

## Question 11

## 11 PRIORITIES GENERALLY

11.1 Are priorities determined under local law (*lex fori*), or the law of the jurisdiction in which the claim arose (*lex causae*), or the law of the flag of the vessel?

<b>Argentina</b>	<p>Under Argentine law (Navigation Act, art. 476, the following credits will rank over a mortgage:</p> <p>(a) Legal costs incurred in the common interest of the creditors in order to preserve the vessel or to procure her sale and the distribution of the proceeds of the sale;</p> <p>(b) Credits of the master and crew members arising from their labor contracts, labor laws and collective bargaining agreements;</p> <p>(c) Duties, taxes and other public charges arising from services connected with the navigation and commercial operation of the vessel;</p> <p>(d) Damages arising from death or personal injuries occurring on board, on land or on water, directly connected with the operation of the vessel;</p> <p>(e) Claims against the owner or operator of the vessel, arising from liability in tort for damages to property on board, in land or in the water, directly connected with the operation of the vessel; and</p> <p>(f) Salvage, wreck removal and contribution in general average credits.</p> <p>A mortgage will rank over the following credits:</p> <p>(g) Credits for damage to cargo and luggage;</p> <p>(h) Credits arising from bareboat or voyage charterparties, and from contracts of carriage;</p> <p>(i) Credits arising from the supply of equipment for the vessel, for her operation or preservation;</p> <p>(j) Credits arising from the building or repair of the vessel or from drydocking;</p> <p>(k) Credits arising from disbursements made by the master, the shipper, the charterers or the agents, for the account of the vessel or her owner; and</p> <p>(l) The credit for the purchase price due in respect of the latest sale of the vessel and the interests accrued thereon for the last two years.</p> <p>Priorities are determined under the law of the flag of the vessel (Navigation Act, art. 598).</p>
<b>Australia</b>	<p>Priorities are determined by the <i>lex fori</i>.<sup>1</sup></p> <p>In Australian law, with the exception of the changes made by the Personal Property Securities Act 2009 (Cth), there is no codified list of priorities for claims to the fund arising from the judicial sale of a ship. Nonetheless, there is a well-recognised order</p>

<sup>1</sup> The Ship "Sam Hawk" v Reiter Petroleum Inc [2016] FCAFC 26, considering Bankers Trust International Ltd v Todd Shipyards Corporation (The 'Halcyon Isle') [1981] AC 221 (UKPC).

	<p>of ranking which is subject to modification by reference to equitable principles and doctrines, and considerations of public policy, commercial expediency and justice.<sup>2</sup></p> <p>The prima facie order of ranking is:</p> <ol style="list-style-type: none"><li>1. Admiralty Marshal's charges and expenses;</li><li>2. Costs of:<ol style="list-style-type: none"><li>a. the arresting party of his or her action up to and including the arrest; and</li><li>b. the party who obtained the order for appraisal and sale up to and including the date of that order;</li></ol></li><li>3. Maritime liens;</li><li>4. Mortgages;</li><li>5. Statutory actions in rem;</li><li>6. In personam claims.</li></ol> <p>The owner of the ship will be entitled to the balance (if any).</p> <p>As explained in the answer to 6.6, liens, charges or interests that are created, arise or are provided for by operation of law are excluded from the operation of the PPSA. The effect of this is that the PPSA only affects ship mortgages. Importantly, it does not affect the priority of mortgages as set out in the above list, but only the priorities of mortgages inter se. Those priorities were discussed in the answer to 6.3. The PPSA also recognises the priority of maritime liens (s 73).</p>
<b>Brazil</b>	Priorities are determined according to local law.
<b>Canada</b>	<p>The priorities are decided by lex fori but whether the claim has the status of a maritime lien is established by the lex causae. The local law (lex fori), absent abnormal circumstances justifying deviation the   normal ranking of admiralty priorities in Canada is as follows:</p> <ol style="list-style-type: none"><li>(i) Marshall's expenses</li><li>(ii) Legal costs including the costs and disbursements of selling the ship</li><li>(iii) Possessory liens arising earlier in time than maritime liens</li><li>(iv) Maritime liens, both traditional and statutory</li><li>(v) Possessory liens arising later in time than maritime liens</li><li>(vi) Mortgages in order of their registration</li><li>(vii) Unregistered legal mortgages</li></ol>

<sup>2</sup> Patrick Stevedores No. 2 Pty Ltd v The proceeds of sale of vessel MV 'Skulptor Konenkov' (1997) 75 FCR 47 at 50-1; The 'Ruta' [2000] 1 Lloyd's Rep 359 (UK); Bajpayee v The Ship "Estancia" [2003] FCA 1640; The Ship "Sam Hawk" v Reiter Petroleum Inc [2016] FCAFC 26 at [79].

	<p>(viii) Equitable mortgages and charges</p> <p>(ix) Statutory rights in rem - those claims in which a creditor has the right to arrest, but is otherwise not secured.</p> <p>(x) Other maritime and non-maritime claims</p>
<b>Croatia</b>	The priorities are determined under the applicable law for a particular issue. Which law is applicable depends on the circumstances of each case.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	The French case law decides that, although the existence of the maritime hypothecation or that of the privilege shall be verified under the lex contractus, the priority shall be determined lege fori. {Navire Nobility}.
<b>Germany</b>	The priorities are determined under the local law regardless of the flag that the vessel is flying. A vessel that passes several jurisdictions maintains those priorities that have arisen in different jurisdictions.
<b>Greece</b>	Pursuant to Greek private international law the order of priorities is determined by local law/lex fori (i.e. the law of the place where the auction took place). However, whether a claim is a maritime lien is determined by the law of the flag.
<b>Ireland</b>	Priorities are determined under local law by the Admiralty Judge in the absence of agreement between the creditors.
<b>Italy</b>	Priorities are determined by 1926 Convention; in other cases art. 6 CN provides that the law of the flag of the vessels applies.
<b>Japan</b>	In court practice, priorities tend to be determined by the Japanese law as lex fori (though views of commentators are divided).
<b>Malta</b>	Priorities are determined under local law (lex fori), being Maltese law.
<b>Netherlands</b>	The priorities are determined by the law of the underlying register (lex registrationis) (not to be confused with the law of the flag of the vessel). (See more extensively under 1.2.) When determining the ranking of claims, priority shall however be given only to claims over and above claims secured by hypothec which also enjoy such priority under Dutch law. No priority is given to a claim which is not privileged according to the law applicable thereto (Article 10:160 DCC).
<b>New Zealand</b>	Lex fori. <sup>3</sup>
<b>Nigeria</b>	LexFori. Section 213 of the Merchant Shipping Act provides that where there is a conflict of laws, the provision of the act shall apply to a ship except there is no local law governing the matter relating to the ship, in which case the law of the flag of the vessel shall apply.
<b>Norway</b>	Priorities are determined by local law (lex fori). If the law of the flag of the vessel has a wider range of maritime claims than Norway, these will be accepted as claims, but without the benefit of a special priority.

<sup>3</sup> Admiralty Act 1973, s 5(3); see *Fournier v The ship "Margaret Z"* [1999] 3 NZLR 111 (HC).

<b>Panama</b>	It will be the law of the flag of the vessel when related to maritime liens that affects the vessel (Article 555 Ordinal 2). Otherwise, under the substantive law applicable.
<b>Spain</b>	Under Spanish conflict of laws provisions regarding rights in rem, priority issues are determined under the <i>lex rei sitae</i> , for movable and non-movable goods (real state property), but under the <i>lex signum</i> (the law of the flag) for vessels (Art. 10 Spanish Civil code).
<b>Switzerland</b>	In case the vessel is owned by a Swiss debtor but registered under a foreign flag, the situation is not entirely clear but most likely Swiss courts would decide that priorities are to be determined based on the law of the flag state of the vessel (art. 99 and 100 PILA).  In case the vessel is registered under Swiss flag, Swiss law would determine on the priorities.
<b>UK</b>	Priorities will be determined by the <i>lex fori</i> – English law.

**11.2 If local law, where does the mortgagee rank amongst other maritime claims in the order of priority and which are those claims which rank prior to the mortgagee. Do the claims which rank ahead of a mortgage in your jurisdiction vary depending on whether the mortgage is:**

**NIGERIA NOTE BEFORE PART (A):** The following claims rank prior to the mortgage: Maritime Liens

Possessory Liens:

- Admiralty Marshall's Expenses
- Claims by a ship builder and ship repairer for expenses in building or repairing the ship

**(a) a mortgage of a vessel registered under the laws of your jurisdiction?**

<b>Argentina</b>	<i>LEFT BLANK</i>
<b>Australia</b>	See the answer to 11.1. The ranking of a mortgage vis-à-vis those claims which rank ahead of it will not depend on whether the subject vessel is registered under the laws of Australia or under the laws of a different jurisdiction. It may affect the ranking of several mortgages inter se.
<b>Brazil</b>	The following maritime claims rank prior to mortgage: <ol style="list-style-type: none"> <li>1. Federal taxes;</li> <li>2. Legal costs and expenses;</li> <li>3. Claims resulting from the employment of Master, crew and ship personnel;</li> <li>4. Indemnities due for salvage;</li> <li>5. General Average contributions;</li> <li>6. Obligations undertaken by the Captain outside the port of registry for maintenance needs or continuation of the voyage;</li> <li>7. Indemnities due as a result of collisions, or any other sea accident.</li> <li>8. Ship mortgages.</li> </ol>
<b>Canada</b>	No
<b>Croatia</b>	In the enforcement proceedings over the vessel before the Courts of Croatia, a Court will apply the law of the vessel's flag to determine which claims are considered as maritime liens. However, priority rank of the claims would be considered as the procedural issue, and consequently governed by the Croatian law. Under Croatian law ranking is 1. claims of the state for removal of wreck 2. maritime liens 3. creditors with the right for retention (ship repairers in possession of the ship) 4. mortgages 5. other creditors. The fees and expenses of the sale procedure have priority over all other claims.
<b>Finland</b>	Claims secured by a maritime lien rank highest in the order of priority. Subsequent come claims secured by a right of retention, claims secured by a right of lien (mortgagee), then unsecured claims. Costs of enforcement and sale fees are paid from the proceeds prior to performance of any claims.

<b>France</b>	According to the French domestic legal regime, Privileges maritimes (So called Hens) have priority over Hypotheques maritimes (Maritime Hypothecations). This order of priorities is defined by legislation and implemented by Courts (Navire Belostrov). There is no rule establishing per se any discrimination depending whether the hypothecation was registered in France or abroad.
<b>Germany</b>	Sec. 596 German Commercial Code (HGB) stipulates that crew wages, public fees, damages arisen out of the injury of death of human, salvage costs and social security fees rank ahead of the rights of the mortgagee. The interests and legal costs are included.
<b>Greece</b>	<p>(a) The claims which are maritime liens under Greek Law and rank in priority over a mortgage are specified in article 205 of the GCPML and they are:</p> <p>(1) taxes in connection with navigation, legal costs incurred in the common interest of the creditors, dues and charges on the vessel, and also charges of the Seamen's Pension Fund relating to seamen's employment and fines imposed by the Marine Employment Bureau in favour of the Seamen's Unemployment and Illness Fund;</p> <p>(2) claims arising out of the contracts of employment of the master and crew, and also the costs of guarding and maintainance of the vessel from the time the vessel entered the last port (i.e. the port where it was sold in public auction);</p> <p>(3) damages payable to vessels, passengers and cargo caused by collision.</p> <p>(b) This applies strictly to Greek flag vessels registered pursuant to the provisions of the Greek Code of Public Maritime Law (GCPML).</p> <p>(c) However, most ocean going vessels are registered under a special regime (article 13 of Legislative Decree 2687/1953) which corresponds to what is called in some other countries international registry. For these vessels the claims ranking in priority over the mortgage are the maritime liens provided in article 2 of the Brussels 1926 "International Convention for the unification of certain Rules relating to Maritime Liens and Mortgages". This convention has not been ratified by Greece. However, exceptionally article 2 applies by reference to Greek flag vessels registered pursuant to article 13 of Legislative Decree 2687/1953.</p> <p>(d) In respect of foreign flag vessels sold in public auction in Greece claims ranking in priority over the mortgage are those which are recognized as maritime liens both (cumulatively) by the law of the flag and by Greek law. The order of ranking is determined by Greek law (article 205 of the GCPML).</p>
<b>Ireland</b>	Mortgages in Ireland generally rank below Admiralty Marshall expenses, the costs of the producer of the fund and the maritime liens enumerated above.
<b>Italy</b>	<p>If the Italian law applies, the maritime claims mentioned by Article 552 CN only have priority over the mortgage. Maritime claims under Article 552 CN are mainly the same as those listed by the 1926 Convention on maritime liens and mortgages:</p> <p>1) judicial expenses of the State or made in favour of all creditors for arresting/conserving the vessel, anchorage / lights / harbour dues and similar dues, pilotage expenses and costs for conserving the ship at the last port;</p> <p>2) crew and master's wages;</p> <p>3) expenses anticipated by the State for victualling and repatriating the crew,</p>

	<p>credits for compulsory contribution to pension system;</p> <p>4) salvage rewards and sums due by the vessel as contribution to general average;</p> <p>5) sums due to collisions, hits, casualties occurred during the navigation, damages to ports, yards and navigable ways, indemnities due to passengers and crew for death or personal injuries, loss or damage to cargo and baggage;</p> <p>6) claims resulting from contracts entered to by the master for conserving the ship or continuing its voyage.</p> <p>If a foreign law applies, the priority depends on what the law of the different jurisdictions provides.</p>
<b>Japan</b>	<p>All the maritime liens under the Japanese Commercial Code have priority over a mortgage. They are:</p> <ol style="list-style-type: none"> <li>1. Law costs incurred for the forced sale of the vessel;</li> <li>2. Costs incurred for the preservation of the vessel in the last port;</li> <li>3. Dues and taxes imposed on the vessel;</li> <li>4. Pilotage dues and the charge for tugs;</li> <li>5. Remuneration for assistance and contribution of the ship in general average;</li> <li>6. Claims resulting from contracts or acts that were necessary for the continuation of the voyage;</li> <li>7. Claims arising out of employment of the Master and the crew;</li> <li>8. Claims arising from the sale, building or equipment of the vessel that has not commenced voyage as well as claims arising from equipment of, or supply of food and fuels to, the vessel arising from last voyage;</li> <li>9. Claims for damages to the goods if the damages are caused by the carrier that is a charterer of the vessel;</li> <li>10. Claims subject to limitation; and</li> <li>11. Claims arising from oil pollution that are subject to limitation proceedings under the Act on Ships' Civil Liability and Compensation for Oil Pollution</li> </ol> <p>As long as the mortgage registered under the law of a different jurisdiction is accepted as equivalent to mortgage under the Japanese law, the priority is the same.</p>
<b>Malta</b>	<p>There are certain debts which are all special privileges which rank ahead of a Maltese mortgage or a foreign mortgage recognized under the Maltese Merchant Shipping Act.</p> <p>These are:</p> <p>(a) judicial costs incurred in respect of the sale of the ship and the distribution of the proceeds thereof;</p>

	<p>(b) fees and other charges due to the registrar of Maltese ships arising under the Maltese Merchant Shipping Act;</p> <p>(c) tonnage dues;</p> <p>(d) wages and expenses for assistance, recovery of salvage, and for pilotage;</p> <p>(e) the wages of watchmen, and the expenses of watching the ship from the time of her entry into port up to the time of sale;</p> <p>(f) rent of the warehouses in which the ship's tackle and apparel are stored;</p> <p>(g) the expenses incurred for the preservation of the ship and of her tackle including supplies and provision to her crew incurred after her last entry into port;</p> <p>(h) wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;</p> <p>(i) damages and interest due to any seaman for death or personal injury and expenses attendant on the illness, hurt or injury of any seaman;</p> <p>(j) moneys due to creditors for labour, work and repairs previously to the departure of the ship on her last voyage: provided that such privilege shall not be competent where the debt has not been contracted directly by the owner of the ship, or by the master, or by an authorised agent of the owner;</p> <p>(k) dues owed to ship repairers, shipbuilders, or other persons in whose care the ship has been placed for the execution of works or other purposes;</p> <p>(l) ship agency fees due for the ship after her last entry into port, in accordance with port tariffs, and any disbursements incurred during such period not enjoying a privilege in paragraphs (a) to (i), though in any case for a sum in the aggregate not in excess of four thousand units.</p> <p>Where funds are insufficient, competing creditors under the same heading shall share in such fund ratably.</p>
<p><b>Netherlands</b></p>	<p>Article 8:204 DCC provides:</p> <p>A claim covered by hypothec ranks after the claims referred to in Articles 210, 211, 221, 222 (1), 831 and 832 (1); however, it ranks in priority to all other claims in respect of which this or any other law grants a privilege.</p> <p>Article 8:210 DCC provides:</p> <ol style="list-style-type: none"> <li>1. In the case of an execution sale of a sea-going vessel, the costs of execution sale, the costs of custody during such execution or sale, as well as the costs of judicial ranking and of distribution of the proceeds amongst the creditors, shall be paid from the proceeds of the sale in priority to all other claims to which this or any other law grants a privilege.</li> <li>2. In the case of sale of a sea-going vessel which has run aground, has been dismantled or has sunk, and which public authority has had removed in the public interest, the costs of wreck removal shall be paid from the proceeds of the sale in priority to all other claims to which this or any other law grants a privilege.</li> </ol>

	<p>3. The claims referred to in the preceding paragraphs rank equally and shall be paid pro rata</p> <p>Article 8:211 DCC provides:</p> <p>The following claims have a privilege on a sea-going vessel in priority to all other claims to which this or any other law grants a privilege, save for the provision in Article 210:</p> <p>(a) in the case of attachment: the claims for costs made after attachment in order to preserve the vessel, including costs of repairs indispensable to preserve the vessel;</p> <p>(b) the claims resulting from the contracts of employment of the captain or of the other members of the crew, provided that the claims with respect to wages, salary or remuneration shall be privileged only up to an amount owed over a period of twelve months;</p> <p>(c) the claims for salvage as well as for the contribution of the vessel to general average;</p> <p>(d) the claims in respect of harbour charges and measures with regard to a vessel which were necessary for safeguarding the safety of the port or of third persons, provided that this privilege shall lapse upon commencement by the vessel of a new voyage.</p> <p>(Article 8:211 sub (d) does not exist in the Civil Code of Aruba.)</p> <p>The Articles 8:221, 8:222 sub (1), 8:831 and 8:832 sub (1) also referred to in Article 8:204 DCC involve claims with a privilege on objects on board of ship. We are not aware of these articles having ever been applied in practice.</p>
<b>New Zealand</b>	<p>No.</p> <p>There is no fixed list of priorities – these remain at the discretion of the court. However, in general the ranking of mortgages will come after the court's and other statutory expenses and the expenses of the party that produced the funds by arresting the vessel, as well as maritime liens and any possessory liens. Mortgages generally rank ahead of other statutory in rem claims under s 4(1) of the Admiralty Act 1973.<sup>4</sup></p>
<b>Nigeria</b>	No
<b>Norway</b>	<p>Only maritime claims also giving rise to maritime liens rank ahead of registered mortgages. See our answer to question 1.5 for a list of maritime liens recognised under Norwegian law. The maritime liens are given priority in the order listed in our response to 1.5.</p> <p>There is no difference between a mortgage of a vessel registered under the laws of Norway and a vessel registered under a foreign flag.</p>
<b>Panama</b>	<p>In Panama, maritime liens that rank above the naval mortgage are:</p> <p>i. The judicial expenses caused in pursuit of the common interest of the</p>

<sup>4</sup> Fournier v The ship "Margaret Z" [1999] 3 NZLR 111 (HC).

	<p>maritime creditors;</p> <p>ii. The expenses, indemnities and salaries for assistance and salvage; and,</p> <p>iii. The salaries, retributions and indemnities owed to the captain and crew members.</p>
<p><b>Spain</b></p>	<p>According to Art. 2 MLM93, the ranking of registered mortgages or charges as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.</p> <p>Article 4 of the Convention/1993 establishes a list of maritime liens which have priority over mortgages:</p> <p>a) Claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;</p> <p>b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;</p> <p>c) Claims for reward for the salvage of the vessel;</p> <p>d) Claims for port, canal, and other waterway dues and pilotage dues; and</p> <p>e) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.</p> <p>In addition, the MLM93 foresees other credits which are not maritime liens (as are not recognized as such in the list of Art. 4) but which are to be paid with preference (Art. 12):</p> <p>a) The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel (such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages);</p> <p>b) A State Party may provide in its law that, in the event of the forced sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel. Spain has included such costs of removal as credits which are to be paid prior to maritime liens (Art. 122 MNA);</p> <p>c) If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a ship repairer who under the law of the State Party in which the sale takes place enjoys a right of retention (this is the case in Spain), such shipbuilder or ship repairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4 (but before the mortgages over the vessel).</p>

	<p>Thus, in light of the foregoing, the priority would be as follows:</p> <ol style="list-style-type: none"> <li>1. Credits foreseen under Art. 12 MLM93 (i.e. costs and expenses arising out of the arrest and costs of removal);</li> <li>2. Maritime liens of Art. 4 MLM93;</li> <li>3. Credits of shipbuilders/ship repairers; and</li> <li>4. Mortgages.</li> </ol>
<b>Switzerland</b>	<p>No. priorities are defined by the Ship Register and art. 3 of the 1952 Arrest convention. For river resp. inland vessels, priorities are governed by art. 53bis Swiss Federal Law on the Ship Register. Art. 53bis is similar to art. 2 of the 1952 Arrest convention.</p>
<b>UK</b>	<p>The order of priority for payment out is:</p> <ol style="list-style-type: none"> <li>(a) Admiralty Marshal's costs of arrest, custody and sale.</li> <li>(b) legal costs of arresting party.</li> <li>(c) maritime lien claims (as recognised in English law).</li> <li>(d) possessory lien claims.</li> <li>(e) mortgages valid under the law of the country of registration: in certain circumstances if the mortgage is not enforceable under the law of the country of the registration of the ship it may be valid under English law as an equitable mortgage or charge.</li> <li>(f) statutory lien claims.</li> <li>(g) the owner or any judgment creditor of the owner.</li> </ol>

**(b) a mortgage of a vessel registered under the laws of a different jurisdiction?**

<b>Argentina</b>	See 11.1
<b>Australia</b>	See (a) above
<b>Brazil</b>	A mortgage of a vessel registered in a different jurisdiction may not, in theory, be recognized in Brazil, since, to be considered valid, it is required its registration before the Admiralty Court. However, as previously mentioned, this is still a controversial matter. In case it is recognized, it will rank in the same way as indicated in letter (a) above.
<b>Canada</b>	No
<b>Croatia</b>	See (a) above
<b>Finland</b>	See (a) above
<b>France</b>	See (a) above
<b>Germany</b>	No difference to above a).
<b>Greece</b>	See (a) above
<b>Ireland</b>	See (a) above
<b>Italy</b>	See (a) above
<b>Japan</b>	See (a) above
<b>Malta</b>	See (a) above
<b>Netherlands</b>	See (a) above
<b>New Zealand</b>	See (a) above
<b>Nigeria</b>	No
<b>Norway</b>	See (a) above
<b>Panama</b>	The order of priority, in case the mortgage is registered over a vessel under a different jurisdiction, will be given by the law of that other jurisdiction.
<b>Spain</b>	See (a) above
<b>Switzerland</b>	See (a) above
<b>UK</b>	<i>LEFT BLANK</i>

### 11.3 Are there any special rules on priority for local creditors?

<b>Argentina</b>	No
<b>Australia</b>	There are no special rules on priority for local creditors in Australia
<b>Brazil</b>	There are no special rules on priority for local creditors.
<b>Canada</b>	Yes, s.139 of the Marine Liability Act grants a maritime lien to ship suppliers and repairers of non-Canadian vessels whose ranking as a result is in priority to the mortgage holder. Furthermore, the St. Lawrence Seaway Authority and the major Port Authorities established under the Canada Marine Act have the benefit of a maritime lien for unpaid charges which rank over that of the mortgage holder. A maritime lien has been recognized by the Courts in favour of the pilotage authorities pursuant to the Pilotage Act. Various federal statutes such as the Fishing and Recreational Harbours Act and the Department of Transport Act gives minor ports, smaller canals and other governmental authorities priority for their claims over those of ship mortgagee. The Arctic Waters Pollution Prevention Act and the Canada Shipping Act, 2001 give priority over ship mortgagees to governmental expenses for the cost of abating or remediating pollution and the removal of wreck. The Marine Liability Act provide for a similar right to secure the claims of the Ship-source Oil Pollution Fund against vessels having caused pollution damage. Where a ship is seized or deemed forfeit for contraventions under the Customs Act, the onus is on the ship mortgagee to apply to the Canadian Border Services Agency for recognition of its interest and demonstrate that it was not in privity with the activities of the ship owner if the mortgagee wishes to recover the vessel from seizure or forfeiture. Similarly under s. 233(5) of the Canadian Environmental Protection Act if a ship is seized or forfeited for a pollution offense, the ship mortgagee must take the initiative to make an application for the recognition of its interest. The onus is on the mortgagee to demonstrate that it was innocent of any complicity with the offense and "exercised all reasonable care in respect of the persons permitted to obtain possession and use of the [ship] so as to be satisfied that it was not likely to be used contrary to the provisions of this Act or, in the case of a mortgagee or lien holder, other than the holder of a maritime lien or statutory right in rem, that the applicant or intervenor exercised such care with respect to the mortgagor or the lien giver".
<b>Croatia</b>	No. Except under for the claims of the state for removal of wreck.
<b>Finland</b>	No
<b>France</b>	Being a founding Member of the EU, the French Republic has not established any special rules giving priority to local creditors due to their nationality.
<b>Germany</b>	The maritime liens have their own ranking which is separate from those creditors that do not possess maritime claims. The latter's claims are ranked according to sec. 10 and sec. 171 ZVG.
<b>Greece</b>	In principle there is no distinction between local and foreign creditors with the exception of the Greek Seamen Pension Fund (NAT) which is a local public entity and ranks in the first class of maritime liens for Greek flag vessels. By a special law NAT has a further privilege in that its claims are not extinguished by auction unless and until they are actually paid.
<b>Ireland</b>	No special rules of priority are afforded to local creditors.
<b>Italy</b>	No, local creditors are subject to the same rules applying to foreign creditors

<b>Japan</b>	No
<b>Malta</b>	There are no special rules on priority for local (as opposed to foreign) creditors.
<b>Netherlands</b>	No, not under Dutch law.
<b>New Zealand</b>	There are no special rules on priority for local creditors in New Zealand.
<b>Nigeria</b>	No. There are no special rules. The processes and remedies available to a local creditor are also applicable to a foreign creditor.
<b>Norway</b>	No, in principle all creditors are treated equally independent of their nationality. It is, however, assumed that only claims of Norwegian public authorities enjoy the special priority set out in section 9-4 of the Norwegian Creditor's Recovery Act of 1984 (Nw. dekningsloven).
<b>Panama</b>	<p>Maritime liens and their order of priority are given by preferred liens on the vessel, freight or cargo. Maritime creditors will rank pari-pasu with all of its other unsecured obligations and according to Article 1662, Ordinal 3, paragraph c) of our Civil Code, these credits will have preference over the others based in order of priority of those credits in Public Deed, those by executed judgment or private documents having certain date.</p> <p>By certain date of a private document, will be the one from the date the signature of the parties have been affixed or recognized before a notary public in the same document.</p>
<b>Spain</b>	No
<b>Switzerland</b>	No
<b>UK</b>	No

**11.4 Is it necessary for claimants to introduce their claims prior to the date of sale or within some specified period thereafter?**

<b>Argentina</b>	Under Argentine law privileges are governed by the law of the flag (Navigation Act, art. 598). Privileges governed under Argentine law expire within one year unless the creditor has previously obtained the arrest of the vessel, which has been registered with the National Register of Ships (art. 484.a). However if the vessel is sold out of court, privileges will expire within three months from the registration of such sale (art. 484,c). The judicial sale extinguishes all privileges (art. 484.b).
<b>Australia</b>	<p>A person who has obtained a judgment in a court (whether a local court or an Australian court) against a ship (or the fund resulting from its judicial sale), assuming the judgment is enforceable in a court of Australia, may apply for determination of the order of priority of claims against the ship (r 73(1) Admiralty Rules 1988 (Cth)). Such an application may be made before or after the judicial sale of the ship.</p> <p>The court can then order that notice of the application in the proper form (Form 28) be published in a particular way. That notice will specify the period within which claims may be notified (r 73(2) Admiralty Rules 1988 (Cth)). The determination is to priorities may not occur until the specified period has expired (r 73(3) Admiralty Rules 1988 (Cth)).</p>
<b>Brazil</b>	The claims may be presented within the time bar, therefore it may be before or after the sale. However, after the sale there is the risk of no longer having assets or securities as collateral. Claims presented after the sale may be over the credit obtained with the sale while it is still deposited in the judicial account.
<b>Canada</b>	Normally, in an Order of Sale of the ship, provision is made for a Notice to Creditors and the filing of claims at a specific date and time prior to the conduct of the sale itself. Only under special circumstances, will the delay for filing claims be extended.
<b>Croatia</b>	The registered creditors do not have to introduce their claims, and unregistered creditors must do that latest at hearing at which the auction is carried out.
<b>Finland</b>	<p>Mortgages of a vessel are registered, therefore the bailiff should take them into consideration without the mortgagee's introduction. Other claims are not registered so claimants have to introduce their claims in a meeting of the parties that is organized by the bailiff.</p> <p>A meeting of the parties shall be arranged at the latest two weeks before the. The debtor, the applicant and the joint owners as well as all the known creditors and holders of a special right who have a right of lien or other right to be entered into the list of parties shall be invited to the meeting of the parties (participants in a meeting of the parties). The invitation to the meeting of the parties shall be sent at the latest four weeks before the meeting.</p>
<b>France</b>	The auctioneer of the vessel shall summon the creditors to appear before the Court. They then have three days to object the transfer of the proceeds of the sale (Navire Partner). If an agreement has not been found between creditors, creditors have a supplementary delay of 3 days to submit their title of claim.
<b>Germany</b>	The claimants need to register their claims with the court latest at the court's auction (sec. 37 no. 4, sec. 110 and sec. 171 III ZVG). Upon the court's award of the bid the buyer receives title and ownership of the vessel and all maritime liens against the physical vessel cease to exist, with the exception that the claims are secured with the sale proceeds received by the court.

