

THE SHIPPING LAW
REVIEW

SEVENTH EDITION

Editors

George Eddings, Andrew Chamberlain and
Holly Colaço

THE LAWREVIEWS

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PREFACE

The seventh edition of this book aims to continue to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues and decommissioning. A new chapter on ship financing is also included, which seeks to demystify this interesting and fast-developing area of law.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around US\$380 billion in terms of global freight rates, amounting to about 5 per cent of global trade overall. More than 90 per cent of the world's trade is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

The maritime sector continues to take stock after experiencing a bumpy ride during the past few years and, while the industry is looking forward to continued recovery, there is still uncertainty about the effects of trade tariffs and additional regulation. Under the current US administration, the sanctions picture has become ever more complex and uncertain.

With a heightened public focus on the importance of environmental issues, a key issue within the shipping industry remains environmental regulation, which is becoming ever more stringent. At the IMO's MEPC 72 in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement has led to some of the most significant regulatory changes in the industry in recent years and is likely to lead to greater investment in the development of zero carbon dioxide fuels, possibly paving the way for phasing out carbon emissions from the sector entirely. This IMO Strategy, together with the stricter sulphur limit of 0.5 per cent m/m introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies.

Brexit continues to pull focus. Much has been printed about the effects of Brexit on the enforcement of maritime contracts. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly effect enforceability. Arbitration awards will continue to be enforceable under the New York Convention and it seems likely reciprocal EU and UK enforcement of court judgments will be agreed.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

George Eddings, Andrew Chamberlain and Holly Colaço

HFW

London

May 2020

MALTA

Jean-Pie Gauci-Maistre, Despoina Xynou and Deborah Mifsud¹

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The Republic of Malta is a small, strategically located island country whose maritime industry has long provided great value to its economy. Malta is regarded as a strong and safe maritime jurisdiction; in fact, it has consolidated its position as the largest European maritime flag and, since 2014, the sixth largest in the world. Since then, registered numbers have continued to increase every year.

As well as offering a stable legal and fiscal regime, Malta's ship registry has remained competitive and has constantly proven itself ready to accommodate shipowners and shipping companies, always within the parameters of international rules and conventions. According to UNCTAD's *Review of Maritime Transport* for 2019, Malta retained its position as the sixth-largest flag worldwide and increased the registered deadweight tonnage (DWT) to 110,682, constituting a share of world total DWT of 6 per cent.

The successful enactment of the Commercial Yacht Code also makes Malta a leading commercial yacht registry, and has led to the country becoming the flag choice for the global luxury superyacht industry. In addition, lying midway between Europe, the Middle East and North Africa, Malta is established as the third-largest transshipment port and logistics centre in the Mediterranean region, mainly for container cargo.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

Malta's legal system is a hybrid, mainly based on Roman law influenced to a great extent by UK law, as a result of its former British colony status. Following Malta's accession to the European Union in 2004, the European Union Treaty was transposed into Maltese law and is now the law of the country.

The principal legislation for shipping in the Republic of Malta is the Merchant Shipping Act of 1973, a law based on English shipping laws, as amended today, and supplemented by a comprehensive set of rules and regulations. Several international conventions to which Malta is either a signatory or that have been incorporated into Maltese law, as well as EU regulations and directives, also regulate the shipping industry.

¹ Jean-Pie Gauci-Maistre is a managing partner, Despoina Xynou is a partner and Deborah Mifsud is a junior associate at Gauci-Maistre Xynou.

III FORUM AND JURISDICTION

i Courts

The Civil Court is where maritime cases are heard in Malta. Disputes with a value of more than €15,000 are heard by the First Hall of the Civil Court while smaller claims are heard by the Court of Magistrates. Although the Civil Court is the competent court to hear a vast range of cases, individual judges are normally assigned cases of a similar nature to increase court efficiency.

Ship arrest procedures are swift and relatively inexpensive. When coupled with the judicial sale by auction procedure or a court-approved private sale, Malta offers a reliable solution for an executing creditor seeking recourse to the courts.

ii Arbitration and ADR

Arbitration proceedings are regulated by the Arbitration Act,² which incorporates a number of international conventions, such as the UNCITRAL Model Law on International Commercial Arbitration. Arbitration in Malta falls under the auspices of the Malta Arbitration Centre.

