 nor the 1993 Maritime Liens and Mortgages Conventions. However, for most ocean going vessels registered under Greek flag only the maritime liens of the 1926 Convention run in priority over mortgage pursuant the registration act which is issued specifically for each vessel in accordance with article 13 of Legislative Decree 2687/1953, which has increased constitutional protection pursuant to article 107 of the Greek Constitution.
Ireland	Ireland is not a signatory to the International Convention on Maritime Liens and Mortgages, 1926 and/or 1993.
Italy	Italy is a signatory of the 1926 Convention. Conversely, the 1993 Convention has not been ratified yet.
Japan	Japan has ratified neither.
Malta	Malta is not a signatory to the 1926 or the 1993 International Conventions on Maritime Liens and Mortgages
Netherlands	Neither
New Zealand	Neither Australia nor New Zealand are parties to either convention.
Nigeria	Nigeria has not ratified the 1926 convention. However, she is a signatory to the 1993 convention but is yet to promulgate same into domestic law.
Norway	Norway has ratified, but later withdrawn from the 1926 Maritime Lien and Mortgages Convention. The rules in the NMC are based on the International Convention for the Unification for Certain Rules relating to Maritime Liens and Mortgages, Brussels 1967.

Panama	No
Spain	Spain is a State party to the 1993 Maritime Liens and Mortgages Convention (hereinafter MLM93, Instrument of Adhesion dated on May 31, 2002 – Official Journal no. 99, of April 23, 2004, at p. 16350).
Switzerland	Switzerland has ratified the 1926 Maritime Lien Convention but is not a signatory to the 1993 Maritime Lien Convention.
UK	No

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

<p>Argentina</p>	<p>The approximately equivalent concept of lien in our legal system is privilegio. The Argentine Republic recognizes foreign maritime privileges, including liens, which are governed by the law of the vessel's flag (Navigation Act, art. 598). A change of flag does not affect the regime applicable to privileges and liens and the applicable law is the law of the state in which the vessel was registered prior to the change of flag (art. 599).</p>
<p>Australia</p>	<p>Section 15(2) of the Act specifically recognises maritime liens for:</p> <ol style="list-style-type: none"> 1. salvage; 2. damage done by a ship; 3. wages of the master, or of a member of the crew, of a ship; and 4. master's disbursements. <p>In addition, the reference to 'a proceeding on a maritime lien' in s 15(1) has been interpreted as requiring the proceeding to be 'on a maritime lien of a character recognised by Australian law, including Australian rules of private international law'.⁷</p> <p>Australian courts determine whether the Australian rules of private international law recognise a foreign maritime lien through a two-stage process:</p> <ol style="list-style-type: none"> 1. first, the court determines what rights exist by reference to the <i>lex causae</i>; and 2. second, the court characterises those rights, in the circumstances in which they arose, for the purposes of Australian law to determine whether they can be described as a "maritime lien".⁸
<p>Brazil</p>	<p>Brazil has ratified the 1926 Liens Convention and Brazilian jurisdiction does recognize maritime liens. It should be noted that Brazil also ratified the Convention on Private International Law (Bustamante Code) of Havana 1928 by Decree 18.871/1929.</p> <p>Additionally, in order to be considered valid and in effect under Brazilian law, all maritime mortgages must be constituted through a public deed and registered before the Maritime Notary, Port Captaincy and Admiralty Court. In this sense, to create a mortgage on a Brazilian-registered vessel, a public deed must mandatorily contain the following requirements: (i) Amount of credit (an estimate or maximum amount); (ii) Term established for repayment; (iii) Interest Rate, if any; (iv) Vessel's specifications, such as gross tonnage, deadweight and other identifying data; and (v) Vessel's Insurance Certificate.</p> <p>The following maritime liens are recognized by Brazilian Law, as per item 1.2: (i) Federal taxes; (ii) Legal costs and expenses; (iii) Claims resulting from the employment of Master, crew and ship personnel; (iv) Indemnities due for salvage; (v) General Average contributions; (vi) Obligations undertaken by the Captain outside the port of registry for maintenance needs or continuation of the voyage; (vii) Indemnities due as a result of collisions, or any other sea accident; (viii) Ship</p>

⁷ *Elbe Shipping SA v The Ship "Global Peace"* (2006) 154 FCR 439 at [133].

⁸ *The Ship "Sam Hawk" v Reiter Petroleum Inc* [2016] FCAFC 26.

	<p>mortgages; (ix) Port dues; (x) Outstanding payments due to depositaries, warehouse rentals, ship equipment; (xi) Expenditures for the upkeep of the ship and her appurtenances; (xii) Short delivery and cargo losses; (xiii) Debts arising out of the construction of the vessel; (xiv) Expenses incurred for repairs of the vessel and appurtenances; (xv) Outstanding price of the vessel.</p> <p>Please note a recent decision rendered by São Paulo Court as describe in 1.3 (b).</p>
Canada	<p>Any maritime lien that is created for the benefit of creditors under a foreign law will be recognized and enforced by a Canadian court, even though Canadian Maritime Law does not recognize a similar right. The only restriction is where the foreign maritime lien is against public policy. <i>Todd Shipyards Corp. v. Altema Compania Maritima S.A.</i>, [1974] SCR 1248, 1972 CanLII 193 (SCC)</p>
Croatia	<p>Yes, all of the claims as prescribed in 1993 Convention against the owner, demise charterer, manager and operator of the vessel and employer in relation of the claims set out in Art 4 par 1 (b) of the 1993 Convention.</p>
Finland	<p>Finland recognises maritime liens. The claims secured by a maritime lien are listed in the Maritime Code, Chapter 3 which corresponds to the list in the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967</p>
France	N/A
Germany	<p>German law recognises foreign maritime liens.</p> <p>According to the German conflict of law rules, the law applicable to a maritime lien is the law applicable to the claim that gave rise to the maritime lien ("lex causae"). Thus, German law will in principle recognise a maritime lien for any claim that, under the lex causae, gives rise to a maritime lien.</p> <p>German law, however, applies to the ranking of maritime liens. Maritime liens thus rank according to the rank that they would have if they were German maritime liens. Foreign maritime liens that do not have an equivalent under German law are ranked according to the so-called priority principle, meaning in practice that a foreign maritime lien with no direct equivalent under German law will rank after registered mortgages.</p>
Greece	<p>In case of enforcement and auction of a vessel in Greece in determining the order of priorities for the distribution of the auction proceeds the maritime liens are taken into account, which are recognized by the law of the flag of the vessel. However, the order of priority (and especially the priority over the mortgage) is deemed to be a procedural matter and it is determined by the law of Greece, as the lex fori.</p>

Ireland	<p>The courts recognise the following classes of liens:</p> <p>a) Maritime Liens:</p> <ul style="list-style-type: none"> • Bottomry and respondentia; • Damage done by a ship; • Salvage; • Crews wages; and • Master's wages and disbursements. <p>b) Possessory Liens</p> <p>c) Statutory Liens</p> <p>d) Equitable Liens</p> <p>Under the Rules of the Superior Courts maritime liens may be pleaded as statutory liens.</p>
Italy	<p>Italy ratified the 1926 Convention and Italian Jurisdiction recognize foreign maritime liens. Indeed, the existence of a lien over a ship is determined by the law of the flag, pursuant to Article 6 of the Italian Navigation Code ("CN").</p>
Japan	<p>Yes, Japan recognises foreign maritime liens subject to the private international law of Japan. Courts tend to apply Japanese law as <i>lex fori</i> to determine whether a type of maritime claim is secured by a maritime lien. (Tokyo District Court, 19 August 1991, Hanrei Jihô no.1402, p.91; Tokyo District Court, 15 December 1992, Hanrei Times no.811, p.229. see also the unreported case of Hakodate District Court in 2011, cited in Y. Takase, Kin'yu Hômu Jijyô no.1941, p.116).</p>
Malta	<p>Although the concept of a maritime lien is not recognised as such under Maltese law, yet the Merchant Shipping Act recognises a number of special privileges on vessels. These survive for one year following the voluntary sale of the vessel concerned (thereby assuming the character of maritime liens), and are also relevant in the context of ranking of creditors.</p>
Netherlands	<p>Yes, foreign maritime liens may be recognized under the conflict of law rules of either Article 10:127 and/or Article 10:160 DCC applying in the Netherlands in Europe or the unwritten conflict of law rules applying in the Dutch Caribbean. The types of claim recognized will therefore be determined by the law to be applied under these conflict of law rules.</p>
New Zealand	<p>The New Zealand courts have followed the approach in <i>The Halcyon Isle</i>, ie that the law of the forum will determine the evaluation and ranking of maritime liens.⁹ New Zealand law recognises maritime liens for seamen's wages, masters' wages and</p>

⁹ *Bankers Trust International Ltd v Todd Shipyards Corp* [1981] AC 221 (PC); *The ship "Betty Ott" v General Bills Ltd* [1992] 1 NZLR 655 (CA); *ABC Shipbrokers v The ship "Offi Gloria"* [1993] 3 NZLR 576 (HC); *Fournier v The ship "Margaret Z"* [1999] 3 NZLR 111 (HC) at 115–116.

	disbursements, damage and salvage (along with the now redundant liens for bottomry and respondentia). ¹⁰ Although the definition of “maritime lien” in the Admiralty Act 1973 is not exhaustive, there is virtually no possibility that the New Zealand courts will recognise any further liens without legislative intervention.
Nigeria	<p>Nigerian law recognizes foreign maritime liens. Under Section 67 of Merchant Shipping Act 2007 (MSA) the following maritime liens are recognized:</p> <ul style="list-style-type: none"> (i) Wages and other sums due to the master, officers and crew (ii) Disbursements of the master on account of the ship (iii) Claims in respect of loss of life or personal injury occurring whether on land or water in direct connection with the operation of the ship (iv) Claims for salvage, wreck removal and contribution in general average (v) Claims for port, canal and other waterways and pilotage dues See also section 5(3) of the Admiralty Jurisdiction Act 1991.
Norway	<p>Claims recognised as maritime liens are set out in section 51 of the NMC and are limited to claims for:</p> <ul style="list-style-type: none"> (i) wages and other sums due to the master, officers and other persons employed on board in respect of their employment on the vessel; (ii) port, canal and other waterway dues and pilotage dues; (iii) damages in respect of loss of life or personal injury occurring in direct connection with the operation of the vessel; (iv) damages in respect of loss of or damage to property occurring in direct connection with the operation of the vessel, provided the claim is not capable of being based on contract; and (v) salvage reward, compensation for wreck removal and general average contribution.
Panama	<p>Yes. Foreign liens must be proven in court by the corresponding parties applying the foreign substantive law.</p> <p>Article 557 of Law No.8 of March 30,1982 as amended by Laws No.II of May 1986 and Law No.12 of 2009 states that with respect of liens that affect the vessel, the law of the country of registry is the substantive law to be applicable.</p>
Switzerland	N/A
Spain	N/A
UK	The only maritime liens recognised in English law are claims for crews wages, salvage, collision damage, master’s wages and disbursements (this is now statutory under s.41 Merchant Shipping Act 1995) – and also bottomry and respondentia although these are now obsolete. The question of whether a foreign maritime claim could constitute a maritime lien was considered by the Privy Council in <i>The Halcyon Isle</i> [1980] 2

¹⁰ Admiralty Act 1973, s 2, definition of “maritime lien”; Maritime Transport Act 1994, ss 28-29.

	<p>Lloyds Rep 325 which decided that whether a maritime claim created a maritime lien was to be determined by the lex fori (in practice the law of the state in which the ship was arrested) and not the law of the state where the claim arose. This analysis of the position in English law has been questioned by certain academic writers.</p>
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1.6 Does the law of your jurisdiction incorporate the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents?

Argentina	The 1961 Hague Convention has been approved by the Argentine Republic (Act 23.458).
Australia	Australia is a party to this convention, having ratified it on 9 August 1994. It is given effect through the Foreign Evidence Act 1994 (Cth).
Brazil	Yes, Brazil has ratified the 1961 Hague Convention, as per Decree number 8.660/2016.
Canada	No - "Legalization of Foreign Public Documents" was never required. Foreign Public Documents have to be proven in court in accordance with common law and local statutory rules of evidence.
Croatia	Yes
Finland	Finland has ratified the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents.
France	France has ratified the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents.
Germany	Yes
Greece	Greece is a member and party to the 1961 Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents.
Ireland	Yes
Italy	Yes, Italy authorized the ratification of the 1961 Hague Convention which it's in force since August 1978.
Japan	Yes. Japan ratified the Convention in 1970.
Malta	The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents is in force in Malta.
Netherlands	Yes, the Netherlands is a party to the Apostille Convention (see https://www.hcch.net/en/instruments/conventions/status-table/?cid=41). The Apostille Convention is in force in the Netherlands in Europe since 8 October 1965, in Aruba since 1 January 1986 and in the rest of the Dutch Caribbean since 10 October 2010.
New Zealand	New Zealand is a party to this Convention, and it has been implemented through ss 141-147 of the Evidence Act 2006.
Nigeria	Nigeria is not a member of the Hague Apostille Convention (Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents). Documents being sent to Nigeria require State, and Nigeria Embassy legalization.
Norway	Yes, Norway is party to the 1961 convention so that documents can be "legalised" by way of apostille where applicable.

Panama	Yes, but also kept the other method of legalization. A document coming from abroad to be valid, the same must be duly notarized and legalized either by Panamanian Consul or Apostille.
Spain	Yes, Spain is a State party to the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents (Instrument of Ratification dated on April 10, 1978 – Official Journal no. 229, of September 25, 1978, at p. 22329).
Switzerland	Yes. Switzerland has ratified the 1961 Convention Abolishing the Legal Requirements for Legalisation of Foreign Public Documents. Under Swiss Law, international treaties are directly applicable, if they are self-executing. There is therefore no need for special legislation incorporating such treaties.
UK	Yes

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Question 2

2 NATURE OF THE SHIPS' REGISTER

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

Argentina	<p>Yes, it is a register of legal title (Navigation Act, art. 158, and Act 19.170, art. 21).</p> <p>Act 19.170 governs the National Register of Ships (Registro Nacional de Buques).</p>
Australia	<p>Australia has two ships' registers, which are governed by the Shipping Registration Act 1981 (Cth):</p> <ol style="list-style-type: none"> 1. The Australian General Shipping Register; and 2. The Australian International Shipping Register. <p>The Shipping Registers are not registers of legal title. Ownership of a ship (or shares in a ship) does not depend upon registration. Registration does not confer or confirm title.¹</p>
Brazil	<p>The register of vessels in Brazil shall be made before the Admiralty Court (for vessels with gross tonnage over 100 AB). Vessels with gross tonnage less than 100 shall be register before the Port Captancy.</p> <p>The Admiralty Court is a register that grants legal title to the owner towards its vessel.</p>
Canada	<p>Yes. Legal title holders are registered as owner in the Canadian Register of Vessel. However, legal title continues to exist without registration, but may not be opposable to third parties who believe that they have obtained legal title without notice. Registration may be prima facie evidence of title, but no more.</p> <p>Example: <i>Ballantrae Holdings v M.V. "Phoenix Sun"</i> 2016 FC 570 (CanLII) - an unpaid mortgage creditor whose title was not registered, was recognized as a legal mortgage holder ranking ahead of any equitable mortgagees or beneficiaries of an equitable charges.</p>
Croatia	Yes
Finland	Yes it is
France	<p>The French Register is presently regulated by art. L 5114-1 ff. Code des transports. It is indeed a register of legal title. Any act, operation or deed having the effect to create, convey or void the property over a vessel shall be registered; the register can be accessed by the public.</p>
Germany	<p>The German ships' register for sea-going ships is not a register of legal title, as the registration of title in the vessel is only of a declaratory nature. Title in a sea-going vessel passes upon agreement between the parties (see sec. 2 I of the relevant German law, the "Gesetz iiber Rechte an eingetragenen Schiffen und Schiffsbauwerken", Schiffsregistergesetz - SchRG).</p>