	Claims can still be introduced at a later stage but will lose their priority and only be satisfied after all claims filed with the court until beginning of the auction have been satisfied.
<b>Greece</b>	The claimants who want to participate to the distribution of the auction proceeds must register/introduce ("announce") their claims (accompanied by supporting evidence) to the Notary Public in charge of the auction up to five (5) days prior to the auction date (Articles 972 para 1b and 995 para 5 of the GCCP).
<b>Ireland</b>	Yes, it is necessary for the claimants to introduce their claims prior to the distribution of the fund after the priorities hearing. An application for an arrest and subsequent judgment may be made against the fund after the judicial sale. Claims registered before the sale are notified of the sale and the claim is automatically on sale transferred to the sale proceeds. If a claim is not brought against the vessel or fund prior to distribution of the fund in Court, the claim as against the vessel or sale proceeds will be generally extinguished on the said distribution and will simply survive as an in personam claim against the previous owner.
<b>Italy</b>	As per 566 CCP claimants assisted by hypothéque/mortgage participate to the distribution of the proceeds of judicial sale provided they intervene in the enforcement procedure before the hearing that under art. 596 CCP takes place for the approval of the plan for distribution of proceeds.
<b>Japan</b>	In order to be entitled to distribution from the sale proceeds, all the claimants (except the arresting claimant and the claimant who has a security interest not assumed by the purchaser in the vessel) need to make a demand prior to the date determined by the court. The date is set before the sale of the vessel. (See Art.52 of the Civil Enforcement Act.)
<b>Malta</b>	Once the purchase price of the vessel is deposited in court, all creditors of the vessel and/or owners may compete to recover their dues, depending on the ranking of their claim at law. Their claims must be put forward within one month from date of notice of the opening of the competition of claims being given.
<b>Netherlands</b>	In order to share in the proceeds of a judicial sale claimants must have a hypothec/mortgage, or they must have effected an attachment for their claim on the vessel (prior to the judicial sale) or on the proceeds of the judicial sale (prior to distribution of the proceeds). It should be noted that an attachment on the proceeds will only attach the possible surplus of the sale proceeds that would be returned to the debtor after the claimants with a limited right in the vessel or that attached the vessel have been paid.
<b>New Zealand</b>	A party who obtains judgment against the ship or the proceeds of sale of the ship may, on obtaining judgment, apply to the court for an order determining the order of priority of the claims against the proceeds of sale of the ship.  The court sets a time period of any length for the determination of the distribution, with 65 working days as the default, although parties can apply to have the period extended. Parties must introduce their claims within this time period. <sup>5</sup>
<b>Nigeria</b>	Prior to the forced sale of a ship, the court is mandated to give at least thirty days' written notice of the time and place of the sale to all interested parties including the ship's registrars, registered mortgagees and holders of maritime liens. Section 74 (a-c) MSA 2007. This will allow the interested persons sufficient time to come forward

<sup>5</sup> High Court Rules, r 25.52

	and declare their interests.
<b>Norway</b>	Yes, pursuant to section 11-16 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) claimants are to receive a notice of the upcoming sale with a request to present their claim within a set date. The owner of the vessel/debtor is obliged to give the court information about known claimants. If such information is not provided, the owner of the vessel/debtor will be responsible for such claimants' loss. Once the sale is completed all monetary claims against the vessel will be deleted unless otherwise agreed with the buyer.
<b>Panama</b>	The claimant must submit its claim prior to the date of sale.
<b>Spain</b>	<p>According to Art. 11 MLM93, prior to the forcible sale of a vessel in Spain, the competent authority shall ensure that notice in accordance with such article is provided, among others, to: (i) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer and (ii) all holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in Art. 4 MLM93, provided that the competent authority conducting the forced sale receives notice of their respective claims.</p> <p>Upon the forcible sale of the ship or the judicial proceedings to enforce a maritime mortgage, the holders of maritime liens will be entitled to file a "third party claim with paramount rights" (tercería de mejor derecho) as provided under Arts. 614 to 620 of Spanish Civil Procedure Act. The "third party claim with paramount rights" can be exercised from the seizure of the vessel until the creditor who started the enforcement proceedings receives the sum of money or the title of the asset (Art. 615 of Spanish Civil Procedure Act).</p> <p>In case there was a maritime mortgage enforcement procedure (Arts. 681 et seq. of the Spanish Civil Procedure Act) the "third party claim with paramount rights" can be exercised since beginning of the enforcement proceedings (despacho de la ejecución).</p> <p>The "third party claim with paramount rights" will be governed by the terms set forth in administrative provisions when it is filed in an administrative enforced collection procedure (procedimiento administrativo de apremio).</p>
<b>Switzerland</b>	Yes. With the announcement of a judicial sale all and any creditors having secured claims are requested to file their claims within 20 days (art. 138 DEBL).
<b>UK</b>	Claimants have to file notice of claims within a certain period ( e.g.60 days) set out in the order for sale.

**11.5 What is the timetable leading up to the distribution of the proceeds of sale?**

<b>Argentina</b>	There is very little judicial experience on this issue so it is not possible to provide an estimate timetable.
<b>Australia</b>	See the answer to 11.4 above. The timetable will be set by the court
<b>Brazil</b>	After the payment, in case it is not challenged, distribution of the proceeds of sale may take 20 days, since it is necessary to await the decision to become final.
<b>Canada</b>	Unless the Court orders otherwise due to special circumstances, once the proceeds of sale of the ship are deposited into court, there is a time delay to allow for the examination of the various claimants, then a delay for the contestation of the various claims, if any, and once the discovery examinations and expert reports, if any, are completed and filed, then to apply to the Court for a hearing to adjudicate on the claims, establish their priorities and pay out the funds in accordance with the priorities established.
<b>Croatia</b>	Time table is set up by the court depending circumstances of the case.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	In case of disagreement between creditors, the Tribunal decides the order of priorities (Navire Stainless Lord). This decision, which might take several months, may be appealed within 8 days. The order of priorities and the amount due to each creditor is definitively set either after the expiry of the delay to appeal or after the appeal decision.
<b>Germany</b>	<p>The court is not bound to an absolute statutory time limit for the distribution of the sale proceeds under a "distributional procedure" (sec. 105 and sec. 162 ZVG etc.). However, the calculation of the different claims and the interests involved may lead to discussions between all claimants. Therefore the ZVG foresees a rather detailed procedure which requests the claimants to submit their calculations and in which the court shares its calculation by preparing a preliminary plan for the distribution of the sale proceeds among the claims that have been duly filed in accordance with their priority.</p> <p>Timing will much depend on certain notice and appeal periods for, and the number of, the interested parties and the quality of their claims as well as on the cooperation between the court, the claimant and the other creditors. Within a few weeks after the auction, the court will order an oral hearing to hear the interested parties (including the owner and creditors) and the successful bidder to agree on the final distribution plan. If and as far any claim is disputed, the funds attributed to it will be set aside and the immediately succeeding party alternatively entitled to these funds will be identified in the distribution plan. Generally, undisputed claims will be paid out within a few days after the hearing. In case of arrest creditors, funds will be set aside until they have presented to the court a valid and enforceable title for their claim. Any party disputing a claim must commence legal action to prove that (and as far) the disputed claim is unjustified. If no proof for the commencement of such action has been filed with the court within one month, the dispute will be ignored and the funds paid out according to the distribution plan. If action has been duly commenced and proven, the funds will remain set aside until a valid and binding judgment has been presented to the court (no matter how long that takes), and the funds will be paid out to the originally chosen creditor, or the immediately succeeding party in accordance with the distribution plan.</p> <p>All going well, a well prepared mortgagee with an undisputed claim can reasonably</p>

	expect to receive funds within two to six weeks after the auction.
<b>Greece</b>	<p>(a) The distribution of the auction proceeds is made by the notary public in charge of the auction.</p> <p>(b) If the proceeds are sufficient to satisfy all the creditors the notary pays them within 20 days as of the auction or two (2) days after the payment of the balance of the auction price (if a credit period has been given to the successful bidder for the payment of the auction price), whichever is later.</p> <p>(c) Within this 20 days period the defendant of the enforcement may challenge the claims of certain creditors by starting proceedings before the Court.</p> <p>(d) If the auction proceeds are not sufficient to satisfy all the creditors then the notary public should prepare a list of priorities within two months as of the auction and notify it to the creditors within 3 further days.</p> <p>(e) Any party having a legitimate interest (i.e. the defendant/owner and any creditor including the claimant who initiated the enforcement procedure) may challenge the list of priorities in respect of some (or all) the creditors listed in the list within twelve (12) business days as of the notification of the list to the creditors.</p> <p>(f) If the list of priorities is not challenged within the above time limit the list becomes final and the notary proceeds to the distribution according to the list.</p> <p>(g) If the list is challenged the notary does not pay the claims which were challenged until a final (unappealable) decision is issued.</p> <p>(h) The challenge of any claims listed on the list is determined by the court within about one year at first instance and in about one more year in case of appeal.</p> <p>(i) See Articles 971, 974, 979 and 1006 paras 1-3 of the GCCP.</p>
<b>Ireland</b>	The timetable leading up to the distribution of is as follows; the net proceeds of sale must be paid into the Court and, after the payment of the of the sale and appraisal expenses and other expenses of the Admiralty Marshall, the Admiralty Judge will determine the distribution of the sale proceeds to the various interested parties.
<b>Italy</b>	<p>For vessel's judicial sales Article 649 CN and following articles provide that the attaching creditor (after 30 days from the attachment of the vessel and within 90 days) can demand the sale of the vessel.</p> <p>Upon filing before the Court of the dossier the Judge schedules a deadline for filing the expert valuation; this has to be done within 30 days from the Judge's order. Within 5 days from the filing of said evaluation the Judge orders the sale of the vessel.</p> <p>In case the first sale at auction does not succeed several further auctions shall take place reducing the price of 20% each up to a price amounting to 40% of the evaluation price. In such a case the Judge orders for a sale without auction (ie by private treaty).</p> <p>Obviously the time of the sale depends a lot from the commercial issues at stake.</p> <p>The first sale at auction - if no complications occur - takes place some 6 months after the sale is demanded.</p>

<b>Japan</b>	Once the purchase price is paid in full, the court sets the date of distributing the proceeds. The date shall be within a month from the payment of purchase price. (Artt.59 (1), 83 & 174 (5) of the Supreme Court Rules on Civil Enforcement.) All the claimants, including mortgagees, and the debtor are summoned to appear before the court on that date. (Artt.85 (3), 121 & 189 of the Civil Enforcement Act.) Claimants and mortgagees are required to report to the court the amount of their claims with interests accrued. The report shall be made within a week from the date of the summons. (Artt.60, 83 & 174 (5) of the Supreme Court Rules on Civil Enforcement.)
<b>Malta</b>	On average a vessel is sold through judicial auction within four to eight weeks from the date on which the mortgage is rendered enforceable. Before the proceeds are released the successful bidder will have to deposit the purchase price including court expenses relating to the procedure (1% of the successful bid) and bill of sale that will be entered into by a court appointed lawyer, into the Courts by not more than seven days from the date of the final adjudication. The executing creditor is also liable to pay the auctioneer's fees which would amount to 0.2% of the final bid.
<b>Netherlands</b>	See under 8.2. In the absence of a dispute on the priority of claims, distribution of sale proceeds normally takes a few weeks.
<b>New Zealand</b>	See the answer to 11.4 above. The timetable will be set by the court
<b>Nigeria</b>	The Admiralty Marshall of the court is obligated to give 21 days' notice in 2 newspapers advertising the auction sale. He further gives 30 days' notice of time and place of sale to all interested parties. Within 21 days of the sale, he is required to file a return of the sale and pay into court the proceeds thereof. An application may be made to court for determination of the order of priorities and same is advertised. Thereafter, the court decides the order as to priorities.
<b>Norway</b>	Please see our response to question 7.3.
<b>Panama</b>	Once the Marshall has presented a report no later than 30 days after the approval of the judicial sale, the distribution is paid once the judicial sale has taken place.
<b>Spain</b>	<p>The timetable depends on the specific procedure that leads to the distribution of the proceeds of sale: (i) realisation agreements (convenios de realización), foreseen in article 640 of the Spanish Civil Procedural Act (vid. question 9.8 above); (ii) judicial auction; or (iii) enforcement by a specialized individual or entity (Art. 642 et seq. Civil Procedure Act).</p> <p>In case of a judicial auction, the timetable would include the following: (i) appraisal of the vessel unless there is a previous agreement regarding the value of the vessel; (ii) calling of the auction and advertisement and publicity of the auction; (iii) notice of the judicial auction to the Registrar, the owner of the ship, the holders of mortgages, encumbrances or maritime liens in the terms of the MLM93 and Art. 481 MNA; (iv) judicial auction; and (v) approval of the final bid, payment and awarding the assets to the creditor.</p> <p>The maritime mortgage enforcement procedure (Arts. 681 et seq. of the Spanish Civil Procedure Act), has some special features which have been described in question 9.2 above.</p>
<b>Switzerland</b>	There is no timetable. Depending on the circumstances.

<b>UK</b>	An order for payment out is usually made at the same time as order for priorities is made.
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**11.6 Is the distribution order decided by the court?**

<b>Argentina</b>	Yes (Navigation Act, arts. 555/557), but the applicable law is the law of the flag of the vessel (art. 598).
<b>Australia</b>	Yes
<b>Brazil</b>	The distribution of the amount may only be effected with a Court order. Once the sale is duly performed, the judge will release an order of sale and the bidder will register ownership of the vessel at the Maritime Court.  When different privileged creditors dispute the product of the judicial sale, the release of the deposit made by the bidder will respect the ranking of priorities and the chronology of the respective judicial attachments.
<b>Canada</b>	Yes
<b>Croatia</b>	Yes
<b>Finland</b>	No, the distribution order is decided by the bailiff.
<b>France</b>	The distribution order is decided by Court as explained.
<b>Germany</b>	Yes
<b>Greece</b>	As noted above the order of priorities is determined by the notary public in charge of the auction and this order may be challenged by the defendant or any creditor before the Court.
<b>Ireland</b>	Yes the Admiralty Judge decides how the proceeds are to be distributed unless all creditors agree.
<b>Italy</b>	Yes, if the judicial sale procedure is supervised directly by the Judge. As per art. 591 bis CCP the judicial sale procedure can be delegated to an expert (a notary, a lawyer or an accountant) appointed by the Tribunal, in such a case the distribution order is prepared by the expert and approved or amended by the Judge.
<b>Japan</b>	Yes
<b>Malta</b>	The distribution order is decided by the court depending on the ranking of the creditors' claims at law. The first expenses to be recovered from the proceedings are the expenses borne by the mortgagee / executing creditor who filed the proceedings for the judicial sale of the vessel. If there are no known competing claims the Court's order will generally be a mere rubber stamping process.
<b>Netherlands</b>	The main rule behind the statutory regulation is for the claimants (that are allowed to share in the proceeds) to come to an amicable settlement regarding the distribution of the proceeds. If such settlement is not reached any interested party may apply to the court to have a rechter-commissaris (perhaps best translated as judge commissary or supervisory judge) appointed who will prepare a list of distribution of claims on the basis of documents submitted by the claimants. Claimants may oppose the list of distribution and if the rechter-commissaris is unable to reconcile the claimants, he will refer them to proceedings before the court.
<b>New Zealand</b>	Yes

<b>Nigeria</b>	The distribution order is determined by the court.
<b>Norway</b>	Yes, see section 11-36 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven)
<b>Panama</b>	Yes. Any lienholder according to Article 531 may challenge the verification or the order of priority of the liens within the five days following the date fixed by the Court for the presentation of the proposal.
<b>Spain</b>	The allocation of the amounts obtained in the auction will be decided by the Court Clerk through an order (decreto) which may be appealed against. When deciding the distribution order Art. 486 MNA shall apply (see section 10.1 (b) above).
<b>Switzerland</b>	No, by the debt enforcement authority (art. 33 VZG).
<b>UK</b>	Yes

### 11.7 Is that order subject to a right of appeal?

<b>Argentina</b>	Yes
<b>Australia</b>	Yes
<b>Brazil</b>	The order which authorizes the distribution of the proceeds should not be subject to an appeal, since it only takes place after the decision became final and unappealable. Additionally, the order of the priorities among creditors is not determined by the court, but by law.
<b>Canada</b>	Yes, but in order to prevent the payment out, an Order must be sought from the Court suspending the execution of the judgment ordering the payment out.
<b>Croatia</b>	Yes
<b>Finland</b>	An enforcement measure or a decision of the bailiff is subject to appeal by the person whose right the measure or decision affects. After the closing remittance, an appeal is allowed only for an error in the remittance.
<b>France</b>	The decision is subject to a right of appeal (Navire Biladi).
<b>Germany</b>	Yes
<b>Greece</b>	The decision of the First Instance Court in respect of the challenge of priorities is subject to appeal before the Court of Appeal.
<b>Ireland</b>	Creditors can appeal to the Court to the Court of Appeal.
<b>Italy</b>	Yes, Article 512 CCP refers to the Judge in charge of the judicial sale procedure the decision of any dispute arisen in respect on the distribution of proceeds. Said decision can be appealed before the Tribunal.
<b>Japan</b>	Yes
<b>Malta</b>	Yes. The Order given following a competition of creditors procedure is deemed to be a decision of the Court which may be appealed within twenty days from grant.
<b>Netherlands</b>	A decision by the court to appoint a rechter-commissaris is not subject to appeal, but a decision by the court in which the application to appoint a rechter- commissaris is denied, is subject to appeal. Decisions by the rechter-commissaris are not subject to a normal appeal (at a Court of Appeal), but are subject to cassation at the Hoge Raad (the Dutch Court of Cassation). Judgments by the court on the issue of ranking are subject to appeal.
<b>New Zealand</b>	Yes
<b>Nigeria</b>	Yes. An aggrieved party has the right to challenge the order before the Court of Appeal.
<b>Norway</b>	Yes, see section 11-37 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).
<b>Panama</b>	According to Article 533, the lienholder to whom the order of priority claimed is denied may seek to assert their rights by moving for reconsideration within the time

	set forth in the preceding paragraph, which is within three days from the time notice is given.
<b>Spain</b>	The order may be appealed against only by virtue of a "recurso de reposición" before the Court Clerk.
<b>Switzerland</b>	The decision of the debt enforcement authority may be appealed to the supervisory authority of the debt enforcement authority (art. 140 DEBL and art. 38 VZG).
<b>UK</b>	In theory an appeal against an order for priorities may be made to the Court of Appeal but this does not usually happen in practice.

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**Question 12**

**12 MORTGAGEE'S SELF-HELP REMEDIES**

**12.1 Under the laws of your jurisdiction does a vessel mortgage governed by and registered in accordance with such laws give the right to take the following enforcement steps without a court order in your jurisdiction?**

**(a) to take possession of the vessel;**

<p><b>Argentina</b></p>	<p>NOTE: Under our legal system, all the issues mentioned in this title of the questionnaire, are considered procedural issues which are governed by the lex fori. Mortgage self-enforcement is not admissible under our legal system.</p> <p>No. See 9</p>
<p><b>Australia</b></p>	<p>If the secured party has a perfected security interest and the mortgagor is in default under the security agreement, the secured party may seize the vessel by any method permitted by law (s 123 PPSA). It is not necessary for the secured party to obtain a Court order before seizing the vessel.</p> <p>For example, subject to the terms of the mortgage, a mortgagee may generally take possession of the mortgaged ship in two circumstances:</p> <ol style="list-style-type: none"> <li>1. Where the mortgagor defaults in the repayment of the capital or the repayment of interest; or</li> <li>2. Where the mortgagor deals with the ship in such a way that the security is, or will become, materially impaired.</li> </ol> <p>A secured party which has seized possession of a vessel pursuant to s 123 PPSA are must (s 125 PPSA):</p> <ol style="list-style-type: none"> <li>1. dispose of the collateral in accordance with Division 3 PPSA; or</li> <li>2. take action to retain the collateral in accordance with Division 4 PPSA.</li> </ol> <p>Section 128(2) PPSA (which is in Division 3) lists the methods by which a secured party may dispose of collateral after seizing the property (whether pursuant to s 123 or otherwise). The relevant methods of disposal are:</p> <ol style="list-style-type: none"> <li>1. by private or public sale (including auction or closed tender); or</li> <li>2. by lease, if the security agreement so provides.</li> </ol> <p>Again, it is not necessary for the secured party to obtain a Court order before selling the vessel as mortgagee.</p> <p>Section 128(1) also provides that a secured party may dispose of a seized vessel by purchase. The process for disposing of seized property is set out in s 129 PPSA. That section provides, inter alia, that:</p> <ol style="list-style-type: none"> <li>1. the secured party must give notice under s 130 PPSA;</li> <li>2. there can be no disposal by purchase if the secured party receives a notice of objection in accordance with s 137(2) PPSA;</li> </ol>

	<p>3. a secured party may only purchase secured collateral if the purchase is part of a public sale; and</p> <p>4. a secured party purchasing collateral pays at least market value for the collateral at the time of the purchase.</p> <p>The above rights, and all other rights of a secured party to deal with a vessel, are limited to the extent that the grantor/mortgagor would be entitled to deal with the vessel (s 112(1) PPSA).</p>
<b>Brazil</b>	No, it is not possible. In Brazil, mortgages on ships are only enforced through judicial actions and through forced sales at public auctions. There are no self-help remedies.
<b>Canada</b>	Yes to all, although it is not recommended, as any other creditor who seeks the Court's intervention can obstruct the exercise of these rights, and, moreover, only the Admiralty Court can sell a ship "free and clear of all claims and encumbrances". Remedies (a), (b) and (d) would normally arise in contract or to extent that the deed of covenants so provides.
<b>Croatia</b>	Yes
<b>Finland</b>	No
<b>France</b>	<p>Maritime Hypothecation is, in essence, different from Mortgage since it does not vest the maritime hypothecary creditor with self-help remedies. The maritime hypothecary creditor is no mortgagee and shall not, from its own move, take possession of the vessel, nor appoint a receiver, nor sell the vessel as mortgagee or as attorney in fact of the owner.</p> <p>Having said that, some Court decisions have admitted that the mortgagee under English Law could take possession of the vessel exerting the prerogatives of a mortgagee. (Navire Heavenly Daze).</p>
<b>Germany</b>	No
<b>Greece</b>	<p>Greece has two types of mortgages: (a) what is called simple mortgage (Articles 195-204 of the GCPML) which gives the mortgagee only the right of priority over other claims (except maritime liens) and (b) what is called preferred mortgage (Legislative Decree 3899/1958) which may be registered on vessels over 500 grt by agreement between the owner and the creditor gives the mortgagee the right:</p> <p>(a) to take possession of the vessel (undertake the management) and appoint a manager to operate the vessel and</p> <p>(b) to sell the vessel in a private sale in his capacity as mortgagee or as an attorney in fact of the owner, if a power of attorney to this effect has been included in the preferred mortgage agreement.</p> <p>The joint ministerial decisions authorizing the registration of vessels under Greek flag pursuant to article 13 of LD 2687/1953 provide these self-help powers more explicitly, that they may be enforced without responsibility of the mortgagee and that the financing documents are enforceable titles in Greece for the enforcement of such rights.</p>
<b>Ireland</b>	NOTE: There is an automatic right of sale pursuant to section 54 of the 1955 Act. A Court Order is likely to be needed to enforce however.

	No for constructive possession but actual possession may require assistance of the courts in the absence of cooperation.
<b>Italy</b>	As a general principle, under the Italian law self-help remedies are not allowed, and therefore in case of non-cooperation of the counterparty, a judicial proceedings is required. None of the self-remedies listed above are consequently allowed within the Italian jurisdiction.
<b>Japan</b>	No. A mortgage under the Japanese law is rather an hypoth�que of the civil law than a mortgage under the common law. Therefore, its enforcement must be made through the court procedure.
<b>Malta</b>	<p>Article 42 of the Merchant Shipping Act provides for non-judicial methods of enforcement which include the mortgagee's entitlement to take possession of the vessel as mortgagee-in-possession as well as the separate power to sell the vessel through a private sale to third parties. Such remedies become available where the mortgagee serves written notice on the mortgagor following the latter's default. Where the owner or master of the vessel is uncooperative in granting possession to the mortgagee, the mortgagee may request the courts to order that the crew surrender the vessel to the mortgagee.</p> <p>The power to sell the vessel as mortgagee-in-possession is dependent on any prior incumbent mortgages. However, subsequent mortgagees may still affect the sale of the vessel without the concurrence of every prior mortgagee through a court order. In order for the vessel to be sold by private sale, the vessel need not be in Malta; it can be located in any jurisdiction.</p>
<b>Netherlands</b>	Not in the Netherlands in Europe. Recent changes to Article 3:267 DCC now require leave from the Provisional Measures Judge of the District Court to take possession of the mortgaged property (and provided this right was stipulated for in the hypothecary instrument). However, it is not entirely certain whether this new provisions applies to ships, as the legislative history to the act amending the provision explicitly states there was no intention to change the law relating to enforcement against ships. In the jurisdictions in the Dutch Caribbean leave from the court is not necessary (but the right to take possession must be stipulated for in the hypothecary instrument).
<b>New Zealand</b>	Yes, if the loan agreement provides for this. <sup>1</sup>
<b>Nigeria</b>	Yes. Provided he is the owner of controlling shares in the ship. National Bank OF Nigeria Ltd. V. Okafor Lines Ltd. (No. 3) 1967 1 NSC 110.
<b>Norway</b>	The above enforcement steps can only be undertaken with consent from the owner. Please, however, note that the concept of receivership is unknown to Norwegian law.
<b>Panama</b>	Yes, Article 273 of Law No.55
<b>Spain</b>	No
<b>Switzerland</b>	None of these options are available to a mortgagee under Swiss law.
<b>UK</b>	Yes: the powers set out in subparas (a) to (d) are all exercisable by a mortgagee, such powers being granted by statute or by the mortgage documents.

<sup>1</sup> Property Law Act 2007, ss 137-138; see also Ship Registration Act 1992, s 48.

**(b) to appoint a receiver, manager or other party to operate the vessel;**

<b>Argentina</b>	No. See 9
<b>Australia</b>	The PPSA does not expressly provide or prohibit the appointment of receivers and/or managers over secured property. However, as the approach to ships mortgages is now more or less in line with the approach to other security interests, there does not appear to be any reason why a Court order would be required to appoint a receiver or manager to operate a vessel. The right of a secured party to make such an appointment will be limited only by the terms of the security agreement. The position appears to be the same with respect to a secured party selling the vessel as attorney in fact.
<b>Brazil</b>	No. The appointment of a receiver/manager, who would be in charge of keeping the good, would have to be made by Court.
<b>Canada</b>	See (a) above
<b>Croatia</b>	Yes
<b>Finland</b>	No
<b>France</b>	See (a) above
<b>Germany</b>	Not by statutory law, however the mortgagee and mortgagor may agree on the basis of loan documentation to the above.
<b>Greece</b>	See (a) above
<b>Ireland</b>	Might be applicable contractually but generally against assistance of the Courts is likely to be required in absence of cooperation.
<b>Italy</b>	See (a) above
<b>Japan</b>	See (a) above
<b>Malta</b>	See (a) above
<b>Netherlands</b>	No. Article 3:267 requires court approval to take over the management of the vessel from the hypothecary debtor (and provided the right to take over the management was stipulated for in the hypothecary instrument). This rule applies throughout the Kingdom (only the particular type of court that is to give leave may be different in each jurisdiction).
<b>New Zealand</b>	Yes, once in possession the power of management of the mortgaged property is granted. <sup>2</sup> Receiverships are governed by the Receiverships Act 1993.
<b>Nigeria</b>	Yes if provided for in the mortgage deed.
<b>Norway</b>	See (a) above
<b>Panama</b>	Yes, Article 273 of Law No.55

<sup>2</sup> Property Law Act 2007, ss 148; see also Ship Registration Act 1992, s 48.