Maltese law only contemplates mediation as a method of alternative dispute resolution, which is regulated by the Mediation Act.³ The law allows for disputes involving civil, family, social, commercial or industrial matters to be referred for mediation.

iii Enforcement of foreign judgments and arbitral awards

In accordance with Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters (recast), a judgment given in an EU Member State shall be recognised in Malta without any special procedure being required. With respect to judgments constituting a *res judicata* given by any other competent court outside Malta and the European Union, these may be enforced in the same manner as judgments are delivered in Malta, upon an application containing a demand that the enforcement of the judgment be ordered.

With respect to the recognition and enforcement of arbitral awards in Malta, the Second Schedule of the Arbitration Act⁴ incorporates into Maltese law the Protocol on Arbitration Clauses (Geneva 1923), the Convention on the Execution of Foreign Arbitral Awards (Geneva 1927) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention). Therefore, a foreign arbitral award, by means of registration through the Malta Arbitration Centre, may be recognised and subsequently enforced as an executive title by the courts of Malta in the same manner as if the awards were delivered in domestic arbitration. An executive title would then be of relevance with respect to executive warrants of arrest (see Section V.i).

2 Chapter 387 of the Laws of Malta.

3 Chapter 474 of the Laws of Malta.

4 Chapter 387 of the Laws of Malta.

IV SHIPPING CONTRACTS

i Shipbuilding

Valletta's Grand Harbour is considered to be the deepest natural harbour in the Mediterranean, which has further increased Malta's maritime importance throughout history. Historically, the dry docks were mainly used for repair and construction of civilian ships but naturally this changed during both world wars, given Malta's role and strategic location.

More recently, a process of privatisation of Malta Shipyard Ltd took place after Malta became an EU Member State, as government subsidies to the shipyard had to stop. Nowadays, there are no state-owned shipyards and only a handful of privately owned yards, the largest being Palumbo Malta Shipyards Ltd, all regulated by international and domestic law.

ii Contracts of carriage

Malta's economy is dependent on foreign trade, serving as a freight transshipment hub. Being an importing country, it is essential that Malta is compliant with international regulations and standards. In this respect, although Malta is not a signatory to the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules), the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) or the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules), it is a party to the Hague Convention, and the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules) are applied by the Maltese courts with regard to marine cargo claims by virtue of the Carriage of Goods by Sea Act 1954.⁵ The Maltese courts also apply the Hague-Visby Rules when they are incorporated into a bill of lading that is the subject of a dispute.

Carriage is considered an act of trade as per the Commercial Code⁶ and therefore any dispute that may arise in this respect shall be subject to the jurisdiction of the Civil Court of Malta in accordance with the provisions contained in the Code of Organisation and Civil Procedure,⁷ which also caters for contracts of affreightment. The Merchant Shipping Act⁸ regulates the carriage of goods as a shipping activity.

The United Nations Convention on International Multimodal Transport of Goods (Geneva 1980) is not in force and, as such, multimodal transport is not regulated in Malta.

iii Cargo claims

Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy and to ensure that the ship is properly manned, equipped and supplied.⁹ In addition, Article IV(2)(q) of the Carriage of Goods by Sea Act states that neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the

5 Chapter 140 of the Laws of Malta.

6 Chapter 13 of the Laws of Malta.

7 Chapter 12 of the Laws of Malta.

8 Chapter 234 of the Laws of Malta.

9 Article IV, Schedule 1 of the Carriage of Goods by Sea Act 1954.

agents or servants of the carrier. The burden of proof is on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

Under the Merchant Shipping Act, an agent is to be considered mandatory for the carrier and cannot be found liable for any liability of the carrier.¹⁰

iv Limitation of liability

The regime for limitation of liability for maritime claims applicable in Malta is the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976) as amended by the 1996 Protocol, which was ratified by Malta on 13 February 2004 by virtue of an instrument of accession. On 8 June 2015, the International Maritime Organization (IMO) announced new limits to enter into force, in accordance with the tacit acceptance procedure, raising the amount claimable for loss of life or personal injury on ships (not exceeding 2,000 gross tonnage) to 3.02 million special drawing rights (SDRs), up from 2 million SDRs (additional amounts are claimable on larger ships).¹¹ For the purposes of Article 11 of the LLMC Convention 1976, the fund referred to therein is governed by the Limitation of Liability for Maritime Claims Regulations¹² and shall be constituted with the First Hall of the Civil Court, and the rate of interest to be applied shall be 8 per cent.