¹ However, the entry of a person's name in the Register as owner of a ship will give that person good title if they are a bona fide purchaser for value from the person last named in the Register as the owner: *Shipping Registration Act 1981 (Cth) s 45.*

	<p>By contrast, the ships' register for inland water vessels is a register of title as title in an inland waterway vessel passes upon agreement between the parties and registration (sec. 3 I SchRG).</p> <p>In either case, however, it remains possible to prove that an entry in the register is wrong.</p>
Greece	The Ship's Register in Greece is a register of legal title. Mortgages or other encumbrances are registered in separate registers and a notation is made on the Ship Register.
Ireland	Yes
Italy	<p>Yes, it is a register of legal title as provided by Article 250 CN.</p> <p>In Italy there are three types of Registers:</p> <ol style="list-style-type: none"> 1. the International Register (Registro Internazionale) kept by a Direzione Marittima (there is one approximately for each Italian Region boarding the sea), 2. the ordinary Register for vessels allowed to sail on the high seas (Navi Maggiori), called "Matricola" which are also kept by each Direzione Marittima, and 3. the Register for vessels allowed to sail coastwise or intended for harbour services (Navi Minori) as well as for barges (Galleggianti), called "Registro", kept by each Compartimento Marittimo (there are several within each Direzione Marittima) or by the authorized "Circondari" (there are several within each Compartimento Marittimo). <p>The International Register was established by Decree-Law 30 December 1997, No. 457 ("DL 457/1997") converted, with certain amendments, into Law 27 February 1998, No. 30 ("L 30/1998").</p>
Japan	There are two registers for ships under the Japanese law. One is administered by the Ministry of Land, Infrastructure, Transport and Tourism and is a register for certifying the Japanese nationality. The other is administered by the Ministry of Justice and is a register of legal title. (In the following answers, the "ships register" refers to the second type of register (that of legal title) unless remarked otherwise.)
Malta	The Maltese Ship Registry is a register of legal title to the vessel in the sense that the Maltese Registrar of Ships records ownership of Maltese flagged vessels. However, since our Merchant Shipping practice is based on the British tradition, we would follow the principle that the register of Maltese ships is merely prima facie evidence of ownership.
Netherlands	In principle, the Dutch ships' registers are registers of instruments/deeds (negative system), and not registers of title (positive system). However, reliance in good faith on the register may create legal rights so that the Dutch system is often categorized as a semi-negative or semi-positive system.
New Zealand	No. Registration under the Ship Registration Act 1992 does not confer or confirm legal title, but it can be used as evidence of it.
Nigeria	The Ship Register in Nigeria is a register of both legal and equitable interests.
Norway	Yes

Panama	Law No.57 of August 6, 2008 is the General Merchant Marine Law of the Panama Maritime Authority. The registry dates back from 1917 when our first Commercial Code was enacted, contemplating the registration of ships in Panama and it was formalized and better developed by Law No.8 of 1925 and is based on the concept of the sovereignty of states and it gives effect of a registered legal title.
Spain	Spain has established a double registry system for vessels. Vessels flying the Spanish flag have to be registered in the Public or Administrative Vessel Registry, which is the registry for administrative (Flag State) purposes, as well as in Section of Vessels and Aircrafts (section 1) of the Title Registry for Movable Goods (Art. 65 of the Maritime Navigation Act 14/2014 –hereinafter MNA). The transfer and acquisition of ownership of a vessel requires written form, as well as registration in the Title Registry for being effective as against third parties (Art. 63 MNA). Likewise, perfection of voluntary security interests upon a vessel, their enforceability and the corresponding priority require registration in the Title Registry of a written deed (e.g., Art. 128 MNA for vessel mortgages).
Switzerland	Yes
UK	<p>In <i>Baumwoll Maunufactur von Carl Scheibler v Furness</i> [1893]AC 8 Lord Herschell L.C. said in the relation to the statutory registration system “all that it (the Act) has done is to make the register prima facie evidence of ownership. In fact it assumes that anybody may displace altogether the statutory effect which has been given to it by proving what the facts really are”.</p> <p>In practice however registration is accepted as proof of legal title to the ship subject the power of the Admiralty Court or the Registrar to rectify any incorrect entry on the Register.</p>

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

Argentina	Yes, as provided for in decree 1010/2004, art. 18. However, the Register has never received any such application.
Australia	<p>A ship may not be registered on either Shipping Register if it is registered under the law of a foreign country (s 17). If the ship must otherwise be registered under Australian law, this compels the shipowner to take steps to ensure the ship is registered solely in Australia.</p> <p>If not registered under the law of a foreign country, ships that are on demise charter to Australian-based operators may be registered on the General Shipping Register (s 14(d)), and trading ships that are on demise charter to Australian-based operators may be registered on the International Shipping Register (s 15B(d)).</p>
Brazil	<p>In Brazil, the Admiralty Court only has competence to register the ownership of Brazilian-flagged vessels. Therefore, the registration of a demise charter agreement before the Admiralty Court may only happen if the vessel chartered is Brazilian flagged. In this case, not only will the charter agreement be registered before the Admiralty Court, but also before the National Agency of Waterway Transportation (ANTAQ).</p> <p>However, if the legal title of the vessel is registered in another jurisdiction, i.e., the vessel has a foreign flag, the Admiralty Court will not register the interests of such charterer. In this case, there will only be a registration of the agreement before ANTAQ.</p>
Canada	Pursuant to the Canada Shipping Act, 2001, S.C. 2001, c.26 ("CSA 2001"), s.48, a ship can be listed (but not registered) as a bareboat chartered vessel in the Canadian Register of Vessels, provided the right to fly the flag of the underlying register is suspended
Croatia	No. A vessel registered in foreign ship's register can not be registered in Croatian ship's register. (Art. 191. of Maritime Code). The Croatian Ship's Register does not permit any form of dual registration.
Finland	No, the ships' register in Finland does not provide for registration of the interest of a demise charterer.
France	The ownership of a ship under the French flag is recorded in all cases, be it under the main register or under the RIF (See chapter IX of decree 67-967).
Germany	<p>No. The ship registry only provides for the registration of vessels flying the German flag in case the vessel is owned by a German or EU or comparable entity; see sec. 2 II of the relevant German flag law / statute, the "Gesetz über das Flaggenrecht der Seeschiffe und die Flaggenführung der Binnenschiffe" (Flaggenrechtsgesetz - FlaggRG). There is, however, also the possibility to fly the German flag on the basis of a bareboat charter ("bareboat charter in"). A bareboat charterer may apply for a flag certificate ("Flaggenschein") to be issued by the</p> <p>relevant German authority (the Federal Maritime and Hydrographic Authority, BSH). Such authority does keep an internal list of all flag certificates. However, it does not qualify as registration of vessels in its common sense.</p>

Greece	The ship's register provides for the registration of demise charters only when the legal title of the vessel is registered with the same register and not in another jurisdiction.
Ireland	No
Italy	Yes. Temporary flagging in is allowed by article 28 of Decree of the President of the Republic 14 June 1989, No. 234 ("DPR 234/1989") as implemented by the Decree of the President of the Republic 21 February 1990, no. 66 ("DPR 66/1990") for a maximum period of 2 years, which may be extended for further 2 years.
Japan	No. The register (of legal title) only accepts registration for ships having the Japanese nationality.
Malta	It is possible for a vessel to be bareboat chartered under the Maltese flag with the legal title being registered in another jurisdiction (in an underlying registry) upon certain conditions being satisfied.
Netherlands	<p>The ships' register of the Netherlands in Europe is, as part of the Dutch public register, maintained by the Dutch Cadastre (Kadaster). A separate bareboat-in register is maintained by the Human Environment and Transport Inspectorate (ILT) of the Ministry of Infrastructure and the Environment (on the basis of the Wet nationaliteit zeeschepen in rompbevrachting (Act on the Nationality of Sea-going Ships in Bare-boatcharter).</p> <p>In the Dutch Caribbean only Curaçao and Sint Maarten keep registers for commercial ships. In Curaçao, the ship register is maintained by the Curaçao Land Registry and a separate bareboat-in register is maintained by the Maritime Authority of Curaçao. In Sint Maarten both the ship register and bareboat-in register are maintained by the Department of Civil Aviation, Shipping and Maritime Affairs of Sint Maarten.</p>
New Zealand	Yes. It provides for the possibility of registering the vessel itself on the New Zealand register if the vessel is on demise charter to a New Zealand-based operator. ² A vessel cannot be registered on the New Zealand register if it is already registered in a foreign country, but the New Zealand register will accept a suspension of that vessel's foreign registration. ³
Nigeria	Yes. Section 17(1) (d) of the MSA mandates the registrar to keep a register for ships on bareboat charter and other charters exceeding 12 months. Also by section 34(1) © of the Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007, ships on bareboat charter to Nigerian citizens should be entered into the register.
Norway	No, bareboat registration of a vessel is not possible in Norway (neither "in" nor "out".) However, it is currently being discussed to open up for bareboat registration of vessels in the Norwegian International Ship registry ("NIS").
Panama	The ship registry in our jurisdiction provides for BBC registration in and out – Article 82 of Law No.57 of 2008 rules bareboat charter registration out and Article 70 rules bareboat charter registration in.

² Ship Registration Act 1992, ss 4 and 8(1)(b).

³ Ship Registration Act 1992, s 9.

Spain	Spanish legislation regulates the temporary change of flag of a vessel (for both flagging- in and flagging-out) under the MLM93 and Arts. 94 to 96 MNA, which follow the MLM93 scheme. Consequently, and provided that the conditions stated therein are met, Spanish law does allow temporary registration of a vessel in Spain, and use of the Spanish flag, under the responsibility of a demise charterer.
Switzerland	No According to Art. 94 of the Federal Law on Navigation under the Swiss Flag charterparties may be registered in the Swiss Ship Register. Although not specifically mentioned in the act itself, that provision only relates to vessels registered in the Swiss Ship Register.
UK	Yes. Section 17 Of the MSA 1995 permits a British charterer which has entered into a demise charter on a ship registered on a foreign register to register that ship in Part IV of the U.K. Register.

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

Argentina	No. What may theoretically be registered is only the bareboat charter (decree 1010/2004, art. 18).
Australia	No. Security interests in ships are registered on the Personal Property Securities Register (governed by the Personal Property Securities Act 2009 (Cth)).
Brazil	<p>The body competent for the registry of a maritime lien in Brazil is the Admiralty Court (after registration at the Maritime Notary). In line with the answer of item 2.2, in Brazil the Admiralty Court is only competent towards Brazilian flagged vessels. Therefore, it is not possible to register before the Admiralty Court a mortgage or any other maritime lien over a foreign flagged vessel in Brazil.</p> <p>This has long been a controversial issue in Brazil. It is understood that since the Admiralty Court is not competent, such registry shall take place before the Registry of Deeds and Documents, in order to give publicity, validity and enforceability of the maritime lien over third parties.</p> <p>However, this is not settled. More recently, the Court of Appeals of São Paulo rendered a decision rejecting the validity of foreign maritime liens in Brazil. See item 1.3 (b).</p>
Canada	No. Pursuant to the CSA 2001, s.65, mortgages can only be registered against ships that are registered or recorded (as a ship being built). Therefore, one cannot register a mortgage on a ship "listed" in Canada as bareboat chartered. Although the consent of a mortgagee on the underlying register is required to proceed with the listing of a bareboat chartered vessel, unlike some other jurisdictions, no mention or notation of that mortgagee's interest can be made in the Canadian register.
Croatia	<i>LEFT BLANK</i>
Finland	N/A
France	The maritime hypothecation registered in the underlying register of a ship that has been bareboat chartered in under the French flag may be recorded in the file of the ship (fiche matricule) and on its registration certificate, if it is so requested. This recording is only for information and has no legal effect of its own. Recording a maritime hypothecation under French law is not allowed in such case (see article 219.111 and 219 bis.II bis of the Code des douanes (French customs code).
Germany	N/A
Greece	Question not applicable (N/A).
Ireland	N/A
Italy	Registration of securities in respect of vessels temporarily registered in Italy is not permitted. Securities must be registered in the underlying register and only a notice thereof is mentioned in the Italian Register.
Japan	N/A
Malta	In case of a vessel bareboat chartered under the Maltese flag, the Maltese register of the vessel would not indicate the mortgages registered in the underlying registry.

Netherlands	No
New Zealand	This is not specifically provided for, but could be achieved through the mortgage registration provisions. ⁴
Nigeria	The law is silent on this. However, foreign mortgages are allowed to be entered into the Ship registry. The Coastal and Inland Shipping (Cabotage) Act 2007 also, subject to the acquisition of the Minister's consent, permits the registration of foreign mortgages within the country.
Norway	N/A as bareboat registration is currently not possible.
Panama	No
Spain	<p>For the temporary flagging-out of a Spanish vessel, the rules require that all security interests in the Title Registry be cancelled, or alternatively that the holders of such interest give their consent to the temporary flagging-out. In such case, the temporary Flag State is annotated both in the Administrative Registry (where the right to fly the Spanish flag is suspended) and in the Title Registry. Also, the Administrative Registry must require the authority in charge of the underlying (flagging-out) registry to make an annotation stating that the vessel is registered in Spain.</p> <p>Likewise, Spanish law subjects the flagging-in of a foreign vessel to the cancellation of all outstanding registered security interests or alternatively to the consent of the holders thereof, in any case in accordance with the certification issued for that purpose by the authority in charge of the registry of the State of origin.</p> <p>In both of the foregoing cases, the rules expressly state that all security interests on the vessel remain subject to the law under which they have been created (the law of the Flag state of origin).</p>
Switzerland	N/A
UK	No. However Form MSF 4738 which is the Application to Register a Bareboat Charter Ship does require the applicant to state whether there are any "outstanding registered mortgages" on the ship – however this information is not recorded on the Register.

⁴ Ship Registration Act 1992, s 39(3)(a).