<b>Spain</b>	No
<b>Switzerland</b>	See (a) above
<b>UK</b>	See (a) above

(c) to sell the vessel as mortgagee;

<b>Argentina</b>	No. See 9
<b>Australia</b>	See the answer to 12.1(a) above. Subject to the terms of the mortgage, the mortgagee may generally (after having taken possession) sell the ship to realise their security.
<b>Brazil</b>	Private sale of the vessel would only be possible after a judicial order in this sense. The creditor may request the private sale to the Court by its own initiative or by an accredited broker. The judge will fix a term within which the sale must be effected, the way it shall be published, the minimum amount, the payment conditions, any guarantees and broker commission.
<b>Canada</b>	See (a) above
<b>Croatia</b>	Yes
<b>Finland</b>	No
<b>France</b>	See (a) above
<b>Germany</b>	No
<b>Greece</b>	See (a) above
<b>Ireland</b>	See note at (a) above
<b>Italy</b>	See (a) above
<b>Japan</b>	See (a) above
<b>Malta</b>	See (a) above
<b>Netherlands</b>	See under 1.2. The hypothecary creditor may initiate the enforcement without further court approval. So an auction would follow, which may be replaced by a court approved private sale. But the ship cannot be simply sold privately by the hypothecary creditor/mortgagee.
<b>New Zealand</b>	Yes, if the loan agreement provides for this.
<b>Nigeria</b>	Yes. However, if he is a subsequent mortgagee, the consent of every prior registered mortgagee must first be obtained. Section 58(2) MSA.
<b>Norway</b>	See (a) above
<b>Panama</b>	Yes, Article 272 of Law No.55. In the mortgage contract, an irrevocable power of attorney must be given by the shipowner to the mortgagee.
<b>Spain</b>	No
<b>Switzerland</b>	See (a) above
<b>UK</b>	See (a) above

**(d) to sell the vessel as attorney in fact of the owner.**

<b>Argentina</b>	No. See 9
<b>Australia</b>	See the answer to 12.1(b) above.
<b>Brazil</b>	<p>In Brazil, the owner, or the attorney in fact of the owner, of a mortgaged vessel does not need a court order to sell the vessel. He is allowed to sell it without the consent of the mortgagee, since the goods keeps its mortgage regardless of who is the owner. The lien follows the mortgaged good.</p> <p>However, it is important to highlight that, although legally 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, in which the financing agent will have to authorize the sale of the secured vessel by the owner.</p>
<b>Canada</b>	See (a) above
<b>Croatia</b>	Yes, if contracted for with the mortgagor.
<b>Finland</b>	No
<b>France</b>	See (a) above
<b>Germany</b>	Not by statutory law, however the mortgagee and mortgagor may agree on the basis of loan documentation to the above. While this is commonly agreed, there seems not to be any judicial decision confirming this practice.
<b>Greece</b>	See (a) above
<b>Ireland</b>	See note at (a) above
<b>Italy</b>	See (a) above
<b>Japan</b>	See (a) above
<b>Malta</b>	See (a) above
<b>Netherlands</b>	The hypothecary creditor may stipulate for a power of attorney to sell the vessel. This sale however will be regarded as a mere private sale and not as a judicial sale. (The vessel will not be freed from encumbrances.)
<b>New Zealand</b>	Yes, if the loan agreement provides for this.
<b>Nigeria</b>	Yes, if a valid Power of Attorney has been executed.
<b>Norway</b>	See (a) above
<b>Panama</b>	Yes, Article 272 of Law No.55. In the mortgage contract, an irrevocable power of attorney must be given by the shipowner to the mortgagee.
<b>Spain</b>	<p>No.</p> <p>Under Spanish law, the so-called pacto comisorio prohibition entails that the creditor</p>

	<p>may not appropriate the collateral if the debtor fails to fulfil its obligation.</p> <p>If the payment obligation is not performed the mortgage-backed loan shall be accelerated and the mortgage executed, that is, a foreclosure procedure shall be brought. As a result, the mortgaged property shall be enforced by virtue of its sale at a public auction, by an expert or by virtue of a realisation agreement.</p>
<b>Switzerland</b>	See (a) above
<b>UK</b>	See (a) above

**12.2** If, under the law of the ships' register (where that is a different law from the law of your jurisdiction) a mortgagee is given the right to take the enforcement steps referred to at (a) - (d) of 12.1 without a court order would its right to do so be recognised or prohibited in each case in respect of a vessel physically located in your jurisdiction?

<b>Argentina</b>	No. See 9
<b>Australia</b>	<p>Australian law will recognise the interests of a secured party in a vessel even where the relevant security agreement is governed by the law of a foreign jurisdiction.</p> <p>Pursuant to s 238(4) PPSA, the perfection, and the effect of perfection or non-perfection, of a security interest in a vessel will be governed by the law of a country if:</p> <ol style="list-style-type: none"> <li>1. the vessel is entered in a register of ships maintain by the particular country; and</li> <li>2. in proceedings in that country, the law of that country governs title to the goods.</li> </ol> <p>That is, if, in proceedings in the country in which the security interest is registered on the register of ships, the law of another country (for example, the country of the flag of the vessel) governs title to the vessel, the law of the first country will not apply. Australian law will apply so as to determine the validity and effect of the security interest. However, if a foreign law applies, the Australian courts will recognise the rights of the secured party to take enforcement action in accordance with the laws of that country and the terms of the security agreement.</p> <p>However, regardless of the law determining the validity or effect of a security interest, Australian law will recognise but not protect the interest indefinitely. Relevantly, section 39(1) PPSA provides that a security interest in collateral that has been located in a foreign jurisdiction, and is relocated to Australia, is taken to have been continuously perfected for the period covered by subsection (2) if, immediately before the collateral became located in Australia, and at the time it became so located:</p> <ol style="list-style-type: none"> <li>1. the security interest was effective; and</li> <li>2. the security agreement providing for the security interest was enforceable against third parties.</li> </ol> <p>The 'period covered by subsection (2)' relates to the perfection or registration of the relevant security interest in accordance with the law of the foreign jurisdiction. Assuming the interest is enforceable, Australian law will recognise the priority enforceability (ie. temporary perfection) of the security interest for the period from when the vessel becomes located in Australia until the earlier of:</p> <ol style="list-style-type: none"> <li>1. the end of 56 days after the vessel enters Australia; or</li> <li>2. the end of 5 business days after the day the secured party has actual knowledge that the collateral has become located in Australia, (the Temporary Perfection Period: s 39(3) PPSA).</li> </ol> <p>In order to maintain a priority security interest, the secured party must register its interest on the PPSA. Otherwise, any other party may register an interest which would then take priority to the first secured party.</p>

	<p>A subordinate secured party is not prevented, per se, from taking enforcement action, for example, by seizing and selling a vessel. However, any such enforcement action is likely to be challenged by the higher ranked creditor.</p> <p>Similarly, a secured party with an unperfected or unregistered security interest is not prevented from enforcing, but may simply be challenged in the process.</p>
<b>Brazil</b>	<p>The following answer applies to letters "a" to "c".</p> <p>In Brazil the creditor is not entitled to any self-help remedies right, having to resort to the judicial courts. Considering that this would be a foreign mortgage, the creditor might face some difficulties in the enforcement of it in Brazil, without a foreign court order, since the validity of foreign maritime liens in Brazil is still controversial, as previously mentioned. This would apply for the circumstances of taking possession of the vessel, appointing a receiver/manager or in the case of private sale by the mortgagee.</p> <p>In respect specifically to letter "d", in Brazil, the owner, or the attorney in fact of the owner, of a mortgaged vessel does not need a court order to sell the vessel. He is allowed to sell it without the consent of the mortgagee, since the goods keeps its mortgage regardless of who is the owner. The lien follows the mortgaged good. However, considering that the registry of the vessel is foreigner, this issue would need to be in accordance with the local law of the registry.</p>
<b>Canada</b>	<p>Yes, but the effect of the Court's intervention and exercise of its jurisdiction would be difficult to predict, which is the reasons why any creditor wishing to exercise its rights under the agreement should immediately seek the Court's assistance.</p>
<b>Croatia</b>	<p>Yes, it would be recognized.</p>
<b>Finland</b>	<p><i>LEFT BLANK</i></p>
<b>France</b>	<p>It is well established that enforcement procedures are exclusively regulated by the lex loci executionis. It is equally well established that the jurisdictions of the forum loci executionis have exclusive power (Art. 24 § 5 Brussels I regulation recast). As a result, if a vessel registered in a legal system recognising Mortgage, happens to be located in France, the mortgagee shall not use its prerogatives.</p>
<b>Germany</b>	<p>German law recognizes the title and ownership of foreign flagged vessels according to Art. 45 II no. 1 German Introductory Act to the Civil Code (EGBGB). Hence, in case that foreign law foresees and enables such enforcement steps, then these rights will be recognized too.</p>
<b>Greece</b>	<p>Self-help rights granted by a foreign (non Greek) mortgage on a (foreign) vessel will be recognized in Greece as long as the foreign mortgage is recognized in Greece (either automatically if it is an European authentic document or following a recognition judgment) especially if relevant issues come before Greek courts. However, self-help remedies generally face certain practical difficulties for their enforcement in practice.</p>
<b>Ireland</b>	<p>Would require court assistance to enforce</p>
<b>Italy</b>	<p>Such right is prohibited in case the vessel is physically located in Italy. Article 643 Code of Navigation, in fact, provides that the expropriation (or "forced execution") must be conducted before the Court sitting in the district where the ship is located. Italian law and procedure will be applicable therefore.</p>

<b>Japan</b>	The practice is unclear. It is not guaranteed that the remedies that the law of the ship's register grants to a mortgagee will be recognised by the court in Japan.
<b>Malta</b>	The mere presence of the vessel within the jurisdiction of Malta would not preclude a mortgagee from exercising rights that emanate from another applicable set of laws.
<b>Netherlands</b>	As indicated under 1.2. on p. 5, generally foreign security rights/interests such as mortgages are compared to security rights existing under the <i>lex rei sitae</i> to determine the ways in which the foreign right may be exercised in the local jurisdiction.
<b>New Zealand</b>	There is no specific New Zealand law on this situation, so the self-help options outlined above are neither recognised nor prohibited. New Zealand law will recognise the interests of a secured party in a vessel even where the relevant security agreement is governed by the law of a foreign jurisdiction. However, if it will do so in accordance with its private international law rules, so if the secured party has to move beyond the self-help options it will need to assert the validity of its claim in the normal way.
<b>Nigeria</b>	It will not be recognized. The laws of Nigeria ( <i>lex fori</i> ) are what determine whether or not the enforcement steps can be taken without a court order.
<b>Norway</b>	An agreement between the mortgagee and the owner will as a starting point be recognised. The possibility of getting the court's assistance will still most likely be limited and would depend on, <i>inter alia</i> , the court's jurisdiction and whether the mandatory provisions of the Norwegian Enforcement Act of 1992 ( <i>Nw. tvangsfullbyrdelsesloven</i> ) are deemed to apply. As stated above, Norwegian law only allows for consensual private enforcement.
<b>Panama</b>	The Court will follow the substantive law applicable.
<b>Spain</b>	A Spanish court may refuse to give effect to any enforcement steps referred to at (a) – (d) on the grounds that it infringes Spanish public policy. Article 12.3 of the Spanish Civil Code states that a foreign law will not apply when its contrary to public policy; moreover, article 12.4 of the Civil Code says that the application of foreign law with the aim of circumventing a mandatory provision of Spanish law shall be deemed as fraud of law. The concept of public policy is not clearly defined under Spanish law, and whether or not said steps conflict with Spanish public policy needs to be determined on a case by case basis.
<b>Switzerland</b>	N/A
<b>UK</b>	If the law of the country of registration of the ship gives the mortgagee the powers set out in sub paras (a) to (d) and the ship was within the jurisdiction of the Admiralty Court, it would be lawful for the mortgagee to exercise these powers. However if the ship were arrested before the ship was sold this would prevent any further exercise of these powers. Also a sale by a mortgagee under a power of sale would be subject to maritime liens and to those statutory liens in respect of which the claimant had issued an <i>in rem</i> claim form prior to the completion of the sale.

**12.3 Where answers to the questions in 12.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ships' register?**

<b>Argentina</b>	No. Judicial sale of vessels is a procedural matter governed by the <i>lex rei sitae</i> (Navigation Act, art. 611).
<b>Australia</b>	N/A
<b>Brazil</b>	The follow answer shall apply to letters "a" to "d".  In order to enforce the mortgage decision in Brazil, the creditor would need to validate the foreign documents and to enforce the foreign judicial decision/arbitral award through the ratification procedure before the Superior Court of Justice in Brazil. In summary, it is a ratification by the Superior Court of Justice, which takes place 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.
<b>Canada</b>	No
<b>Croatia</b>	<i>LEFT BLANK</i>
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	The answer would be no different since in the EU, the jurisdictions of the place of enforcement are vested with exclusive jurisdiction, thus barring enforcement of any putative foreign judgement.
<b>Germany</b>	N/A
<b>Greece</b>	Since foreign mortgages are recognized in Greece, self-help remedies are also recognized and question 12.3 is not applicable. However, if a foreign court order in this respect is brought in Greece, the issue becomes an issue of recognition and enforcement of a foreign judgment and not one of recognition of a foreign mortgage.
<b>Ireland</b>	Yes
<b>Italy</b>	Any foreign judgment relating to the mortgage must be declared enforceable by the relevant Italian Court of Appeal, upon specific petition filed by the mortgagee. If declared enforceable by the relevant Italian Court of Appeal, enforcement proceedings under the Italian Code of Civil Procedure and Italian Navigation Code should be commenced. Also in this case, therefore, the above listed self-help remedies will not be recognized.
<b>Japan</b>	The answer to this question is also unclear.
<b>Malta</b>	A Court order obtained from another Member State may be enforced directly in Malta as a result of EU Regulations. Order of non-EU courts may be enforced if the procedure for the enforcement of foreign judgments under Maltese law is followed.
<b>Netherlands</b>	The issue would then become one of recognizing foreign judgments. Judgments from the different jurisdictions within the Kingdom are readily enforceable in the other jurisdictions. Judgments from courts within EU-countries are readily enforceable in the Netherlands in Europe. All other judgments will need some form of <i>exequatur</i> to become enforceable. A judgment from outside the local jurisdiction which is or has become (by <i>exequatur</i> ) enforceable in the local jurisdiction is thought to have the

	same effect as the judgment has in the jurisdiction of origin.
<b>New Zealand</b>	Yes, but only to the extent that the secured party could then approach the matter as the enforcement of a foreign judgment.
<b>Nigeria</b>	Yes. If a court order is granted in a foreign jurisdiction, it can be recognized and registered in Nigeria subject to the provisions of the Foreign Judgments (Reciprocal Enforcement) Act.
<b>Norway</b>	The possibility of enforcing a foreign court order will depend on whether or not Norway has entered into a bilateral or unilateral agreement on enforcement with the relevant foreign state.
<b>Panama</b>	Please refer to point 12.2 above.
<b>Spain</b>	No. The public policy test is applicable in any event.
<b>Switzerland</b>	The question would be if such court order would be recognised in Switzerland (based on the Lugano Convention or art. 25 to 32 PILA).
<b>UK</b>	This rather depends on the terms and effect of the order of the court in the country of registration: for example if the competent court in the country of registration declared that the mortgage was invalid or unenforceable under the law of the country of registration then the Admiralty Court would probably recognise that declaration or judgment and not enforce the mortgage subject to our comment in sub para 11.2( e ).

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**Question 13**

**13 INSOLVENCY PROCESSES**

**13.1 Has your jurisdiction adopted the UNCITRAL Model Law on Cross-Border Insolvency?**

<b>Argentina</b>	<p>NOTE: Argentine Bankruptcy Act (Act 24,522 as amended), contemplates three insolvency proceedings: (i) out-of-court agreement, (ii) reorganization and (iii) bankruptcy.</p> <p>No.</p>
<b>Australia</b>	Yes. It is given effect through the Cross-Border Insolvency Act 2008 (Cth).
<b>Brazil</b>	Brazil has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.
<b>Canada</b>	Yes
<b>Croatia</b>	<p>Croatia has not adopted any specific rules on cross-border insolvency (not UNCITRAL Model Law nor i.e. Convention on Insolvency Proceedings of 23 November 1995, nor European Convention on Certain International Aspects of Bankruptcy of 09 June 1990 (signed by 8 countries, ratified by 1 country) and is not a party to the specific bilateral instrument.</p> <p>The matter of cross-border insolvency is regulated by the Croatian Insolvency Act (Official Gazette No. 71/15 - entered into force on 01 September 2015) - thereafter referred to as "IA" - in the Section entitled "Cross-Border Insolvency" (Please see answer under below 13.2. for more details).</p> <p>Additionally, on the 01 July 2013 (the date of Croatian entry into the European Union) the European Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings) came into force in Croatia and constitutes an integral part of the Croatian legal system.</p>
<b>Finland</b>	No
<b>France</b>	Regulation (EU) 2015/848 on insolvency recast may be considered as an advanced enactment of the UNCITRAL Model law on Cross-Border Insolvency since it coordinates main insolvency proceedings and secondary insolvency proceedings.
<b>Germany</b>	<p>NOTE: The German jurisdiction is subject to the 'Recast' EU Insolvency Regulation (EU) No. 2015/848 of 20 May 2015.</p> <p>No. The German domestic rules on cross-border insolvency do not feature an adoption of the UNCITRAL Model Law on Cross-Border Insolvency. The respective rules stated in sec. 335 to 358 of the German Insolvency Statute (Insolvenzordnung - InsO) provide an independent regulation of cross-border insolvency cases. The same holds true for the provisions under European law, which are applicable in inner-European cases and as such override the German domestic rules. Neither the Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings, nor its latest recast, the Regulation (EU) No. 2015/848 of the European Parliament and of the Council of 20 May 2015, feature an adoption of the UNCITRAL Model Law on Cross-Border Insolvency. Nonetheless one can say that these provisions do not necessarily contradict the UNCITRAL Model Law on Cross-Border Insolvency either. They rather follow the Model Law's tendency to an "universalist" approach.</p>

<b>Greece</b>	<p>Law No 3858/2010, which came into force on 1 July 2010, implemented most of the UNCITRAL Model Law on Cross-border insolvency. Up to the present, the law has seen scant application in practice.</p> <p>Further, since Greece is an EU member state, Regulation (EU) 2015/848 on insolvency proceedings [which replaced the previous Regulation (EU) 1346/2000] applies. Regulation (EU) 2015/848 applies, in case insolvency proceedings have been initiated in one of the EU Member States (except Denmark), while Law No 3858/2010 applies, in case insolvency proceedings have been initiated in any other country (provided that the proceedings are considered "foreign proceedings"; see Q 13.2).</p>
<b>Ireland</b>	No
<b>Italy</b>	No. In Italian jurisdiction is applicable either the EU Council Reg. 1346/2000 on insolvency proceedings ("Reg. 1346/2000"), or the general conflicts of law rules.
<b>Japan</b>	Yes, the Act on Recognition of and Assistance to Foreign Insolvency Procedures of 2000 (hereinafter the "2000 Act") basically adopts the rules of the UNCITRAL Model Law.
<b>Malta</b>	No, since Malta is part of the European Union it is subject to the EU Insolvency Regulation and will be subject to the 'Recast' EU Insolvency Regulation.
<b>Netherlands</b>	No
<b>New Zealand</b>	Yes, New Zealand enacted the Model Law domestically through the Insolvency (Cross-border) Act 2006.
<b>Nigeria</b>	No
<b>Norway</b>	Norway has not adopted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency.
<b>Panama</b>	No
<b>Spain</b>	Spain is subject to the 2000 and the 2015 Insolvency Regulations. However, the 2003 Spanish Insolvency Act (Ley 33/2003 -hereinafter SIA) does also contain provisions on cross-border insolvency proceedings (Arts. 10 to 12, and Title IX of the SIA, Arts. 199 to 230). Such provisions are largely based on the European Regulation, but do also take into account the approach and solutions in the UNCITRAL Model Law on Cross-Border Insolvency (hereinafter, the MLI). The provisions on the SIA do only apply where the European Regulation does not (in general, as against non-Member States and Denmark).
<b>Switzerland</b>	No
<b>UK</b>	The UNCITRAL Model law was adopted in Great Britain by the Cross-Border Insolvency Regulations 2006 ( SI/2006/1030) ("CBIR") and in Northern Ireland by the Cross-Border Insolvency Regulations (Northern Ireland) 2007 (SR 2007/115): the UK is also governed by the EU Insolvency Regulation 1346/2000 which was amended by the 'Recast' EU Insolvency Regulation in June 2017.

**13.2 Do the laws of your jurisdiction provide for recognition of foreign insolvency proceedings?  
(if the UNCITRAL Model Law has been adopted, in addition to its provisions)**

<b>Argentina</b>	No
<b>Australia</b>	By s 6 of the Cross-Border Insolvency Act 2008 (Cth), the Model Law has the force of law in Australia. Recognition of foreign insolvency proceedings occurs only in accordance with the Model Law.
<b>Brazil</b>	<p>Considering that Brazil has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, any foreign insolvency proceedings shall not be immediately recognized within Brazilian Jurisdiction.</p> <p>In order to be valid and enforceable in Brazil, any foreign decision must previously scrutinized and ratified by the Superior Court of Justice – STJ.</p> <p>Further to that, Brazilian Insolvency Act (Federal Law nº 11.101/05) establishes that Brazilian Courts have exclusive jurisdiction for conducting the insolvency proceedings of a Brazilian Company. In this sense, even though there is a foreign insolvency proceeding in course, the Company under insolvency regime should request the insolvency of its own branch/subsidiary before the Brazilian Courts.</p>
<b>Canada</b>	Yes
<b>Croatia</b>	<p>Yes they do. Articles 392-427 of IA contain provisions:</p> <ul style="list-style-type: none"> <li>a) on the international jurisdiction of the courts of the Republic of Croatia</li> <li>b) on general matters</li> <li>c) on preconditions and the procedure on recognition of foreign decision at the commencement of the insolvency proceeding</li> <li>d) on the effect of the recognition of foreign decision on commencement of the insolvency proceeding</li> <li>e) on commencement of the special insolvency proceeding as a result of a recognition of the foreign decision on commencement of the insolvency proceeding</li> <li>f) on denial of recognition of the foreign decision on commencement of the insolvency proceeding and</li> <li>g) on foreign compulsory settlement or foreign insolvency plan.</li> </ul> <p>Article 394 of IA provides that the above provisions on the international insolvency do not apply to the insolvency procedures on which provisions of the European Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings) is applicable.</p>
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	Art. 19 of the Regulation states that « Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings ».

	Conflict of Laws Rules also give effect to extra EU insolvency proceedings.
<b>Germany</b>	Yes. German domestic law provides a set of extensive rules on the recognition of foreign insolvency proceedings, stated in sec. 343 to 353 InsO. These rules follow a rather "universalist" approach, meaning that pursuant to sec. 343 InsO foreign insolvency proceedings are generally recognized ipso jure, provided they were properly and effectively opened. Exceptions are solely made in cases in which the appointed insolvency court in the foreign insolvency proceeding has no jurisdiction according to German law or in which the foreign insolvency proceeding contradicts with fundamental principles of German law (public policy - "where recognition leads to a result which is manifestly incompatible with major principles of German law, in particular where it is incompatible with basic rights"). A similar approach can be found in European law, which overrides German domestic law in inner-European cases. Currently applicable is the European Council Regulation (EC) No. 1346/2000, which includes rules on recognition of foreign insolvency proceedings in art. 16 to 26. Pursuant to art. 16 all insolvency proceedings properly and effectively opened in one of the EU member states are recognized ipso jure in any other member state, unless as per art. 26 the recognition of the foreign proceeding would be manifestly contrary to the member states fundamental principles of law (public policy). Nearly the same provisions are included in art. 19 and 33 of Regulation (EU) No. 2015/848 of the European Parliament and of the Council of 20 May 2015, which will be applicable from 26 June 2017 on and as such will replace the former Council Regulation.
<b>Greece</b>	<p>According to the prevailing view, foreign insolvency proceedings can be recognised under Art. 780 of the Greek Civil Procedure Code (CPC). This will be the case, of course, only if neither Regulation (EU) 2015/848 nor Law No. 3858/2010 applies.</p> <p>It shall be noted that Art. 780 CPC applies only with regard to the recognition of specific foreign court decisions, including those relating to insolvency proceedings. According to Art. 780 CPC for a foreign decision to be recognised i) the issuing court must have applied the substantive law applicable under Greek conflict of laws rules, ii) the decision must have been issued by a court which is competent according to the law which has been applied by this court, and iii) the recognition of the judgment must not contradict public policy (ordre public), i.e. fundamental rights and principles of domestic law. If these preconditions are met, foreign judgments will be automatically recognised and enforced.</p> <p>As a rule, however, foreign decisions (issued outside the EU) will be recognised according to Law No. 3858/2010. It shall be noted that "foreign proceedings", according to the said national law, are collective proceedings that involve the appointment of an insolvency administrator. According to Art. 15 and 17 of Law No. 3858/2010, recognition is not automatic, since an application of the foreign insolvency representative to the competent court is required. Recognition will be granted, as long as certain conditions are met (mainly, as long as the foreign procedure does not contradict public policy).</p>
<b>Ireland</b>	Yes – under the common law rules and under EC Council Regulation 1346/2000 in relation to member states.
<b>Italy</b>	Yes; the recognition is automatic for decisions related to insolvency proceedings of other EU Member States (Article 16, Reg. 1346/2000).
<b>Japan</b>	The recognition of foreign insolvency proceedings is made only through the 2000 Act.
<b>Malta</b>	Maltese law provides for recognition of foreign insolvency proceedings in terms of the EU Insolvency Regulation. However, if the company in question is not an EU company or the assets of the Malta company are located in a non-EU jurisdiction

	<p>then the principles of private international law will apply. Furthermore, it is important to mention the Code of Organisation and Civil Procedure which contains specific articles on the recognition of foreign judgements. These provisions state that any judgment delivered by a competent court outside Malta and constituting a <i>res judicata</i> may be enforced by the competent court in Malta, in the same manner as judgments delivered in Malta, upon an application containing a demand that the enforcement of such judgment be ordered.</p>
<b>Netherlands</b>	<p>The Dutch courts usually state to apply a principle of territoriality of (foreign) bankruptcies, which means that a foreign bankruptcy in principle has no effect in the Netherlands, unless an international instrument (convention; EU- regulation) the recognition of foreign bankruptcies. Some form of recognition is provided for by:</p> <ul style="list-style-type: none"> <li>- 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 (only in force in the Netherlands in Europe);</li> <li>- the Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the Reciprocal Recognition and Enforcement of Judicial Decisions and other Enforceable Orders in Civil and Commercial Matters, The Hague, 30 August 1962, (in force in the entire Kingdom);</li> <li>- the Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (to be replaced per 26 June 2017 by the recast Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings per 26 June 2017 (only in force in the Netherlands in Europe); the Regulations replace, in respect of the matters referred to therein, in the relations between EU Member States, the Conventions concluded between two or more Member States.</li> </ul> <p>However, in a recent judgment in a case where no such international instrument applied, the Hoge Raad (the Dutch Court of Cassation) (HR 13 Sept. 2013, ECLI:NL:HR:2013:BZ5668) ruled that a trustee appointed in the bankruptcy of a foreign company could validly dispose of assets in the Netherlands of that foreign company, provided these assets in the Netherlands were not subject to an attachment. It seems therefore that the application of the principle of territoriality is now somewhat limited to issues of enforcement.</p>
<b>New Zealand</b>	Not in addition to the Model Law.
<b>Nigeria</b>	There is no specific law that provides for the recognition of foreign insolvency proceedings.
<b>Norway</b>	<p>Norway is party to the Nordic Bankruptcy Convention of 7 November 1933, pursuant to which insolvency issues regarding individuals or companies within the Nordic countries are governed. The other signatory parties include Finland, Iceland, Sweden and Denmark, but Iceland has not ratified the revised version of the convention of 1982. The Nordic Bankruptcy Convention gives extraterritorial effect to the decision of a court in another member state to commence bankruptcy proceedings and requires the same member state's bankruptcy legislation to apply in subsequent proceedings.</p> <p>The Nordic Bankruptcy Convention is the only specific rules on cross-border insolvency adopted by Norway. In addition, Directive 2001/24/EC on reorganization and winding up of credit institutions (Credit Institution Directive) and Directive</p>

	<p>2002/47/EC as amended by Directive 2009/44/EC on financial collateral arrangements (Collateral Directive) have been implemented in Norwegian law.</p> <p>There is, however, an ongoing legislative process in place whereby regulation of the effect and acknowledgment of certain foreign insolvency proceedings will be included in the Norwegian Bankruptcy Code of 1984 (Nw. konkursloven). The new legislation is inspired by the EU Regulation on Insolvency Proceedings (EU) 2015/848, but several special "Norwegian solutions" have been chosen which may make the reciprocity and recognition more difficult than it could have been by either copying (EU) 2015/848 or basing the legislation on the UNICITRAL Model Law.</p>
<b>Panama</b>	<p>Any foreign resolutions must be enforced through the Fourth Chamber of the Panama Supreme Court through exequatur proceedings. The recognized resolution will carry the same effect as issued by a Panama court and shall thus be brought to relevant instance for enforcement, provided that it is not contrary to Panamanian law, or public order.</p>
<b>Spain</b>	<p>Yes, other than under the Regulation (which provides for the automatic recognition of insolvency proceedings opened in another Member State), the SIA provides for rules for the recognition of foreign main and territorial insolvency proceedings. As to the material rules that define the scheme, these provisions are based on the same principles that the EU Regulations and the MLI as regards the scope and the law applicable to foreign insolvency proceedings. Recognition, however, is subject to procedural rules on exequatur.</p>
<b>Switzerland</b>	<p>Yes. Switzerland strictly follows the principle of territoriality and has implemented, within its art. 166 to 165 Federal Act on Private International Law (PILA; SR 291), specific formal statutory procedures for the recognition of foreign insolvency orders complemented by particular insolvency proceedings again based on statutory Swiss insolvency law (Article 166 PILA).</p> <p>A legal entity against which the competent (foreign) judge opened insolvency proceedings loses its legal capacity to the insolvency estate. The opening of insolvency proceedings and the appointment of a liquidator by a foreign Court is a governmental act which, following the principle of territoriality, remains without any effect in the territory of Switzerland as</p> <p>long as such foreign governmental act has not been recognised by a competent Swiss Court. As long as a foreign insolvency order had not been formally recognised by a Swiss Court according to Articles 166 et seq. PILA a foreign insolvency estate represented by its liquidator therefore has no legal capacity in the territory of Switzerland. This basically has the following effects:</p> <p>a. A foreign liquidator is neither able to initiate enforcement proceedings, nor to issue payment orders, nor to initiate litigation, nor to otherwise act on behalf of the foreign insolvency estate in any ongoing litigation before a Swiss Court.<sup>1</sup> A foreign liquidator lacks capacity to litigate according to Article 68 CCP (Swiss Code of Civil Procedure).<sup>2</sup></p>

<sup>1</sup> F. Lorandi, 'Handlungsspielraum ausländischer Insolvenzmassen in der Schweiz', Aktuelle Juristische Praxis (AJP) 5/2008, p. 563, footnote 37; with a different opinion I. Schwander, 'Anerkennung ausländischer Konkursdekrete, Nachlassverträge und Kollokationspläne in der Schweiz', in: CJ. Meier-Schatz and R.J. Schweizer (eds.), Recht und Internationalisierung, Festgabe der Juristischen Abteilung der Universität St Gallen zum Juristentag 2000, Zurich; Schulthess 2000, p. 334 et seq.; R. Kuhn and M. Jakob, Die ausländische Insolvenzverwaltung in der Schweiz - eine Standortbestimmung, in: Jusletter, 13. August 2012, p. 4; Swiss Federal Court, BGE 129 III 683; Swiss'Federal Court, BGE 134 III 366.