V REMEDIES

i Ship arrest

According to the Merchant Shipping Act, ships and other vessels constitute a particular class of movables whereby they form separate and distinct assets within the estate of their owners for the security of actions and claims to which the vessel is subject. The Code of Organisation and Civil Procedure provides for the arrest of vessels in Malta both as security of maritime *in rem*¹³ claims (where the ship concerned is within the territorial jurisdiction of the Maltese courts) and as security of *in personam*¹⁴ claims in cases where the owner is subject to the jurisdiction of the Maltese courts. The legislation provides for an exhaustive list of maritime claims for which the courts shall have jurisdiction *in rem*. Ships can only be arrested in Malta in virtue of a warrant of arrest. A precautionary warrant of arrest may be issued against any seagoing vessel (subject to certain requirements) to secure a claim that has not yet been decided, and an executive warrant of arrest is to be issued when enforcing a judgment. Vessels may also be arrested pursuant to the provisions of Article 31 of Council Regulation (EC) No. 44/2001, dealing with protective measures, in cases where the courts of another Member State have jurisdiction as to the substance of the matter. The arrest of sister ships is possible but only in cases concerning specific maritime claims as listed in the relevant legislation.

A ship within Maltese territorial waters can be arrested irrespective of her flag so long as the requirements prescribed by law are met, which are that the ship has a length exceeding 10 metres and that the claim is not less than €7,000. The warrant of arrest is filed *ex parte* by the arresting party by submitting the appropriate forms requesting the arrest of the vessel and

10 Chapter 234 of the Laws of Malta.

11 www.imo.org/en/MediaCentre/PressBriefings/Pages/24-LLMC-limits.aspx.

12 Laws of Malta, Subsidiary Legislation 234.16.

13 Article 742B of the Code of Organisation and Civil Procedure (COCP).

14 Article 742 of the COCP.

indicating the place where the vessel is to be found: it is not permissible to apply for a warrant of arrest unless the vessel is inside Maltese territorial waters. Transport Malta is deemed by law to be the authority with the power and control to have a ship arrested as soon as it enters Maltese territorial waters.

By virtue of Act XXXI of 2019 entitled Various Laws (Better Administration of Justice) (Amendment) Act 2019, the procedure pertaining to the arrest of vessels in Malta has been amended; the amendments came into force on 18 December 2019. The execution of the warrant is effected for all effects of law the moment a notice of the warrant has been duly served on the executive officer of the Authority for Transport in Malta. In accordance with these amendments, the party issuing the warrant should appoint a natural or legal person who should be responsible for serving an official copy of the warrant to the master of the vessel or other person in charge of such vessel and seize the appropriate documentation and certification from on board the vessel, which must be handed to the Registrar, Civil Courts and Tribunals, by the person indicated by the applicant, within one working day. The applicant is required to indicate the particulars of the nominated person, so appointed, in the prescribed form. It is essential that the nominated person must have agreed to effect such service. The same procedure as described above is applicable *mutatis mutandis* in the event of a counter claim to lift the warrant of arrest. The application forms for precautionary and executive warrants of arrest have also been amended.

Once a vessel is arrested, the arrestor must commence an action on the merits, or arbitration proceedings in respect of the claim stated in the warrant, within 20 days of the date of issue of the warrant of arrest. In default, the effects of the warrant cease and the arresting party may be liable for damages. A warrant of arrest may be lifted by means of a counter-warrant of arrest issued by the court on the grounds of repayment of the claim or the setting up of a security by means of a guarantee, inter alia. Cash deposits, Maltese bank guarantees or, upon agreement between the parties, a guarantee put up by a P&I club can be placed for the release of the arrest. A penalty of not less than €11,600 is applicable if it is found that the warrant was obtained upon a demand maliciously made.

Moreover, the owner whose vessel was arrested may apply to the court requesting that the arresting party give, upon good cause and within a time fixed by the court, a counter-security sufficient for the payment of the penalty that may be imposed, and of damages and interest, and, if in default, to rescind the warrant.

ii Court orders for sale of a vessel

A court judgment and a mortgage are executive titles and therefore the holder of such a title may proceed directly to enforce its claims.

Judicial sale by auction

The holder of an executive title could file an application in court requesting the court to order the judicial sale of the vessel and appoint a public auctioneer. The court registry is bound to publish the list of judicial sales by auction that are to be held. The auction is conducted in the presence of the Registrar of Courts and the purchaser shall be the highest bidder. The public auctioneer may request that a person submitting an offer should be in possession of the necessary guarantees. The auctioneer shall cause that no bid shall be accepted if it is either made *pro persona nominanda* or by any person who is notoriously incapable of fulfilling the obligations arising out of the adjudication. The purchaser shall pay the price into court within seven days of the final adjudication. Any creditor having a judgment or other executive title

in its favour may bid *animo compensandi*; that is, in set-off of the debt it is owed. In such cases, the creditor by means of an application should request the approval of the court for proposed set-off, and it shall pay into court the surplus of the price where the price exceeds the amount of the debt and costs. When a ship is sold in a judicial sale by auction, the vessel is sold free and unencumbered.