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

Argentina	No
Australia	As noted in the answer to 2.2, a ship may not be registered on either Shipping Register if it is registered under the law of a foreign country (s 17). If the ship must otherwise be registered under Australian law, this compels the shipowner to take steps to ensure the ship is registered solely in Australia.
Brazil	Brazil only accepts to register ownership of Brazilian-flag vessels, as well as bareboat charter agreements of such Brazilian vessels. However, the hypothetical registry of a demise charter agreement of a Brazilian vessel abroad will depend upon the local rules of the foreign jurisdiction.
Canada	<p>Yes to the first question - On application, the Chief Registrar may suspend the registration of a Canadian vessel in respect of the right to fly the Canadian flag for the duration of the bareboat registration elsewhere, also that there is some requirement that the other jurisdiction will only be accepted if it reciprocate and allows its ships to be bareboat registered in Canada. The registration of the vessel, however, will remain effective to record transactions on the title of the ship, such as sale or mortgaging of the ship or of a share thereof.</p> <p>As to the second question, for bareboat registration in a non-Canadian jurisdiction the Canadian registrar requires the consent of any holder of a mortgage on the Canadian registry as a matter of registry policy.</p>
Croatia	<i>LEFT BLANK</i>
Finland	<i>LEFT BLANK</i>
France	Yes, a French flag vessel may be bareboat chartered out in another jurisdiction in the name of a demise charterer, even when a maritime hypothecation is registered under French jurisdiction. The consent of the maritime hypothecary creditor is required.
Germany	<p>Yes, this is allowed, even if the vessel is subject to a mortgage registered in Germany. The mortgagee's consent is required pursuant to sec. 20 II no. 7 of the relevant German statute, the "Flaggenrechtsverordnung" (FIRV).</p> <p>According to sec. 7 I FlaggRG, the owner of a German-flagged vessel can be granted the right to flag out the vessel to another State ("bareboat charter out") under certain conditions (either training on board of the vessel for which the application was made to temporarily fly the flag of another state or payment of a redemption amount to support training and education activities, see sec. 7 II and III FlaggRG). Such permit is limited to a period of not more than two years, however, it is renewable. For the purposes of private property interests, the vessel will continue to be regarded as a German-registered vessel.</p>
Greece	Greece does not allow vessels registered in Greece in the name of an owner to be also registered in another jurisdiction in the name of a demise charterer.
Ireland	No - dual flagging is not permitted in Ireland

Italy	Yes. Temporary flagging out is allowed by article 29 of DPR 234/1989 as implemented by DPR 66/1990. The flagging out is also permitted when the vessel is subject to a mortgage but in such a case the authorization of the mortgagee is required and the signature of the mortgagor shall be certified by a Notary Public.
Japan	No
Malta	Yes, it is possible for a Maltese vessel to be bareboat registered in a foreign registry upon certain conditions being satisfied. When the vessel to be bareboat registered out is subject to a Maltese mortgage, the Maltese Registrar of Ships requires the written notarised and apostilled consent of the mortgagee for the bareboat registration out of the vessel (and for any eventual change of name in the vessel's bareboat register) before the Maltese Registrar of Ships issues his consent for the bareboat registration out.
Netherlands	Yes, although not specifically legislated for, bareboat-out registration is possible of ships registered in the Dutch ships' registers. The bareboat-out registration is also permitted when the vessel is subject to a (registered) hypothec. No consent of the hypothecary creditor is required as a matter of law, but the terms and conditions of the hypothecary instrument may and in practice do determine otherwise.
New Zealand	Yes, but the vessel's owner may be exempted from the requirement to register in New Zealand in such cases. ⁵ The Ship Registration Act does not prevent such registration where the vessel is subject to a New Zealand mortgage, but under s 41(1)(d) the mortgagee may vary or add covenants to a registered mortgage, which could include consent to an overseas demise charter.
Nigeria	Our law prohibits dual registration of a ship. The Nigerian registration would be suspended for the duration of the registration in a foreign registry. The consent of the registered holders of mortgages as well as that of the Nigerian Registry is statutorily required. See section 29 MSA
Norway	As stated in our response to question 2.2, no form of bareboat registration is currently possible in Norway.
Panama	Yes. It is permitted with the consent of the mortgagee and the mortgages are never registered in the foreign registry. Titles and mortgages are only registered in the registry of origin which is Panama.
Spain	See response to the previous question.
Switzerland	This constellation is not dealt with at all in the Swiss Ship Register Act. From the Swiss point of view it is therefore permissible to register a charterparty in another register if title is registered in the Swiss register. Since Swiss law does not address this issue, such registration is also possible if a mortgage is registered in the Swiss register. No consent by the mortgagee is required for the registration of a charterparty in the register of another jurisdiction.

⁵ Ship Registration Act 1992, s 6(3).

UK	The MSA 1995 does not prohibit the owners of UK registered ships from demise chartering them to foreign charterers nor does it impose any restriction on the charterer from registering that charter in a foreign jurisdiction. However a ship so chartered will still have fully to comply with the MSA 1995 requirements including flying the correct ensign. Accordingly the consent of the Registrar is not required for a UK ship to be demise chartered (whether there is a mortgage registered against the ship or not) but invariably the mortgage documents will contain a covenant against demise chartering the ship without the mortgagee's prior consent.
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2.5 Please describe (briefly) the criteria for registration of a vessel on the ships' register in your jurisdiction, with particular reference to eligibility or not for registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.

<p>Argentina</p>	<p>Statutory certificates are needed (Navigation Act, art. 52. A). The owner must be domiciled in Argentina. If the owner is a company it must be established in Argentina or, in case of a foreign company, it must be registered as a branch before the Public Registry of Commerce pursuant to Section 118 of the Argentine Companies Act (Navigation Act, art 52.c). In case of vessels that have been entered with a foreign register, the deletion certificate from the previous register (Navigation Act, art. 53) as well as the provisional navigational certificate issued by the Argentine Consul are necessary required. (The latter is only required when the deletion certificate is issued abroad prior to the ship's voyage to an Argentine port). .</p> <p>Assets employed in offshore oil and gas exploration, production, processing and storage are eligible for registration under similar criteria.</p>
<p>Australia</p>	<p>All Australian-owned ships may be registered in the General Shipping Register, whereas the International Shipping Register is restricted to Australian-owned commercial ships that engage in international trade (ss 14, 15B). Subject to certain exceptions, every Australian-owned⁶ ship must be registered in Australia (ss 12, 13). A ship may not be registered on both Shipping Registers (s 17).</p> <p>Ships that may be registered on the General Shipping Register are (s 14):</p> <ol style="list-style-type: none"> 1. Australian-owned ships (including ships otherwise exempt from the obligation to register); 2. small craft that are wholly owned by Australian residents, or by Australian residents and Australian nationals; 3. small craft that are operated solely by Australian residents, or by Australian nationals, or by both; 4. ships that are on demise charter to Australian-based operators. <p>Ships that may be registered on the International Shipping Register are (s 15B):</p> <ol style="list-style-type: none"> 1. trading ships that are Australian-owned ships (including ships otherwise exempt from the obligation to register); 2. trading ships that are wholly owned by Australian residents, or by Australian residents and Australian nationals; 3. trading ships that are operated solely by Australian residents, or by Australian nationals, or by both; 4. trading ships that are on demise charter to Australian-based operators. <p>Whether assets employed in offshore oil and gas exploration, production, processing and storage can be registered depends on whether they meet the definition of "ship". It is defined to mean any kind of vessel capable of navigating the high seas and includes (s 3):</p>

⁶ Defined in s 8.

	<ol style="list-style-type: none"> 1. a barge, lighter or other floating vessel; 2. a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another; and 3. an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water. <p>However, it does not include a vessel, structure, vehicle or craft declared by the regulations not to be a ship for the purposes of the definition.</p>
Brazil	<p>In order to be able to register a vessel in the Admiralty Court in Brazil the owner must be a Brazilian citizen, resident and domiciled in Brazil or a legal entity with headquarters in Brazil.</p> <p>Additionally, a foreign flagged vessel may also be registered in Brazil if there is the temporary suspension of the foreign flag (in this case, the vessel will receive a provisory Brazilian flag).</p> <p>Finally, the Admiralty Court is only competent to register vessels and, therefore, is not able to register different types of assets.</p>
Canada	<p>Pursuant to the CSA 2001, a vessel means: "a boat, ship or craft designed, used or capable of being used solely or partly for navigation in, on, through or immediately above water, without regard to method or lack of propulsion, and includes such a vessel that is under construction. It does not include a floating object of a prescribed class." It follows that most floating structures used in the off-shore industry, other than those meant to be permanently connected to the sea bottom, including semi-submersible floating platforms or mobile off-shore drilling units and floating production, storage and offloading units ("FPSO"), would qualify as a 'vessel' and could therefore be registered in the Canadian Register of Vessel. As a matter of fact, currently, there are a number of FPSO's registered in the Canadian Register of Vessels. Other floating structures, like floating fueling stations may also qualify as a 'vessel' if their characteristics meet the definition.</p>
Croatia	<p>In Croatian ship's register could be registered the ships owned by:</p> <ul style="list-style-type: none"> • citizen of the Republic of Croatia • citizen of EU member state if the Company (ISM) or bareboat charterer is Croatian legal entity • legal entity with registered office in the Republic of Croatia and legal entity with registered office in the EU member state if the Company or bare boat charterer is legal entity with registered office in the Republic of Croatia • citizen of EU member state or legal entity incorporated under the laws of EU member state with registered office in EU member state provided that the vessel is managed by a branch office in the Republic of Croatia. • Physical person having permanent residence outside of the Republic of Croatia or EU member state if the Company (ISM) or bare boat charterer is legal entity having registered office in the Republic of Croatia • Legal entity having registered office outside of the Republic of Croatia or outside of EU member state if the Company (ISM) or bare boat charterer is legal entity with registered office in EU member state and that Company

	<p>(ISM) or bare boat charterer has branch office in the Republic of Croatia</p> <ul style="list-style-type: none"> Foreign legal entity with registered office outside of the Republic of Croatia or any other EU member state or European Economic Area (EEA) if such legal entity is ship owning company and a subsidiary of a legal entity having registered office in the Republic of Croatia which is tax payer of Croatia tonnage tax. <p>Maritime Code allows registration of floating objects such as floating dock, floating warehouse, restaurant etc. and fixed off-shore objects for various purposes such as research and exploitation of seabed</p>
Finland	<p>According to the Finnish Register of Ships Act, Finnish vessels engaging in merchant shipping with the length of 15 meters and upwards must be registered in the Finnish Register of Ships. Vessels falling below this length requirement with a length of 10 meters minimum may be registered voluntarily. The Finnish Register of Ships Act does not regulate the registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.</p> <p>Vessels under construction in Finland may be registered in the Register of Ships under Construction if the vessel will fulfil the requirements for registration once complete. This is the case even if the vessel is intended to be taken abroad for registration after the building is completed. It is also possible to register vessels prior to the start of construction, provided that the vessel can be identified by means of hull number, blueprints or other reliable way.</p>
France	<p>According to Art. L 5111-1 Code des transports a vessel is identified by her name, her home-port, her nationality and her tonnage. So as to fly the French flag, the vessel shall meet the criteria of art. 219 Code des douanes (that fully conforms EU Law). The most significant requirements are :</p> <ul style="list-style-type: none"> Compliance with safety rules ; Regular building or regular importation within the EU customs territory; Present EU ownership as defined, or future EU ownership through the exercise of an option at the end of a leasing operation ; Bareboat chartering by EU Charterers ; Effective nautical management from France or from EU. <p>French Law has not created a unique category for the registration of assets employed in off-shore oil and gas exploration, production, processing and storage. Either the asset meets the criteria of the French Register and she shall be registered accordingly, i.e. drilling vessels or supply vessels ; or it meets the criteria of Statute 68-1181 (Loi n° 68-1181 du 30 decembre 1968 relative a ('exploration du plateau continental et a l'exploitation de ses ressources naturelles), e.g. a fixed platform. However, these assets that are not vessels may be assimilated to a vessel for matters of liability or, in the scope of this questionnaire for mortgages and liens (Statute 68-1181, art 8, opening the possibility for a lien or an hypothecation).</p>

Germany	<p>According to German law precedents, a "ship" is "an object which is hollow and capable of floating, of more than insignificant size, which is capable of and meant to be moved on water or below the water surface and to carry persons or objects."</p> <p>Hence, stationary objects such as fixed offshore oil platforms are not eligible for registration, but offshore mobile units might be eligible if they are meant to, and effectively are, occasionally moved. As to the capability to carry goods or persons, a theoretical capability to carry the objects' own crew or equipment has been considered as sufficient.</p> <p>In addition, German law provides for the possibility to register ships under construction and floating docks in a special register.</p>
Greece	<p>I. Pursuant to article 5 of the Greek Code of Public Maritime Law, a vessel may be registered with a Greek Ship's Register if they are owned by more than 50%:</p> <p>(a) by Greek nationals or Greek companies;</p> <p>(b) by EU nationals or companies (referred to in article 54 of the Treaty on the Functioning of the European Union-TFEU) provided they have an establishment in Greece pursuant to article 49 of the TFEU. The same applies for the nationals and companies of state-members of the European Economic Area.</p> <p>II. Pursuant to article 13 of Legislative Decree 2687/1953 vessels over 1500 grt purchased by foreign currency may be also registered with a Greek Ship's registry even if they are owned by foreign companies controlled by Greek nationals by more than 50%. The terms of registration are determined by a Ministerial Decision (act of registration) individually for each vessel (but in practice such acts are in standard form) and cannot be altered throughout the period when the vessel is registered in Greece (under Greek flag).</p> <p>III. The definition of ship in the Greek Code is very broad and includes all floating craft moving on water (whether self propelled or not). Auxiliary craft are defined as floating craft permanently stationed (usually in port) to assist shipping, e.g. floating tanks, floating cranes, dredgers, floating docks). For large floating craft (over 500 grt.) the provisions for maritime mortgages and maritime liens apply (L.457/1976).</p>

Ireland

The current applicable legislation for registration of ships in Ireland is the Mercantile Marine Act 1955 (the "1955 Act"). Under section 16 of the 1955 Act the following are qualified to register a ship in Ireland:

- The Government;
- A Minister of State;
- An Irish citizen; and
- An Irish body corporate.

Under section 18 of the 1955 Act every ship which is wholly owned by an Irish citizen or an Irish body corporate must be registered unless the vessel is exempt from registration and/or the Minister has consented to registration of the vessel outside of the State.

Those vessels excluded from registration are:

- a) Ships not exceeding fifteen net registered tons employed solely in navigation on the rivers, canals, lakes or coasts of Ireland, Great Britain, the Chanel Islands and the Isle of Man;
- b) Ships acquired before the 1955 Act was passed; and
- c) Ships owned by Irish citizens not ordinarily resident in the State.

When the Merchant Shipping (Registration of Ships) Act, 2014 is commenced, this will determine the criteria for registration which are set out in section 12 and 15 of the Act. Section 15 of the act provides that the following persons may be entitled to register as owners of ships on the registry subject to any requirements set by the Minister under section 12, and the requirement that the ship not be registered under the laws of any other State:

- (a) the Government;
- (b) a Minister of the Government;
- © an Irish citizen;
- (d) a national of another Member State or an EEA state;
- © a body corporate established under and subject to the law of another Member State or an EEA state;
- (f) an Irish body corporate; and
- (g) a non EEA state national residing in the State, except that such person may not register a fishing boat on the Register.