<sup>2</sup> Swiss Code of Civil Procedure of December 19, 2008 (CCP), SR 272.

	<p>b. A foreign liquidator is not able to obtain an order for the recognition and/or enforcement of any final and legally binding judgment (exequatur) against a debtor domiciled in Switzerland.</p> <p>c. A foreign liquidator is not able to act on behalf of the foreign insolvency estate in insolvency proceedings against an insolvent debtor domiciled in Switzerland.<sup>3</sup></p> <p>d. A foreign liquidator is not allowed to collect documents, data or other information in the territory of Switzerland or to summon individuals domiciled in Switzerland to provide respective documents, data or information. This is prohibited by Article 271 Swiss Criminal Code.<sup>4</sup></p> <p>The only thing that a foreign liquidator is entitled to do in Switzerland prior to the recognition of the foreign insolvency order is to request an order for the recognition of the foreign insolvency order (Art. 166 para. 1 PILA) and, once that request had been filed, to request the ordering of conservatory measures in the sense of Articles 162 to 165 and Article 170 DEBL.</p> <p>Preconditions for the recognition of a foreign insolvency order upon the request of a foreign liquidator are the following:</p> <p>a. The order is enforceable in the state in which it was rendered;</p> <p>b. There is no ground for non-recognition according to Article 27 PILA (no duly summons, violation of Swiss ordre public, lis pendens);</p> <p>c. Reciprocity is granted by the state in which the order was rendered.</p> <p>Simultaneously with the recognition of a Dutch insolvency order, the Swiss Court orders the opening of particular or secondary insolvency proceedings concerning the Dutch debtor in Switzerland. The competent Swiss insolvency authority is appointed to pursue the particular insolvency proceedings in Switzerland.</p> <p>All assets of the debtor located in Switzerland are subject to the legal consequences of insolvency according to Swiss law (Art. 170 para. 1 PILA). In the schedule of claims of the particular insolvency proceedings only privileged claims by creditors who have their domicile in Switzerland and claims by creditors which are secured by pledges or mortgages are recorded (Art. 172 PILA).<sup>5</sup> The assets that form the insolvency estate in the particular insolvency proceedings are first used to cover the creditors who are recorded in the schedule of claims. Only the remaining balance after the satisfaction of these creditors shall be made available to the foreign insolvency estate (Art. 173 PILA).</p>
<p><b>UK</b></p>	<p>Yes. In addition to recognition under the 'Recast' EU Insolvency Regulation and the CBIR, foreign insolvency proceedings may also be recognised under section 426 of the Insolvency Act 1986 and the common law.</p> <p>Under section 426 of the Insolvency Act 1986, courts in certain Crown dependencies and countries/territories designated by the Secretary of State, namely Commonwealth countries, can apply to the UK courts for assistance in insolvency proceedings. The UK courts also operate the concept of modified universalism in</p>

<sup>3</sup> Swiss Federal Court BGE 137 III 570; Swiss Federal Court 5A\_248/2014 E 5.

<sup>4</sup> Swiss Criminal Code of December 21, 1937 (SCC), SR 311.0.

<sup>5</sup> U. Biirgi, in: H. Honsell et al. (eds.), Basler Kommentar, Internationales Privatrecht, 3rd edn., Basel: Helbing & Lichtenhahn 2013, Art. 172 no. 4.

	providing common law assistance to foreign insolvency proceedings.
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**13.3 Do the laws of your jurisdiction provide that the enforcement of rights of secured creditors (such as the mortgagee of a vessel) can be stayed or suspended during applicable insolvency proceedings?**

<b>Argentina</b>	In case of reorganization proceedings, the enforcement may be suspended during 90 working days if the vessel is needed in order to produce the income necessary to maintain the commercial activities of the owner (Bankruptcy Act, arts. 24 and 16 in fine). This answer may be applicable to other assets, but its applicability to vessels is debatable. In bankruptcy and liquidation proceedings, if the debtor's business is continued by the workers with court approval, those workers -acting by means of an entity called "Cooperativa de Trabajo"- can request the court to stay the foreclosure of the mortgage for a two years period.
<b>Australia</b>	In Australian law, companies in financial difficulty may enter liquidation (voluntary or compulsory) or voluntary administration. Where a company enters voluntary liquidation or voluntary administration, there is a mandatory stay on proceedings against the company or its property (ss 440D, 500 Corporations Act 2001 (Cth)). There is no exception for secured creditors.  Where a company enters compulsory liquidation, there is also a stay on proceedings (s 471B Corporations Act 2001 (Cth)). However, there is an exception to this stay for secured creditors (s 471C Corporations Act 2001 (Cth)).
<b>Brazil</b>	As a consequence of the insolvency proceedings in Brazil, further to the submission of the insolvency request or conversion of court-supervised restructuring into insolvency proceedings and the analysis of its requirements, the Judge shall order the suspension of all claims, lawsuits or expropriation of assets, except for tax cases and other cases where credits are being liquidated, shall be suspended (stay period) so that the company insolvency would be able to calculate the total debt amount and the total of assets and rights subject to its sale for the payment of the creditors.  In this sense, even the secured creditors shall be forbidden to request/proceed enforcement of their rights during the stay period.
<b>Canada</b>	Yes, for up to 75 days under the Bankruptcy and Insolvency Act, s.69.3(2)(a) and indefinitely under the Company Creditors Arrangement Act.
<b>Croatia</b>	IA has changed previous law under which secured creditors were entitled to continue or commence proceeding for enforcement of their rights regardless and independently of the insolvency procedure.  Now, IA provides that creditors entitled to a separate claim settlement in enforcement proceedings or in claim security proceedings (hereinafter: "Secured Creditors") are entitled to a separate claim settlement/collection but that all procedures initiated before the commencement of the insolvency procedure shall be suspended and completed within the insolvency procedure (not independently as it was the case before 01 September 2015) on the basis of the rules for enforcement applicable to the object of enforcement, in our case the vessel. Enforcement proceedings initiated by the Secured Creditors after the commencement of the insolvency procedure (on the basis of proposal of the insolvency administrator or creditor) shall be completed in the same manner.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	Art. 8 § 1 of the Regulation states that: « The opening of insolvency proceedings shall not affect the rights in rent of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets, both specific assets and collections of

	<p>indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings ». Nevertheless, article 14 of the Regulation states that « The effects of insolvency proceedings on the rights of a debtor in immoveable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept». The general view of French Law might be thus summarized : Insolvency proceedings are an obstacle to enforcement measures the effect of which has not been fully and timely realized since the collective interest shall prevail over individual interests.</p>
<b>Germany</b>	<p>Yes. Although the individual enforcement of rights of secured creditors generally remains admissible regardless of the opening of any insolvency proceedings before a German insolvency court, the insolvency administrator may achieve the temporary suspension of enforcement upon application before the responsible German enforcement court. In detail, mortgagees of a vessel gain a right of segregation ("Absonderungsrecht") pursuant to sec. 49 InsO which, amongst other things, allows them to continuingly pursue the enforcement of their rights autonomously from any insolvency administrator. In certain cases however the court appointed insolvency administrator is entitled to file an application for temporary suspension of enforcement with the responsible enforcement court pursuant to sec. 30d ZVG, provided that German enforcement law is applicable. This is the case when the vessel is situated within German territory and a secured creditor undertakes the enforcement of his rights before a German enforcement court.</p>
<b>Greece</b>	<p>According to Art. 25 of the Greek Bankruptcy Code (GBC), after a debtor is declared bankrupt, all enforcement actions and proceedings against the debtor are automatically suspended. However, the following rules apply with regard to secured creditors (see Art. 26 GBC, which applies only in the case of in rem securities): Their rights arising from existing security are not affected, but enforcement will be impeded in the event that the (secured) assets are closely connected to the debtor's business or production unit or enterprise, if the approval of a reorganisation plan is pending or when the creditors' meeting decides over the bankruptcy proceedings that will be followed. A vessel will be typically considered to be "closely connected to the debtor's business". Nevertheless, ten months after the opening of bankruptcy proceedings, the aforementioned enforcement suspension is no longer valid. So, after that point in time, secured creditors will be able to continue enforcement actions.</p>
<b>Ireland</b>	<p>The Laws of Ireland allow that the rights of a secured creditor can be stayed during applicable insolvency proceedings and on completion of the said proceedings. No leave is required however, for the arrest of a Vessel whose owner is in liquidation.</p>
<b>Italy</b>	<p>Yes. The enforcement must be suspended in case an insolvency process is commenced during the enforcement and must be stayed when the insolvency process is commenced (Article 51 Bankruptcy Law).</p>
<b>Japan</b>	<p>In case of a bankruptcy procedure (whose aim is liquidation), no. In civil rehabilitation procedure (whose aim is reorganisation), the court may issue an order to suspend the enforcement of the mortgage. In case of a corporate reorganisation procedure, all the enforcement procedure is suspended upon commencement of corporate reorganisation. (Art.31 of the Civil Rehabilitation Act, Art.50 of the Corporate Reorganisation Act.)</p> <p>Furthermore, there is a system to apply for cancellation of a security interest by the court order in exchange for a tender of the actual amount of the secured object. The cancellation is ordered by the court (a) if it is in the general interest of creditors and (b-1) if it does not give undue harm to the secured claimant (in case of a bankruptcy procedure), (b-2) if the secured asset is indispensable for continuation of the</p>

	insolvent debtor's business (in case of a civil rehabilitation), or (b-3) if the secured asset is indispensable for reconstruction of the insolvent debtor's business (in case of a corporate reorganisation procedure). (Art.186 of the Bankruptcy Act, Art.148 of the Civil Rehabilitation Act, Art.104 of the Corporate Reorganisation Act.)
<b>Malta</b>	Assuming that the vessel in question is registered in Malta and there is a Malta registered mortgage over the vessel, then, in terms of the Malta Merchant Shipping Act, any judicial sale proceedings instituted by a mortgagee or privileged creditor may not be interrupted or hindered by any curator in bankruptcy or any liquidator or receiver of the shipowner for any cause other than a cause which could be set up by the owner.
<b>Netherlands</b>	All judicial enforcement against any part of the property, rights and interests of the debtor commenced prior to the bankruptcy ends immediately. All attachments effected lapse (Article 33 Bankruptcy Act/Article 29 Bankruptcy Act BES). But hypothecary creditors may exercise their rights as if there were no bankruptcy (Article 57 Bankruptcy Act/Article 53 Bankruptcy Act BES). Identical provisions exist in the legislation of Aruba (Bankruptcy Regulation), Curaçao and Sint Maarten (Bankruptcy Decree).
<b>New Zealand</b>	Yes, the Companies Act 1993 deals with the liquidation of companies, and following an application to appoint a liquidator, the company, a creditor or shareholder may apply to the relevant court for the stay of any proceeding against the company. Once the liquidation commences a person cannot commence or continue a proceeding without the court's or the liquidator's consent. <sup>6</sup> When a company enters voluntary administration no proceeding may be commenced or continued against it in court without the court's or the administrator's consent. <sup>7</sup> No specific provision is made for secured creditors in this context.
<b>Nigeria</b>	Yes. The enforcement rights of secured creditors may be stayed pending the determination of insolvency proceedings.
<b>Norway</b>	Yes, pursuant to section 117 cf. section 17 of the Norwegian Bankruptcy Code of 1984 (Nw. konkursloven), enforcement of rights of secured creditors (such as the mortgagee of a vessel) are stayed for the first 6 months of an insolvency proceeding.
<b>Panama</b>	No
<b>Spain</b>	<p>In national insolvency proceedings, and in accordance to the SIA, enforcement rights of secured creditors are stayed as of the opening of the proceedings, except that the encumbered assets or rights are not linked to the business or the activities of the debtor. In this latter case, the stay will apply until one year has passed since the opening of the proceedings without liquidation proceedings being opened or, alternatively, a composition agreement that does not affect such rights is approved, whatever comes first (a composition agreement would only bind a secured creditor if it votes in favour or adheres to it). In any case, and once the insolvency proceedings have been opened, enforcement of such rights must be done under the jurisdiction of the insolvency court.</p> <p>As regards the claims secured with a maritime security interest on the vessel (be it a mortgage or a lien/privilege), the SIA states that the rights of these secured creditors may be separately enforced in accordance to their specific rules, and without being affected by any stay, provided such enforcement is done within one year as of the</p>

<sup>6</sup> Companies Act 1993, ss 247 and 248(1)(c).

<sup>7</sup> Companies Act 1993, s 239ABE.

	<p>opening of the insolvency proceedings.</p> <p>Where the main insolvency proceedings opened in Spain involve foreign flagged vessels as part of the debtor's estate, the provisions on cross-border insolvency would apply. Under the EU Regulation, the rights in rem of creditors on the debtor's vessels registered in another Member-State would not be affected by the main insolvency proceedings (which means that creditors secured with any security interest over the vessel may enforce their rights under the law applicable thereto – Arts. 2.g and 5 Regulation 2000, Arts. 2.9.iv and 8 Regulation 2015). If, alternatively, the provisions of the SIA apply, Art. 201 states that the effects of the Spanish main insolvency proceedings will be those as determined by the insolvency laws of the State where the vessel is registered. If the laws of the State where the vessel is registered provide for the application of the Spanish law as the <i>lex concursus principalis</i> for ruling the effects of the proceedings on the said maritime secured creditors, the provisions in the first two paragraphs of this answer would apply.</p> <p>All this being said, however, if the 1993 Maritime Liens and Mortgages Convention applies to the rights of secured creditors, these can be enforced in Spain in the terms of the Convention (as it does not exempt its application in cases of insolvency and the Convention has a superior legal rank than national laws, with the corresponding overriding application).</p>
<b>Switzerland</b>	<p>In case the insolvent debtor is foreign (not domiciled in Switzerland) but he is the owner of a vessel sailing under Swiss flag: The enforcement of secured rights against the vessel may continue in Switzerland as long as the foreign insolvency order has not been recognised by a Swiss Court.</p> <p>In case the insolvent debtor is domiciled in Switzerland or the foreign insolvency order has been recognised by a Swiss Court: All secured rights and all mortgaged assets in Switzerland become part of the Swiss bankruptcy estate and the Swiss bankruptcy proceedings against the Swiss debtor (Article 197 and 199 Swiss Debt Enforcement and Bankruptcy Law, DEBL, SR 281.1). This provided that the mortgaged asset has, at the time of the opening of bankruptcy proceedings not yet been sold or otherwise realised (Article 199 DEBL).</p> <p>A creditor whose claim is secured by a mortgage is privileged in the bankruptcy proceedings and will be satisfied directly out of the proceeds from the realisation of the mortgaged asset (Article 219 al. 1 DEBL).</p> <p>In case of bankruptcy against an owner of a vessel sailing under Swiss flag, the liquidator orders the vessel to a specific port and collects the certificate of registry (Article 61 Swiss Law on the Ship Register, SR 747.11).</p>
<b>UK</b>	<p>Yes.</p> <p>Should a company be placed into administration a statutory moratorium will apply; restricting the ability of creditors or third parties from taking action against the company or its assets. Unless the administrators' consent or a court order permits, secured creditors cannot enforce security over the company's property. The moratorium also prevents creditors from bringing any other kind of insolvency proceeding against the company or any form of legal process. The moratorium does not have extra-territorial effect, so does not restrict the ability of a creditor to take enforcement action against assets of the company located outside England and Wales. An interim moratorium will also apply for a limited period where a notice of intention to appoint administrators has been filed with the court.</p> <p>In a compulsory liquidation scenario, there is no stay on the enforcement of security</p>

or the forfeiture of a lease. however there is a stay on commencing or continuing legal proceedings against the company in liquidation without the leave of the court. In a voluntary liquidation, the liquidator, any creditor or contributory may apply to court for a stay on proceedings.

Another insolvency proceeding is company voluntary arrangement ("CVA"). A statutory moratorium will not automatically arise under a CVA however certain small companies are eligible to adopt a 28-day moratorium.

While not an insolvency proceeding, under a scheme of arrangement which is a court sanctioned restructuring/reorganisation of a company, a moratorium may be granted at the court's discretion.

**13.4 Is the answer to 13.3 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?**

<b>Argentina</b>	Judicial sales of vessels are governed by the <i>lex rei sitae</i> (Navigation Act, art. 611), so foreign insolvency proceedings should not interfere in a judicial sale of a vessel in Argentina.
<b>Australia</b>	If foreign insolvency proceedings are recognised under the provisions of the Model Law, the stay in Article 20(1) will apply. Section 16 of the Cross-Border Insolvency Act 2008 (Cth) provides that for the purposes of the exceptions in Article 20(2), the scope and the modification or termination of the stay or suspension is the same as if the stay arose under various parts of the Corporations Act 2001 (Cth) or Bankruptcy Act 1966 (Cth). As such, in the application to recognise the foreign insolvency proceedings, the court must identify which Parts of the Corporations Act 2001 (Cth) would apply to the foreign proceedings if they were taking place under that Act. <sup>8</sup> The relevant provisions will then determine whether a stay (and an exception to that stay) will apply.
<b>Brazil</b>	<p>In general, any foreign decision must be previously scrutinized and ratified by the Superior Court of Justice – STJ in order to be valid and enforceable in Brazil.</p> <p>However, even when the mortgage/credit rights are not ratified by the Superior Court of Justice, the creditors shall be entitled to request the inclusion of their credits in the creditors list of the insolvent company. In this scenario, the recognition of the credit and also its classification, secured or unsecured, will be subject to the Judicial Administrator discretion and/or Judge's discretion should the Judicial Administrator rejects the request for inclusion of credits.</p>
<b>Canada</b>	No
<b>Croatia</b>	<p>No, save for application of the rules of IA on international insolvency which deals with recognition of the foreign decision.</p> <p>Article 404 of IA provides as a general rule that from the day of the announcement of filing a proposal for recognition of the foreign decision on opening of insolvency proceeding abroad no litigation, enforcement or procedures of securing the claims are allowed to be initiated and those pending are to be suspended on the day of the announcement.</p> <p>However, the above rule shall not apply in case the debtor is a foreigner and its and Secured Creditors claim against its debtor property located is in the jurisdiction of the court which recognizes the foreign decision, but only if the foreign insolvency administrator gives consent to those procedures.</p> <p>Proceeds collected in enforcement procedure in Croatia in the period between commencement of the insolvency proceedings abroad and the day on announcement of filing proposal for recognition of the foreign decision (on commencement of insolvency proceedings), as well as rights of secured creditors created in the enforcement proceedings or security proceedings in Croatia in that period are without legal effect.</p> <p>In case the rights accrued in Croatia lose their legal effect, the creditors have to pass all the proceeds obtained by enforcing such rights to the insolvency administrator, after deduction of the expenses incurred in the enforcement proceedings. (Article</p>

<sup>8</sup> *Tai-Soo Suk v Hanjin Shipping Co Ltd* [2016] FCA 1404.

	412 of the IA).
<b>Finland</b>	LEFT BLANK
<b>France</b>	The answer shall be no different within the EU. Outside of the EU, the foreign judgement would produce effect subject to exequatur. It could then retroact.
<b>Germany</b>	No. If a secured creditor undertakes the enforcement of his rights before a German enforcement court, any insolvency administrator, regardless if foreign or domestic, may file an application for temporary suspension of enforcement with the responsible enforcement court pursuant to sec. 30d ZVG. The only requirement is that the foreign insolvency proceeding fulfils the requirements to be recognized under German cross-border insolvency law.
<b>Greece</b>	<p>In case the foreign proceedings are recognised according to Law No. 3858/2010, the scope of application of the stay or suspension (which is an effect of the recognition) will be determined according to the provisions of the GBC (Art. 20 para. 2, referring explicitly also to Art. 26 GBC). Therefore, the answer is negative. It shall be noted, however, that the national court may order the extension of the stay in cases not covered by Art. 20, according to Art. 21 (1)(a).</p> <p>Within the framework of Regulation (EU) 2015/848, the effects of the insolvency proceedings on proceedings brought by individual creditors (with the exception of pending lawsuits) are determined by the lex fori concursus [Art. 7(2)(f) of the Regulation]. So, it is the law of the opening of proceedings which determines the effects of insolvency on individual enforcement actions. However, there is an explicit exception in Art. 8, according to which rights in rem are not affected by the opening of insolvency proceedings. Therefore, a secured creditor cannot be prevented from exercising his rights in rem due to provisions of the lex fori concursus. As a side note: for Art. 8 to apply, the asset shall be situated within the territory of a Member State which is different from the Member State in which proceedings have been opened. In the case of vessels, according to the prevailing view, they are considered to be situated in the country they are registered [Art. 2 (9)(iv)]. If Art. 8 is deemed inapplicable, the lex fori concursus applies.</p> <p>Finally, in case a decision is recognised according to Art. 780 CPC, the lex fori concursus determines insolvency-related issues (to the extent that national public policy is not violated).</p>
<b>Ireland</b>	No
<b>Italy</b>	Yes. It could be different according to the applicable law provisions of Article 4 Reg. 1346/2000.
<b>Japan</b>	When foreign insolvency proceedings is recognised by a Japanese court, the court may order stay of the enforcement of a security interest if it is in the general interest of creditors and does not give undue harm to the secured claimant that applied for enforcement. (Art.27 of the 2000 Act.)
<b>Malta</b>	Assuming that the vessel is registered in Malta and there is a Maltese registered mortgage registered over the vessel, then, in terms of the Malta Merchant Shipping Act, any judicial sale proceedings instituted by a mortgagee or privileged creditor may not be interrupted or hindered by any curator in bankruptcy or any liquidator or receiver of the shipowner for any cause other than a cause which could be set up by the owner.

**Netherlands**

See under 13.2.

Again, the basic rule is that foreign bankruptcies are not recognized in the Dutch jurisdictions unless an international instrument would say otherwise.

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 only relevant in respect of the jurisdiction of the Netherlands in Europe. As such it is replaced by the Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings in respect of the matters referred to therein (Article 44 Regulation 1346/2000). It would seem that the issue of a stay or suspension of the enforcement of rights of secured creditors are referred to in Regulation 1346/2000, so that the Brussels Convention is replaced in that respect.

The Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the Reciprocal Recognition and Enforcement of Judicial Decisions and other Enforceable Orders in Civil and Commercial Matters, The Hague, 30 August 1962, (in force in the entire Kingdom) gives some rules about recognition and enforcement of bankruptcy distribution plans, but it does not give a basis for stays or suspensions of enforcement actions in the Dutch jurisdictions as a result of a bankruptcy in Germany.