Court-approved private sale

The court-approved private sale offers creditors of an indebted vessel a simple remedial mechanism, by which a request is made to the Superior Courts of Malta to approve the private sale of a vessel. This amendment was introduced to address the disadvantages of private sales and judicial sales by auction.

By means of such an application and subject to certain procedures being followed, in the event of default, a holder of an executive title may sell the vessel to a private buyer, thereby being able to agree on a reasonable price (as would be the case in a private sale) but also allowing the buyer to benefit from purchasing the vessel free and unencumbered (as in a judicial sale by auction). The agreed price should be equal to, or higher than, two previously obtained valuations of the vessel, carried out by independent and reputable valuers. An application is filed in court, exhibiting copies of the memorandum of agreement and the valuations obtained, and requesting the court to approve the private sale and to appoint a person who can transfer the vessel by means of a bill of sale to the new buyer for the agreed price. The court shall appoint the application for hearing within 10 days of its filing. If approved, the vessel would be sold free and unencumbered.

Despite this piece of legislation being enacted in 2006, the Courts of Malta were only asked to rule upon it for the first time in December 2011. The sale of the MV *Thor Spirit*¹⁵ in December 2011 paved the way for many similar cases in which also other subtleties of this judicial mechanism have been explored.¹⁶ The procedure has been extensively used in the past few years and the more contentious private sales are being more uniformly handled by the courts of Malta.

15 *Danske Bank A/S v. MV Thor Spirit* (1 December 2011).

16 In *Joint Stock Company Rietumu Banka v. MV Blankenese* (22 August 2013), the issue arose that the mortgagee was requesting the court to sell the ship to a company in which the same mortgagee was in control. The court held that there is nothing in the Maltese Companies Act that prohibits a shareholder from acquiring property of a company in which he or she is a shareholder, and made a distinction between the physical individual shareholder and a duly incorporated company which is separate and distinct from its members. It specifically stated that parties alleging bad faith on the part of the buyer must prove bad faith before the court and it emphasised that the price being paid by the buyer was as good as or superior to the valuations produced by the mortgagee, so the court was convinced that the valuations were reasonable and true. Given the fact that the price offered exceeded the valuations presented, the court discarded the objections raised by the two claimants; *Amsterdam Trade Bank NV v. MT Pacific* (28 November 2013); *Hyundai Heavy Industries Co Ltd and Hyundai Samho Heavy Industries Co Ltd v. MV B Ladybug* (8 April 2014), in which the court made it clear that any creditor who decides to make use of this mechanism is not abusing the law, since the private sale of vessels is a legitimate remedy according to Maltese law as long as creditors who decide to apply for the approval of a private sale of a vessel do not abuse this mechanism or use it frivolously to the detriment of other creditors or the debtor himself; *Malta Towage Limited v. MV Irmak* (25 August 2014); *Pacific Seaways Shipbuilding Inc. v. MV Kay* (18 February 2016), in which not only was the mortgagee of the vessel allowed to purchase it but was allowed to do so *animo compensandi*; *Fenech noe v. MY Indian Empress* (25 September 2018).

VI REGULATION

i Safety

The Merchant Shipping Directorate (MSD) and Armed Forces of Malta (AFM) are the responsible institutions for maritime safety in Malta. The MSD is responsible for ensuring that Malta implements and accedes to the key international conventions regarding maritime safety, and the AFM implements the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention 1979) in addition to the Global Maritime Distress and Safety System used to increase safety at sea and facilitate the rescue of distressed ships, boats and aircraft.

Malta is a party to the following maritime safety and security conventions:

- a* the International Convention for the Safety of Life at Sea 1974 (SOLAS) (as amended);
- b* the International Regulations for Preventing Collisions at Sea 1972 (COLREGs) (as amended);
- c* the Convention on Facilitation of International Maritime Traffic 1965 (the FAL Convention);
- d* the International Convention on Load Lines 1966 (the Load Lines Convention);
- e* the Search and Rescue Convention 1979;
- f* the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation 1988 (SUA);
- g* the Torremolinos International Convention for the Safety of Fishing Vessels;
- h* the Maritime Labour Convention 2006 (MLC) (as amended); and
- i* the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995 (the STCW Convention) (as amended).