Section 12 establishes the ship

<p>Italy</p>	<p>2-5.1 International Register</p> <p>Pursuant to Article 1(2) of L 30/1998 three categories of vessels are eligible for registration in the International Register:</p> <p>(a) Vessels belonging to Italians or to persons of other EU countries in compliance with the provisions of Article 143 (a) CN;</p> <p>(b) Vessels belonging to non EU persons who are entitled to own Italian vessels in compliance with Article 143 (b) CN;</p> <p>© Vessels belonging to EU or non EU persons registered in a foreign EU or non EU Register under temporary flag suspension following a bareboat charter to an Italian person.</p> <p>2-5.2 Matricola</p> <p>Vessels eligible for registration in the Matricola are those capable of sailing on the high seas. Pursuant to article 302 of Regulation of Maritime Navigation ("RNM") such vessels must have characteristics, equipment and crew quarters such as to be suitable to sailing on the high seas; pursuant to Article 303 RNM for the purposes of registration the necessary documentary evidence (plans, certificates, etc.) must be provided to the Port Authority in charge of the relevant Matricola.</p> <p>2-5.3 Registro</p> <p>Vessels eligible for registration in a Registro require also some evidence of their sailing capabilities. With particular reference to the registration of craft employed in offshore oil and gas exploration, production, processing and storage, there are no specific rules under Italian law and it is debatable whether these assets can be considered as Vessel. However offshore rigs are capable to be registered in the Registro.</p>
<p>Japan</p>	<p>This is not defined in statutes. The prevailing view is that the ship subject to registration is what is generally considered as a ship. A dredger is not a ship, as it has no propeller. (Art.2, Ministerial order to implement the Law on Ships.) Offshore drilling equipment or floating unit for exploration, production, processing and storage is not generally considered as a ship.</p>

<p>Malta</p>	<p>Pleasure boats, commercial yachts, merchant ships, pontoons, barges, floating establishments, installations or structures and oil rigs are all eligible for registration as Maltese vessels. A ship of less than six metres in length is not eligible for registration under the Maltese flag.</p> <p>As a rule, merchant ships of 25 years old and over are not eligible for registration under the Maltese flag. Merchant ships of 15 years of age and over but less than 25 years may be registered under the Maltese flag following the satisfactory outcome of a pre-registration inspection by an authorised flag inspector. The registration of ships of 10 years and over but less than 15 years is subject to a satisfactory inspection by an authorised flag inspector within one month before registration.</p> <p>At the time of registration of the vessel under the Maltese flag, the applicant must provide evidence of ownership in the form of a bill of sale or a builder's certificate as well as a declaration of ownership wherein the owner declares that the ship is free from registered encumbrances. The Maltese Ship Registry would require evidence of seaworthiness in the form of a confirmation from an approved classification society.</p> <p>In case of registration of a vessel under construction under the Maltese flag, the requirements relating to surveying of the vessel and the declaration of ownership when the builders have not yet effected delivery to the owners are suspended until construction of the vessel or until delivery of the vessel is complete.</p> <p>A ship may be only registered under the Maltese flag if it is owned (or in the case of bareboat registration in, if the vessel is chartered) by qualified persons.</p>
<p>Netherlands</p>	<p>Any ship being constructed in the Netherlands may be registered in the Netherlands as a 'ship under construction'. Any (finished) seagoing ship may be registered in the Netherlands if it may be regarded to be a Dutch ship. Any (finished) seagoing fishing ship may be registered in the Netherlands in Europe if it is registered in the Dutch fishing registry. Any (finished) inland navigation ship can be registered if it is operated from the Netherlands, or the natural person owning it is Dutch or lives in the Netherlands, or the company owning it has its company seat or principal place of business in the Netherlands. By ship is meant: all objects, other than aircraft, which, according to their construction, are meant to float and which float or have done so (Article 8:1 DCC). This includes all floating assets employed in offshore oil and gas exploration, production, processing or storage, and e.g. also floating windturbines.</p> <p>Use in navigation or transportation is not part of the definition of ship. (See in more detail the Reply from our Association to the CMI Questionnaire of 8 March 2016 with regard to Vessel Nomenclature.)</p>

<p>New Zealand</p>	<p>In general, to be eligible for registration, a vessel must be New Zealand-owned. This essentially means that New Zealand nationals own either the whole vessel or a majority share.⁷ The following New Zealand-owned ships must register:⁸</p> <ul style="list-style-type: none"> • Ships over 24 metres in length • Ships under 24 metres in length that proceed on overseas voyages • Pleasure vessels that proceed on overseas voyages <p>Exempted from mandatory registration are all other pleasure vessels and ships under 24 metres in length, all ships engaged solely on inland lakes and rivers, and barges that do not venture beyond New Zealand's exclusive economic zone.⁹ However, in each case these vessels are entitled to be registered if the owners so choose.¹⁰</p> <p>Ships on demise charter to New Zealand-based operators (other than pleasure vessels and New Zealand-owned ships) are also entitled to be registered.¹¹</p> <p>The New Zealand legislation defines "ship" as "every description of boat or craft used in navigation, whether or not it has any means of propulsion", but does not otherwise specifically apply to offshore exploration assets (compare for example the Australian response to this question).</p>
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⁷ Ship Registration Act 1992, s 2(1), definition of "New Zealand national" and s3.

⁸ Ship Registration Act 1992, s 6(1) and (2). For evidence required see s 14.

⁹ Ship Registration Act 1992, s 6(1) and (2).

¹⁰ Ship Registration Act 1992, s 8.

¹¹ Ship Registration Act 1992, s 8(1)(b)

<p>Nigeria</p>	<p>In line with the Merchant Shipping Act 2007, the following persons can register a vessel in Nigeria;</p> <ul style="list-style-type: none"> (a) Nigerian Citizens (b) Bodies corporate established under and subject to Nigerian laws, having their principal place of business in Nigeria (c) Such other persons as the Minister of Transport may by regulations prescribe <p>Section 17 of the MSA obligates the registrar of ships to keep a register for the following:</p> <ul style="list-style-type: none"> (a) Merchant ships; (b) Fishing vessels; (c) Ships under construction; (d) Ships on bareboat charters and other charters exceeding 12 months duration; (e) Licensed ships below 15 gross tons; (j) Floating Production Storage and Offloading (FPSO) and Floating Storage and Offloading (FSO). <p>Also, Under Section 34 of the NIMASA Act, the following vessels are eligible to be registered;</p> <ul style="list-style-type: none"> (i) Nigerian Owned Ships (ii) Small Vessels .i.e. fishing vessels (except canoes and primitive boats) which are engaged in artisan fishing and are: <ul style="list-style-type: none"> (a) wholly owned by foreign nationals resident in Nigeria or Nigerian Citizens (b) Operated solely by Nigerian residents or Nigerian citizens or both such residents (iii) Ships on bareboat charter to Nigerian Citizens
<p>Norway</p>	<p>Norway has two ship registries, the Norwegian Ordinary ship Registry ("NOR") and the Norwegian International Ship registry ("NIS"). The differences between the two registries are mainly related to ownership requirements and trading restrictions. As part of NOR, the ship registries also offer the possibility to register vessels under construction.</p> <p>In addition to vessels, floating mobile offshore units (including drilling units, accommodation units, FSOs, FPSOs, FDPSONs and well intervention units) may be registered in both NOR and NIS.</p>
<p>Panama</p>	<p>Our ship registry allows for the registration of all type of vessels. The only requirement is a power of attorney to a law firm or attorney, ownership title, tonnage certificate, builder's certificate (if it is a new built vessel) or a deletion certificate (if the vessel comes from a previous registry), valid international tonnage certificate. Ship Management Certificate (SMC) for Panama registry, radio license</p>

	<p>application form.</p> <p>There are no limitations of the age, size or purpose of the vessels, nor on the nationality of ownership or seafarers. Only the vessels coming from North Korea are not allowed to be registered in Panama.</p>
Spain	<p>As mentioned in section 2.1 above, Spain has a double registry system for vessels: the Administrative Registry and the Title Registry. Moreover, the Administrative Registry is also divided in two: the Ordinary Administrative Registry and the Special Administrative Registry. The concept of "vessel" and its eligibility for registration varies depending on the registry.</p> <p>The criteria for the registration of a vessel on the Ordinary Administrative Registry is very wide. The Royal Decree 1027/1989 (Real Decreto 1027/1989, de 28 de julio, sobre abanderamiento, matriculación de buques y registro marítimo), which, pursuant to its article 1 is applicable to every vessel, ship and naval artefact, states that the Administrative Registry shall be organised throughout nine "lists" where said vessels, ships or naval artefacts are to be registered:</p> <ul style="list-style-type: none"> • 1st list: platforms, high seas tugboats, support vessels and platform supply vessels. • 2nd list: Spanish built vessels or vessels imported in accordance with the applicable laws in force, dedicated to the carriage of goods and/or passengers. • 3rd list: Spanish built vessels or vessels imported in accordance with the applicable laws in force, dedicated to fishing activities and the extraction of other living marine resources. • 4th list: auxiliary fishing ships, auxiliary ships to aquaculture, and those artefacts dedicated to the cultivation or farming of marine species. • 5th list: tugboats, ships and naval artefacts dedicated to port and bay services. • 6th list: recreational ships used for commercial purposes. • 7th list: Spanish built ships or ships duly imported, exclusively used for recreational activities without commercial purposes. • 8th list: public vessels or ships. • 9th list: vessels or ships under construction. <p>On the other hand, the Special Administrative Registry opts for a different criterion regarding registration of vessels and ships therein. Additional Disposition 16th of the Royal Decree 2/2011 of State Ports and Merchant Marine foresees the relevant requirements: (i) any civil vessel operated with commercial purposes, excluding fishing vessels; and (ii) of at least 100 GT.</p>
Switzerland	<p>Assets for offshore oil and gas exploration, production, processing or storage are not eligible for registration.</p> <p>The requirements for the registration of a seagoing vessel are.</p> <p>Nationality requirements: Physical persons as shipowners need to be Swiss nationals.</p>

	<p>Legal entities or partnerships need to meet certain nationality requirements.</p> <p>Domicile requirements: Legal domicile of shipowner/shipowning entity in Switzerland, and, if a legal entity or a partnership is the shipowner, then certain domicile requirements in regard to shareholders/partners (depending on type of entity/partnership) have to be met</p> <p>Management: the management activity must predominantly take place in Switzerland. 2/3 of the management must be Swiss nationals and the majority must be Swiss residents.</p> <p>The shipowner must finance at least 20% of the newbuilt value (own equity)</p> <p>Only vessels used for a commercial activity can be registered (exceptions are granted for certain special purpose vessels, such as for humanitarian purposes, and for yachts).</p>
<p>UK</p>	<p>A ship is defined in the MSA 1995 as including "every description of vessel used in navigation" and only such ships may be registered. There are numerous decisions of the courts interpreting what a ship is, many of which are conflicting. However off shore installations engaged in offshore oil and gas exploration and storage are generally outside the definition of ship unless they are capable of self propelled motion. The Secretary of State has the power under section 311 of the MSA 1995 to extend the application of the MSA to "a thing designed or adapted for use at sea". At present no such order has been made.</p> <p>In order for a ship to be registered under the MSA 1995 at least 33 (of 64) shares must be owned by a qualified person or persons (in summary British or EEA nationals or companies) and it must conform to the technical requirements of the MSA 1995 – e.g. loadline, safety construction, safety equipment etc.</p>

Question 3

3 FORMALITIES FOR MORTGAGE REGISTRATION

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

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

Argentina	It is necessary to attach the loan agreement. This document should state the loan amount, the interest and the date of payment (art. 12, Act 19.170).
Australia	<p>Security interests in ships now fall within the purview of the Personal Property Securities Act 2009 (Cth), and are registered on the Personal Property Securities Register. The ship is referred to as the 'collateral' (secured property).</p> <p>In order to register a security interest such as a mortgage the secured party is only required to submit a 'financing statement', and not a copy of the instrument (ie the mortgage or loan agreement) that itself creates the security (s 150). The financing statement must contain prescribed information about (s 153):</p> <ol style="list-style-type: none"> 1. the secured party; 2. the grantor; 3. giving of notices; 4. the collateral and proceeds; 5. the end time for registration; 6. subordination; 7. security interest; 8. any matter prescribed by the regulations. <p>A person must not apply to register a financing statement that describes collateral unless the person believes on reasonable grounds that the person described in the statement as the secured party is, or will become, a secured party in relation to the property (s 151).</p>
Brazil	Yes, in order to register a maritime mortgage, it is required the presentation of documents which evidence the existence of the obligation / credit secured.
Canada	No
Croatia	A notarized Mortgage Agreement evidencing the obligations secured needs to be attached.
Finland	<p>The following attachments are needed:</p> <ul style="list-style-type: none"> • Ship mortgage application (original or copy) • Power of attorney (if the applicant is not the owner) • Original bond(s)

	<ul style="list-style-type: none"> • Mortgage decision (internal decision by corporate body) (copy) • Consent from the ship owner (if necessary)
France	<p>The information that is required under French Law is related to the vessel and her ownership, so as to secure creditors. It is not needed to evidence the obligations secured nor to set out in details the circumstances giving rise to a right of enforcement. In a Civil law system, it belongs to the creditor to safeguard the required evidence as to the origin of his contractual rights. Legal publicity is simply there to make known that a maritime hypothecation has been registered over the vessel to the benefit of a certain creditor. For entry in the register, one must deliver to the Conservateur des hypothèques an original of the mortgage agreement with a form entitled "bordereau d'inscription maritime" which contains the information listed in Art. 17 of the 1967 Decree, namely date and form of the maritime hypothecation agreement, amount secured by the maritime hypothecation, details of the vessel.</p>
Germany	<p>No, it is not required for registration of a German law ship mortgage to attach the loan documentation.</p>
Greece	<p>(a) There are two types of Greek maritime mortgages. First, what is called a simple mortgage (articles 195-204 of the Greek Code of Private Maritime Law) which gives the right to the mortgagee to sell the vessel to public auction and satisfy its claim out of the proceeds in priority over unsecured claims (but following maritime liens) and what is called preferred maritime mortgage (Legislative Decree 3899/1958) which gives the mortgagee in addition the right to sell the vessel in private sale or take the possession and the management of the vessel and/or any other rights which may be agreed in the mortgage deed.</p> <p>A Greek maritime mortgage is regularly granted by a notarial deed.</p> <p>The mortgage should specify the parties (mortgagor and mortgagee) and their address and profession, the title of ownership of the mortgagor, the name of the vessel, the registration number and the port of registry, the international call sign, the dimensions and tonnage of ship, the type of propulsion and the HP of the engine, the amount of the debt, and when it becomes due and payable, whether the debt is interest bearing and an agent to receive service of documents.</p> <p>(b) A Greek mortgage is not necessary to attach the loan agreement (or other agreement setting out the obligations of the parties) but it must specify sufficiently the debt which is secured by the mortgage. In practice sometimes the actual loan agreement is attached.</p> <p>(c) The circumstances under which a mortgage may be enforced are usually described in the mortgage although they may be ascertained through the loan (or other) agreement secured by the mortgage.</p> <p>(d) However, it is strongly advisable a Greek mortgage to describe in reasonable detail the obligations of the parties and the circumstances of enforcement because the notarial deed of the mortgage is (under Greek law) an enforceable title on the basis of which the mortgage may be enforced (i.e. the vessel may be arrested and sold) through a Court bailiff and a notary public without a court decision. For the purpose of such direct enforcement of the notarial deed it is necessary to be specific. (Only objections of the defendant/mortgagor or other interested parties are submitted to the Court).</p>

Ireland	The mortgage is to be in the form currently prescribed by the Revenue Commissioners
Italy	No
Japan	While the agreement to create a mortgage is required, the loan agreement is not necessary for registering a mortgage in respect of a vessel.
Malta	It is not necessary (and it is not the practice) for Maltese mortgages to attach loan documents evidencing the obligations secured.
Netherlands	<p>Article 3:260 DCC provides:</p> <p>1. A hypothec is established by a notarial instrument drawn up between the parties in which the hypothecary debtor grants a hypothec to the hypothecary creditor over registered property, followed by the entry of the instrument, in the appropriate public registers provided for that purpose. The instrument must contain an indication of the claim for which the hypothec serves as security, or of the facts, on the basis of which that claim can be determined. The amount for which the hypothec is granted must also be mentioned or, if this amount has not yet been established, the maximum amount for which recourse may be had against the property pursuant to the hypothec. In the instrument the hypothecary creditor must elect domicile in the Netherlands. (...)</p>
New Zealand	Yes. There is a short prescribed form, which requires the applicants to attach evidence of their loan agreement, but the details of the agreement are not entered in the register. ¹
Nigeria	Yes, see section 53(1) of the MSA 2007. This is a statutory requirement as the aforementioned section does provide that a written instrument e.g. a Deed of mortgage creating the security should exist.
Norway	No. In practice the registry's standard mortgage form is (always) used. This is a form of mortgage which does not necessarily reflect the underlying facts (Nw. gjort panteobligasjon/akkomodasjonsobligasjon).
Panama	No. It only requires to have the basic legal requirements as set out in Article 260 of Law No.55 of 2008 as amended by Law No.27 of 2014. Basically, these are name of vessel, owner and his address, mortgagee and his address, vessel characteristics (length, breadth, depth, gross tonnage, net tonnage, provisional patent, call letters), mortgage amount, interests, form of payment, mortgage expiration or maturity date, acceptance of mortgage by mortgagee.