Article 5 of Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings provides:

Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) ) a right in rem to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Under this provision the enforcement in the Netherlands in Europe of rights of

	<p>creditors secured by a right in rem such as hypothecary creditors or mortgagees in respect of vessels is not affected by the foreign insolvency. (Per 26 June 2017 this Article 5 will continue to apply without any change as Article 8 of the recast Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.)</p> <p>The enforcement or rights of creditors that are secured, but not by a right in rem, would however be effected. It is debatable whether privileged claims can be regarded as rights in rem.</p> <p>See the judgment ECJ 26 Oct. 2016, ECLI:EU:C:2016:804 (SCI Senior Home v Gemeinde Wedemark) for the latest guidance from the Court of Justice of the European Union on what is to be considered a 'right in rem' within the meaning of Article 5 Regulation 1346/2000.</p>
<b>New Zealand</b>	If foreign insolvency proceedings are recognised under the provisions of the Model Law, the stay in art 20(1) will apply. Section 8 of the Insolvency (Cross-Border) Act 2006 allows the High Court to exercise powers that it could exercise as if the matter had arisen in New Zealand.
<b>Nigeria</b>	Yes. Foreign insolvency proceedings are not recognized in Nigeria. However, foreign insolvency judgments and orders may be enforced in Nigeria where they are registered in a High Court.
<b>Norway</b>	It depends on the effect of the recognition. Currently only insolvency proceedings in the other Nordic countries are recognised in Norway, so insolvency proceedings originating in other jurisdictions will not benefit from the Norwegian rules on automatic stay.
<b>Panama</b>	<p>Please refer to point 13.2 above. Again, foreign resolutions must be subject to exequatur proceedings and in order for such resolutions to be accepted by the Fourth Chamber of the Panama Supreme Court, the following criteria must be met:</p> <p>(i) the said foreign court would in similar circumstances recognize a final and conclusive judgment of the courts of the Republic of Panama;</p> <p>(ii) the judgment has been issued as a consequence of an action taken "in personam" or in an in-rem cause of action;</p> <p>(iii) the judgment was rendered after personal service on the Borrower as defendant or on its agent appointed for such purpose by order of the court rendering judgment or on the master or any other person having the care and custody of the Vessel in an in-rem cause of action;</p> <p>(iv) the cause of action on which the judgment is based does not contravene the public policy of the Republic of Panama and that the documents evidencing the judgment are in authentic form according to the provisions of the relevant foreign court, and have been duly authenticated by Panamanian Consul or Apostille.</p>
<b>Spain</b>	<p>Where foreign main insolvency proceedings are recognized, the rules that apply in Spain would symmetrically correspond to those referred to in the previous question. Thus, if the EU legislation applies, and where the vessel is registered in Spain or in another Member State that is not the State of the opening of the main or territorial/secondary insolvency proceedings, the rights of maritime secured creditors would be treated as not affected by the effects of the proceedings.</p> <p>If foreign main insolvency proceedings are recognized in Spain under Spanish</p>

	<p>domestic legislation, the SIA provides that effects of the insolvency proceedings upon the rights of maritime secured creditors, where the vessel is registered in Spain, and even if the effects of the insolvency proceedings are generally subject to the <i>lex concursus principalis</i>, are those as determined by Spanish insolvency laws (see therefore the response to question 13.3, in the first two paragraphs). Where the recognized foreign proceedings are territorial ones, a vessel registered in Spain will be held as beyond their reach (territorial proceedings effects are limited to the debtor's assets situated in the State where the proceedings have been opened).</p> <p>Again, all this provided that the 1993 Convention does not apply. Otherwise, maritime secured creditors may enforce their right in accordance to the terms of the Convention.</p>
<b>Switzerland</b>	<p>No. In case the foreign insolvency order has been recognised by a Swiss Court, the vessel sailing under Swiss flag becomes an asset of the Swiss particular or secondary bankruptcy proceedings.</p>
<b>UK</b>	<p>No.</p> <p>Under the CBIR and in respect of foreign main proceedings, an automatic moratorium, equivalent to the moratorium arising in a compulsory liquidation will apply to prevent execution or proceedings against the debtor's asset but will not prevent a creditor from exercising their rights to enforce security over the debtor's property nor the ability to exercise rights of set off. It will also not affect a creditor's ability to commence British insolvency proceedings (which will be limited to assets in Great Britain). In respect of foreign non-main proceedings, no automatic stay applies but discretionary relief may be granted to protect the assets of the debtor or the interests of creditors. The 'Recast' EU Insolvency Regulation does not offer this level of protection.</p>

**13.5 If the mortgage over a vessel located in your jurisdiction is being enforced through a maritime court sale in circumstances where the owner of the vessel is subject to insolvency proceedings in your jurisdiction, do the maritime court sale proceedings take precedence over the insolvency proceedings, or vice versa?**

<b>Argentina</b>	Bankruptcy proceedings attract all claims and foreclosure against the debtor (Bankruptcy Act, art. 132). In reorganization proceedings the maritime sale can continue in the original court.
<b>Australia</b>	A mortgagee is a 'secured creditor'. As such, where the company that owns the ship is in compulsory liquidation, the exception to the stay referred to in the answer to 13.3 will apply, and the mortgagee will be able to proceed against the ship regardless of the insolvency proceedings. Where it is in voluntary liquidation or voluntary administration, there is no exception to the stay for secured creditors and the mortgagee will not be able to proceed, and the insolvency proceedings will take precedence.
<b>Brazil</b>	<p>Brazilian Maritime Courts jurisdiction is limited to the judgment of navigational incidents/ facts and registration of vessel ownership. In this sense, Brazilian Maritime Courts have no jurisdiction for the enforcement of maritime mortgages or sale of vessels, which both shall be subject to State Courts of Federal Courts.</p> <p>Further to that, the Judge in charge for the insolvency proceedings has exclusive jurisdiction for the enforcement of any mortgage or expropriation of any insolvent company's asset, including vessels.</p> <p>In this sense, the insolvency proceedings shall prevail over any other proceeding.</p>
<b>Canada</b>	<p>Where the ship is subject to insolvency proceedings in the nature of a bankruptcy where the assets of the bankrupt are being liquidated, the claims of secured creditors, such as a ship mortgagee or a maritime lien holder, before the admiralty court take precedence over the insolvency proceedings: Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 SCR 907, 2001 SCC 90 (CanLII)</p> <p>Where the ship is subject to insolvency proceedings in the nature of a reorganization such as the Companies Creditors Arrangement Act, the insolvency court has and generally exercises the power to suspend all enforcement proceedings by secured creditors including ship mortgagees until the plan of arrangement by the ship owner is voted on by the classes of creditors or approved by the court: Sargeant v. Worldspan Marine Inc. 2011 BCSC 787 Where the plan of arrangement is rejected by creditors or not approved by the court, the estate of the ship owner is deemed bankrupt and the ship mortgagee then has the same rights to enforce a security as in a regular bankruptcy liquidation.</p>
<b>Croatia</b>	After changes introduced by IA insolvency proceedings take precedence over maritime court sale. However, in substance the rules of (maritime) enforcement shall still apply but within the insolvency procedure and priority of the secured creditors shall be preserved.
<b>Finland</b>	If assets of the bankruptcy estate have been distrained before the beginning of bankruptcy, the enforcement shall be stayed and the distrained assets and the possibly accrued funds remitted to the estate, unless the estate requests that the enforcement be resumed on its behalf. If the sale of the distrained assets has been announced before the beginning of bankruptcy, the enforcement may be stayed only if the estate so requests. If the enforcement is resumed or an already announced sale is cancelled at the request of the estate, the estate shall bear the costs of the

	enforcement.
<b>France</b>	<p>If insolvency proceedings have been opened against the shipowner, the ship of which is one of the main assets allowing the pursuit of activity and business, it is highly probable that the shipowner himself (if not divested) or agencies of the bankruptcy will oppose judicial sale, insolvency proceedings taking precedence over a putative judicial sale. As far as "procidure de sauvegarde", which is the first step without any divestment of the CEO, no payment shall be made to creditors for claim arisen before the insolvency judgement (Art. L 622-7-1 al. 1er Code de commerce). Moreover, article</p> <p>L622-13 tries to favour continuation of contracts. Art. L 622-30 al. 1 Code de commerce further prohibits new hypothecations after the "jugement de sauvegarde". As far as the second step, which is known as "redressement judiciaire", the CEO's power are more regulated. On top of that, art. L 632-1, § 7 holds for voidable any hypothecation contracted during the period coming just before "redressement judiciaire". Finally, the vessel shall be auctioned in the perspective of a failure of "redressement judiciaire", when the shipowner is liquidated.</p>
<b>Germany</b>	Not applicable. The concept of a maritime court sale does not exist under German law.
<b>Greece</b>	<p>As noted in Q 13.3, as a rule secured creditors can continue their enforcement actions, despite the opening of insolvency proceedings. This does not mean, however, that secured creditors are prevented from participating in the latter proceedings. This will be meaningful in case they seek satisfaction from assets other than the secured assets. In particular, according to Art. 26 GBC, secured creditors are satisfied from the entirety of the insolvency estate if they waive their in rem security or when their security does not suffice for their full satisfaction. In the latter case, they will be satisfied as unsecured creditors for the part of the claim which cannot be satisfied through the liquidation of the secured assets.</p> <p>Further, it shall be noted that there is a final point in time until which a secured creditor can initiate enforcement actions. This is the so-called "union of creditors" stage, i.e. the stage after the verification of claims and before the liquidation stage. So, if the secured creditor fails to act until that time, only the insolvency administrator can conduct the liquidation of the secured asset (Art. 147 para. 1 GBC).</p>
<b>Ireland</b>	The proceedings that were initiated first take precedence in Ireland.
<b>Italy</b>	Viceversa. The insolvency proceeding in Italian jurisdiction take precedence (Article 4.1 Reg. 1346/2001).
<b>Japan</b>	As long as the enforcement of a mortgage or other security interest is not stayed, the court sale proceedings take precedence. As to when the enforcement is stayed, see the answer to Question 13.3 above.
<b>Malta</b>	In terms of Maltese law, and assuming that the vessel is registered in Malta, the vessel is deemed to be a separate patrimony within the assets of the company and therefore the maritime court sale proceedings will not be affected by any insolvency proceedings and the maritime court sale proceedings shall proceed accordingly.
<b>Netherlands</b>	See 13.3.
<b>New Zealand</b>	As per 13.3 above, the court will have a discretion to permit the admiralty proceeding to continue.

<b>Nigeria</b>	The right of a registered mortgagee is not affected by and takes precedence over any insolvency proceedings of the vessel owner. Section 57(2) MSA
<b>Norway</b>	The insolvency proceeding takes priority so that any ongoing forced sale proceeding of the vessel will be stayed.
<b>Panama</b>	Yes, the maritime court sale proceedings take precedence over the insolvency proceedings, because it is an in-rem proceeding against the vessel, not against the owner being declared insolvent.
<b>Spain</b>	Spain lacks a specific maritime jurisdiction; Commercial Courts are the ones with competence to decide on private law-related maritime disputes. Maritime security interests' enforcement proceedings are subject to the effects of insolvency proceedings to the extent stated in responses to questions 13.5 and 13.4. The sale or enforcement proceedings would take precedence over such effects in accordance thereto.
<b>Switzerland</b>	The "theoretical" answer would be no. The Swiss bankruptcy proceeding encompasses all assets of the bankrupt debtor. However, it is not possible to arrest a sea going vessel in landlocked Switzerland. Hence there is no maritime court and there cannot be a maritime court sale in the sense of an admiralty jurisdiction act.
<b>UK</b>	<i>LEFT BLANK</i>

**13.6 Is the answer to 13.5 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?**

<b>Argentina</b>	As far as we know, no judicial precedent has been published on this issue, but if the insolvency proceeding is originated in a foreign jurisdiction the rule mentioned in 11.4 should apply.
<b>Australia</b>	On the application to recognise the foreign insolvency proceedings the court will have to characterise the foreign proceedings by reference to the Corporations Act 2001 (Cth) (as explained in the answer to 13.4). After the precise type is identified, the same consequences as identified in the answer to 13.5 will follow.
<b>Brazil</b>	Any foreign decision must be previously scrutinized and ratified by the Superior Court of Justice – STJ in order to be valid and enforceable in Brazil.  In this sense, no decision rendered in a foreign insolvency proceedings or maritime court shall be immediately enforceable in Brazil for the expropriation of a Brazilian asset or asset owned by a Brazilian subsidiary/branch.
<b>Canada</b>	No, provided that a recognition order has been granted by a Canadian insolvency Court
<b>Croatia</b>	No
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	The answer shall be no different within the EU.
<b>Germany</b>	No
<b>Greece</b>	The rules mentioned in Q 13.4 apply.
<b>Ireland</b>	Yes - proceedings in Ireland will take priority over foreign proceedings.
<b>Italy</b>	If the insolvency proceedings originate in one of EU Member State under Reg. 1346/2000 it is subject to the law applicable of the state in which the proceedings has been opened. However, according to Article 5 Reg. 1346/2000 the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of assets belonging to the debtor which are situated within the territory of another member State at the time of the opening of the proceedings. In any case, according to Article 26 of Reg. 1346/2000, a member state may refuse to recognise insolvency proceedings opened in another Member State or to execute e judgement where a recognition or enforcement would be manifestly contrary to that State's public policy.
<b>Japan</b>	The general principle is the same as Question 13.5. Unless the enforcement of a security interest is stayed, the court sale proceedings take precedence. As to when the enforcement is stayed, see the answer to Question 13.4.
<b>Malta</b>	If the insolvency proceedings did not originate in our jurisdiction then our courts would need to refer the matters to the jurisdiction where insolvency proceedings have been initiated.
<b>Netherlands</b>	See 13.4.

<b>New Zealand</b>	As per 13.4 above, the court will have a discretion to permit the admiralty proceeding to continue. The outcome to this can depend on some very fine distinctions of timing, as in a case where a New Zealand admiralty proceeding was commenced just prior to the recognition of a Korean insolvency proceeding, and permitted to continue under art 20. <sup>9</sup>
<b>Nigeria</b>	No
<b>Norway</b>	Again, it depends on the legal effect of the foreign insolvency proceedings in Norway and how the planned changes to the law will play out. Currently sales proceedings will in most cases not be stayed merely as a result of the foreign insolvency proceeding. A protest from the foreign insolvency practitioner may, however, be respected.
<b>Panama</b>	The answer will be the same.
<b>Spain</b>	See also answer 13.3 and 13.4.
<b>Switzerland</b>	No
<b>UK</b>	The Admiralty Court may stay an in rem action if so required by a foreign insolvency court: The Sanko Mineral [2015] EWHC 1031.

<sup>9</sup> See for example Kim v STX Pan Ocean Co Ltd [2014] NZHC 845.

**13.7 If a vessel is sold in your jurisdiction through a maritime court sale is the mortgagee's claim to the sale proceeds subject to the risk of the mortgage being challenged or set-aside by applicable insolvency claw-back rules for transactions prior to insolvency?**

<b>Argentina</b>	Yes, in bankruptcy proceedings by means of the rules of the Bankruptcy Act (arts. 118 and 119). In reorganization proceedings it could be challenged according to the rules of the Civil and Commercial Code.
<b>Australia</b>	Potentially, although the amount at risk is likely not to be the sale proceeds, but any amounts paid by the mortgagor to the mortgagee that are subsequently found, in the event the mortgagor enters liquidation, to be recoverable "preference" payments.
<b>Brazil</b>	<p>As mentioned above, Brazilian Maritime Courts do not have jurisdiction for the enforcement of mortgages and sale of vessel.</p> <p>Brazilian Insolvency Law (Federal Law nº 11.101/05) establishes a period prior to the request for insolvency which all the negotiations performed by the company shall be subjected to an investigation to be conducted by the Judge so that the Judge may discover any fraudulent act or which jeopardize creditors' rights and order its revocation.</p> <p>In this sense, should any asset is sold by the insolvent company during such period or should such sale is performed, even prior to the commencement of the insolvency proceeding, with fraudulent purpose (i.e. in order to privilege certain creditors, avoid the payment of credits and etc) or not, such sale will be subject to its challenge by the creditors, Public Prosecutor and the Judicial Administrator.</p> <p>However, should the vessel's sale be pre-registered before the Maritime Court and its final registration be performed prior to the request for insolvency or during the insolvency proceedings, vessel's sale shall be recognized as valid since the final registration shall be deemed as a mere formality for the conclusion of the sale and not the sale itself.</p>
<b>Canada</b>	Yes, although arguably a Trustee in Bankruptcy or creditors of the bankrupt ship owner would be bound by the claims bar date in a Federal Court judicial sale if the insolvency proceedings had been commenced before the claims bar date. We are not aware of any Canadian authority in which a bankruptcy trustee or creditors of an insolvent ship owner attempted to challenge the validity of ship mortgage as a preference where the mortgage already had been enforced under a concluded Federal Court judicial sale.
<b>Croatia</b>	Yes, if creation of the mortgage was fraudulent aimed in unjustifiably favoring one creditor against the others.
<b>Finland</b>	The Act on the Recovery of Assets to a Bankruptcy Estate provides claw-back rules for transactions prior to insolvency.
<b>France</b>	French insolvency law contains claw-back rules for transactions prior to insolvency, for example art. L 622-21 Code de commerce that interrupts or prohibits any individual claim that would order the debtor to pay any sum of money. This is a mandatory rule that is applicable sua sponte.
<b>Germany</b>	Not applicable, see above.
<b>Greece</b>	Yes. The creation of security over the debtor's estate for pre-existing debts is a transaction that can be annulled according to the applicable claw-back rules (Art. 41 ff. GBC). An important exception, however, is included in Art. 2 of L.D. No. 4001/1959

	<p>[in conjunction with Art. 45(b) GBC]: according to this provision, the creation of security in favor of a credit institution is a transaction which cannot be annulled in case the debtor is subsequently declared bankrupt.</p> <p>The annulment of the transaction is effected by a decision issued by the insolvency court following an application of the insolvency administrator. If the transaction is annulled, any interested party can challenge the security before the court of enforcement. In case the enforcement has been already concluded, unjust enrichment principles apply (Art. 49 GBC); in particular, the creditor will be obliged to return the proceeds to the insolvency estate.</p>
<b>Ireland</b>	Yes
<b>Italy</b>	Yes if it is so provided by the law of the State of the opening of the proceedings (Article 4 and Article 18 Reg. 1346/2000). Yes in case of application of Italian law (Article 67 Bankruptcy Law par, 3-4).
<b>Japan</b>	Yes. If, for example, the right of avoidance is successfully exercised against the grant of a mortgage, the mortgagee will lose its claim to the proceeds.
<b>Malta</b>	<p>Maltese law has the concept of "fraudulent preference". The Maltese Companies Act holds that every privilege, hypothec or other charge, or transfer or other disposal of property or rights, and any payment, execution or other act relating to property or rights made or done by or against a company, and any obligation incurred by the company within six months before the dissolution of the company shall be deemed to be a fraudulent preference against its creditors, whether it is of a gratuitous nature or an onerous nature.</p> <p>Such an act shall be deemed to be a fraudulent preference if it constitutes a transaction at an undervalue or if a preference is given, unless the person in whose favour it is made, done or incurred, proves that he did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency, and in the event of the company being so dissolved such fraudulent preference shall be void.</p> <p>A transaction shall be deemed to be at an undervalue if (i) the company makes a gift or otherwise enters into a transaction on terms that provide for the company to receive no consideration; or (ii) the company enters into a transaction for a consideration the value of which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the company.</p> <p>A company gives a preference to a person if (i) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and (ii) the company does anything or suffers anything to be done which, in either case, has the effect of putting that person into a position which, in the event of the company going into insolvent winding up, will be better than the position he would have been had that act or omission not occurred.</p> <p>Unlike the Maltese Companies Act, the Merchant Shipping (Shipping Organisations - Private Companies) Regulations (the "Regulations") - which regulate Maltese shipping organisations - make no specific reference to hardening periods. This appears to have been intentional since it was decided to have a simpler regime in respect of shipping organisations. Art 3 (3) of the Regulations however states that "Where a matter is not specifically dealt with under these regulations, reference shall be made to the provisions of the Companies Act on such matter." The application of the fraudulent preferences rules contained in the Companies Act to shipping organisations would</p>

	therefore depend on the interpretation given to Art 3 (3). If interpreted widely there is a possibility that a Maltese court may cross refer to the Companies Act and apply the fraudulent preferences section in the Companies Act even in the context of shipping companies
<b>Netherlands</b>	No
<b>New Zealand</b>	A party could attempt to use the claw-back rules under the Companies Act 1993. <sup>10</sup>
<b>Nigeria</b>	No. The rights of registered mortgagee are not affected by the applicable insolvency claw-back rules. Section 57(2) MSA
<b>Norway</b>	A sale through the court will as the clear main rule not be subject to claw-back.
<b>Panama</b>	No
<b>Spain</b>	<p>Acts by the debtor that are detrimental to the bankrupt debtor's state may be rescinded (claw-backed) in Spain if they have been performed with the two years prior to the opening of the insolvency proceedings. These may include voluntarily created security interests (e.g., ship mortgage) or contracts or other acts that any give rise to a claim secured with a legally created security interest (e.g., a maritime lien or privilege –not the lien or privilege itself separately).</p> <p>If a vessel has already been sold (by auction), on the basis of a maritime security interest, even if the contract or the act by the debtor giving rise to the involved security interest was rescindable (claw-backed), the sale may not be challenged. Otherwise, and if the conditions for the claw-back are met, the acts of the debtor may be subject to rescission, and their consequences corrected or subject to restitution. In cases, where, e.g., the involved asset cannot be claimed from a third party protected by the law (such a good faith purchaser in public auction after enforcement of a security interest), the involved secured creditor may be condemned to restitution of any amounts perceived as proceeds as a consequence of the claw-backed right (Arts. 71 to 73 SIA).</p> <p>If the situation involves a bankrupt debtor subject to main insolvency proceedings opened in Spain, and the ship is registered in a foreign State, where also the sale may take place in Spain and under the jurisdiction of Spanish courts, the foregoing would also apply. Both the EU Regulation and the Spanish SIA cross-border insolvency provisions foresee the application of Spanish law (as the <i>lex concursus principalis</i>) as regards rescission, reintegration or claw-back actions, even if the rights in rem or security interests of creditors upon a vessel registered in another State are involved (and except where the secured creditor proves that the act or rights subject to rescission or reintegration cannot be claw-backed in any circumstances under the law applicable to its right).</p> <p>The said situation, when approached under the application of the 1993 Convention, poses some interesting difficulties, but it is submitted that in this case its provisions would not alter the rules just described, as they require the valid existence of a mortgage (to be recognized and possibly enforced under the Convention), or the valid existence of one of the claims that the Convention sets as secured by a maritime lien or privilege. Neither of these elements or conditions is, however, addressed in the Convention, as a matter of substance and its material scope.</p>

<sup>10</sup> Companies Act 1993, s 292-293.

<p><b>Switzerland</b></p>	<p>The answer is again "theoretical". Swiss insolvency law knows claw-back rules for transactions prior to insolvency (so called avoidance claims; Anfechtungsklage, paulianische Anfechtung). According to Article 287 DEBL the following acts of a debtor are voidable if the debtor carried them out within one year before the opening of bankruptcy proceedings (Article 287 DEBL):</p> <ul style="list-style-type: none"> <li>a. the granting of collateral or security for existing obligations which the debtor was not bound to secure;</li> <li>b. the settlement of a debt of money by another manner than in cash or by other normal means of payment;</li> <li>c. the payment of an unmatured debt.</li> </ul> <p>Additionally, all transactions are voidable, which the debtor carried out during the five years prior to the opening of bankruptcy proceedings with the intention, apparent to the other party, of disadvantaging his creditors or of favouring certain of his creditors to the disadvantage of others (Article 288 DEBL).</p> <p>In case of the sale of a mortgaged vessel and the satisfaction of the creditor out of the proceeds of the sale, there is no risk that an avoidance claim could successfully be enforced against such creditor. As creditor of a secured claim, he would be satisfied directly out of the proceeds from the realisation of the mortgaged asset (Article 219 al. 1 DEBL). Therefore, the satisfaction of such creditor cannot have a disadvantageous effect on other creditors (Article 288 DEBL). This provided that the mortgage was not granted within one year before the bankruptcy and for a claim which the debtor was not bound to secure (Article 287 DEBL).</p>
<p><b>UK</b></p>	<p>The Admiralty Court will give effect to the sections in the Insolvency Act 1986 (as amended) which set out the circumstances in which a mortgage may be deemed invalid e.g. transactions at an under value or a preference given to the mortgagee.</p>

**13.8 Is the answer to 13.7 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?**

<b>Argentina</b>	Challenge of a mortgage could be made applying the rules of the Civil and Commercial Code.
<b>Australia</b>	Potentially. There are too many variables to provide a meaningful answer to this question.
<b>Brazil</b>	Any foreign decision must be previously scrutinized and ratified by the Superior Court of Justice – STJ in order to be valid and enforceable in Brazil.  In this sense, no decision rendered in a foreign insolvency proceedings or maritime court shall be immediately enforceable in Brazil for the expropriation of a Brazilian asset or asset owned by a Brazilian subsidiary/branch.
<b>Canada</b>	No, the decision of the Admiralty Court does not interfere with any legitimate exercise of jurisdiction by “Insolvency Court” provided that a recognition order has been granted by a Canadian insolvency Court
<b>Croatia</b>	No, if the creditors who challenge the validity of the mortgage have obtained the judgment of the competent court invalidating the mortgage.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	<i>LEFT BLANK</i>
<b>Germany</b>	No
<b>Greece</b>	In case the foreign proceedings are recognised according to Law No. 3858/2010, upon recognition, the foreign insolvency administrator has standing to request the avoidance of acts detrimental to creditors (Art. 23). The provision of Art. 23 does not address the issue of the applicable law for such avoidance actions, i.e. whether the lex fori concursus or the lex fori should regulate these actions. According to the prevailing view, provided that the action under scrutiny relates to property situated in Greece, the lex fori, namely Greek law, applies.  In case Regulation (EU) 2015/848 is applicable, the lex fori concursus determines annulment issues [Art. 7(2)(m)], unless the conditions mentioned in Art. 16 of the Regulation are met.  Finally, as aforementioned, in case a decision is recognised according to Art. 780 CPC, the lex fori concursus determines insolvency-related issues.
<b>Ireland</b>	Yes
<b>Italy</b>	Yes, It could be different in case of insolvency proceeding opened in a NON- EU Member State.
<b>Japan</b>	The answer could be different. Under this hypothesis, the insolvency proceedings, including the conditions of avoidance, is governed by the law of the originating jurisdiction.
<b>Malta</b>	If the insolvency proceedings did not originate in our jurisdiction then our courts would need to refer the matters to the jurisdiction where insolvency proceedings

	have been initiated.
<b>Netherlands</b>	Possibly, depending on the foreign insolvency law and the question whether the enforcement in the Netherlands must be recognized in the country where the insolvency proceedings are pending.
<b>New Zealand</b>	The position is uncertain.
<b>Nigeria</b>	No
<b>Norway</b>	No, see our response to question 13.2 regarding recognition of foreign insolvency proceedings.
<b>Panama</b>	Refer to answer in point 13.4 above.
<b>Spain</b>	<p>If foreign main insolvency proceedings are recognized in Spain, where a vessel that is part of the bankrupt debtor involved is sold after enforcement of a mortgagee's rights, the rules applicable to rescission, reintegration or claw-back actions, and their consequences, would be those under the lex concursus principalis (under both the EU Regulation and the provisions of the SIA). This would be so also if the ship is registered in Spain or in another State other than the State of the opening of the insolvency proceedings, in which case, however, the creditor may oppose rescission or reintegration if it proves that its right (or its consequences) cannot be claw-backed in any circumstances under the law applicable thereto.</p> <p>If the recognized insolvency proceedings are secondary or territorial ones, the foregoing reasoning would also follow only if the vessel is registered in the State of the opening of the proceedings (the rules applicable to rescission or reintegration actions would be those under the lex concursus).</p> <p>For the reasons stated in the response to the previous questions, the foregoing would apply also where the sale of the ship has been done pursuant to the 1993 Convention.</p>
<b>Switzerland</b>	No
<b>UK</b>	No. Local law would still apply.

**13.9 Do the insolvency courts of your jurisdiction have, or claim, extraterritorial jurisdiction, such as over vessels located in a different jurisdiction? If so, how?**

<b>Argentina</b>	No, except the court may order an embargo and arrest of the vessel under the rules of the Navigation Act.
<b>Australia</b>	Yes. Australian insolvency law claims jurisdiction over all of the debtor's assets, regardless of their location. This is a result of the Model Law adopting a 'universalist' approach (cf 'territorial' approach).
<b>Brazil</b>	Brazil has not adopted the UNCITRAL Model Law on Cross-Border Insolvency and, therefore, Brazilian insolvency Courts jurisdiction and effects of insolvency proceedings in course in Brazil shall be limited to Brazil.
<b>Canada</b>	No, the Canadian insolvency courts only have territorial jurisdiction, and must seek the assistance of foreign courts to recognize and enforce their judgments. Canadian Insolvency courts have commented on the desirability of international comity in insolvency proceedings affecting debtors with worldwide assets such as ship operators.
<b>Croatia</b>	Croatian insolvency court can pass judgment concerning assets of the insolvent debtor located in a foreign country. However such judgment could be enforced in that country according to its laws on recognition and enforcement of the foreign judgments.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	According to article 2 § 9 iv of the Regulation, « the Member State in which assets are situated » means, in the case of: « property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept». This means that a vessel registered in France could be deemed to be located in France, whatever her actual location is.
<b>Germany</b>	Yes. German insolvency law claims jurisdiction over all the debtor's assets, regardless if they are situated within German territory or not. Consequently the initiation of insolvency proceedings through a German insolvency court as well as the following decisions of that court claim unconditional extraterritorial effect. If these decisions will actually be recognized within the foreign jurisdiction is not taken into any account but is rather deemed a follow-up question within the procedure of recovering the debtor's assets. If the vessel is located within the territory of the European Union the German insolvency proceeding will be recognized pursuant to art. 16 to 26 of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings or, from 26 June 2017 on, pursuant to art. 19 to 33 of Regulation (EU) No. 2015/848 of the European Parliament and of the Council of 20 May 2015. Extraterritorial effects of the initiation of a German insolvency proceeding include a general prohibition of disposals by the debtor as well as enforcements by unsecured creditors pursuant to sec. 80 to 102 InsO.
<b>Greece</b>	Yes. Art. 16 para. 1 GBC claims jurisdiction over all of the debtor's assets, regardless if they are situated in Greece or not. However, the recognition of a decision of Greek insolvency court depends on applicable rules. If the vessel is located in an EU Member State, Regulation (EU) 2015/848 applies. It shall be noted that, after the opening of insolvency proceedings, if a creditor gets satisfied from assets located in another Member State, he/she shall return what is obtained to the insolvency administrator, subject to Art. 8 and 10 (Art. 23 para. 1).