These maritime safety regulations are transposed into domestic law through:

- a* the Merchant Shipping (Safety Convention) Rules (SL 234.30);
- b* the Merchant Shipping (Safety Convention Rules) (SL 234.33);
- c* the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations (SL 234.37);
- d* the Merchant Shipping (Accident and Incident Safety Investigation) Regulations (SL 234.49);
- e* the Merchant Shipping (Fishing Vessels) (Minimum Health and Safety Requirements) Regulations (SL 234.34);
- f* the Merchant Shipping (Fishing Vessel Safety) Rules (SL 234.36);
- g* the Merchant Shipping (Maritime Labour Convention) Rules (SL 234.51); and
- h* the Merchant Shipping (Certification of Commercial Yachts and Commercial Cruising Vessels) Regulations (SL 234.45).

The Merchant Shipping (Accident and Incident Safety Investigation) Regulations (SL 234.49) established the Marine Safety Investigation Unit as an independent government investigation unit to carry out safety investigations into accidents and incidents and participate in safety studies and academic research.¹⁷

¹⁷ <https://mtip.gov.mt/en/Pages/MSIU/Marine-Safety-Investigation-Unit.aspx>.

ii Port state control

Through the MSD, Malta ensures that any ship entitled to fly its flag complies with the applicable international rules and standards. As part of the effective enforcement of those rules, standards, laws and regulations, Malta adopted the Memorandum of Understanding on Port State Control in the Mediterranean Region (the Mediterranean MOU) on 11 July 1997 (which entered into force on 24 February 1998), with other maritime authorities and the assistance of, inter alia, the IMO, the International Labour Organization and the European Commission. Moreover, Malta has an active participation in the Paris Memorandum of Understanding on Port State Control 1982 (the Paris MOU) and Transport Malta has been a member since 2006.

As the provisions of the Paris MOU were incorporated into EU law through Directive 2009/16/EC of the European Parliament and of the Council on port state control, Malta transposed them into domestic law through the Merchant Shipping (Port State Control) Regulations (SL 234.38), which apply to any ship and her crew calling at a port in Malta or anchored off such a port to engage in a ship-port operation, unless the exemptions set in the legislation apply. Furthermore, the Merchant Shipping (Flag State Requirements) Regulations (SL 234.48) adopt the measures contained in Directive 2009/21/EC of the European Parliament and of the Council on compliance with flag state requirements. Both regulate inspections and detention procedures.

iii Registration and classification

Registration

Maltese legislation offers great advantages and benefits to those who choose to register their vessels under the Malta maritime flag. Malta retains its place on the Paris MOU white list, in line with its policy not to register ships with a poor detention, safety or marine pollution record, and ranks among the flags meeting the Paris MOU criteria for low-risk ships.¹⁸ Ship registration and the provision of all ancillary services is the responsibility of the MSD, which is also responsible for the regulation, control and administration of all matters related to merchant shipping, the certification of seafarers and the administration and implementation of international maritime conventions and agreements.¹⁹ The registry's services are offered around the clock, to accommodate any urgent matter.

Maltese legislation provides for the registration of vessels used for navigation in international waters under the provisions of the Merchant Shipping Act, and the registration of ships under 24 metres in length and employed solely in navigation within the territorial waters of Malta, whether privately or commercially, under the provisions of the Small Ships Regulations. Registration of fishing vessels used in the territorial waters of Malta is provided for under the provisions of the Fisheries Conservation and Management Act. Commercial yachts (that is, yachts in commercial use that are over 15 metres in overall length and that do not carry more than 12 passengers) can be registered in Malta subject to the conditions of the Commercial Yacht Code. All types of vessels, from pleasure yachts to oil rigs, may be registered, provided that all requirements set out in the applicable legislation are met. Maltese law also provides for the registration of vessels under construction.

18 Published on the flag performance list of the Paris MOU.

19 www.transport.gov.mt/maritime/ship-and-yacht-registry/ship-registration-126.

As for ownership and eligibility for registration, the Merchant Shipping Act provides that vessels owned by either citizens of Malta or bodies corporate established under the laws of Malta, or European citizens or foreign corporate bodies or entities ('international owner') having a Maltese resident agent, are eligible for registration under the Malta flag. An international owner shall be deemed to have submitted to the jurisdiction of the Maltese courts through the resident agent. There are no nationality restrictions for masters, officers and crew of Malta-registered vessels and no trading restrictions. A vessel is first registered provisionally under the Malta flag for six months, during which time all documentation needs to be finalised.