¹ Ship Registration Act 1992, s 39; see s 93(3)(b) for foreign registered ships being registered on the New Zealand Register; New Zealand Shipping Register prescribed form SR16.

Spain	No. In order for a ship mortgage to be validly constituted and registered on the Register of Moveable Assets, it merely requires to be granted in a public deed or a private document. All agreements constituting a ship mortgage shall record the following compulsory details: a) Creditor, debtor and, where appropriate, non-debtor mortgagor, specifying all the personal particulars required by the mortgage legislation; b) The amount of the loan guaranteed by mortgage and of the sums that, if appropriate, shall cover the encumbrance for enforcement costs and expenses, and of the remuneration and delay interest and other expenses; c) Maturity date of the capital and payment of the interest; d) Description of the ship, stating, where appropriate, that the ship is under construction; e) The value or appraisal made of the ship and, where appropriate, that may be taken as the auction rate; and the addresses that the debtor and, where appropriate, the non-debtor mortgagor, provide for demands and notifications; f) Sums assigned to each ship, in the event of two or more being mortgaged to secure a single debt or loan; g) The regulatory circumstances determined in the case of a mortgage to guarantee titles, whatever their denomination; h) The other clauses that are established by the parties to the contract on interest, insurance, early maturity, extension and any others deemed convenient.
Switzerland	No. It is considered sufficient if the document by which the mortgage is established, refers to other documents such as loan agreements, etc. However, these documents don't have to be (but may be) attached.
UK	No. Generally the owner's obligations are set out in the loan agreement which is not attached to the deed of covenant collateral to the mortgage: such a loan agreement is not registrable with the Registrar of Ships nor with the Companies Registry – unless the document includes a charge.

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

Argentina	Even though it is not strictly necessary to set out those details, in practice they are always mentioned in the loan agreement.
Australia	See the answer to 3.1(a) above.
Brazil	Yes, the mortgage public deed does indicate the circumstances which shall give rise to a right of enforcement.
Canada	No It is the almost invariable commercial practice that the lender and the shipowner enter into a deed of covenants stipulating the obligations of the parties including the payment schedule, loan covenants events of default and rights of enforcement. The deed of covenants itself is not registered with the ship Registry The registerable form of ship mortgage generally refers to the date of the deed of covenants, the rate of interest and the principal amount of money secured,
Croatia	Right of enforcement accrue whenever an event of default occurs. Events of default could be set out in a mortgage agreement, loan agreement or any other security document.
Finland	No
France	See (a) above.
Germany	In which circumstances a mortgagee has a right to enforce a German law ship mortgage depends on the agreement reached with the mortgagor in the underlying security agreement. Usually, the minimum requirements for the enforcement of security under German law are, however, (a) a payment default; and (b) the lapse of a period of not less than one week (in case of a commercial transaction, otherwise one month) after the mortgagee has notified the mortgagor of its intention to enforce the mortgage. In addition, a mortgagee has a statutory right to enforce a ship mortgage if due to a deterioration of the vessel or its equipment the ship mortgage is endangered and a reasonable grace period expired without result.
Greece	See (a) above
Ireland	A registered mortgagee has the power absolutely to dispose of the vessel or share in respect of which he is registered under section 54 of the 1955 Act.
Italy	No. There is no form prescribed by or approved under registration regulations in Italy but the hypothec must, pursuant to art. 565 CN, identify the vessel on which the hypothèque is granted. Additional elements consist in the name of the owner of the vessel, his domicile or his principal place of business, the name of the person in whose favour the hypothèque is granted (the "creditor") as well as his domicile or principal place of business, the amount secured, the interest thereon, the date or dates of repayment. These elements, in fact, must, pursuant to Art. 569 CN, be mentioned in the application for registration ("Nota di Trascrizione" which is a summary of the hypothèque) and this implies that they must be mentioned in the

	hypothèque itself.
Japan	<i>LEFT BLANK</i>
Malta	It is sufficient for any documents or agreements on which the mortgage is based and which detail the terms and conditions of default to be mentioned in the mortgage deed without setting out in detail the circumstances giving rise to a right of enforcement in the actual mortgage deed.
Netherlands	Article 3:260 DCC provides: 1. If the debtor is in default of performing that for which the hypothec serves as security, the hypothecary creditor is entitled to have the secured property sold in public before a notary with authority to do so. (...)
New Zealand	No it does not.
Nigeria	The mortgage agreement would ordinarily set out the instances that will give rise to the right of the financier to enforce its security.
Norway	No. In practice the registry's standard mortgage form is (always) used. As stated above, this is a form of mortgage which does not necessarily reflect the underlying facts. The standard form includes a list of enforcement grounds, but in case of enforcement the terms of the loan agreement will prevail.
Panama	Unfulfillment of the mortgage contract.
Spain	The ship mortgage creditor may exercise its right against the ship or ships encumbered to its satisfaction in the following cases: a) On expiry of the term to return the capital or pay interest, in the manner that may have been agreed upon between the parties; b) Should the debtor be declared bankrupt; c) Should the ship mortgaged suffer deterioration that makes it definitively unseaworthy (incapable of sailing); d) When there are two or more ships assigned to fulfil the same obligation and loss or deterioration arises that makes either of them definitively unseaworthy, unless otherwise agreed; e) On fulfilment of the conditions agreed to terminate the obligation guaranteed, and all those that take the effect of making the capital or interest callable.
Switzerland	A mortgage may be enforced if the secured obligation is not fulfilled. No further conditions need to be met.
UK	See (a) above

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

Argentina	The document must necessarily be notarized (Navigation Act, art. 501 and Act 19.170, art. 3.a.1).
Australia	<p>The mortgage must be (s 20):</p> <ol style="list-style-type: none"> 1. signed by the mortgagor; or 2. adopted or accepted by the grantor by an act, or omission, that reasonably appears to be done with the intention of adopting or accepting the writing. <p>Unlike mortgages over real estate, there is no express requirement that a mortgage over personal property be notarised, legalised or witnessed.</p>
Brazil	<p>Before the ratification of the 1961 Hague Convention (Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents), it was mandatory to notarize and legalize foreign documents, in order for them to become valid in Brazil.</p> <p>Brazil only in 2016 ratified the Hague Convention 1961, as per Decree n. 8660/2016. As a consequence, the Hague Convention 1961 is already in force in Brazil. In this way, for a foreign document to be valid in Brazil, it will solely and simply be necessary the issuance and attachment of the "Hague Apostille" to the referred document, which can be made by the own public notary who issued or notarized the document.</p> <p>However, it should be noted that the Apostille Convention will only be in fact in effect among Brazil and its other member countries on August 14, 2016, should there be no objections to the adhesion of Brazil.</p> <p>Moreover, the Brazilian National Council of Justice ("CNJ"), responsible for coordinating and regulating the application of the Apostille in Brazil, has not yet concluded the regulation of the matter. As a consequence, despite the fact that the Hague Convention 1961 is already in force in Brazil, it is still necessary to notarize and legalize foreign documents in order for them to become valid in Brazil.</p>
Canada	No
Croatia	Only signature of the mortgagor has to be notarized.
Finland	A ship mortgage is registered upon application and pursuant to the terms and conditions agreed upon by the debtor and creditor. The Trafi is the registration authority for ship mortgages and is required to ensure that the agreement has been drawn up in accordance with current legislation and regulations and that the interests of all parties are safeguarded.
France	<p>In a Civil law perspective, and strictly understood, a maritime hypothecation (This wording is highly preferable to that of mortgage that refers to a purely Common Law concept) neither needs to be legalised nor notarised. At least, it shall be in writing, executed by Parties and established in as many originals as parties or legal publicity reasons. However, it is frequently notarised.</p> <p>Once it has been concluded, the maritime hypothecation shall be published so as to be opposable to third parties. In civil law jurisdictions, such as France, legal publicity is a distinct step from that of the making of the deed.</p>

Germany	The application for registration of the mortgage needs to be notarially certified, and, if notarially certified by a foreign notary, apostilled / legalised.
Greece	For a mortgage on a Greek flag vessel a notarial deed is required describing all the terms of the mortgage. Mere notarization of signatures is not sufficient. Exceptionally for vessels registered under article 13 of LD 2687/1953 granted outside Greece the local form for mortgages may be followed.
Ireland	No - it just has to be witnessed.
Italy	Art. 565 CN provides that the hypothèque must be granted, under penalty of nullity, by a Notarial deed ("atto pubblico") or simply in writing ("scrittura privata"), the signature(s) being certified by a Notary Public (both to be referred to as "Deed of Hypothecation").
Japan	No
Malta	It is not necessary for a Maltese mortgage to be notarized and/or legalized. It is sufficient if the execution of the Maltese mortgage be witnessed.
Netherlands	Yes, a Dutch hypothec is created by an instrument (≈ deed) executed before a civil law notary (without any further need of legalization), followed by the entry of the deed in the public registers.
New Zealand	The prescribed form requires the signatures to be witnessed by an independent person who is known to the person executing the document. ²
Nigeria	A registered mortgage need not be notarized.
Norway	If the owner of the vessel is a foreign entity, the signatures must be notarised and confirmed by legalisation/apostille. If the owner is Norwegian, it is sufficient that the signature is witnessed and made in accordance with the signature provisions registered in the Norwegian Register of Business Enterprises (either directly or by Power of Attorney).
Panama	Yes, it needs to be notarized and legalized by Panamanian Consul or Apostille.
Spain	In accordance with Art. 128 MNA, the constitution of a valid mortgage would require either a public deed or a private document, although we would strongly suggest to notarize the same, since not all the Registrars have unified views about the construction of such article. As a matter of practice all the banks notarize their mortgage agreements.
Switzerland	No. The document by which the mortgage is established (Pfanderrichtungsakt) does not have to be notarized. However, the signatures of the representatives of mortgagor on that document need to be legalized (and apostilled/re-legalized, if legalization originates from another jurisdiction).
UK	No

² Section 39(2); see New Zealand Shipping Register prescribed form SR16.

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

Argentina	0,50 0/00 of the amount of the mortgage.								
Australia	<p>The following are the fees for registering a financing statement:³</p> <table border="1"> <thead> <tr> <th>Duration of registration period</th> <th>Cost of registration</th> </tr> </thead> <tbody> <tr> <td>Seven years or less</td> <td>AUD \$6.80</td> </tr> <tr> <td>More than seven years but less than 25 years</td> <td>AUD \$34.00</td> </tr> <tr> <td>No stated end time</td> <td>AUD \$119.00</td> </tr> </tbody> </table>	Duration of registration period	Cost of registration	Seven years or less	AUD \$6.80	More than seven years but less than 25 years	AUD \$34.00	No stated end time	AUD \$119.00
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Brazil	The registry fees vary according to the characteristics of the vessel, as well as to the State where the Notary is located. However, they tend to be very high (including taxes), since they are usually a specific percentage over the amount of the vessel. Such fees and taxes percentage are fixed annually by local law.								
Canada	Canadian \$150.00 as per Vessels Registry Fees Tariff (SOR/2002-172)								
Croatia	The registry fees are 110 Croatian kunas (approx. 15 Euros)								
Finland	Registration fee of a ship mortgage is 225 €.								
France	According to the article 254 Code des douanes (French Customs Code), the registry fees in order to have a mortgage registered against a vessel is 0,05% of the debt giving rise to mortgage.								
Germany	The fees of the ship registry for the registration of a ship mortgage are prescribed by law and depend on the amount of the mortgage. If the amount of the mortgage exceeds EUR 60,000,000 such higher amount will not be taken into account when calculating the registration fee; e.g. the registration of a mortgage in the amount of EUR 60,000,000 (or higher) will trigger a registration fee of the ship registry in the amount of approximately EUR 27,000 plus VAT of 19% (if any).								
Greece	The fees payable to the Registry for registration of a maritime mortgage on a Greek registered ship are for oceangoing ships (Class B) Euros 120.								
Ireland	For all vessels less than 400 gross tons there is a flat registration fee – currently €64 and for every 1,000 tons (if any) or fraction thereof in excess of 400 tons, an additional sum of € 36.								
Italy	<p>The only document to be produced to the registering authority is a certified copy of the deed accompanied by the “Nota di Trascrizione” in two originals one of which is retained by the Ship Registrar and the second one is returned to the applicant with mention of the number of the registration repertory, the date and time of registration.</p> <p>The costs involved in the execution of a Deed of Hypothecation are the following:</p>								

³ These are set by the *Personal Property Securities (Fees) Determination 2015* (Cth).

	<p>(a) Notarial fees and costs;</p> <p>(b) registration tax on the Deed, such tax being for a fixed amount, at present of € 200.</p> <p>(c) stamp duty on the document (€ 16 each four pages).</p>					
Japan	The registration fee is 0,4% of the amount of the secured claim. (No.1 (5) of Annex 1 to the Act on Registration Fees.)					
Malta	<p>The registry fees for the registration of a Maltese mortgage are Euros 500.</p> <p>At times, the mortgages may wish to register a mandate or power of attorney given by a mortgagor as part of the security. Such registration of a mandate or power of attorney may be effected against a registration fee of Euros 100.</p>					
Netherlands	<p>The fee charged by the Cadastre for the registration of a hypothec is EUR 126,- (per 1-1-2017).</p> <p>The basic fee charged by the Curaçao Land Registry for the registration of a hypothec is 510 Antillean Guilders (ANG). In case the amount secured by the hypothec equals or exceeds ANG 200,000, another fee of ANG 100 per ANG 100,000 of the secured amount applies.</p> <p>(The above fees exclude the fee of the civil law notary for drawing up the notarial instrument itself.)</p>					
New Zealand	NZ\$436.00					
Nigeria	<table border="1"> <thead> <tr> <th>CONSENT FEE</th> <th>REGISTRATION OF MORTGAGE</th> </tr> </thead> <tbody> <tr> <td>₦50,000 (\$139)</td> <td>₦100,000 (\$278)</td> </tr> </tbody> </table>	CONSENT FEE	REGISTRATION OF MORTGAGE	₦50,000 (\$139)	₦100,000 (\$278)	
CONSENT FEE	REGISTRATION OF MORTGAGE					
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Norway	The registration fee is currently (November 2016) NOK 2 258 (approximately USD/EUR 200). A transcript of the ownership and encumbrances costs NOK 579 (approx. USD/EUR 50).					
Panama	<p>Public Registry fees for permanent registration of mortgage of a Panamanian vessel are calculated based on net tonnage of the vessel (Net Tonnage x 0.12) with a cap of US\$600.00 plus US\$50.00 review charge.</p> <p>If you will arrange preliminary registration of the mortgage, the Public Registry fees will be calculated as follows:</p> <p>US\$450.00 - for the first US\$2,000,000 of mortgage amount</p> <p>US\$150.00 - for each additional million or fraction with a cap of \$,1,200.00</p> <p>US\$50.00 - Review charge</p>					
Spain	The Registrar's fees are published in the Spanish Official Gazette and are calculated according to a Scale which takes into account the amount of the "mortgage responsibility" (being the sum of the loan's amount plus an estimate of the eventual enforcement costs, which varies among banks in the region of 30% to 50%). The Maximum Fees would never exceed the figure of 1,75 per 1000.					

Switzerland	1 o/oo of the mortgage amount, at least CHF 10, but not over CHF 2'000.
UK	£84.00 or £184.00 for premium(expedited) service.