	If the vessel is located in a country which has adopted the UNCITRAL Model Law, the respective law of this country applies. Finally, in any other case, foreign procedural rules apply.
<b>Ireland</b>	No the Irish Courts only have jurisdiction over Ireland.
<b>Italy</b>	Yes according to Article 4-5 of Reg. 1346/2000.
<b>Japan</b>	Yes. When the 2000 Act was enacted, provisions that limited the effect of an insolvency proceedings to the territory of Japan was deleted from the relevant statutes. This is understood as affirming the extraterritorial jurisdiction of an insolvency proceedings in Japan.
<b>Malta</b>	If the vessels are registered in Malta (and especially if there is a Maltese mortgage registered over such vessels), then the insolvency courts of our jurisdiction would have a claim over such vessels, even if they are located in a different jurisdiction.
<b>Netherlands</b>	Yes. Under Dutch law the Dutch insolvency is considered to have worldwide application. All assets of the insolvent debtor are considered part of the insolvency estate, including those assets (ships) that would be located in a different jurisdiction. Creditors taking independent action against foreign assets of the insolvent debtor may be subject to claw back provisions. (Articles 203-205 Bankruptcy Act/Articles 195-197 Bankruptcy Act BES). Identical provisions exist in the legislation of Aruba (Bankruptcy Regulation), Curaçao and Sint Maarten (Bankruptcy Decree).
<b>New Zealand</b>	Yes, New Zealand insolvency law does not distinguish between a debtor's assets based on their location.
<b>Nigeria</b>	The jurisdiction of the court is generally restricted to the territorial waters of Nigeria which is within 12 Nautical Miles from the baseline. However, the court may, for the purpose of arrest proceedings, exercise extraterritorial jurisdiction over vessels expected to arrive Nigerian territorial waters within three days. Order 7 Rule 1 Admiralty Jurisdiction Procedure Rules.
<b>Norway</b>	Yes, pursuant to section 2-2 of the Norwegian Creditor's Recovery Act of 1984 (Nw. dekningsloven) all assets of the debtor wherever they are located are (claimed to be) confiscated by the bankruptcy estate. In practice it may, however, be difficult for the bankruptcy estate to enforce this extraterritorial jurisdiction.
<b>Panama</b>	No
<b>Spain</b>	<p>Spanish courts claim jurisdiction on civil or private law matters over national (Spanish) or foreign vessels on the basis of the legislation in force in Spain in accordance to the 1982 United Nations Convention on the Law of the Sea.</p> <p>Thus, judicial civil jurisdiction may be claimed and exercised by Spanish courts over Spanish vessels wherever they are; however, enforcement jurisdiction may only be exercised if the Spanish vessel is on the High Seas, the Spanish Exclusive Economic Zone, Contiguous Zone or Territorial Sea (other than on the internal waters or in Spanish ports).</p> <p>Where a foreign vessel is involved, Spanish courts may establish their jurisdiction to decide in civil or private law disputes that may affect the vessel (which would depend on different circumstances and/or legal rules). Any resulting enforcement jurisdiction in these cases, however, requires that the foreign vessel is on Spanish internal waters, in Spanish ports, or in the Spanish Territorial Sea (with the corresponding</p>

	limitations in this latter case –Art. 28 UNCLOS).
<b>Switzerland</b>	<p>Swiss bankruptcy proceedings claim to follow the principle of universality in view of the collection of assets. This means, any assets of the debtor, whether located in Switzerland or in another jurisdiction, belong to the bankruptcy estate (Article Universaltatsprinzip (197 DEBL; Article 27 Regulation on the Organisation of the Bankruptcy Authorities KOV, SR 281.32). However, it is a question of the laws of the jurisdiction in which the vessel is located whether and under which preconditions a Swiss liquidator is entitled to take control over the vessel or to move to the realisation of such asset (i.e. by way of sale).</p> <p>Regarding vessels sailing under Swiss flag it should be considered that any enforcement of claims against such vessel is governed by Swiss law and by the rules and regulations regarding the enforcement of claims against immovable property (Article 54ff. Law on the Ship Registry). Based on the same provisions, a Swiss liquidator should be able to apply for the judicial sale of a vessel registered in the Swiss ship registry.</p>
<b>UK</b>	No. An insolvency court in England would apply to a foreign court which had arrested the ship to claim the proceeds of sale so that they could be applied in accordance with English insolvency rules.

## Question 14

### 14 LEASING

#### 14.1 In your jurisdiction is leasing of vessels common as a method of financing?

<b>Argentina</b>	<p>Leasing (including leasing of vessels) is governed by the Civil and Commercial Code (arts. 1227 to 1250).</p> <p>No. Leasing contracts must be registered with the Registry of Ships (Civil and Commercial Code, art. 1234) but only a small number of contracts has been registered.</p>
<b>Australia</b>	Leasing, in the sense described in the footnote, is a known financing technique in Australia. As to whether it is "common", we do not have sufficient information.
<b>Brazil</b>	Although not expressly provided for by law, leasing operations/contracts are common in Brazil. However, leasing operations of ships are not very common, although they do exist. Usually vessels are acquired by other means of financing and instead of a mortgage BNDES and Banco do Brasil prefer to guarantee such loans to obtain a fiduciary alienation (a type of chattel mortgage) of the vessel. The fiduciary alienation is not a leasing but the ownership of the vessel remains with the Bank until the loan is paid.
<b>Canada</b>	Yes
<b>Croatia</b>	Yes, but basically only for small pleasure crafts and yachts. Ocean going ships are not financed through leasing as the banks involved in merchant ships financing are reluctant to assume position and accompanied liabilities of the ship-owner.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	Yes, finance leasing ("credit-bail") is a very standard way of financing vessels.
<b>Germany</b>	<p>Leasing financing is not a very common method of financing in Germany. German shipping, for the time being, remains predominantly financed by traditional bank financing. However, the need to access financing sources outside of Germany in recent years due to the lack of available financing resources for shipping within Germany has certainly led to an increase of sale- and lease-back models.</p> <p>In particular the ever increasing financing raised in the Asian market tends to be provided in this form. Such financing is, however, not commonly subject to German law.</p>
<b>Greece</b>	Leasing is not common as a method of shipfinancing. The scope of applicability of the Greek law on leasing (by leasing companies or financial institutions) i.e. L. 1665/1986 is limited to movable or immovable assets and expressly excludes vessels with the exception of private or professional pleasure boats but in practice it is not used even for these boats. However, sometime in effect (although not in form) leasing is used as financing of ocean going vessels and shipowning companies when they sell their vessel to another shipping company, which acts as investor and this owner leases back the vessel. This is done invariably in the form of a bareboat charter (with or without purchase option at the end of the charter period).

<b>Ireland</b>	Leasing is used but not as popular as debt financing. Our Merchant Shipping Act expressly provides that the mortgagee of a vessel is not an owner. There is no similar provision for leasing.
<b>Italy</b>	Yes it is.
<b>Japan</b>	Yes
<b>Malta</b>	Maltese financial institutions do not favour the finance leasing model as a method of ship/vessel financing. International finance leasing institutions do however register their interests in Maltese registered vessel on the Maltese Ship Registry.
<b>Netherlands</b>	No
<b>New Zealand</b>	No information available.
<b>Nigeria</b>	An agreement for the hire or use of a ship is more commonly referred to as a charter of a ship rather than a ship lease. It is a common method of financing.
<b>Norway</b>	Yes, this is quite often used even though we do not have a general legal framework for leasing.
<b>Panama</b>	Yes
<b>Spain</b>	The leasing of vessels is not a common method of financing in Spain because of the lack of knowledge by the financial and banking sector of the ship industry, among other reasons. However, leasing agreements are used in the context of tax lease structures, which are commonly used to finance the construction of vessels.
<b>Switzerland</b>	I'm not aware of any finance structure based on leasing for sea-going vessels but there are such structures in place for river vessels.
<b>UK</b>	Since a change in the tax regulations relating to capital allowances finance leases of ships are no longer usual. However hire purchase agreements may still be used for financing the purchase of pleasure vessels.

**14.2 Do the laws of your jurisdiction give effect to a lease in accordance with the form of the document (formal approach) or is there a risk they will re-characterise certain leases as security interests (functional approach)?**

<b>Argentina</b>	Pursuant to Section 1227 of the Civil and Commercial Code in a lease agreement the lessor agrees to give the lessee possession of certain and determined assets for its use, and to grant the latter a purchase option for a Please note that "security interest" is not a term included in Argentina's regulation. Therefore, there is practically no risk that a court would re-characterize certain leases as security interests.
<b>Australia</b>	<p>The Personal Property Securities Act 2009 (Cth) adopts a functional approach, and will characterise the lessor's interest under certain leases as a security interest. The Act applies to:</p> <ol style="list-style-type: none"> <li>1. the interest under a lease of goods if the transaction in substance secures payment or performance of an obligation; and</li> <li>2. the interest of a lessor under a "PPS lease" (s 12(3)(c)).</li> </ol> <p>A PPS lease is defined as a lease or bailment of goods (if a bailment, where the bailee provides value) (s 13(1)):</p> <ol style="list-style-type: none"> <li>1. for a term of more than one year; or 2. for an indefinite term (even if determinable by any party within a year); or</li> <li>3. for a term of up to one year that is automatically renewable, or that is renewable at the option of one of the parties, for one or more terms if the total of all the terms might exceed one year; or</li> <li>4. for a term of up to one year, in a case in which the lessee or bailee, with the consent of the lessor or bailor, retains uninterrupted (or substantially uninterrupted) possession of the leased or bailed property for a period of more than one year after the day the lessee or bailee first acquired possession of the property (but not until the lessee's or bailee's possession extends for more than one year).</li> </ol> <p>However, a PPS lease does not include (s 13(2)):</p> <ol style="list-style-type: none"> <li>1. a lease by a lessor who is not regularly engaged in the business of leasing goods; or</li> <li>2. a bailment by a bailor who is not regularly engaged in the business of bailing goods; or</li> <li>3. a lease of consumer property as part of a lease of land where the use of the property is incidental to the use and enjoyment of the land; or</li> <li>4. a lease or bailment of personal property prescribed by the regulations.</li> </ol> <p>The definition of PPS lease would likely catch a demise charter. A time charter of less than one year would not meet the requirement of 'uninterrupted (or substantially uninterrupted) possession', as ownership and possession of the ship remain with the owner under a time charter.</p>
<b>Brazil</b>	Brazil adopts a form approach, considering a leasing agreement as a lease, based on the form of the document, and being the lesser the real owner of the good.

<b>Canada</b>	In Canada, the nature of the contract will be determined in accordance with its terms, and there is a risk that what appears to be a demise charter will be characterized as a time charter or some other form of service agreement, if all five of the essential requirements of a demise charter are not met. The personal property security legislation of all common law provinces provides for an overriding functional test as to whether a set of contractual stipulations creates a security interest. While there is no equivalent federal legislative provision, recent authorities suggest that the Federal Court would be receptive to a functional test.
<b>Croatia</b>	Formal approach is applied.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	The two approaches are combined : the formalism of the contract (contrat de credit-bail) as well as the security interests are determining the characterization. Indeed, the leasing is part of the law and not subject to rulings but there are strict rules in terms of repartition of costs and charges which qualifies a finance lease vs. an operational lease.
<b>Germany</b>	<p>Germany tends to adopt a functional approach.</p> <p>In order to determine whether a lease contract (as opposed to a formal rental contract) has been concluded, the designation of the contract and the parties in individual cases is not decisive, but a substantial indication. According to the prevailing opinion, a lease contract is considered to be an atypical rental contract. The Courts have held that a contract which is designated as a "rental contract" and contains the terms "tenant" and "landlord" is nevertheless a lease contract (as further defined in 14.3 below) if it contains provisions which are typical for a lease contract.</p> <p>However, the legal nature of a lease contract under German law still is to a certain extent controversial, depending on the type of lease contract.</p> <p>Nonetheless the courts will up-hold the ownership structure determined by the lease agreement, and not regard the position of the lessor as purely a security interest.</p>
<b>Greece</b>	In principle and in practice the formal approach is followed.
<b>Ireland</b>	The Laws of Ireland will adopt a functional approach.
<b>Italy</b>	No, is not characterised as security interests.
<b>Japan</b>	The status of a lessor varies from issue to issue. With regards to the lessor's right in insolvency, the court treats a lessor of a finance lease of the "full-payout" type as holder of a security interest (i.e. functional approach).
<b>Malta</b>	Malta legislation adopts the formal approach and considers the finance lease to be a proper lease.
<b>Netherlands</b>	<p>Article 8:530 DCC (identical throughout the Kingdom of the Netherlands) defines bare-boat chartering/chartering by demise as follows:</p> <p>Under the contract (bare-boat chartering) whereby one party (the bare-boat lessor) binds himself to make a vessel exclusively at sea available to the other party (bare-boat charterer) without retaining any control thereof, the operation of the vessel is under the control of the bare-boat charterer and for his account.</p>

	<p>Book 8 DCC gives no further guidance regarding the obligations of the parties under a bare-boat charter or charter by demise. When the charter is regarded to be a lease contract, the statutory provisions about lease contained in Title 4 of Book 7 DCC may apply. It may also be that an agreement through which the shipowner grants a right in rem of usufruct would mean that a bare-boat charter within the meaning of Article 8:530 DCC exists.</p> <p>As indicated under 4.1. 'security interest' has no particular meaning under Dutch law. The qualification as such therefore has no particular consequence. The only security rights in rem existing within the context of shipping are hypothec (registered ships) and pledge (non-registered ships). Other rights which may help to secure a claim are privileged claims.</p> <p>The fact that a bare-boat charter exists does not as such create a security right in rem, or a privileged claim.</p>
<b>New Zealand</b>	<p>A lease for a term of more than one year can be deemed a security interest under the Personal Property Securities Act 1999 (PPSA), as this takes a functional approach.<sup>1</sup> If the lessor did not register their interest under the PPSA, then their interest could rank behind that of other parties in an insolvency situation, despite having title to the vessel. The PPSA is not a regime aimed at vessel financing, and the parties may therefore prefer to register a mortgage under the Ship Registration Act 1992 using the lease as evidence of their agreement.</p>
<b>Nigeria</b>	<p>Our courts will give effect to the lease in line with the form of the document</p>
<b>Norway</b>	<p>Norwegian law would generally take a functional approach. This is certainly the case when it comes to looking at a structure/agreement for tax and accounting purposes, and it is generally also the case in respect of ownership and security interest.</p> <p>A (financial) lease is seen to be very similar to a vendor's lien, and in order to ensure the lessor's rights to the leased property the starting point is that the formalities for establishing a vendor's lien must be followed for (financially) leased personal property. However, vessels and other registerable personal property is not subject to the general regulation in section 3-22 cf. section 3-15 of the Norwegian Pledge Act of 1980 (Nw. panteloven). There is therefore a lack of specific regulation on how a lessor's rights to a financially leased vessel can be secured under Norwegian law.</p>
<b>Panama</b>	<p>Formal but it will depend on the lease and how it is .... [can't read last word]</p>
<b>Spain</b>	<p>Spanish laws follow a functional approach. However, as explained below, the re-characterisation of the leasing agreement does not necessarily have to be as a security interest, but as any contract that corresponds to the agreement's actual nature.</p>
<b>Switzerland</b>	<p>Leasing is not a specifically normed type of a contract according to Swiss Law (Innominatkontrakt). It is generally qualified as a mixed contract with elements of a sales contract and a rental contract. The meaning and the interpretation of such contractual agreement depends primarily on the wording of the contract.</p> <p>The Swiss Ship register as well as the Swiss Maritime Navigation Office take a formal approach. Consequently, the lessor has to fulfil the preconditions of an owner of a vessel (see question 2.5 above). He has then to bareboat charter out the vessel to the lessee (art. 90ff. Federal Law on Navigation under the Swiss Flag (LNSF; SR 747.30). The lessee may be registered as charterer in the Swiss Ship Register (art. 93). Is the</p>

<sup>1</sup> Personal Property Securities Act 1999, ss 16 (definition of lease), 17, 23(e)(xi).

	lessee registered, he is considered to be the shipowner as far as the operation of the vessel is concerned (see art. 45 ff. LNSF).
<b>UK</b>	Generally the court would adopt the "formal approach" i.e. give effect to the demise charter according to its terms unless the court considered that the transaction was a sham.

**14.3 If the laws of your jurisdiction adopt a functional approach (14.2) please describe briefly how this is applied; also, please say whether your courts would adopt a functional approach even where the governing law of the lease follows the formal approach.**

<b>Argentina</b>	See above
<b>Australia</b>	<p>As to how the functional approach is applied, see the answer to 14.2 above. Where foreign law is concerned, it is important to distinguish between:</p> <ol style="list-style-type: none"> <li>1. the law governing the lease and the contractual rights and obligations thereunder; and</li> <li>2. the law governing the validity of the security interests.</li> </ol> <p>The former is governed by Australian rules of private international law (conflict of laws). Applying those rules, Australian courts will generally give effect to an express or implied contractual choice of law; in the absence of such a choice, they will identify and apply the law which has the closest and most real connection with the contract.<sup>2</sup> The PPSA does not affect the governing law of the contract (s 234(2)).</p> <p>Whether Australian law or a foreign law will govern the latter depends on two questions. First, a court will determine whether the PPSA applies. It applies to a security interest in goods if (s 6):</p> <ol style="list-style-type: none"> <li>1. the grantor is an Australian entity; or</li> <li>2. the goods are located in Australia.</li> </ol> <p>If the PPSA does not apply, the court will apply the Australian rules of private international law to determine the applicable law. If it does apply, the court will then apply the choice of law provisions in the PPSA to determine the applicable law (ss 233-241). Most relevantly for present purposes, s 238(4) provides that where a ship is registered on a foreign register of ships and the foreign law governs title to the ship, the 'perfection, and the effect of perfection or non-perfection' of the security interest will be governed by the foreign law. As such, if that law adopts a formal approach, that will be applied.</p>
<b>Brazil</b>	N/A
<b>Canada</b>	Canadian courts will recognize and enforce "in rem" rights created under foreign law, regardless of whether the foreign law follows either approach.
<b>Croatia</b>	N/A
<b>Finland</b>	LEFT BLANK
<b>France</b>	LEFT BLANK
<b>Germany</b>	Whilst German law is statute based, the lease contract is a type of contract which is not explicitly regulated by statute. There are hardly any statutory provisions applying directly to lease contracts. German law will, given that an underlying principle of the German contract law is the principle of freedom of contract, nonetheless give effect to lease contracts by means of analogous application of principles governing related contract types, and general law principles.

<sup>2</sup> Akai Pty Ltd v The People's Insurance Company Pty Ltd (1996) 188 CLR 418.

	<p>As stated before, lease contracts are broadly considered to be atypical rental/lease contracts. Therefore, according to the constant ruling of the Federal Supreme Court, the rules governing tenancy can generally be applied to lease contracts.</p> <p>The law of tenancy of vessels is regulated in sec. 553 ff. HGB. These statutes are <i>lex specialis</i> with regard to the law of tenancy regulated in sec. 535 ff. of the German Civil Code (BGB), which is generally applicable if specific questions are not already regulated in the Commercial Code. However, not all rules governing the general law of tenancy in sec. 535 ff. BGB can be applied to the rental of vessels. Then, general contract law statutes as laid down in the BGB are generally applicable. Depending on the underlying intention of the contract (operating lease/financing lease), principles from e.g. the law of credits and securities may also apply.</p> <p>If a lease contract is governed by a foreign law and a German court has jurisdiction, it would apply German private international law to determine which law governs the contract. The German private international law is set out in the EGBGB. When determining the applicable law, categorization of the relevant contract within the conflict of law application is subject to the "lex fori". Choice of law clauses will generally be given effect if entered into between business men; if used in connection with consumers, certain protective rules (e.g. to prevent unfair contract terms) might be given precedence over the choice of law clause. With regard to European countries, the regulations in the Rome I Regulation need to be observed.</p> <p>If in accordance with the conflict rules a foreign law regime is applicable to a lease contract, the German court would apply the foreign law to the lease contract, regardless of the approach this regime contains.</p>
<b>Greece</b>	Only in case of a dispute before the courts, it might be possible for the Court to look behind the documents, if some of the parties of the dispute have a legitimate interest to challenge the documents (as abusive, fraudulent or otherwise).
<b>Ireland</b>	A functional approach is adopted where lessors must comply with the general standards of trading laws.
<b>Italy</b>	It depends on the interpretation of the contract i.e. which was the real intention of the parties in the agreement : a financing operation or a sale operation (passage of property).
<b>Japan</b>	As already mentioned above (answer to Question 14.2), if the lease is a finance lease of the "full-payout" type, the lessor is treated as holder of a security interest in an insolvency procedure. (Tokyo District Court, 22 December 2003, Hanrei Times no.1141, p.279.)
<b>Malta</b>	N/A
<b>Netherlands</b>	N/A
<b>New Zealand</b>	The New Zealand PPSA regime would apply where the vessel is situated in New Zealand (or will soon move to New Zealand) when the lessee gains rights in the vessel, or where New Zealand law is stated as applicable to the agreement. <sup>3</sup>
<b>Nigeria</b>	N/A
<b>Norway</b>	Norwegian law makes a distinction between financial leasing and operating leasing, so that if the lease – based on its terms – classify as a financial lease, the lessee will

<sup>3</sup> Personal Property Securities Act 1999, s 26.

	<p>be deemed to be the owner for tax and accounting purposes. If the lease – again, based on the terms of the lease – is deemed to be an operating lease, the lessor is deemed to be the owner for tax and accounting purposes. In terms of ownership/security interest in a bankruptcy, the question is somewhat more difficult for financial leases. Both for financial and operating leases, the lessor will usually be the registered owner of the vessel and the general view is that the lessor (as the registered owner of the vessel) will be deemed as the “legal owner” of the vessel even if the lessee is owner for tax and accounting purposes. This view has, however, so far not been tested by the Norwegian courts as the bankruptcy estates have respected the registered ownership.</p> <p>It is a question of Norwegian international private law whether the fact that the lease is governed by foreign law would have an impact on how a Norwegian court would view the lease, and it is difficult to give a general answer to how this would play out in specific situations.</p>
<b>Panama</b>	The Court will adopt a formal approach if the governing law of the lease follow the formal approach.
<b>Spain</b>	<p>According to the Spanish Supreme Court’s case law, agreements are what they are and their character does not rely on the name (nomen iuris) that the parties have given to it (“los contratos son lo que son y la calificación no depende de las denominaciones que le hayan dado los contratantes”). Consequently, even if an agreement is formally characterised as a leasing, if it does not have its typical elements, the agreement will be re-characterised.</p> <p>However, Spanish courts have to interpret contracts according to the applicable law. If, under Spanish conflict-of-law rules, the applicable law follows the formal approach, that will be the approach that Spanish courts will apply (unless such application is manifestly incompatible with the public policy (ordre public) of the forum).</p>
<b>Switzerland</b>	N/A
<b>UK</b>	See 14.2.

**14.4 Do the laws of your jurisdiction permit the parties to the lease of a vessel governed by that law to expand by contract the rights and remedies of the lessor on default by the lessee? Or are such rights and remedies provided for exclusively by law?**

<b>Argentina</b>	Remedies and rights are described in arts. 1248 and 1249 of the Civil and Commercial Code. Some legal authors consider that these provisions of the Code are not mandatory.
<b>Australia</b>	Yes. As a general principle, Australian law recognises 'freedom of contract' and allows parties to expand their contractual rights and remedies.
<b>Brazil</b>	Assuming that the contract is governed by Brazilian law, all the rights and remedies are provided by law.
<b>Canada</b>	Yes. Freedom of contract prevails subject to public policy.
<b>Croatia</b>	The parties may agree to grant the lessor certain rights allowed under some legal concepts (like power of attorney, etc.).
<b>Finland</b>	Leasing of vessels is not governed by special legislation. Therefore the parties can agree on the right by agreements.
<b>France</b>	Rights and remedies can indeed be expanded by contracts.
<b>Germany</b>	The laws of the German jurisdiction, giving effect to the "Freedom of Contract"-principle, generally do permit the parties to expand by contract the rights and remedies of the lessor on default by the lessee. However, this is only possible as long as the contract does not contradict mandatory rules. Especially sec. 305 ff. BGB, governing the incorporation of standard business terms into the contract, as well as sec. 134 and 138 BGB, which contain rules regarding statutory prohibition and legal transactions contrary to public policy and usury will be observed to limit variations of the statutory contract model. The statutes explicitly governing the tenancy of vessels (sec. 553 ff. HGB) can generally be deviated from by the parties.
<b>Greece</b>	Since the leasing of oceangoing vessels has the form of a bareboat charter the mutual rights and obligations of the parties are those which exist in any bareboat charter.
<b>Ireland</b>	Such rights are provided exclusively by law that can expand contractually.
<b>Italy</b>	The rights (usually the ones of the lessor) might be expanded by contract; this is not for the e remedies because they are only the ones provided by the law.
<b>Japan</b>	Yes, rights and remedies of the lessor may be determined by the lease agreement.
<b>Malta</b>	Rights and remedies can be regulated by the lease agreement regulating the terms of the lease between the parties. The terms of the lease agreement in this regard shall also be interpreted in the context of international usages of trade. A lessor shall not be required to seek authorisation or confirmation from a competent court in order to exercise its rights and remedies under a lease agreement.
<b>Netherlands</b>	There is no specific legislation on this point.

<b>New Zealand</b>	As a general principle, New Zealand law recognises “freedom of contract” and allows parties to expand their contractual rights and remedies. <sup>4</sup> However, the PPSA is more prescriptive with limited contracting out where security interests are concerned. <sup>5</sup>
<b>Nigeria</b>	The rights of the parties herein are exclusively governed by contract as there is no law that specifically deals with ship lease in our jurisdiction.
<b>Norway</b>	As stated in our response to question 14.1 we do not have a general legal framework for leases in Norway. The starting point under Norwegian law is freedom of contract. However, when it comes to enforcement measures, the parties cannot agree in advance that the creditor shall have wider rights than those set out in the Norwegian Enforcement of Claims Act of 1992 (Nw. tvangsfullbyrdelsesloven), cfr. section 1-3 of this Act. However, once a default has occurred, the parties have contractual freedom to agree that the defaulted claim shall be settled in other ways than those prescribed by law.
<b>Panama</b>	The laws of Panama will enforce the law of the contract.
<b>Spain</b>	Leasing agreements, although admitted under Spanish law, are atypical contracts (i.e., there is not a systematic regulation but different rules that govern it for different purposes –e.g., accounting, tax and administrative purposes–). There are no laws that specifically permit the parties to the lease of a vessel governed by Spanish law to expand by contract the rights and remedies of the lessor on default by the lessee.  Consequently, the contracting parties may establish any covenants, clauses and conditions deemed convenient, provided that they are not contrary to the laws, to the morality or to public policy.
<b>Switzerland</b>	No. The rights and duties of the lessor being the formal owner are defined by art. 92 LNSF regarding the bareboat charter. Therefore, the lessor is obliged to hand over the seagoing vessel in seaworthy condition and the lessee shall return the seagoing vessel in the same condition, subject to normal wear and tear, to the lessor at the end of the bareboat charter.
<b>UK</b>	The parties to a demise charter/lease may agree the rights and remedies of the owner in the event of a default and these would be enforceable subject to certain overriding rules e.g. the rule against penalties, the right to relief from forfeiture etc. The Consumer Credit Act would also restrict certain rights of enforcement. However that Act applies primarily to pleasure vessels owned by individuals.

<sup>4</sup> Contractual Remedies Act 1979, s 5.

<sup>5</sup> Personal Property Securities Act 1999, s 107.

**14.5 Do the rights and remedies of the lessor of a vessel include steps to terminate the leasing and re-take possession of the vessel through self-help or is this only possible in your jurisdiction with the assistance of the court?**

<b>Argentina</b>	Unless the termination and re-possession is consented by the lessee, the lessor needs the intervention of the court (Civil and Commercial Code, arts. 1248 and 1249).
<b>Australia</b>	The terms of the lease may give the lessor the right to terminate the lease and re-take possession on default of the lessee without court assistance.
<b>Brazil</b>	The termination of the contract can take place in the following circumstances: death of the lessee, unexpected circumstance or force majeure, conclusion of the contract, perishing of the good or due to a breach of one of the parties' obligations.  In these cases, the lessor is able to re-take possession of the vessel through self-help.
<b>Canada</b>	Re-taking possession is possible with the express or implied consent of the possessor; where there is contestation, recourse to the court is necessary. The right to retake possession without consent of the possessor in the event of a default may be included in the contractual agreements between the parties, but again, any contestation will have to be adjudicated by the court.
<b>Croatia</b>	Possession of the ship under a lease can only be retaken by the court's assistance.
<b>Finland</b>	Depends on the agreement.
<b>France</b>	Rights and remedies of the lessor of a vessel include steps to terminate the leasing and re-take possession of the vessel through self-help.
<b>Germany</b>	Owners are generally not allowed to re-take the possession of the vessel through self-help without the assistance of a court, since this would be a case of unlawful interference with the possession of another. The BGB generally allows for self-help only under very limited circumstances.  If the contract provides a securing right, this does not include the authority to re-take possession through self-help. If necessary, the securing instead should be undertaken via a preliminary injunction. Unlawful interference with the possession of another could cause a claim for damages and the loss of the entitlement to leasing rates for the period of unlawful interference.
<b>Greece</b>	The parties have the usual rights and obligations under a bareboat charter.
<b>Ireland</b>	The only way the lessor can terminate the lease and re-take possession of the vessel is with the assistance of the court in order to enforce the lease in absence of co-operation.
<b>Italy</b>	No self help remedies are not admitted. It is possible with the assistance of the Court, i.e. through by remedies provided by the law only.
<b>Japan</b>	If the lease agreement so provides, the self-help remedy is available.
<b>Malta</b>	Please have a look at the answer to question 14.4: self-help remedies are available and the lessor will not require authorisation and/or confirmation from a court in order to take possession of the vessel provided that the relevant provisions catering for such right are properly included in a lease agreement.