Maltese law allows for both bareboat charter registration of foreign ships under the Malta flag (bareboat charter in registration) and for bareboat charter registration of Maltese ships under a foreign flag (bareboat charter-out registration), as long as all the requirements prescribed in the legislation are satisfied and the consent of the registrar is provided. Moreover, Malta caters for a certificate of registry to be issued in the name of the charterer or the lessee when a ship registered under the Malta flag is being operated under charter or is leased, and that ship is not bareboat charter registered in a foreign registry.

At the request of the owner, the registry of a Maltese ship may close, followed by the issuance of a deletion certificate, provided, *inter alia*, that the consent of the registered mortgagees is evidenced and all liabilities and obligations of the ship towards the Republic of Malta have been fulfilled.

Malta has also become renowned for the protection it offers to financiers. The mortgagee has the right to take possession and sell the vessel secured by the mortgage when the debtor is in default and is also empowered to maintain the status and validity of the registration of the ship, thereby safeguarding its ability to operate the ship commercially pending a sale procedure. Under Maltese law, a mortgage is an executive title and can be enforced upon default without the need for a special judgment. Mortgages enjoy a relatively high ranking among maritime claims, which is of great importance if the mortgage is actually enforced through a judicial sale or a court-approved private sale and the proceeds from the sale of the vessel are not sufficient for all creditors.

Classification

A merchant vessel at the time it is being registered as a Maltese ship and during the period of its registration under the Malta flag must be classed with a classification society authorised to issue statutory certificates on behalf of the government. The criteria in accordance with which organisations or bodies of surveyors may be authorised under the Merchant Shipping Act are prescribed in the Ship Inspection and Survey Organisations Regulations.²⁰

The following classification societies are recognised and approved by the government:

- a* the American Bureau of Shipping;
- b* Bureau Veritas;
- c* the China Classification Society;
- d* the Croatian Register of Shipping;
- e* Class NK (Nippon Kaiji Kyokai);
- f* DNV GL;
- g* the Indian Register of Shipping;

20 Subsidiary Legislation 234.37.

- b* the Korean Register of Shipping;
- i* Lloyd's Register;
- j* the Polish Register of Shipping;
- k* Registro Italiano Navale; and
- l* the Russian Maritime Register of Shipping.

iv Environmental regulation

Malta is a Member State of the European Maritime Safety Agency, the European Seaports Organisation and the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea. In assistance with these regional authorities and, inter alia, the IMO, Malta enforces international, regional and EU instruments, which have been either ratified or directly form part of domestic legislation. Malta is party to the major conventions regulating sea and air pollution.

As a signatory of the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL) (as amended), Malta has transposed MARPOL's Annexes into domestic legislation through:

- a* the Merchant Shipping (Prevention of Pollution of Ships) Regulations (SL 234.32);
- b* the Merchant Shipping (Prevention of Pollution by Garbage) Regulations (SL 234.33);
- c* the Merchant Shipping (Prevention of Pollution Sewage) Regulations (SL 234.47); and
- d* the Merchant Shipping (Wreck Removal Convention) Regulations (SL 234.53).

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunker Convention) has been transposed into domestic law through the Merchant Shipping (Liability for Bunker Oil Pollution Damage) Regulations (SL 234.46).

Additionally, in response to grave concern about the spread of invasive species due to carriage of ballast waters from ships, Malta acceded, on 7 September 2017, to the Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (the Ballast Water Management Convention), which entered into force on 8 September 2017. The Convention came into force in Malta on 7 December 2017 when it was transposed into domestic legislation through the Merchant Shipping (Ballast Water Management Convention) Regulations (SL 234.55).

Moreover, to further establish a system of penalties for failure to comply with the monitoring and reporting obligations, Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015, and amending Directive 2009/16/EC, was transposed into domestic legislation through the Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions from Maritime Transport) Regulations (SL 234.54).

Furthermore, Malta is a signatory to:

- a* the UN Environment Programme Convention on Biological Diversity;
- b* the Convention for Protection of the Mediterranean Sea against Pollution 1976 (the Barcelona Convention) and its 2002 and 2004 Protocols;
- c* the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Dumping Convention);
- d* the International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001 (the Anti-Fouling Convention);
- e* the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (the OPRC Convention); and
- f* the Protocol on the Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (OPRC-HNS).

v Collisions, salvage and wrecks

Collisions

Malta has adopted the COLREGs, which are regulated in the Commercial Code (Chapter 13), the Merchant Shipping Act (Chapter 234) and in the Prevention of Collisions Regulations (SL 234.20).