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

Argentina	Unless its terms provide for a longer period, the mortgage will expire after three years unless it is re-registered (Navigation Act, art. 509 and Act 19.170, art. 36.b).
Australia	Where the ship is classified as 'consumer property', ⁴ the registering party can choose a registration period of up to 7 years (s 153). Where the ship is 'commercial property', ⁵ the registering party can choose an indefinite registration or a period of up to 25 years (s 153).
Brazil	The registration is indefinite and there is no requirement for re-registration.
Canada	The registration of a mortgage is indefinite. However, registration of the vessel is generally five years with provision for renewal. If the registration of a vessel lapses, any ship mortgages registered on title continue. It is a usual practice for ship mortgage deed of covenants to require the ship owner to keep the ship registered in good standing and for a breach of that covenant to be an event of default.
Croatia	There is no requirement for re- registration of an already registered mortgage.
Finland	A ship mortgage is valid for 10 years unless renewed or cancelled. Renewal must take place within 10 years of the date on which the mortgage is registered or the date on which the mortgage was most recently renewed.
France	The registration of the maritime hypothecation shall not be done in a given period of time, let alone the unfortunate consequences of the death of the shipowner or its insolvency. Once registration has been performed, it is not indefinite. After ten years, according to art. 248 Code des douanes, it does not have anymore effect.
Germany	No, there is no requirement for re-registration of the ship mortgage after a certain period.
Greece	The registration of a mortgage is immediately permanent and indefinite. No reregistration is required.
Ireland	Currently registration is indefinite. The Merchant Shipping (Registration of Ships) Act 2014 (the "2014 Act") was enacted in December 2014 but is not yet in force. If a vessel is already registered on the Irish register, it is proposed that it will be transferred free of charge to the new register that will be established under 2014 Act when it comes into force, for a period of up to five years. Under section 9(9) of the 2014 Act registration on the Register may be granted for an initial period of 5 years, subject to compliance with any conditions applying under section 18 (10) with subsequent registrations of a ship granted for periods of up to 10 years.
Italy	According to Art.2847 Civil Code ("CC") the registration of a hypothec is valid for 20 years and in order to maintain the hypothec in existence for a longer period the registration should be renewed before the lapse of the 20 years period.

⁴ Defined in s 10 to mean personal property held by an individual, other than personal property held in the course or furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated.

⁵ Defined in s 10 to mean property that is not consumer property.

Japan	The registration is valid indefinitely.
Malta	The registration of the mortgage is indefinite.
Netherlands	The registration is indefinite.
New Zealand	Registration for the purposes of security interest is indefinite, ⁶ but any variations in ownership or the nature of the vessel require the registration to be updated.
Nigeria	There is no requirement for re-registration.
Norway	The registration is in principle indefinite, i.e., there is no system for provisional registration of vessels in Norway.
Panama	Registration is indefinite and is valid until the mortgage is cancelled.
Spain	There is no re-registration requirement. The registration is indefinite (as long as the mortgage is not cancelled).
Switzerland	Registration is indefinite.
UK	The registration of the ship has to be renewed every five years and if it is not renewed the registration is terminated.[Regulations 41 and 42 of the Registration Regulations]: however such termination will not affect any mortgage which will remain registered [section 16(4) MSA 1995].

⁶ Ship Registration Act 1992, s 20. Registration on Part B of the Register, which is primarily for pleasure vessels, lapses after five years.

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

Argentina	A mortgage of a vessel must be registered only in the National Register of Ships. No additional registration is required, but a note must be included in the Vessel's Register Certificate and in its notarized property deed(Navigation Act, art. 501).
Australia	A mortgage of a vessel is only required to be registered on the Personal Property Securities Register.
Brazil	The mortgage of a vessel, or any other maritime lien, must be registered first at the Maritime Notary and, after that, at the Admiralty Court.
Canada	<p>If the ship is registered in the Canadian Register of Vessels, then registration of the mortgage in the said Register suffices in order to set up the rights of the mortgagee against third-parties.</p> <p>That said, Canadian provinces and territories also possess a local regime for security interests. Many of those jurisdictions, such as the Province of Quebec specifically prohibit the registration of security interests in ships that are registered pursuant to the CSA 2001 or under an equivalent foreign law. Others, however, do not, or are silent, which has led, from time to time, to conflicts of priority with marine mortgages registered pursuant to the CSA 2001's predecessors. There is also the concern that certain movables on a ship may not be covered by the definition of "ship and its appurtenances" and registration under the provincial law may be advisable. So far, the case law has systematically recognized the priority of the mortgages registered in the Canadian Register of Vessels, irrespective of its date of creation or of registration. Because of recent developments in Canadian constitutional law that a security interest in personal property can be a matter of both provincial and federal jurisdiction, some mortgagees take the precaution of registering ship mortgages under provincial personal property security legislation (where it is not prohibited and where there is a connection with either the location of the ship or the residence of the owner), as well as under the Canada Shipping Act, 2001 for the purpose of facilitating notice to creditors and others interested in the ship of the existence of the mortgage. However, as long as the ship mortgage is registered under the Canada Shipping Act, 2001, registration under provincial personal property security legislation, even if permitted by the applicable provinces law, is not compulsory.</p>
Croatia	A mortgage over a vessel has to be registered in the ships register only.
Finland	No other registration is required.
France	According to the articles 15 and 18 of 1967 Decree (Decret n°67-967 du 27 octobre 1967 relatif au statut des navires et autres bâtiments de mer) the mortgage of a vessel has to be registered in the ship register and in a special register hold by the mortgage registrar.
Germany	Under German law, no additional registration is required.
Greece	A Greek mortgage is registered in a special mortgage register and a notation is made on the ship's register. There is no need for any other registration like registration with the company register of the mortgagor as it is required in some other jurisdictions.
Ireland	If the owner is an Irish Company, the mortgage is also to be registered in the Companies Registration Office as a registrable charge on the company's assets.

Italy	No, there are no such registers as far as the hypothèque is concerned, which can only be registered in the Italian ship register. However the hypothèque for vessels allowed to sail on the high seas (Navi Maggiori) is to be endorsed also in the "Atto di Nazionalità" (Certificate of Registry) which is on board the vessel. It must be noted however that prior to the registration the hypothec as well as any other charges if created or executed in Italy should be registered at the tax office.
Japan	Registration only in the ship's register (of legal title) suffices.
Malta	A mortgage granted over a Maltese vessel only requires to be registered in the Maltese ship registry.
Netherlands	The hypothec is only registered in the ships' register.
New Zealand	Only on the ships register. Security interests in vessels under 24 metres will be registered under the Personal Property Security Act 1999.
Nigeria	Mortgages are not only kept in the ship's register. Mortgages may also be registered as charges with Nigeria's Companies Registry (the Corporate Affairs Commission in accordance with section 197 of the Companies and Allied Matters Act (CAMA).
Norway	Mortgages are only registered in the ships register. No other registration is possible or required (at least as long as the owner of the vessel is a Norwegian entity, other requirements may apply to foreign owners in accordance with foreign law).
Panama	Only in the Public Registry of the Panama Maritime Authority.
Spain	In order to be validly constituted (in accordance with Art. 128 MNA), the mortgage has to be compulsorily registered on the so-called Register of Moveable Goods; on top of that, for administrative reasons, the mortgages shall also have to be mentioned in the Spanish Administrative Register, which is coordinated with the Register of Moveable Goods (ex Art. 66 MNA).
Switzerland	There is no other registration required than the registration in the Ship Register.
UK	The mortgage deed in the form prescribed by the Secretary of State (MSF 4736 or 4737) has to be registered with the Registrar of Ships: if the owner is a limited company incorporated in the UK then the mortgage deed, the collateral deed of covenant and any other document creating a charge has to be registered with the Companies Registry within 21 days otherwise it will be void against the liquidator, administrator and any other creditor of the owner [Part 25 Companies Act 2006 – section 859].



Question 4

4 INFORMATION CONCERNING SECURITY INTERESTS IN SHIPS

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

- (a) Does a person seeking such information need the authorization of the vessel owner to get such information?**
- (b) Does your jurisdiction certify the accuracy of the information?**
- (c) How much time is generally required to obtain such information?**

Argentina	<p>The information is available to anyone interested in obtaining it (Act 19.170, art. 38). In the application form the applicant must state his interest.</p> <ul style="list-style-type: none"> (a) The authorization of the vessel owner is not needed. (b) Upon written request, a certificate regarding the ownership, mortgages and embargos will be issued by the National Register of Ships (Act 19.170, art. 40). In case of error, the Government will be liable for damages. (c) Between three and five working days.
Australia	<p>The Personal Property Securities Register provides for registration against the grantor's details or against the serial number of the collateral or, in certain circumstances, both. Item 4 in the list of details set out in the answer to 3.1(a) provides for the serial number of the collateral to be set out in the financing statement. Ships must be described by a serial number when they are consumer property, and may be described by a serial number when they are commercial property. Consequently, members of the public are able to search the Register: 1. by grantor's details; or 2. by serial number of the ship.</p> <ul style="list-style-type: none"> (a) A person may apply to search the Register (s 170) if the search is authorised under ss 171 or 172. The authorisation of the vessel owner is not required. However, the search will only produce the details required to be recorded in the financing statement (see the answer to 3.1(a) above). If the searcher wants further details, they will have to apply to the secured party named in the statement under s 275. Section 275(9) limits the people who can make such a request to: 1. the grantor in relation to the collateral in which the security interest is granted; 2. a person with another security interest in the collateral mentioned in paragraph 1; 3. an auditor of a grantor mentioned in paragraph 1, if the grantor is a body corporate; 4. an execution creditor with an interest in the collateral; 5. an authorised representative of any of the above. (b) No. (c) Where a request is made under s 275 for further details of a security, the secured party must reply within 10 business days (s 277).
Brazil	<p>Yes.</p> <ul style="list-style-type: none"> (a) Any person may ask for information regarding security interests in vessels registered at the Admiralty Court (it will be a request for a certificate of

	<p>encumbrances, issued by the Admiralty Court). And it is not necessary to have authorization from the owner of the vessel.</p> <p>(b) Yes, the Admiralty Court certifies the accuracy of the information through the issuance of the certificate of encumbrances, which states whether there are any liens over the vessel and their basic information.</p> <p>(c) After the request of a certificate of encumbrances, the Admiralty Court takes approximately 1 (one) week to issue the document.</p>
Canada	<p>(a) The information is publicly available and one needs not the authorization of the vessel owner to access same. No</p> <p>(b) No</p> <p>(c) Generally, the information is available online; however, where no online service is available, then attendance at the registration office is necessary</p>
Croatia	<p>Yes, information concerning security interests in ships is publicly available. Ship's register is kept by Harbour Master office(s) as public books or as electronic records. Any information concerning security interests in ships are open to public inspection and extracts from the register are obtainable from the registrar. (Art. 195 of Maritime Code)</p> <p>(a) No.</p> <p>(b) Yes.</p> <p>(c) Any information concerning security interest is obtainable immediately upon request.</p>
Finland	<p>(a) Data entered in the Register of Ships are public. Information on whether there is a mortgage on a particular ship can be obtained by anyone by phoning the registration authority. Detailed information on encumbrances on a particular ship may be obtained for a fee from the officials who handle matters pertaining to the Register of Ships. Orders for encumbrance certificates must be submitted in writing, for instance by fax or e-mail.</p> <p>(b) An application which is pending but has not been processed has no legal impact except for the registration of mortgages. Once an application is pending, a mortgage on the ship may not be registered on the basis of an application or consent from the previous owner. There is no legal impact on registration. Under chapter 1 section 5 of the Maritime Act, title in a ship is transferred by agreement and pursuant to the terms of that agreement; registration does not compensate for imperfect acquisition.</p> <p>(c) Data entered in the Register of Ships are public. Information on whether there is a mortgage on a particular ship can be obtained by anyone by phoning the registration authority. Detailed information on encumbrances on a particular ship may be obtained for a fee from the officials who handle matters pertaining to the Register of Ships. Orders for encumbrance certificates must be submitted in writing, for instance by fax or e-mail.</p>
France	<p>(a) No. Any person having an interest in knowing the situation of the vessel may file such a request to the Homeport Customs office. Some practical difficulties may however arise when the request is not filed by a legal</p>

	<p>professional.</p> <p>(b) Not directly. However, according to Art. 253 Code des douanes recently modified by Statute 2016-816 on Blue Economy, the State is liable for any damage resulting from a fault committed by the administration in charge of maritime hypothecation.</p> <p>(c) A few days</p>
<p>Germany</p>	<p>(a) Owners' consent for disclosure of such information recorded in the ships register is not required. The ship registers are public registers accessible by everyone without limitation and for a nominal fee. A ship register excerpt states, inter alia, the main details of the vessel, the owners and the registered encumbrances. Registerable interests are limited to ownership title, security interests such as mortgages, usufruct (Nießbrauch) and attachment liens, and priority notices (Vormerkung) in respect of each. Other security interests, such as those created by operation of law, including maritime liens or maritime claims, are not registered. The general information right does not normally extend to inspection of the actual files of the registry and any underlying documents. Inspecting of the registry files and underlying documents in person is possible, if the applicant credibly demonstrates a justified interest to obtain such information, for example if required for the assertion of rights or the defence against a claim.</p> <p>(b) Upon request, the ship register certifies the excerpts to be true copies of the register folio entry. The accuracy of the information contained in the excerpts is not confirmed thereby. Furthermore, the ship register can upon request issue a certificate confirming that specific entries have not been made or there are no other entries concerning a registered right. There is only a statutory rebuttable presumption that the content of the ships register is accurate, because entry into the ships register is in case of seagoing vessels (in contrast to inland waterway vessels) not constitutive for in rem ownership rights in the vessel. Title to seagoing vessels can be transferred by simple oral agreement, without the need for recordation of such change in the ships register. However, reliance on the accuracy of the register record by a bona fide third-party transferee or taker of a security interest is statutorily protected in respect of certain information, as long as no objection has been recorded in the register in respect of such information. Such statutory protection only extends to certain information, including in respect of ownership, mortgages, usufruct and the deletion of mortgages or usufruct ("öffentlicher Glaube des Registers"). Even if not explicitly mentioned in the relevant statutes, this also applies to attachment liens in Germany and the right to fly the German flag. Reliance on other information shown in the excerpt, such as the physical details of the vessel, does not benefit from statutory protection.</p> <p>(c) Ship register information is not available electronically so far (although there are now political intentions to modernize / digitalize ship registers). During the ship register's opening hours, an excerpt from the ship register can be obtained quickly - often on the same day. For lawyers making an application for a ship register excerpt, all that is required in addition to the actual request for the excerpt is an undertaking regarding fees. As there is no centralised ships register in Germany and ships registers are maintained by the competent local courts (currently 17 different ships registers), it may take more time to retrieve information if the competent ship register</p>

	is not known already and must be determined first.
Greece	<p>Information concerning security interests in ships registered in your jurisdiction is publicly available.</p> <p>(a) The basic information (parties, amount, expiration of the secured debt) is recorded on the register and may be obtained without authorization and free of charge. Copies of the actual documents (e.g. mortgage, or arrest order) may be obtained from the file of the vessel kept at the registry following authorization from the registrar (or if necessary from the District Attorney) provided the person seeking the information can prove a legitimate interest.</p> <p>(b) The Registrar certifies the information, if so requested.</p> <p>(c) The basic information may be obtained immediately. For documents and certification few days (2-5) may be required depending on the burden of work of the Registry.</p>
Ireland	<p>It is available on request from the Port Registry to which the vessel has been registered. Inspection of the registry is permissible for a fee.</p> <p>(a) No</p> <p>(b) No</p> <p>(c) Usually up to one week</p>
Italy	<p>Yes, it may be possible to ask an abstract of the vessel's registry with all data relating to the vessel, her ownership, date of registration, registration number as well as the registration of mortgages with all the Nota di Trascrizione and/or other recordable encumbrances (such as arrests).</p> <p>(a) No, the registry is public and any person can ask for an abstract.</p> <p>(b) No.</p> <p>(c) About a week.</p>
Japan	<p>(a) No. Anyone can have access to the information in the ship's register and acquire a certificate of registered information. A fee is applicable. (art.33 (1), the Ministerial Order for Ship Registry.)</p> <p>(b) It is certified that the information accurately reflects the registration made. Whether the registered information is true or not is not checked or certified.</p> <p>(c) A certificate is issued on the spot, as long as the procedure is duly complied with</p>
Malta	<p>Basic information relating to a registered Maltese mortgage - such as execution date and recording date of mortgage, the full style of the mortgagee and a short synopsis of the mortgage recital - is entered in the ship's register by the Maltese Registrar of Ships. A copy of the mortgage deed is not publicly available. The ship's register with the above basic information referring to mortgages is available for public inspection at the Maltese Ship Registry.</p>