<b>Netherlands</b>	The rights and remedies of the lessor of a vessel include steps to terminate the leasing.
<b>New Zealand</b>	The terms of the lease could provide for this.
<b>Nigeria</b>	Our law generally frowns upon self-help. A lessor keen on re-taking possession of the vessel can bring a proprietary maritime claim for the purpose of obtaining an order of court against the lessee.
<b>Norway</b>	As stated in our response to question 14.1 we do not have a general legal framework for leases in Norway. Self-help would require cooperation by the lessee. If the lessee does not cooperate, assistance of the courts would need to be sought as enforcement through self- help is generally not allowed in Norway. The process of re-taking possession is, however, made somewhat easier as the leasing contract – as long as it fulfils certain requirements – is deemed to be a special enforcement ground pursuant to section 13-2 of the Norwegian Enforcement of Claims Act of 1992 (Nw. tvangsfullbyrdelsesloven). This means that the leasing contract is a “prima facie” evidence of the lessor’s right to re-take possession of the vessel.
<b>Panama</b>	Panama law provides the rights and remedies of the lessor of a vessel including steps to terminate the leasing and taking possession of the vessel with the assistance of the court, but if uncontested also by private means.
<b>Spain</b>	<p>“Self-help” remedies are not allowed under Spanish law. The creditor should always ask for the consent by the debtor possessing the asset to be returned or, failing such consent, the approval by the competent court once the relevant actions have been exercised.</p> <p>In the case of finance leasing agreements which have been formalised in a public deed (escritura pública) or notarial deed (póliza) or which have been registered with the Moveable Assets Hire-Purchase Registry and formalised according to the official form set forth for that purposes, the lessor can claim the repossession of the asset by means of the notarial procedure established under the First Additional Provision, section 3, of Law 28/1998 of 13 July 1998 on the hire-purchase of movable assets (Ley 28/1998, de 13 de julio, de Venta a Plazos de Bienes Muebles).</p>
<b>Switzerland</b>	Only with the assistance of the court.
<b>UK</b>	Subject to the terms of the demise charter the owner may terminate the lease and take possession of the ship if the demise charterer is in default. However if the demise charterer disputed the owner’s right to terminate and refused to surrender possession of the ship the owner would have to arrest the ship to enforce its right to possession. The demise charterer could also apply to the court for relief against forfeiture i.e. the owner’s claim to terminate the demise charter.

**14.6 Under the laws of your jurisdiction is a leased vessel considered to be an asset of the lessor or the lessee, or both?**

<b>Argentina</b>	A leased vessel is considered and asset of the lessor (Civil and Commercial Code, art. 1242).
<b>Australia</b>	The vessel under a lease is an asset of the lessor. The lessor has ownership of the vessel, while the lessee only has use and possession.
<b>Brazil</b>	In Brazilian jurisdiction, the vessel under a leasing agreement will be considered to be an asset of the lessor (the creditor has the vessel ownership), while the lessee only has the use and enjoyment of the asset.
<b>Canada</b>	A demise charter only gives the lessee a right to possession and control subject to the terms of the contract; ownership and the right to the equity remains with the owner.
<b>Croatia</b>	The leased vessel is an asset of the lessor.
<b>Finland</b>	It is considered to be an asset of the lessor.
<b>France</b>	Both. For the Lessor: it is a legal ownership as the Lessor holds a title on the asset. For the Lessee, this is an economical ownership so that the accounting rules impose a consolidation of the asset into the balance sheet.
<b>Germany</b>	Whether German law considers a vessel subject to a lease contract as an asset of the owner or the lessee depends on the area of law one is looking at.  For the purposes of property law, the vessel is clearly an asset of the lessor.  For the purpose of accounting and tax laws, the vessel will be regarded as an asset of the lessee if the consideration payable under the lease contract covers at least 90% of the acquisition costs of the vessel.
<b>Greece</b>	The "leased" vessel is considered an asset of the lessor. The lessee is treated as operator and he may be registered as such at the Shipping Register.
<b>Ireland</b>	A leased vessel is considered to be an asset of both the lessor and the lessee.
<b>Italy</b>	It is an asset of the lessor.
<b>Japan</b>	Legally a leased vessel is a property owned by the lessor. The accounting rules are different.
<b>Malta</b>	The leased vessel is an asset of the lessor and not the lessee. The lessee will be specifically using the vessel under a title of lease. (this response is given from a legal and not from an accounting practice perspective)
<b>Netherlands</b>	A leased vessel is considered to be an asset of the lessor.
<b>New Zealand</b>	The vessel would be an asset of the lessor.
<b>Nigeria</b>	This will depend on what type of charter it is. A vessel under a bareboat charter may be considered as the property of the charterer such that certain claims against the vessel may be made against the charterer as if he were the owner.

<b>Norway</b>	As stated in our response to question 14.3 it would depend on the type of lease and to a certain extent also on whether you look at it from a tax and accounting law perspective or whether it is a question of deciding who the "legal owner" is in case of a bankruptcy of either the lessor or the lessee.
<b>Panama</b>	It is to be considered the asset of the lessor until title is passed to the lessee.
<b>Spain</b>	The leased vessel is considered an asset of the lessor (i.e., the lessor is the owner of the vessel).
<b>Switzerland</b>	In terms of ownership the vessel is an asset of the lessor. But as a contract may also be an asset, the bareboat charter-agreement is an asset of the lessee.
<b>UK</b>	This is a complex area of the law. For certain taxation purposes the ship may be regarded as the asset of the demise charterer – but for other purposes both the owner and the demise charterer may be deemed to have a legal interest in the ship.

**14.7 Under the laws of your jurisdiction what impact would an insolvency process (or different processes) in respect of the lessee have on the rights and remedies of the lessor of a vessel? Is this affected by the type and terms of the lease?**

<b>Argentina</b>	In case of lessee's bankruptcy the receiver and in case of reorganization the lessee, have the option to continue with the leasing or to terminate it. If no option is exercised, the leasing is considered terminated and the vessel must be redelivery to the lessor (Act 25.248, art. 11, third paragraph).
<b>Australia</b>	<p>If the lessor's security interest is unperfected (ie unregistered) at the time of the commencement of the insolvency proceedings, the security interest vests in the grantor (s 267). In the case of a lease where the lessor's 'security interest' is their title to the property, the effect of s 267 is that full title to the property is vested in the lessee upon the lessee's insolvency.<sup>6</sup></p> <p>The lessor is then given a claim for damages, provable in the lessee's insolvency proceedings, for the market value of the leased property (s 269).</p>
<b>Brazil</b>	<p>In case of insolvency of the lessee, the ownership of the goods remains with the lessor and, therefore, will not compose the lessee remaining assets. Additionally, insolvency does not extinguish the leasing agreement, unless otherwise provided for in the contract.</p> <p>Furthermore, the leasing agreement may be considered as an extrajudicial enforcing instrument in case of default in payments by the lessee. In this case, the lessor may enforce its rights by terminating the contract with the right to damages, as well as by repossession of the goods.</p>
<b>Canada</b>	A demise charter by itself and even if registered does not give the lessee the status of a secured creditor; therefore in any insolvency process, whether in a bankruptcy, or reorganization or a liquidation, a demise lessee is considered an unsecured creditor and shares pro-rata with other unsecured creditors.
<b>Croatia</b>	If the lessor has a claim against the lessee, general creditors may ask the court to include such claim in the lessee's asset against which then they will have a claim.
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	Insolvency process is a case of default (cas de dicheance du Terme) and would allow the Lessor to Terminate the Lease or substitute the defaulting lessee.
<b>Germany</b>	<p>I. Insolvency Process</p> <p>An insolvency process in respect of the lessee affects the rights of the lessor under the laws of the German jurisdiction in different ways.</p> <p>First of all, lease contracts concluded by the debtor as lessee may not be terminated by the other party after the opening of the insolvency proceedings has been requested (1) because of default in the payment of the lease fees arising before the opening of the insolvency proceedings was requested or (2) because of the degradation of the debtor's financial situation (cf. sec. 112 InsO). Arrears which arise after the aforementioned request give the lessor the right to termination. A termination undertaken before the request leaves sec. 112 InsO unaffected. Sec. 112 InsO is mandatory.</p>

<sup>6</sup> See, eg, In the matter of OneSteel Manufacturing Pty Limited (administrators appointed) [2017] NSWSC 21.

	<p>The German laws differentiate between movable and immovable objects as part of an insolvency estate.</p> <p>Under German insolvency law, a vessel registered in Germany is considered to be an immovable object. Therefore, the impact on rights of the lessor is different if the lease object is a vessel. Appurtenances of vessels, which are subject to a lease contract, are considered to be moveable objects.</p> <p>According to sec. 108 InsO, the lease contract concluded by the debtor of immovables shall continue to exist, but to the credit of the insolvency estate. The liquidator does not have the option previewed in sec. 103 InsO, whether or not the contract should be performed. However, according to sec. 109 InsO, the liquidator is allowed to terminate the lease contract without regard to the agreed term of the contract or an agreed exclusion of a right to the legal period of notice. The period of notice shall be three months to the end of the month unless another shorter period is applicable. If the liquidator makes use of said special right of termination, the lessor is entitled to claim damages as an insolvency creditor for premature termination of such contract. Under the preconditions stipulated in sec. 112 InsO, the lessor does not, however, have the right to termination himself.</p> <p>If the debtor had not yet entered into possession of the immovables when the insolvency proceedings were opened, the liquidator and the other party may withdraw from such contract. If the liquidator withdraws, damages may be claimed by the other party as an insolvency creditor for premature termination of the contract.</p> <p>II. Other Processes</p> <p>Sequestration of vessels is not admissible. A compulsory auction of vessels is regulated in sec. 162 to 171 ZVG. Rental contracts generally remain effective during a compulsory auction of ships registered in Germany. The compulsory auction of foreign vessels is dealt with in sec. 171 ZVG.</p>
<b>Greece</b>	<p>The insolvency (bankruptcy) of the lessee will have the same effects as the bankruptcy of a bareboat charterer. The owner will be entitled to withdraw the vessel from the charter. Certain creditors of the bareboat charterer shall be able to exercise their rights on the vessel. Such creditors are those having a maritime lien but (pursuant to Article 106 of the GCPML) also those creditors who have claims which arose from the operation of the vessel even if they were created by the lessee (bareboat charterer).</p>
<b>Ireland</b>	<p>An insolvency process would affect the lease, depending on the type and terms of the lease.</p>
<b>Italy</b>	<p>According to Article 72-quater Bankruptcy Law, in case of declarations of insolvency of the lessee, the leasing contract is terminated in advance. The lessor must join the insolvency proceeding for its credits against the lessee.</p>
<b>Japan</b>	<p>As mentioned above (in the answer to question 14.2), if the lease is a finance lease of the "full-payout" type, the lessor is treated as holder of a security interest in an insolvency procedure. Other leases are treated as executory contract and is subject to the trustee's power to perform the contract or terminate it. (On executory contracts, see art.53 of the Bankruptcy Act, art.49 of the Civil Rehabilitation Act, art.61 of the Corporate Reorganisation Act.)</p>
<b>Malta</b>	<p>The insolvency of the lessee will not generally effect the position and ownership title of the Lessor, save for any lien/special privilege which could be 'tied' to the vessel</p>

	even post termination of the lease.
<b>Netherlands</b>	The lessor and the bankruptcy trustee of the lessee may terminate the lease (Articles 38a and 39 Bankruptcy Act). Identical provisions exist in the legislation of Aruba (Bankruptcy Regulation), Curaçao and Sint Maarten (Bankruptcy Decree).
<b>New Zealand</b>	New Zealand law does not contain an equivalent of Australia's s 267 on the property law consequences of security interests interacting with insolvency situations. Instead of the "vesting" approach, a lessor with an unperfected security interest still has a valid and enforceable security interest after the lessee has become insolvent, dealt with under the ordinary PPSA priority rules (see Barry Allan, <i>The Law of Secured Credit</i> (Thomson Reuters, 2016 at [12.2.02])). Their claim will still rank behind parties with perfected security interests in the vessel, so this may not be of assistance to them in practice (PPSA, s 66). The type and terms of the lease do not affect this beyond the ordinary requirement that the lease be for a term of over one year to be counted as a security interest, or to otherwise amount to a security interest (see 14.2 above).
<b>Nigeria</b>	In the absence of any legislation according preferential rights to the lessor, the insolvency proceedings of the lessee may affect the former in the exercise of his remedies.
<b>Norway</b>	<p>Please see our response to question 14.3 above. The bankruptcy estate will usually have the right to step into the lessee's contracts (including a right to exercise any agreed purchase options in accordance with the agreed terms) and will often not be bound by terms stating that insolvency shall give the lessor a right to terminate the lease.</p> <p>If the bankruptcy estate does not wish to continue an operating lease, a bankruptcy in respect of the lessee would give the lessor a right to take back the vessel and make a claim against the bankruptcy estate for the remaining payments under the lease. Any alternative income that the lessor can secure by leasing the vessel to a new customer will have to be deducted from the lessor's claim.</p> <p>If the bankruptcy estate does not wish to continue a financial lease, it is generally expected that the lessor (provided he is the registered "legal" owner of the vessel) will also have the right to take back the vessel even though the lessee is deemed to be the owner for tax and accounting purposes. This view is supported both by the fact that the lessor is the registered owner, the general rule that the bankruptcy estate of a lessee will not have a wider right to the vessel than the lessee itself had and "fairness" (e.g., that if the lessee had been the registered owner of the vessel, the lessor could have had a mortgage over the vessel). This view has, however, never been tested before the Norwegian courts as the registered ownership of the lessor has been respected by bankruptcy estates.</p>
<b>Panama</b>	It will depend on the type and terms of the lease.
<b>Spain</b>	<p>In an insolvency scenario, the rights and remedies of the lessor are affected by the type of lease.</p> <p>In this regard, claims existing before the declaration of insolvency of the debtor for finance leasing agreements have special priority (crédito con privilegio especial).</p> <p>In addition, creditors may not perform actions aiming at the recovery of assets assigned under a finance leasing agreement until: (i) a composition agreement (convenio) is reached whose content does not affect exercise of that right; or (ii) until one year elapses from the declaration of the insolvency proceedings without</p>

	the winding-up having commenced. Such finance lease must have been created by virtue of an agreement registered at the Movable Assets Registry or formalised in a document that involves enforcement (e.g., a public deed (escritura pública) or a notarial deed (póliza)).
<b>Switzerland</b>	The vessel would be considered an asset of the lessor. The lessor could therefore request the vessel to be transferred to him without compensation to the lessee who is facing insolvency. However, this is only the case if the bareboat charter-agreement provides that the charter will be automatically terminated in case the lessee faces insolvency. Should this not be the case, the lessor has to fulfil the bareboat charter agreement and in case of an early termination has to compensate the lessee for damages.
<b>UK</b>	The rights of enforcement would be governed by the terms of the lease which would usually provide for the surrender of the vessel by the lessee. However, in the event the lessee fails to surrender the vessel, the rights of the lessor will be dependent on the insolvency process the lessee enters into (described above at 13.3). For example, under administration, the statutory moratorium would restrict the rights of the lessor to repossess assets in the lessee's possession without the administrators or the court's permission.

**14.8 Under the laws of your jurisdiction can a lessor arrest a vessel which it leases? Can it join in arrest proceedings initiated by a third party?**

<b>Argentina</b>	Yes. The effect of the arrest will be the immobilization of the vessel.
<b>Australia</b>	<p>That depends on the particular type of claim advanced by the lessor. If it falls within the definition of 'proprietary maritime claim' in s 4(2) of the Admiralty Act 1988 (Cth), the lessor is able to commence proceedings in rem against the leased vessel and then apply for an arrest (as explained in the answer to 1.2).</p> <p>An example of this would be where the lessor claims delivery up of a vessel after the exercise of a contractual right under the lease. This would be a 'claim relating to possession of a ship' within the meaning of s 4(2), and therefore a proprietary maritime claim capable of supporting an action in rem.<sup>7</sup></p>
<b>Brazil</b>	Since the ownership of the vessel under a leasing agreement will be of the lessor, there is no need for him to arrest it.
<b>Canada</b>	Yes, an action for possession of the vessel to be arrested is available to anyone who can show that it has a right to possession of the vessel, regardless of whether the lessor is the owner or not. S.22 (2)(a) and s.43(2) of the Federal Courts Act.
<b>Croatia</b>	<p>The lessor can arrest the vessel which it leases only if it has a maritime claim against the vessel. Otherwise, the lessor would have to bring a law suit against the lessee and submit a request for injunction only if the lessor demonstrates to the court that the lessor has an arguable claim against the lessee and existence of danger that without the proposed injunction the lessor would not be able to enforce the final judgment due to fact that the assets would by then not be reachable.</p> <p>Yes, the lessor can join the arrest proceedings initiated by a third party, provided it has a maritime claim against the vessel.</p>
<b>Finland</b>	<p>There is no special legislation with regard to lessor's possibility to arrest a vessel which it leases.</p> <p>Vessels are arrested in accordance with the Maritime Code.</p>
<b>France</b>	Theoretically the Lessor may arrest a vessel but usually it will be done through the Long term lenders to the Lessor, which are usually the same banks which have arranged the lease.
<b>Germany</b>	<p>Under German law, the assets of an obligor can be arrested pursuant to sec. 916 ZPO in order to enable compulsory enforcement of monetary claims. A vessel can therefore in general only be arrested in order to secure a claim directed against the owner of the vessel. This is different, however, in case of claims of maritime lienors, who may also arrest a vessel in case of claims against third parties such as the lessee; however, the owner himself as lessor under German law does not belong to the group of maritime lienors.</p> <p>Thus, if the lessor is the owner, he will not be able to arrest his own vessel. Consequently, he will also not be able to join in arrest proceedings instigated by third parties against his own vessel.</p> <p>However, under certain circumstances there is a possibility of filing an action for an injunction, e.g. when the lease contract has been terminated and the lessor claims</p>

<sup>7</sup> See, eg, Wilmington Trust Company (Trustee) v The Ship "Houston" [2016] FCA 1349.

	<p>restitution and there exists a specific interest in interim security, e.g. that restitution would be rendered unenforceable by removal of the vessel from the jurisdiction. In general only an effective termination of the lease contract gives the lessor the right to claim restitution from the lessee. As long as the contract is not terminated, the lessee is entitled to possess and utilize the leased object. A delay of payment on the part of the lessee does not affect this right.</p>
<b>Greece</b>	<p>Strictly speaking the lessor (by the same token as an owner under a bareboat charter) cannot arrest the vessel because it belongs to him. Arrest is permitted under Greek law as a security of claims. However in case of disputes between the lessor (owner) and the lessee (bareboat charter) about the possession of the vessel Greek law provides for another injunctive remedy (sequestration) with similar effects as the arrest (Art 725 et seq GCCP) until the dispute is resolved by the Courts in formal proceedings.</p>
<b>Ireland</b>	<p>Under the laws of Ireland a lessor if it meets the requirements to arrest a vessel, can do so in Ireland. Likewise it can join in arrest proceedings if it meets the requirements to arrest a vessel.</p>
<b>Italy</b>	<p>Yes</p>
<b>Japan</b>	<p>No. A lessor is the owner of the leased vessel. One cannot arrest an asset of its own under the Japanese law. Nor can a lessor join in the procedure to arrest a vessel that it owns.</p>
<b>Malta</b>	<p>A lessor cannot arrest (or join in arrest proceedings relating to) a vessel which it owns and leases. However, the lessor has various remedies in terms of Maltese law, enabling it to repossess the vessel it owns.</p>
<b>Netherlands</b>	<p>Yes. It could attach the vessel to secure its redelivery (rei vindicatio). The lessor can also join in attachment proceedings initiated by a third party.</p>
<b>New Zealand</b>	<p>Yes, the lessor could arrest the vessel under ss 4 and 5 of the Admiralty Act 1973 as a claim relating to possession or ownership of a vessel (as outlined in part 1 above). It could also join proceedings as a third party with an interest in the ship.</p>
<b>Nigeria</b>	<p>A lessor may arrest a vessel which it leases by bringing an action in rem for possession of the vessel (sec. 2 AJA). He may also apply to join arrest proceedings instituted by a third party against the said vessel.</p>
<b>Norway</b>	<p>As the registered owner of the vessel, the lessor cannot arrest the vessel, but the lessor can require the court's assistance to get access to the vessel pursuant to section 13-2 of the Norwegian Enforcement of Claims Act of 1992 (Nw. tvangsfullbyrdelsesloven). Should the lessor for some reason not be the registered owner of the vessel, he can arrest the vessel in accordance with the general procedure found in the NMC, the Norwegian Enforcement of Claims Act (Nw. tvangsfullbyrdelsesloven) and the Norwegian Civil Procedure Act of 2005 (Nw. tvisteloven).</p> <p>As stated in our response to question 5.1 it will be very limited possibilities for third parties to arrest the vessel for claims against the lessee as long as the lessor is the registered owner of the vessel.</p>
<b>Panama</b>	<p>Yes</p>
<b>Spain</b>	<p>In Spain, the arrest of vessels is governed by the Arrest99 Convention and Arts. 470 to</p>

	<p>479 MNA.</p> <p>According to article 1(f) Arrest99, claims arising out of any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise is a maritime claim. Given this broad description, claims arising out of leasing agreements could be considered a maritime claim. In addition, the arrest would be permissible if: (i) it is considered that the lessee was a demise charterer of the ship at the time when the maritime claim arose and is liable for the claim; and (ii) the lessee is demise charterer of the ship when the arrest is takes place.</p> <p>Notwithstanding the above, the arrest of a ship which is not owned by the person liable for the claim (in this case, the owner will be the claimant) shall be permissible only if, under the law of Spain, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship. There are precedents of the arrest of a vessel in Spain for claims arising out of a leasing agreement under the 1952 Arrest Convention (order of the Provincial Court of Barcelona 160/2010 of 6 October 2010 (auto de la Audiencia Provincial de Barcelona 160/2010 de 6 de octubre de 2010, Rec. 268/2010). However, the arrest of a vessel by the lessor under the 1999 Arrest Convention is not that clear.</p>
<b>Switzerland</b>	<p>The question could only be relevant for river vessels or yachts. Seagoing vessels will not reach Swiss territory. There is no case law but most likely not as precondition for an attachment according to Art. 271 DEBT is that the asset to be attached is a property of the debtor.</p>
<b>UK</b>	<p>An owner could arrest a ship under a demise charter to obtain possession if the demise charterer was in default under the demise charter. If a third party had begun arrest proceedings the owner could commence its own in rem proceedings or intervene in the third party arrest action.</p>

**14.9 Under the laws of your jurisdiction what priority is given to the rights of a lessor of a leased vessel as against third parties with maritime liens/claims?**

<b>Argentina</b>	Lessors have no priority against third parties with maritime privileges. Claims of third parties without maritime privileges are not enforceable against the lessors. Regarding the concepts of liens and privilegios, see 1.5.
<b>Australia</b>	In the prima facie order of priorities set out in the answer to 11.1, the claim of a lessor would fall within item 5 (statutory actions in rem).
<b>Brazil</b>	The lessor has the ownership of the vessel and does not lose it in case of insolvency. The goods will not compose the lessee remaining assets, as indicated above. Therefore, the lessor does not need to apply to the collective insolvency procedure and does not need to follow the priorities order.
<b>Canada</b>	The lessor is not a secured creditor unless it holds a mortgage from the registered owner securing the performance of the obligations under the demise charter; therefore, it will rank as an unsecured creditor after maritime lien and mortgage holders.
<b>Croatia</b>	Maritime claims have priority.
<b>Finland</b>	There is no special regulation with regard to lessor's priorities.
<b>France</b>	It depends the way the Lessor's interest are secured. Usually its debt (Tax allowance) is secured within a First Priority Mortgage together with the Long Term Lenders. The lessor will than rank pari passu with the mortgagee banks.
<b>Germany</b>	<p>There are no particular "maritime claims" under German law.</p> <p>According to sec. 602 ff. HGB, priority is given to the rights of maritime lienors compared to all other parties, including the owner and mortgage secured creditors, with regard to liens concerning the vessel. This is irrespective of whether the facts leading to the lien have been set by the owner or the lessee.</p> <p>The rank of maritime lienors among themselves is listed in sec. 596 HGB (cf. sec. 603 HGB). However, sec. 603 HGB states that certain claims, e.g. salvage charges, have priority as opposed to the liens of all other maritime lienors, whose claims previously arose. Sec. 604 of the HGB contains more detailed statutory provisions regarding the ranks of the maritime lienors under the same number.</p>
<b>Greece</b>	The lessor is the owner of the leased (bareboat chartered) vessel and consequently maritime liens and claims which may be enforced on the vessel have (in effect) priority over the right of the lessor.
<b>Ireland</b>	This depends on the timing of the claim, registered mortgages have priority as from the date the mortgage was registered.
<b>Italy</b>	Maritime liens prevail.
<b>Japan</b>	Under the Japanese law, a lessor is the owner of the leased vessel subject to maritime liens. Its claim against a lessee (such as unpaid lease payments) may be enforced over other assets of the lessee, but not on the vessel.
<b>Malta</b>	A lessor does not have a priority status in the ranking of claims.

<b>Netherlands</b>	None, as the leased vessel is considered to be an asset of the lessor.
<b>New Zealand</b>	See 11.1 above, where the lessor would rank alongside other statutory claims in rem under s 4 of the Admiralty Act.
<b>Nigeria</b>	Maritime liens rank above the rights of a lessor. Section 68 MSA
<b>Norway</b>	As the registered owner, the lessor would need to respect maritime claims giving rise to maritime liens, see our responses to questions 1.5, 5.1 and 11.2. Other maritime claims can only be made against the lessee as the deemed owner of the vessel and cannot be made against the lessor as registered owner of the vessel.
<b>Panama</b>	The priority given to registered contracts and inferior to a third party with a maritime lien.
<b>Spain</b>	The rights of a lessor of a leased vessel have no priority against those of third parties with maritime liens/claims which will be those established under the MLM93 and the Spanish Maritime Navigation Act.
<b>Switzerland</b>	The lessor is considered the owner. He therefore ranks after third parties with claims secured by maritime liens.
<b>UK</b>	None.

**14.10 Do the laws of your jurisdiction recognise registered leases in respect of vessels registered in a different jurisdiction? If so, please give brief details.**

<b>Argentina</b>	Such a lease should be recognized by Argentine jurisdiction. Both, ownership of vessels and bareboat charters are governed by the law of the flag (Navigation Act, arts. 598 and 602, and Civil and Commercial Code, art. 1250).
<b>Australia</b>	If the PPSA applies to the particular transaction in question (as outlined in the answer to 14.3), a security interest in a vessel registered in a different jurisdiction can be registered and recognised.
<b>Brazil</b>	Similarly to the mortgage issue, it is not possible to register in Brazil a lease agreement over a vessel registered in a different jurisdiction. The Brazilian Admiralty Court is only competent towards Brazilian-flag vessels and, as a consequence, may not proceed a register over a foreign-flag vessel. However, as previously mentioned, the recognition of foreign maritime liens in Brazil is still controversial. It can be argued that the leasing agreement might be registered before the Notary of Titles and Documents, in order to gain validity and enforceability in Brazil, towards third parties. But since this is still controversial, it is not guaranteed.
<b>Canada</b>	Yes. If the proper law governing an obligation respecting a vessel is foreign law, the foreign law generally will be given effect: World Fuel Services Corporation v. The Ship Nordems, 2011 FCA 73 (CanLII).
<b>Croatia</b>	No
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	Registered Leases are recognized as longterm debts by our Jurisdiction.
<b>Germany</b>	There is no registration of leases in Germany. The German courts will give effect to a registered lease on a vessel registered in a different jurisdiction pursuant to conflict of law rules.
<b>Greece</b>	Leases on foreign flag vessels when before Greek courts will be recognized (in respect of the relations of lessor and lessee) in accordance with the law applicable on them. Vis-à-vis third parties the lessee will be treated as the operator of the vessel deriving his rights from his internal agreement with the lessor (owner).
<b>Ireland</b>	No
<b>Italy</b>	Yes
<b>Japan</b>	It is difficult to give a clear answer to this question. Because the lessor's status varies from one issue to another, the court will first examine the governing law of the issue in the case. It may not necessarily coincide with the governing law of the lease agreement or the law of the state in which the lease is registered.
<b>Malta</b>	The terms of leases registered in other jurisdictions would be enforceable in terms of Maltese law if there are no violations of any public policy rules. There is no formal mechanism of recognition of a lease of a foreign registered vessel.
<b>Netherlands</b>	Yes. See 1.2.
<b>New Zealand</b>	Not expressly. However, a lease registered in another jurisdiction might still be subject to the PPSA provisions, particularly if the vessel were located in New Zealand

	at the time the lease was entered into.
<b>Nigeria</b>	Yes. By Section 51 MSA, a copy or transcript of the register of ships kept by the Registrar of Ships at any port of registry in any foreign country, or a copy or transcript of any master register of ships kept under the authority of the Government of the foreign country shall be admissible in evidence and have the same effect to all intents as the original register of which it is a copy or transcript.
<b>Norway</b>	It is not possible to give a general answer to this question as the response would depend on the specific circumstances.
<b>Panama</b>	Yes, if proper evidence is presented before court of the registered leases on the vessels registered abroad.
<b>Spain</b>	According to Spanish law, vessels as well as any rights over them are governed by the law of her flag, matriculation or registration. In this regard, please note that according to Spanish Law 1/2000, of 7 January, on civil procedure (Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil), foreign law must be proved as regards its content and validity and a Spanish court may use any means of verification it considers necessary for its implementation.
<b>Switzerland</b>	N/A
<b>UK</b>	A demise charterer may register its demise charter in Part IV of the Register if it is qualified so to do under the MSA 1995 but it would have to comply with the requirements of the MSA and the regulations made under it.