The Commercial Code has sections dealing with the rights and obligations of the insurer and of the assured, specifying the risks borne by the insurer, and with the prescription and inadmissibility of action for damages occasioned by the collision of vessels when a collision happens in a place in which the master could institute proceedings, unless the master has made a protest.²¹

The Prevention of Collisions Regulations are regulated under the Merchant Shipping Act.²² Any proceeds from any indemnity arising from a collision are secured by a special privilege upon the vessel. In the case of a mortgaged vessel, the same will attach to any proceeds from any indemnity arising from such collisions.

Salvage

Malta is not a signatory to the International Convention on Salvage 1989 (the 1989 Salvage Convention); however, the law of salvage is found in the Commercial Code and the Merchant Shipping Act.

The Commercial Code establishes that any damage caused to a vessel or to cargo, or to both, and the salvage payable for extraordinary services to avoid loss or capture in cases of imminent peril, are to be considered to be general average, as per the provisions of Title IV of the Code.²³

Under the Merchant Shipping Act, salvage includes all expenses properly incurred by the salvor in the performance of salvage services.²⁴ Salvage in respect of preservation of life, when payable by the owners of the vessel, shall be payable as a priority over all other claims for salvage.²⁵ Where the vessel, cargo and apparel are destroyed or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may, at his or her discretion, award to the salvor, out of the Consolidated Fund, such sum as he or she thinks fit in whole or in part satisfaction of any amount of salvage so left unpaid.²⁶

Moreover, under the principle of ‘no cure no pay’, the liability of the owner to pay salvage shall extend to persons having an interest that has been saved by the property being brought into a position of security.²⁷

If any dispute arises as to apportionment of any amount of salvage among the owners, master, pilot, crew and other persons in the service of any foreign vessel, the amount shall be apportioned in accordance with the law of the country to which the vessel belongs.²⁸

21 Article 545 of the Commercial Code (Chapter 13 of the Laws of Malta).

22 Part V, Section 5 of the Merchant Shipping Act (Chapter 234 of the Laws of Malta).

23 Article 444(h) of the Commercial Code (Chapter 13 of the Laws of Malta).

24 Article 330 of the Merchant Shipping Act (Chapter 234 of the Laws of Malta).

25 Article 342 of the Merchant Shipping Act (Chapter 234 of the Laws of Malta).

26 *ibid.*

27 Article 344 of the Merchant Shipping Act (Chapter 234 of the Laws of Malta).

28 Article 345(3) of the Merchant Shipping Act (Chapter 234 of the Laws of Malta).

Wrecks

Malta ratified the Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi WRC 2007) on 18 January 2015. The Nairobi WRC 2007 is transposed into Maltese legislation through the Merchant Shipping (Wreck Removal Convention) Regulations (SL 234.53), which is applied to all Maltese ships wherever they may be and to all other ships while in Maltese waters regardless of flag. A section on wrecks is also found in the Commercial Code and the Merchant Shipping Act.

The applicability of the Nairobi WRC 2007 in Malta, as per the Regulations, means an area extending to 25 nautical miles from the baselines from which the territorial waters are measured in accordance with the Territorial Waters and Contiguous Zone Act.²⁹ With respect to certification, Transport Malta is the authority that issues the wreck removal certificates in terms of the Nairobi WRC 2007, which must be placed on board the vessel.

If a vessel has sunk, is stranded or is abandoned on or near the coasts within the territorial jurisdiction of Malta, the Minister responsible for shipping³⁰ is granted the power not only to remove the vessel but also to destroy it, whether in whole or in part.³¹

Ship recycling

Malta ratified the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships 2009 (the Hong Kong Convention) on 14 May 2019, becoming the 12th nation to ratify the Convention. Additionally, the obligations set out in Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling (amending Regulation (EC) No. 1013/2006 and Directive 2009/16/EC) are enforceable in Malta through the Merchant Shipping (Ship Recycling) Regulations (SL 234.56) adopted on 31 December 2018.³² Moreover, to establish a framework to protect human health and the environment against the adverse effects of hazardous wastes and their disposal, Malta ratified the Basel Convention in June 2000. The obligations as found in this Convention are in force by means of the Environment Protection (Control of Transboundary Movement of Toxic and other Substances) Regulations 2000. The Environment and Resources Authority is the competent authority under these regulations.

vi Passengers' rights

Malta has ratified the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention). The Convention establishes a regime of liability for damage suffered by passengers carried on a seagoing vessel. Passengers' claims are regulated by the Merchant Shipping (Carriage of Passengers by Sea) Regulations³³ and give effect to the Athens Convention. In accordance with the Regulations, the Registrar General of Shipping and Seamen should issue a certificate attesting that insurance cover or another financial security is in force in respect of ships registered under the Malta flag and of any other ship entering or leaving Maltese ports. Malta is also bound by Regulation (EC) No. 392/2009 on the liability of carriers of passengers in the event of loss of damage resulting from an