	<p>(a) Since the ship's register is a public register, anyone can carry out a search over a vessel's register and there is no need to obtain the authorization of the ship's owner to carry out a search to identify the registered owners and registered encumbrances. Alternatively, one can request the Maltese Ship Registry to issue a transcript of register in respect of the vessel which would indicate inter alia, the registered owners and registered encumbrances.</p> <p>(b) The Maltese Ship Registrar would verify whether the person executing the mortgage deed on behalf of the Shipowner is duly authorized to execute the mortgage but the Maltese Ship Registrar would not verify the accuracy of the information indicated in the mortgage deed (such as information relating to any underlying obligation which the mortgage may be securing).</p> <p>(c) A search may be carried out over the vessel or a transcript of register may be obtained from the Maltese Ship Registry within a couple of working days from the request being made.</p>
Netherland	<p>Please note that 'security interest' has no particular meaning under Dutch law. The only security rights in rem existing within the context of shipping are hypothec (registered ships) and pledge (non-registered ships). But other rights, some quasi in rem, may exist that improve the creditor's position, such as privileged claims or the right of retention (the latter being comparable to a possessory lien). For the information that may be registered in the Dutch ship's register, please see under 6.6 below.</p> <p>(a) The information contained in the ship's register in the Netherlands in Europe is publicly available without authorization of the ship owner. The Cadastre certifies the accuracy of the information (subject of course to the proviso that the register is a register of deeds). The information can be obtained immediately by subscribers to the Cadastre's online service. Otherwise the information can be requested online and obtained within 2 working days. The foregoing also applies to the ship's register in Curaçao. The only difference is that there is no online service (yet). Information from the Curaçao ship's register can be requested by e-mail to the Curaçao Land Registry and obtained within approximately 2 working days.</p> <p>(c) The information contained in the ship's register in the Netherlands in Europe is publicly available without authorization of the ship owner. The Cadastre certifies the accuracy of the information (subject of course to the proviso that the register is a register of deeds). The information can be obtained immediately by subscribers to the Cadastre's online service. Otherwise the information can be requested online and obtained within 2 working days. The foregoing also applies to the ship's register in Curaçao. The only difference is that there is no online service (yet). Information from the Curaçao ship's register can be requested by e-mail to the Curaçao Land Registry and obtained within approximately 2 working days.</p>
New Zealand	<p>The register is available for public inspection (though not searchable online).³²</p> <p>(a) No.</p> <p>(b) The Registrar will provide a certified transcript of a ships register entry.</p> <p>(c) Same-day service is generally available.</p>

Nigeria	<p>(a) This information is publicly available. An interested person may apply to the Ship registry to conduct a search and/or obtain certified true copies of documents. The authorization of the owner is not required to conduct the search. The search fee is ₦5000 per search although it is to be reviewed upward to ₦20,000 per file.</p> <p>(b) Yes.</p> <p>(c) Upon payment of the prescribed fees, the search can be conducted immediately.</p>
Norway	<p>(a) No.</p> <p>(b) The ship registry certifies that the information provided in an official transcript reflects the registered information, but the registry can of course not guarantee that the registered information is in accordance with the underlying facts.</p> <p>(c) A transcript can be obtained on demand with same day delivery.</p>
Panama	<p>Yes, it is of public records and the Public Registry of Panama Authority has a webpage available for this purpose.</p> <p>(a) No.</p> <p>(b) Yes.</p> <p>(c) The very same date.</p>
Spain	<p>(a) No. A person seeking such information does not need the authorization of the owner. Security interests over vessels are registered within the Title Registry (Registry of Movable Goods) where the ownership is registered. The information recorded in the Title Registry is public and can be consulted by any interested person by submitting the corresponding request to the registry.</p> <p>(b) Publicity of the information is produced by the Title Registry by way of two different means: (i) certificates, which can be used to evidence to third parties the rights and securities registered over the vessel; or (ii) excerpts (notas simples informativas) which are issued for informative purposes only.</p> <p>(c) Generally, up to five business days as of the date upon which the certificate or excerpt was requested to the Title Registry.</p>
Switzerland	<p>(a) Any person may request and receive information about a specific vessel, but such information will be limited to a) specifics of the vessel, b) owner of the vessel, c) statutory liens, d) restrictions on disposal (limited excerpt).</p> <p>(b) A full excerpt, i.e. also providing information on mortgages may only be requested by the mortgagee and owner."</p> <p>(c) Yes</p> <p>(d) 1-2 working days. In urgent matters an excerpt may be picked up in person on the same day.</p>

UK	<p>(a) No.</p> <p>(b) Anyone can request a Transcript of Register from the Registry on payment of the relevant fee [£21.00 for current entries] and this sets out the particulars contained in the Register i.e. details of the ship, the owners and the mortgages registered. The Transcript sets out the entries in the Register but does not certify that the entries accurately state the factual position.</p> <p>(c) About five working days.</p>
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4.2 May a vessel subject to a security interest be sold by the owner prior to the release of the security interest, and if so, under what conditions or circumstances.

Argentina	Yes, but the buyer will have been informed about the mortgage through the certificate he must obtain from the Register (see 4.1.b). If the original debtor does not pay the debt, the creditor will be able to obtain the judicial sale of the vessel (Navigation Act, art. 509), but other assets of the new owner will not be affected (Civil and Commercial Code, art. 2199).
Australia	Yes (subject to the terms of the instrument creating the security interest), but the vessel will still be encumbered with the security interest. Ordinarily the purchaser will require that the security interest be released before sale.
Brazil	<p>The owner of a vessel subject to a security interest may sell the vessel without court authorization, since the encumbrance will remain attached to the good (will follow the good, regardless of who is the owner).</p> <p>The interested buyer will request documents to verify the state of the vessel and the existence of any encumbrances. And it is up to the interested buyer to buy the vessel or not, being aware of the existence of a security interest attached to the vessel.</p> <p>However, it is important to highlight that, although legal there is no impediment to the owner to sell a vessel which is subject to a security interest, contracts terms may require the previous authorization to sell the vessel. This is quite common under financing contracts related to Brazilian Banks such as BNDES and Banco do Brasil, in which the financing agent will have to authorize the sale of the secured vessel by the owner.</p>
Canada	Yes - the governing principle is that a subsequent owner is subject to "Buyer Beware" principle and, as a minimum exercise of its due diligence, should examine the Canadian Register of Vessels. It may also be prudent to search the provincial personal property securities register(s) where the debtor's principal place of business is located and where the ship may be located at the time of registration. Also, a search of the Federal Court and British Columbia Supreme Court registries is advisable, as these two courts purport to exercise "in rem" jurisdiction.
Croatia	A Vessel over which a mortgage has been registered may be sold provided always written consent to the sale has been obtained from the mortgagee.
Finland	<i>LEFT BLANK</i>
France	There is no obstacle to the sale unless the maritime hypothecation has been published.
Germany	A vessel can be sold without prior release or consent of the holder of the security interest (e.g. mortgagee). In case the vessel is sold without mortgagee's consent, the mortgage remains on the vessel as the ship mortgage is an in rem security interest and not in personam. If the vessel is to leave the relevant German ships register, the German ships registry will only delete the vessel and issue its deletion confirmation with the consent of the holder of the security interest.
Greece	A mortgaged or arrested vessel in principle may be transferred (e.g. as a result of sale) to another owner. However, the new owner acquires the vessel subject to the security interest. Exceptionally, if the vessel is subject to a preferred maritime mortgage, which includes a term prohibiting the transfer of ownership, the ownership cannot be transferred. The above apply as long as the vessel remains registered with the same register. However, once a vessel is mortgaged, it is not

	permitted to change registry or even name (art.201 CPML) and any transfer of a mortgaged vessel which results loss of the Greek nationality of the vessel, is null and void (art.202 CPML).
Ireland	<p>Yes.</p> <p>A mortgage on a vessel may also be transferred under section 55 of the 1955 Act subject to section 62 of the 1955 Act. This provides that a transfer of a mortgage may only be transferred with consent of the Minister or where both the transferor or mortgagor and the transferee or mortgagee are persons ordinarily resident in the State or an Irish body corporate.</p> <p>Under section 64 (13) of the 1955 Act if a vessel is sold to a party not entitled to register the vessel in Ireland, any unsatisfied registered mortgagee may, if the vessel comes within the jurisdiction of any court in the State, make an application seeking that court may enforce the mortgage as if the transfer of ownership had not been made.</p>
Italy	<p>Pursuant to art. 2889 CC, the provision of which apply also to hypothèques on vessels if not in conflict with the specific provisions of the CN, the buyer of a vessel on which the hypothèque is registered who has endorsed the purchase on the ships register and is not personally bound to settle the claim of the holder of the hypothèque is entitled to release the vessel from the hypothèque by making available to him or to them the amount of the purchase price in accordance with the procedure set out in the subsequent articles or, if the amount of the claim secured by the hypothèque is less than the purchase price, such amount. If instead such amount is greater, the holder of the hypothèque may apply for the forced sale of the vessel.</p> <p>However recourse to such procedure is rare and what is normally done, in particular where there is only one hypothèque, is to agree with the seller and the holder of the hypothèque that the purchaser pays to the holder of the hypothèque a part of the purchase price equal to the amount due by the seller to the holder of the hypothèque and concurrently with such payment the vessel is released from the security and title to the vessel is transferred by the seller to the buyer against payment to him of the balance of the agreed purchase price.</p>
Japan	Yes. The purchaser acquires the ownership of the vessel subject to registered security interests.
Malta	Where the mortgage deed contains a prohibition of sale of the vessel without the prior written consent of the mortgagee, such prohibition is inserted in the vessel's register and the Maltese Registrar of Ships may not record any transfer of ownership of the vessel without the prior written consent of the mortgagee unless the transfer is made pursuant to a court order in a sale by auction of such a ship or pursuant to any other court order.
Netherlands	The ship subject to a (Dutch) security interest may be sold by the owner prior to release of the security interest without any conditions, unless the terms and conditions of the instrument by which the security interest was created determine otherwise. The security interest will, however, remain enforceable against the ship if the security interest has droit de suite (such as hypothec and certain privileged claims)).

New Zealand	The owner has the power to dispose of a vessel, but this is subject to "any rights and powers appearing from the Register to be vested in any other person" (which would include a registered mortgagee's rights under a loan agreement). ¹
Nigeria	No. The mortgagor is obligated by law to refrain from doing anything that imperils the mortgaged property and jeopardises the mortgagee's interest.
Norway	Unless the registered mortgagee has consented to the sale or is repaid as part of a forced sale, the sale of a mortgaged vessel cannot be registered as long as the mortgage attach to the vessel.
Panama	Yes, with the consent of the security interest holder
Spain	<p>Yes. A vessel subject to a security interest can be sold by its owner prior to the release of the security interest. As a right in rem, the mortgage follows the vessel notwithstanding the ownership and the identity of the mortgagor. Therefore, the mortgage will still be in place over the sold vessel. There are no special conditions or circumstances established by law different to those applicable to the sale of a vessel free of security interest.</p> <p>In any event, Art. 118.4 MNA establishes that in those cases in which the parties aim to have the sale contract notarized in a public deed or a notarial deed (or any other documents established under Art. 73 MNA), prior to notarization thereof, the Notary Public (or the Consul, as the case may be) shall obtain the appropriate information from the Title Registry regarding the status of ownership and charges over the vessel.</p>
Switzerland	<p>Yes, a mortgaged vessel may be sold. The mortgage is a right in rem and will not be affected by such a sale.</p> <p>If, however, the vessel shall be transferred to another register and shall therefore be deregistered from the Swiss register, then such deregistration can only be made with the consent of mortgagee.</p>
UK	A mortgaged ship may be sold subject to the mortgage with the mortgagee's prior consent. If the owner sells the ship without the mortgagee's consent then this will invariably constitute an event of default giving the mortgagee the right to enforce its security. If an owner sells the ship without the mortgagee's consent the registration of the owner will be terminated but the mortgage will remain registered against the ship.[s.16(4)MSA 1995].

¹ Ship Registration Act 1992, s 65.

Question 5

5 ARREST OF A CHARTERED VESSEL

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

Argentina	Yes
Australia	<p>Section 18 of the Admiralty Act 1988 (Cth) allows an action in rem to be commenced (after which the party can apply for arrest) against a chartered vessel for liabilities of the demise charterer. The action in rem will be allowed where it is on a 'general maritime claim' or 'proprietary maritime claim', and a 'relevant person':</p> <ol style="list-style-type: none"> 1. was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship; and 2. is, when the proceeding is commenced, the demise charterer of the ship. <p>A ship under a time charter may not be arrested for liabilities of the time charterer.</p>
Brazil	<p>Yes. If the arrest is in rem and the creditor has a privileged credit according to the 1926 Brussels Convention and the Brazilian commercial Code, the vessel can be arrested on bareboat charter or time charter. Section 494 of the Commercial Code even states that the owners and correlated parties are jointly liable for debts that the master/vessel constitutes. Under these rules, the Brazilian Courts already accepted the arrest of vessels on bareboat or time charters, despite the fact of the owner not being originally involved. However, if the arrest is filed in personam, i.e., related to a civil liability act attributed to the charterer, only the assets belonging to the charterer such as bunkers can be attached/arrested, reason why, in such cases.</p>
Canada	<p>Yes, the fact that the mortgaged vessel is on bareboat or time charter is not an impediment to the arrest of the vessel, providing that the underlying liability is NOT that of the demise or time charterer. The assumption is that the mortgage was granted by an owner with legal title to the vessel and there has been a default under the mortgage contract by the owner or its successors in title.</p>
Croatia	Yes
Finland	It is not be possible to arrest bare-boat or time-chartered vessels if the charterer is solely liable for the claim
France	Yes
Germany	Our jurisdiction allows a mortgagee to arrest vessels on bareboat charter or time charter.
Greece	<p>There is no provision prohibiting a mortgagee to arrest a vessel on bareboat charter or on time charter. For this reason prior to entering such a charter the prospective charterer may ask the owner to provide them with a quiet enjoyment letter from the mortgagee (usually in consideration of the charterer paying regularly the hire at a bank account controlled by the mortgagee. This right of the mortgagee may be subject to limitation by the general rules obliging parties to a contract to perform their respective right and obligations in good faith, the duty not to cause harm to others as a result of your fault (intention or negligence) and the prohibition of abuse of rights.</p>

Ireland	Yes
Italy	Yes, under Italian law a mortgagee may secure its action by arresting a vessel regardless the vessel is under bareboat charter and time charter.
Japan	Yes, unless the bareboat charterer is registered prior to the registration of mortgage. (Cf. Art.174 (2), the Supreme Court Rules on Civil Enforcement.)
Malta	The owner of a vessel that is registered in the Register of Ships in Malta may create a mortgage over such vessel, irrespective of whether the vessel is at the time, or at any time thereafter, bareboat or time chartered. Under Maltese law a mortgage is a 'special charge over a vessel' giving rise to real rights over the mortgaged vessel. It naturally follows that a mortgagee may exercise all its rights arising from the mortgage, including the right to arrest the mortgaged vessel, irrespective of the existence of a bareboat or time charter in respect thereof.
Netherlands	Yes
New Zealand	Assuming the claim is in respect of their mortgage then the mortgagee could arrest the vessel in a proceeding in rem despite the fact that vessel was under charter at the time of arrest. ¹
Nigeria	A mortgagee may arrest vessels on a bare-boat or time-charter. Once the maritime claim is commenced as an action in rem, a ship or other property, maybe arrested at any place within the limits of the territorial waters of Nigeria. Sec 7(2) Admiralty Jurisdiction Act.
Norway	Yes. Please, however, note that the debtor of the claim must be the owner of the vessel arrested. This means that a vessel on a bareboat charter can as a general rule not be arrested in order to secure claims against the bareboat charter. The only exception is claims giving right to a maritime lien which are deemed to be claims against the owner, see our answer to question 1.5 for a list of such claims.
Panama	Yes
Spain	Yes. Mortgage does constitute (i) a maritime lien on the vessel under Arts. 1 and 5 MLM93, and (ii) a maritime claim under Article 1 (u) Arrest99. Both Conventions are as well incorporated to the Spanish Maritime Navigation Act of 2014.
Switzerland	Theoretically, yes. However, with Switzerland being landlocked, maritime vessels will - apart from maybe yachts - never be arrested by a Swiss judge or authority.
UK	Yes

¹ Ship Registration Act 1992, s 46.