**14.11 In your jurisdiction is there generally a wish to promote leasing of vessels, including by reforming the law? If so please provide a brief explanation.**

<b>Argentina</b>	No.
<b>Australia</b>	No information available.
<b>Brazil</b>	Leasing contracts concerning vessels are not very common in Brazil. We understand that this is due to some Regulatory Aspects in Brazil, as well as due to the high liability of a vessel's owners (such as environmental liability) and the lack of interest of banks in assuming such liabilities. It has not been verified a wish to enhance this practice. Charter mortgages, on the other hand, are more common, specially under financing agreements.
<b>Canada</b>	The position of The Canadian Maritime Law Association is that federal law should be reformed to include the recognition of other security interests in a federal registry.
<b>Croatia</b>	No
<b>Finland</b>	LEFT BLANK
<b>France</b>	No
<b>Germany</b>	We do not have the impression that there is a general wish in our jurisdiction to promote the leasing of vessels by reforming the law.
<b>Greece</b>	To our knowledge there is no movement for the promotion of leasing as a form of financing of ocean going vessels.
<b>Ireland</b>	Yes – the Government along with Revenue have introduced many incentives into the Shipping Industry which also includes the promotion of leasing of vessel.
<b>Italy</b>	No
<b>Japan</b>	The leasing industry in Japan is positive about facilitating the lease transactions of vessels. However, no reform of law is anticipated. The bill to amend the Civil Code (so-called contract law reform bill) has been pending before the Diet since a couple of years, but the bill has not adopted a proposal by a group of academics to add "finance leasing" to the list of typical contracts.
<b>Malta</b>	There is a general trend towards recognising leases of vessels. Recent amendments to the Merchant Shipping Act have seen introduction of the formal recognition of a lease of a vessel for registration purposes whereby a Certificate of Registry of a vessel can be issued in the name of a lessee provided that the requisite conditions for such registration are met.
<b>Netherlands</b>	No
<b>New Zealand</b>	No. In general this area of law is poorly developed in New Zealand. There is a lot of potential confusion in the interaction between the Ship Registration Act 1992 and the PPSA. The situation can be compared with Australia where the PPSA regime has been used to comprehensively deal with both ship related and non-ship related security interests.
<b>Nigeria</b>	There has been no active discussion on this. However, foreign bareboat chartered vessels are recognized under the Coastal and Inland Shipping (Cabotage) Act 2003

	and may be registered in the Cabotage Register.
<b>Norway</b>	No
<b>Panama</b>	Yes, generally there is a wish to promote leasing of vessels and this is the reason why in the latest amendments made to Law No.55 of 2008 (which replace Book II of our Commercial Code on Maritime Trade) through Law No.27 of 2014, an article 277-B was added which allows that financial lease agreements on Panama registered vessels to be registered also. Before this was not possible.
<b>Spain</b>	Finance leases are not generally promoted in Spain. However, certain leasing agreements (not only in relation to vessels) have been promoted by establishing an especial corporate income tax regime only applicable to those finance leases with the characteristics established under Spanish Law 27/2014 of 27 November on corporate income tax (Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades). This special regime is applied as part of the tax lease structures used in order to finance the construction of vessels.
<b>Switzerland</b>	N/A
<b>UK</b>	No

## Question 15

### 15 RESERVATION OF TITLE

#### 15.1 Do the laws of your jurisdiction treat the holder of title under reservation of title as the holder of a security interest?

<b>Argentina</b>	Reservation of title is foreign to our legal system. A privilege on the vessel is admitted to secure the collection of the full price of the latest sale, but this privilege is ranked in the last place (Navigation Act, art. 476.I). See 11.
<b>Australia</b>	Yes. Reservation of title arrangements are treated as 'purchase money security interests' under the Personal Property Securities Act 2009 (Cth) (s 14).
<b>Brazil</b>	When registered before the General Register of Properties, the title under a reservation of title is considered to be a security interest, as per article 1.417 of the Brazilian Civil Code. However, it is important to note that, considering that the asset is a vessel, the registry shall be effected before the Maritime Notary.
<b>Canada</b>	No, unless pursuant to the Canada Shipping Act, 2001, s. 47(c) and 53 (3) (vessels subject to financing agreements) are registered.
<b>Croatia</b>	The holder of title under reservation would be treated as the owner of the ship if registered as such.
<b>Finland</b>	Yes
<b>France</b>	Once a creation of practitioners, the "clause de reserve de propriete" is now explicitly recognized by Code civil over moveable assets ( Art. 2367 Code civil). Reservation of title clauses are thus frequently stipulated for the sale of propelling systems or other moveable equipment to be later integrated into the vessel. But, the reservation of titles was also extended beyond moveable assets to real estate (Art. 2273 al 2 Code civil). The person benefiting from the reservation of title is deemed to be in a better position than the ordinary holder of a security interest.
<b>Germany</b>	<p>Generally, German law fully supports reservation of title clauses, both for sales credit and loan credit protection purposes. This includes broad support of extended reservation of title clauses, both into replacement assets (manufactured assets and/or sales proceeds) as well as replacements of the claims secured by conditional title arrangements. The creditor/present owner is considered to hold full legal title under a resolutive in rem condition (auflosende Bedingung) (e.g. payment of the purchase price) whilst at the same time the debtor/future owner holds legal title under the corresponding same, in rem suspensive condition (aufschiebende Bedingung). Title will automatically transfer once the condition matures, even if the creditor of the secured claim (e.g. seller) is insolvent. Reservation of title for loan credit protection purposes, and conditional title retained under extended reservation of title clauses are, however, recharacterised as an in rem security interests upon insolvency of the debtor of the secured claim (e.g. buyer), where any appropriation right of the creditor is reduced to a preferential right to proceeds against the insolvent estate of the debtor.</p> <p>But in case of registerable assets, e.g. ships, the parties regularly do not intend any in rem condition to automatically mature, because a separate register entry is commercially required for the transfer of title to become effective and to avoid any false appearance of title in the ships register. In case of inland waterway vessels, register entry is a legal perfection requirement, which will not even allow for in rem conditionality of transfer outside the register. In addition, a separation of possession</p>

	<p>and title, or payment by way of instalments, as typically is the case in reservation of title arrangements, does not normally commend itself to sales of ships. Possession incurs a multitude of liabilities and exposures to third-party risk. And payment in instalments exposes the seller to credit risk of the buyer in an often international and complex context. The seller as creditor of the purchase price will instead regularly seek to synchronise performance of the payment and delivery obligations. And in case of loan credit protection, the loan creditor regularly has no interest in becoming the owner of a ship even under conditional title arrangements and relies on registered ship mortgages as readily available non-possessory security instead.</p> <p>In the absence of in rem reservation of title agreements in case of ships, only the contractual in personam right of the debtor (e.g. buyer) to transfer of title can optionally be given special protection against subsequent in rem disposals over the ship by the present owner/creditor, cf. answer to 15.2. The in personam right of the debtor so secured is enforceable even in case of insolvency of the creditor of the secured claim (cf. sec. 106 InsO), thereby to a great extent replicating in rem conditionality for the debtor.</p>
<b>Greece</b>	In case of sale of a vessel the holder of title under reservation of title (i.e. the owner who sells) is not treated as a holder of a security interest but as the owner of the vessel sold but the transfer of ownership of which has not been completed yet.
<b>Ireland</b>	Yes
<b>Italy</b>	<i>LEFT BLANK</i>
<b>Japan</b>	<p>The reservation of title is treated as a security interest on some issues, such as the duty of the owner (creditor) to pay the balance or status in insolvency procedures. On other issues, the title is treated as ownership.</p> <p>In Japan, co-ownership has been used to finance building of vessels by Japan Railway Construction, Transport and Technology Agency (JRJT), which is a public financing body. JRJT owns a certain portion of the vessel, depending on the amount of loan that it advances, and another co-owner (debtor) charters the JRJT's portion by demise and operates the vessel. When the total of the hire for the chartered portion reaches the amount equal to the loan and accrued interest, the co-ownership is terminated and the vessel is fully in the hands of the true owner. While technically the JRJT is a party to the co-ownership agreement with the debtor, the actual effect of such co-ownership is almost equivalent to reservation of title in terms of giving security to JRJT as financier.</p>
<b>Malta</b>	Maltese law does not grant security interest holder status to a seller under a title reservation agreement. That being said, the right to receive the balance of the price of a ship by a seller constitutes a special privilege in terms of Maltese law provided that such privilege is registered in terms of article 52 of the Merchant Shipping Act.
<b>Netherlands</b>	<p>As indicated above, 'security interest' or 'holder of a security interest' have no particular meaning under Dutch law. The qualification as such therefore has no particular consequence. The only security rights in rem existing within the context of shipping are hypothec (registered ships) and pledge (non-registered ships).</p> <p>But reservation of title in registered property is generally possible under Dutch law, although it is rare. The holder of title under reservation of title will be regarded as being the owner of the particular property, whereas the buyer will have a right to have (full) title transferred to him at some stage. In respect of aircraft Dutch law allows the creation of an 'in rem' right 'to acquire aircraft by purchase coupled with possession of the aircraft' on the basis of (Article 1 of) the 1948 Geneva Convention</p>

	<p>on the international recognition of rights in aircraft. However, with regard to ships (whether sea-going or not), Dutch law is based on the 1965 Geneva Convention on the Registration of Inland Navigation Vessels which does not provide for such an in rem right. An intermediate solution is provided for the hire-purchase of inland navigation ships (only provided for in the Civil Code of the Netherlands in Europe). When the statutory conditions for the execution of the hire-purchase contract are met and the agreement is registered in the ship's register, a third person acquiring ownership of the ship shall succeed to all (rights and) obligations of the seller in the hire-purchase. There is no similar provision relating to sea-going ships.</p>
<b>New Zealand</b>	Yes. These clauses are security interests under s 17 of the PPSA.
<b>Nigeria</b>	There is no provision for this shipping practice under our law.
<b>Norway</b>	Yes, reservation of title is deemed to be a security interest and the agreement must therefore be perfected in order to have legal protection against the owner's other creditors. It is, however, not possible to establish a security interest in a vessel through a reservation of title clause/arrangement. Pursuant to section 54 of the NMC, a possessory lien is available to ship yards and others doing work on a vessel as long as the vessel is in their possession. Other creditors must get a mortgage over the vessel if they want security.
<b>Panama</b>	Panama jurisdiction recognizes titleholders once the respective document of bill of sale is duly recorded at the Public Registry of Panama Maritime Authority.
<b>Spain</b>	<p>The "reservation of title" clause ("ROT") (pacto de reserva de dominio) is a legal figure admitted under Spanish law as a way to protect the rights of the seller when a deferred payment has been agreed on a sale and purchase agreement. However, traditionally there has been a strong debate to determine its nature and its enforcement against third parties.</p> <p>The scholars and the case law have developed different theories among which the most important ones are the following: (i) the ROT is a condition precedent (condición suspensiva) for the actual acquisition by the purchaser; (ii) the ROT is a condition subsequent (condición resolutoria) of the sale and purchase agreement; and (iii) the ROT is a right in rem similar to a non-possessory pledge (i.e., the holder of title under reservation of title is the holder of a security interest). Although the first interpretation seems to be the most extended one, the nature of the ROT is not clear under Spanish law.</p>
<b>Switzerland</b>	Neither the Swiss Ship Register nor the Swiss Maritime Navigation Office have considered this question up to date. However, a reservation of title is according to Swiss law a legal concept only available for movable property (Fahmieseigentum, see art. 715 Swiss Civil Code). As the registration of vessels and mortgages on vessels follows the legal rules of immovable property, the agreement and registration of a reservation of title is in Switzerland most likely not possible.
<b>UK</b>	No. If the legal owner retains legal title to the ship – generally to secure payment of the purchase price- but has given possession of the ship to a third party it would not be regarded as having a 'security interest' as it remained the legal owner of the ship. This is the effect of a demise charter such as BARECON 2001 (Part IV) in which legal title remains in the legal registered owner until the expiry of the charter term when legal title is transferred to the demise charterer.

**15.2 Do the laws of your jurisdiction provide for reservation of title arrangements to be registered in the ships' register in any way different from a standard registration of the holder of title as registered owner? If so, please give brief details.**

<b>Argentina</b>	No
<b>Australia</b>	No. Purchase money security interests are registered on the Personal Property Securities Register.
<b>Brazil</b>	The reservation of title arrangement shall be register first before the Maritime Notary, as general registration. Then it shall be presented before the Admiralty Court, just to make a note of it on the ownership document of the vessel.
<b>Canada</b>	No
<b>Croatia</b>	No
<b>Finland</b>	No
<b>France</b>	It should be noted that under French Law, the reservation of title has effect on third parties even in the absence of legal publicity ("publicite legale") or registration. Indeed, reservation of title is not mentioned as compulsory in Art. R313-10 Code monetaire et financier that only deals with leasing. However, in theory, there is no obstacle to optional registration.
<b>Germany</b>	The German ship registers do not record in rem reservation of title arrangements in respect of ships. Instead, the essentially in personam right of the debtor (e.g. buyer) of the secured obligation (e.g. payment of purchase price) to transfer of title by the creditor (e.g. seller) of the secured obligation is separately registerable in the form of a priority notice (Vormerkung) in favour of the debtor. This in rem encumbrance may be granted by the creditor as registered owner by way of notarial application to the ships registry. Registration of a priority notice is optional and only the fact of the priority notice, the beneficiary, that it relates to a transfer of title, its date, and only general reference to the secured contractual obligation are recorded in the publicly accessible register.
<b>Greece</b>	There are no special provisions for the registration of reservation of title arrangements.
<b>Ireland</b>	No
<b>Italy</b>	<p>The questions must be treated jointly and the answer is No. According to Italian Law, the reservation of title falls within the provisions of the civil code relating to the sale with reserved ownership, which is ruled within the contest of the Sale Contract and the various different models therein included (Articles 1520, 1521, 1527, 1531 CC). In this respect Article 1523 CC named "Passage of ownership and risks", provides that: "In instalment sales in which ownership is retained by the vendor, the buyer acquires ownership of the thing upon payment of the last instalment of the price, but he assumes the risks for the time of delivery". According to the subs art. 1524 CC, reservation of ownership by the seller can be set up against creditors of the buyer only by a written document bearing a certain date (par.1) ; the provisions relating to movables registered in public registers are unaffected (par.3)</p> <p>Article 1963 CC named "prohibition of foreclosure agreement" provides that "Any agreement is void, even one subsequent to the making of the contract, which provides that the ownership of the immovable shall pass to the creditor in case of default in the payment of the debt". Moreover the same provisions can be found in</p>

	<p>the Article 2744 CC where any agreement which provides that ownership of the asset with mortgage/pledge shall pass to the creditor is void even if is done after the creation of the mortgage /pledge.</p> <p>Sale with reserved ownership is a contract of sale, a security interest if provided in the agreement is void according to Article 1963 (and 2744) CC</p>
<b>Japan</b>	No, reservation of title cannot be registered in the ship's register. However, the co-ownership may be registered.
<b>Malta</b>	Maltese law does not provide for such registration.
<b>Netherlands</b>	See under 5.1.
<b>New Zealand</b>	No, this form of interest could only be registered as a security interest under the PPSA. A party with such an interest could attempt to use it to support a caveat against dealings with the vessel.
<b>Nigeria</b>	See above
<b>Norway</b>	No, as it is not possible to reserve title to a vessel it is consequently not something that can be registered. Neither is a possessory lien applicable for registration.
<b>Panama</b>	Besides the common bill of sale, a deletion certificate from the previous registry can be registered at the Public Registry of Panama Maritime Authority, if only a transfer of registry occurs and the owner is not changed. Therefore, the deletion certificate from the previous registry will be considered as an ownership title. Also a builder's certificate issued by the shipyard in behalf of the buyer will be considered as given title to the vessel.
<b>Spain</b>	<p>Law 28/1998 of 13 July 1998 on the hire-purchase of movable assets (Ley 28/1998, de 13 de julio, de Venta a Plazos de Bienes Muebles) ("Law 28/1998") is the only Spanish law that provides for the registration of a ROT (together with its Rule of 19 July 1999 (Orden de 19 de julio de 1999 por la que se aprueba la Ordenanza para el Registro de Venta a Plazos de Bienes Muebles)). According to Law 28/1998, a ROT will only be registered if it has been established in the sale agreement in written. There are no further requirements for the registration of the ROT apart from those required for the registration of the sale and purchase agreement.</p> <p>In the case of a ROT falling out of the scope of Act 28/1998, there is not a clear answer on the requirements to be complied with by the ROT in order to be registered.</p>
<b>Switzerland</b>	No
<b>UK</b>	It is not possible to register a reservation of title in the Registry – except to the extent that if certain shares in the ship were retained by the seller then it could be registered as a co-owner of the ship.

**15.3 If the laws of your jurisdiction do provide for reservation of title arrangements to be registered as referred to in 14.2, what rights and remedies are given to the holder of title?**

<b>Argentina</b>	<i>LEFT BLANK</i>
<b>Australia</b>	N/A
<b>Brazil</b>	N/A
<b>Canada</b>	With respect to a seller which has retained title, a purchaser has all the rights and recourses available at law. As a seller cannot register its retention of title, it cannot oppose its rights to title against third parties who relied on the register without any notice, subject to sections 47(c) and 53(3) of the Canada Shipping Act, 2001
<b>Croatia</b>	No
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	<i>LEFT BLANK</i>
<b>Germany</b>	Registration of a priority notice binds both the registered owner of the ship and third parties and any subsequent in rem disposal or encumbrance in relation to the ship is void to the extent it adversely affects the priority notice earlier recorded. Upon the transfer or creation of the encumbrance in respect of which the priority notice has been recorded, the in rem right of the holder of the priority notice will take effect with priority from the date of registration of the priority notice. The in personam right of the debtor to transfer of title so secured by a priority notice is enforceable when the contractual condition is satisfied (e.g. payment of the purchase price), even in case of insolvency of the creditor of the secured claim (cf. sec. 106 InsO), thereby to a great extent replicating in rem conditionality for the debtor.
<b>Greece</b>	N/A
<b>Ireland</b>	N/A
<b>Italy</b>	If the reservation of title arrangement is valid, the risks on the vessel pass on to the buyer, but the seller is still the owner until the full payment of the sale price. In case of Buyers' default the Seller can either seek the full payment, or terminate the agreement (returning the partial payments received and subject to special conditions – see art. 1525 and 1526 cod. Civ.)
<b>Japan</b>	As stated above in the answer to Question 15.2, the reservation of title per se may not be registered.  A registered co-owner is in the status of an owner of the vessel, and may terminate the demise charter and repossesses its share of the co-owned vessel when the other co-owner (debtor) fails to make due payments.
<b>Malta</b>	Please see the response to clause 15.2.
<b>Netherlands</b>	See under 5.1.
<b>New Zealand</b>	N/A
<b>Nigeria</b>	See above.

<b>Norway</b>	N/A
<b>Panama</b>	Please refer to our explanation above.
<b>Spain</b>	<p>The main effect of the registration of the ROT with the Moveable Assets Hire-Purchase Registry in those cases where Law 28/1998 applies (upon compliance of all other requirements set out therein) is its enforceability against third parties:</p> <ul style="list-style-type: none"> <li>• Once the court has been informed about the existence of a registered ROT clause, seizure of the asset subject to the ROT will stay, when ordered by a court as a result of proceedings initiated by any person other than the beneficiary of the ROT.</li> <li>• Sellers with a registered ROT may promote two specific summary proceedings to enforce the obligation being secured by the ROT, apart from the remedies at the disposal of any other creditors (the seller will only be entitled to promote those summary proceedings if he/she has requested the payment to the debtor via a notarial request (requerimiento notarial) established under Law 28/1998);</li> <li>• In an insolvency scenario, only creditors with a registered ROT have special priority (crédito con privilegio especial). This means that all the money obtained from the sale of the asset will be firstly directed to pay the outstanding instalments in favour of the seller.</li> </ul> <p>When Law 28/1998 does not apply, there is not a clear answer on the enforceability against third parties of ROT's that may be registered. The registration of the ROT may give reasonable grounds to support its enforceability, but unfortunately there is not a certain answer on this as Spanish law does not provide anything in these cases.</p>
<b>Switzerland</b>	N/A
<b>UK</b>	See above.

**15.4 Do the laws of your jurisdiction recognise foreign reservation of title arrangements of a type referred to in 14.2? If so, please give brief details of how these arrangements would be recognised.**

<b>Argentina</b>	<i>LEFT BLANK</i>
<b>Australia</b>	The answer is the same as for 15.2.
<b>Brazil</b>	In order for a foreign reservation of title agreement to be registered before the Maritime Notary, it shall comply with the following requirements: (i) it must be notarized; (ii) it must be consularized; (iii) it must be translated by a sworn translator; (iv) it must have the signatures dully notarized; and (v) it must be previously registered before the Registry of Titles and Documents.
<b>Canada</b>	Yes, Canadian admiralty courts will recognize "in rem" rights created under foreign law and will give full force and effect to them, even though the same "in rem" rights are not available in Canada.
<b>Croatia</b>	No
<b>Finland</b>	<i>LEFT BLANK</i>
<b>France</b>	A foreign reservation of title arrangement shall be recognized in France provided it was validly set up in its country of origin and provided its implementation is carried out conforming French Law. This cumulative application of the law of the country where the arrangement was made and the law of the country where the asset is located, which frequently is the lex concursus in case of insolvency, gives full effect to the lex concursus.
<b>Germany</b>	<p>German conflicts of law generally recognise in rem rights validly acquired in a foreign jurisdiction once the asset becomes subject to German substantive law, either because of a change of situs or, in case of a ship, of registration in Germany. German law will try to accommodate such foreign rights within the framework of German substantive law, even if there is no direct equivalent.</p> <p>Considering that German law broadly supports reservation of title and extended reservation of title clauses, it will regularly seek to implement these without imposing additional risk of recharacterisation as a security interest. This also applies to enforcement of in rem rights in assets not subject to German substantive law, such as foreign registered ships physically located in Germany. In case of ships registered in Germany, the type of registerable encumbrances is, however, limited by statute. Any in rem reservation of title arrangement validly created in a foreign jurisdiction and with third-party effect will then need to be translated into a priority notice in favour of the debtor of the secured claim.</p> <p>Upon insolvency of a German debtor, however, mandatory German insolvency law will result in recharacterisation of certain ownership-based security, such as reservation of title clauses for loan credit protection or under extended reservation of title arrangements, as security interests resulting in preferential rights to enforcement proceeds rather than appropriation rights by the conditional title holder.</p>
<b>Greece</b>	If the reservation of title arrangement gives rights in rem, Greek courts will apply the law of the flag in order to determine the rights (in rem) of the parties if a relevant dispute comes before the Greek courts. If no rights in rem arise from the reservation of title arrangements or for any rights (other than rights in rem) arising from such arrangements Greek courts would apply lex causae (i.e. the law applicable on the

	agreement for the arrangements).
<b>Ireland</b>	No
<b>Italy</b>	Italian law recognises foreign reservation of title arrangement, provided that they are not considered contrary to public policy; however there is a decision of Italian Supreme Court for which a foreign foreclosure agreement which is regulated by foreign law (i.e. English law) cannot be considered contrary to the international public policy in the light of art. 16 of Law 218/1995 on international private law (Supreme Court of Cassation 5.7.2011 n. 1460).
<b>Japan</b>	It is difficult to give a clear answer to this question. Because the status of the seller reserving the title varies from one issue to another, the court will first consider the governing law of the issue in the case. It may not necessarily coincide with the governing law of the reservation of title agreement.
<b>Malta</b>	The terms of title reservation agreements registered in other jurisdictions would be enforceable in terms of Maltese law if there are no violations of any public policy rules. That being said, any rights under a title reservation agreement would not be considered as a security interest having a priority status in terms of Maltese law.
<b>Netherlands</b>	See under 2.1. with particular regard to art. 10:127 DCC.
<b>New Zealand</b>	A party with such an interest could attempt to use it to support a caveat against dealings with the vessel.
<b>Nigeria</b>	See above.
<b>Norway</b>	This would be a question of Norwegian international private law and the answer would depend on the facts. It is therefore not possible to give a general answer to this question.
<b>Panama</b>	No
<b>Spain</b>	<p>According to Spanish law, all "in rem rights" aspects of a ROT in relation to a vessel (e.g. enforceability against third parties) will be subject to the law of her flag, matriculation or registration.</p> <p>In this sense, if the vessel is registered in Spain at the time of a potential enforcement of the ROT vis-à-vis third parties, the recognition and enforceability of the ROT shall be analysed under the perspective of Spanish law (with the uncertainties arising from the regulation of the ROT under Spanish law).</p>
<b>Switzerland</b>	N/A
<b>UK</b>	If an owner retained legal title to the ship but transferred possession to a third party e.g. a purchaser or a demise charterer and such an arrangement was valid under the law of the country of the registration of the ship the Admiralty Court would usually give effect to such an arrangement – however whether the owner was deemed to remain as legal owner or the holder of 'mortgage or charge' for the purpose of sec.20 (7) ( c ) of the Senior Courts Act 1981 would be a matter of construction.

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**Question 16\***

**16 INSURANCE PROCEEDS**

**16.1 Does a mortgage registered in your jurisdiction extend by law to the vessel's insurance policies in the event of a casualty affecting the vessel?**

<b>Canada</b>	No. The ship mortgagee would have to stipulate for mortgagee's interest insurance in the deed of covenants or make its own arrangements to insure its interest.
<b>Croatia</b>	A ship mortgage extends by law to the ships insurance proceeds, unless otherwise agreed. In order to make this operational, the insurers have to be notified of the mortgage before they pay out the insurance proceeds. If so notified, the insurers must not pay out the insurance proceeds to the insured (the mortgagor) without the mortgagee's approval. If, on the other hand, the insurance proceeds have been paid out before the insurers have received notice of the mortgage, the mortgage over the insurance proceeds ceases.
<b>Germany</b>	Yes
<b>Greece</b>	The rights of the mortgage may be also exercised against the insurance money (Article 198 of the GCPML for a simple mortgage and article 18 of LD 3899/1958 for a preferred mortgage).
<b>Italy</b>	<p>Article 572 CN provides that in case the vessel is lost or damaged the insurance indemnities should be paid to the mortgagee unless used for repairing the damages suffered by the vessel.</p> <p>Therefore if said indemnities are not used for that purpose, they are due to the mortgagee, while if they are used for repairing the vessel, they are due to the shipowner/mortgagor.</p> <p>The mortgagee should step into the owners/mortgagor rights for having his status recognized; the loss payable clause (that is always agreed as between insurers and shipowner assured when there is an hypothec/mortgage on the vessel) deals with this.</p>
<b>Malta</b>	The rights of a mortgagee extend by operation of law to the insurances proceeds following a ship casualty.
<b>Netherlands</b>	<p>Yes, Article 3:229 DCC (applying throughout the Kingdom) provides:</p> <ol style="list-style-type: none"> <li>1. The right of pledge or mortgage entails, by law, a right of pledge over all claims for compensation which take the place of the secured property, including claims resulting from its reduction in value.</li> <li>2. This right of pledge has preference over any other right of pledge established on the claim.</li> </ol>
<b>Nigeria</b>	Nigerian law does not recognize the right of a registered mortgagee to take benefit of an insurance policy taken out by the mortgagor on the vessel.
<b>Norway</b>	Pursuant to section 7-1 of the Norwegian Insurance Contracts Act of 1989 (Nw. forsikringsavtaleloven), a registered mortgagee will be covered under the insurance. This provision is, however, not mandatorily applicable for vessels, see section 1-3 of the Act. The status of the mortgagee will thus be regulated by the applicable insurance terms. The most commonly used terms for hull insurance under Norwegian

	<p>law, are those found in the Nordic Marine Insurance Plan of 2013. Chapter 7 of the Nordic Marine Insurance Plan provides an automatic cover of the mortgagee's interest under the insurance. This means that the mortgagee is co-insured, regardless of whether the insurer has received any declaration to that effect. In practice, the position of the mortgagee is often specifically regulated in the insurance contract. Such specific provisions in the contract will have priority over the rules in Chapter 7. If the position of the mortgagee is incomplete in some respect in such provisions, the rules of Chapter 7 may supplement them.</p>
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\* Question only included in countries listed above.