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

Argentina	No
Australia	<p>Section 34 of the Admiralty Act 1988 (Cth) provides that where:</p> <ol style="list-style-type: none"> 1. a party unreasonably and without good cause: <ol style="list-style-type: none"> a. demands excessive security in relation to the proceeding; or b. obtains the arrest of a ship or other property under the Admiralty Act 1988 (Cth); or 2. a party or other person unreasonably and without good cause fails to give a consent required under the Admiralty Act 1988 (Cth) for the release from arrest of a ship or other property; <p>the party or person is liable in damages to any person who has an interest in the ship (or a party to the proceeding) and has suffered loss or damage as a direct result.</p> <p>Therefore, the mortgagee will only incur liability to charterers or cargo interests for an arrest if:</p> <ol style="list-style-type: none"> 1. the arrest is obtained unreasonably and without good cause; and 2. the charterer or cargo interest suffers loss or damage as a direct result of the arrest.
Brazil	If the arrest is deemed valid by the court, the owners should be responsible for any claims by the charterers. However, if the arrest is deemed to be unlawful, the arresting party may be held liable for damages caused to the owners and eventual third parties, such as charterers for wrongful arrest.
Canada	No
Croatia	No, in case of arrest of the vessel by the mortgagee, charterers or cargo interests have a claim against the mortgagor for damages suffered in relation to the mortgagee's action.
Finland	<i>LEFT BLANK</i>
France	The maritime hypothecary creditor may incur liability under the legal regime of abusive arrest. As far as the C/P is concerned, it only produces effects between the shipowner and the charterer under Privity of contract. The maritime hypothecary creditor is not bound by the C/P provisions.
Germany	In our jurisdiction, the mortgagee will not incur any liability in tort or similar to charterers or cargo interests by arresting a vessel being subject to a charter and/or carrying cargo. A claim in tort would require an infringement of ownership on the part of the claimant by physical damage or permanent deprivation. As cargo owned by third parties other than the shipowner is not subject to the arrest order and the cargo owner may request delivery under the charter party or bill of lading at any time, the arrest of the vessel does not constitute such infringement of ownership. The statutory liability for wrongful arrest (sec. 935 of the German Code of Civil

	Procedure - ZPO) only applies to liability of the arresting party towards the shipowner and not to liability towards any third party.
Greece	Although there is a general provision for torts on the basis of which anyone who causes illegal harm to another is obliged to pay damages, interference with the contractual relation of between owner and charterer is not an illegal act by itself and the general duty not to cause harm to others does not reach the point of prohibiting the exercise of rights. However, special circumstances may play role and balancing the legitimate interests of the parties concerned and taking into account that charterers chartering a mortgaged vessel take the risk of potential enforcement by the mortgagee and this is prudent to seek quiete enjoyment letters in advance. The net result is that the mortgagee enforcing its mortgage or a chartered vessel in principle will not be liable in tort to the charterer or cargo owner, although exceptional cases cannot be ruled out.
Ireland	Yes
Italy	No, provided that such arrest is lawful.
Japan	No
Malta	A mortgagee would hypothetically only incur liability towards charterers or cargo interests (and in such case, as result of the tort of abuse of right) if found guilty of the improper use of enforcement or other rights afforded to him (qua mortgagee) contractually or by statute.
Netherlands	Depending on the circumstances this is possible, but there are only a handful of cases dating back to the late 1980's and early 1990's which give very little guidance other than that the interests of the parties are weighed/balanced. In theory one of the parties can initiate proceedings before the Provisional Measures Judge of the District Court to obtain a court order aimed at forcing other parties involved to take certain actions or rather refrain from taking certain actions. This may involve the release from attachment, sailing of the vessel to other ports or berths to facilitate the discharge of cargo, the actual discharging of cargo from the vessel, suspension of the enforcement etc.
New Zealand	Such liability is unlikely to arise in ordinary commercial dealings. New Zealand law recognises an action in wrongful arrest in the English tradition for instances of gross negligence or bad faith. ²
Nigeria	By Order 13 Rule 1 of the Admiralty Jurisdiction Procedure Rules, an interested person (which may include charterers or cargo interests) may apply to court and obtain security for costs from the plaintiff at whose instance the ship is arrested. The purpose of security for cost is to indemnify such interested party for any loss sustained by him on account of a frivolous arrest.
Norway	Pursuant to section 32-11 of the Norwegian Civil Procedure Act of 2005 (Nw. tvisteloven), the mortgagee may become liable for damages in case of a wrongful arrest. The liability for damages is a starting point only applicable to loss by the direct defendant (here: the owner), but the claims against the owner from its contractual parties can be part of the owner's loss. In accordance with Norwegian background law, it is also possible that the mortgagee may become liable towards other parties but the mortgagee must then typically have been (at least) negligent in its behaviour.

² Nalder & Biddle (Nelson) Ltd v C & F Fishing Ltd [2007] 1 NZLR 721 (CA).

Panama	No, unless it is proven that there is bad faith and there are no grounds for a mortgage foreclosure.
Spain	Under Article 1 (u) Arrest99 there is no limit to the right of arrest if the mortgage has been validly constituted according to the applicable law. Liability of the arresting party only would arise if (i) proceeding for enforcement is not produced within the legal period after the arrest (twenty working days); (ii) enforcement proceedings are dismissed because the mortgage does not meet with legal requirements provided by the applicable law. Liability for wrongful arrest is a strict liability. Please see SMLA's responses to the Questionnaire on damages for wrongful arrest.
Switzerland	No. Mortgagee is under no obligation to respect or protect charterer's interests. Again, with Switzerland being an inland country, this is rather theoretical, since no Swiss judge or authority will ever arrest a maritime vessel.
UK	This is a complex area of the law. There is authority that the mortgage constitutes a superior right giving power to the mortgagee to enforce its security by sale or arrest even if this results in a breach of any contract between the owner and a charterer or the cargo interests. However the view stated in a recent decision [The Tropical Reefer – Anton Durbeck GmbH v Den Norske Bank ASA [2005]EWC 2497] based on 19th century decisions is that a mortgagee can only enforce its mortgage if its security is imperilled. In English law [OBG v Allan [2008] AC1] there is no tort of wrongful interference with a contract but only the two economic torts: first, inducing breach of contract and second, causing loss by unlawful means. It is improbable that a mortgagee merely taking steps to enforce its security after a default by the owner would ever be held to have committed either of these torts.

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

Argentina	We have neither specific legal provisions nor judicial precedents on this issue. Considering the time that proceedings for a judicial sale of a ship may take it is unlikely that any cargo will remain on board at the time the ship is auctioned. In any case, the disbursements for the disposal of the cargo ashore will be likened to disbursements incurred for the purpose of making the judicial sale possible. Therefore, it should be made good with the sale proceeds and will have precedence over other creditors (Navigation Act, art. 476.a).
Australia	The Admiralty Marshal is reluctant to arrest a ship with cargo on board and will sometimes wait until cargo is discharged before arresting a vessel. If there is an order for the judicial sale of the ship the Marshal would seek an order from the Court to discharge the cargo at the port of arrest. As this expense is a cost of the arrest the Marshal would seek the costs from the Plaintiff's solicitor and rely on the solicitor's undertaking to the Court to pay the Marshal's Cost and expenses of the arrest pursuant to paragraph 41(1)(b) of the Admiralty Rules 1988.
Brazil	In principle the cargo should be treated separately and discharged from the vessel. Expenses would be initially anticipated by the arresting party and could be reimbursed from the receivables of the auction of the vessel. However, if the cargo is abandoned by cargo interests, the vessel can be sold with the cargo on board, as is, where is, being important that all the circumstances are detailed in the notice of public sale that will be issued by the court prior to the judicial auction.
Canada	<p>There is no rule. In practice, it is recommended that an order be obtained by the Marshall (or Sheriff) to have the cargo discharged at the expense of the cargo owners, and that any deficiency be a first ranking charge against the proceeds of sale the cargo as the case may be.</p> <p>Generally yes, at the risk of the cargo being also the subject of the ship sale. If no one from the cargo interests comes forward to assume the risk and cost of discharge, then the moving party for the sale of the ship would likely be obliged to discharge the cargo in order to obtain an order for the sale of the ship or obtain the agreement of the court to sell the ship laden with her cargo.</p>
Croatia	In case of judicial sale, the court shall nominate a temporary representative of cargo on board if the person who has title over the cargo fails to report to the court within three days from the date of arrest of the vessel. There is no explicit legal requirement that the cargo on board the vessel must be discharged before the sale of the ship. However, upon proposal (i) of the person who has title on cargo or (ii) his temporary representative, (iii) defendant (owner) or (iv) master or (v) if there are justified reasons, person who safeguard the vessel, the court shall allow discharge of cargo from the vessel and its placement into a public warehouse or other appropriate place. The claimant (creditor) who applied for judicial sale bears costs and risks of such discharge. However, such costs are recoverable form the proceeds of the sale of the vessel in the first priority rank.
Finland	<i>LEFT BLANK</i>
France	<p>Frequently, Cargo interests quickly unload the vessel once they have been informed by the Captain about the perspective of a judicial sale of the Vessel.</p> <p>However, the discharge of the cargo is not required by Statutes.</p>

Germany	It is not necessary to discharge cargo on board a vessel sold by judicial sale. The cargo owned by a third party is not considered as belonging to the vessel. It is therefore not part of the arrest and not part of the judicial sale. The cargo may at any time request delivery of the goods from the mortgagee or the new owner under the charter party or the bill of lading contract.
Greece	There are no special rules regarding cargo on board a vessel subject to judicial sale and there is no rule that the cargo should be discharged prior to the sale, although this is advisable in order to attract more prospective buyers. Of course since the voyage is terminated by the arrest and judicial sale of the vessel, the carrier (and/or usually ultimately the shipowner) is obliged vis-à-vis the cargo owner to discharge the cargo (subject to any different terms in the contract of carriage) and store it safely. If the receiver does not take delivery of the cargo the cost of storage is for the account of the cargo. The carrier may be liable to damages for the early termination of the voyage (ultimately for his fault). In practice at that stage carriers (and/or shipowners) do not incur the cost of discharge and the matter is resolved between the cargo owners and the new owner of the vessel. As between them the cost is for the cargo owners, who may claim reimbursement from the carriers.
Ireland	Proceedings are possible against freight by service of in rem Claim form on Cargo. Also a freezing injunction may be available. There is no provision in the Convention for the said procedures and as such is a matter for the local courts. In accordance with the jurisdictional rules under regulation 1215/2012, arrest of European cargo / freight will be subject to the said regulation.
Italy	Under Italian law there are no specific procedures or requirements applicable to cargo on board of the vessel subject to judicial sale. Normally the cargo on board does not belong to the owner and, most likely, it will be discharged before sale of the ship by the cargo holders and at their expense.
Japan	There is no statutory requirement or procedure to discharge the cargo. The assumption may be that the purchaser will discharge any cargo after taking possession of the ship. The existence of the cargo on board may be reflected in the discount of the purchase price. In order to avoid such a discount, the creditor applying for the judicial sale (or shipowner, as the case may be) may have to discharge the cargo at their own cost prior to the judicial sale.
Malta	Maltese law does not expressly provide for procedures and, or requirements in relation to cargo on board a vessel that becomes subject to judicial sale. These matters are left to the discretion of the presiding judge.
Netherlands	There are no particular procedures or requirements under the law with regard to cargo on board a vessel subject to a judicial sale, with the exception that a pending charterparty governed by Dutch law may survive the judicial sale (see below under question 8.1) and require the buyer at the judicial sale to perform a duty under the charterparty to deliver cargo on board the vessel at the agreed destination.
New Zealand	Persons interested in cargo on board a ship under arrest may request that the High Court Registrar apply to the Court for directions in respect of that cargo. The requesting party must provide an undertaking in respect of the Registrar's (and any agent's) fees and expenses in discharging and storing the cargo. ³
Nigeria	Where a ship is under arrest but its cargo is not, a person who is entitled to immediate possession of the ship or cargo, respectively, may apply to the court to discharge the cargo from the ship. The arrestor or other interested party may also

³ High Court Rules, r 25.47.

	apply to court to discharge the cargo. The applicant bears the costs and risks of discharge. Order 9 Rule 5 AJPR.
Norway	Yes, the vessel must be emptied before delivery of the vessel can be completed. If necessary a mortgagee can request the court's approval to arrange for the discharge. The cost of the discharge must initially be borne by the person requesting the discharge (typically the mortgagee), but the cost will then usually be added to the mortgagee's mortgage claim in accordance with section 1-5(a) of the Norwegian Pledge Act of 1980 (Nw. panteloven). See also sections 11-15 cf. 11-14 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) for further terms on procedure and cost coverage relating to preparation for sale of the vessel.
Panama	The unloading of a cargo onboard the vessel subject to a judicial sale will be on the plaintiff and the cargo must be discharged, who in turn will demand such costs from the owner of the vessel subject to a judicial sale.
Spain	The arrest, or the enforcement of the vessel by judicial sale, does not affect to the cargo on board. Usually, the cargo is discharged with enough anticipation prior to the judicial sale. Costs of discharge use to be assumed by any interested party without prejudice the rights of recovery under relevant carriage/charter contracts.
Switzerland	Seagoing cargo vessels cannot enter Swiss ports. No Swiss judge or authority will therefore ever carry out a judicial sale regarding maritime cargo which was arrested while being on board of a vessel.
UK	If the ship is under arrest the cargo owners may ask the Admiralty Marshal to arrange for the discharge the cargo at the cargo interest's cost. If no such request is made the mortgagee may request the Admiralty Marshal to arrange for the discharge of the cargo: if the cargo interests then refuse to pay the costs of discharge and collect the cargo, the Admiralty Marshal will sell the cargo to recover his costs from the proceeds of sale.