29 Chapter 226 of the Laws of Malta.

30 Article 339 of the Merchant Shipping Act (Chapter 234 of the Laws of Malta).

31 *ibid.*

32 Subsidiary Legislation 234.56.

33 Subsidiary Legislation 234.52.

accident, which entered into force on 31 December 2012. The Regulation incorporates certain provisions of the Athens Convention (as amended by the 2002 Protocol) and applies to all carriers involved in international carriage, including carriage between EU Member States, and certain types of domestic carriage. Regulation (EU) No. 1177/2010 concerning the rights of passengers when travelling by sea and inland waterways,³⁴ which came into force on 18 December 2012, is also enforceable in Malta.

vii Seafarers' rights

Malta ratified the MLC on 22 January 2013. The MLC, which entered into force on 20 August 2013, was transposed into domestic legislation through the Merchant Shipping (Maritime Labour Convention) Rules (SL 234.51). Part IV of the Merchant Shipping Act regulates certification, the conditions for admission to employment, the form, period and conditions of agreements with crew, the conditions of service regulations, the discharge of seafarers, the repatriation of seafarers, rights of wages and payment of seafarers, and the power of the court to rescind a contract between owner or master and seafarer.

Malta has acceded to the STCW Convention (as amended), which was transposed into domestic legislation through the Merchant Shipping (Training and Certification) Regulations (SL 234.17). In terms of these Regulations, officers and seafarers are subject to certification issued by the Registrar General of Shipping and Seamen, who is responsible for certification of seafarers. Certificates of competence are issued after the successful completion of approved training courses and examinations held in Malta. In addition, Malta has entered into bilateral agreements with foreign maritime administrations for the recognition of certificates of competence issued to seafarers.³⁵

With regard to detention measures in respect of ships, if the ship is not in compliance with the provisions of the Merchant Shipping Act, the Merchant Shipping (Maritime Labour Convention) Rules and applicable requirements of the STCW Convention, the Registrar General of Shipping and Seamen shall take necessary measures to ensure that the ship shall not sail until it can proceed to sea 'without presenting an unreasonable threat of harm to the working and living conditions of seafarers and any expenses incurred therefor shall be a charge on the ship, so however that the ship shall not be unduly detained or delayed'.³⁶

VII OUTLOOK

Under the Maltese system, a shipping company is subject to tonnage tax calculated on the basis of the net tonnage of the ship as an alternative to charging corporation tax. Tonnage tax is applied to a shipping company's core revenues derived solely from shipping activities, such as international carriage of goods and passengers, certain ancillary revenues that are closely connected to shipping activities (which are, however, capped at a maximum of 50 per cent of a ship's operating revenues), and revenues from towage and dredging subject to certain conditions. Maltese legislation also caters for ship management companies that may benefit from the tonnage tax system, subject to the conditions set in the legislation being met. Moreover, Malta, under its domestic legislation, has an exemption for domestic source income earned by non-resident shipping owners on a reciprocal basis.

34 https://ec.europa.eu/transport/themes/passengers/maritime_en.

35 www.transport.gov.mt/ship-registration/mlc-2006-stcw/stcw.

36 Article 129(1) of the Merchant Shipping (Maritime Labour Convention) Rules.

Subject to recent amendments, shipping companies should file audited financial statements, as from financial year 2020, within the periods required for a company incorporated in terms of the Companies Act.³⁷ The amendments cater for small companies and the exemptions applicable for small companies under the Companies Act should also apply to shipping companies, as long as the other criteria set in the legislation are met. A shipping company may elect to be governed by the Companies Act should the relevant notice be filed.

Prior to these recent amendments, a shipping company incorporated in another jurisdiction applying to be continued in Malta was required to go through a lengthy process. However, through the introduction of the amendments, foreign shipping companies have been provided with their own specific rules catering for this scenario, which provides for a smoother transition of foreign-registered companies wishing to continue in Malta, or on the inverse, a Malta shipping company wishing to continue in another jurisdiction.

Malta has also enacted the legal framework to regulate activities based in the blockchain and fintech industry and has established itself as a centre for distributed ledger technology businesses; as a result, we have seen a lot of blockchain-driven shipping platforms choose Malta for business. Maltese legislation also caters for smart contracts offering the opportunity for paperless and more efficient shipping transactions.

Additionally, securitisation is one of the financing tools being used as a primary source of raising finance within the shipping industry. Securitisation transactions are undertaken through special purpose vehicles, which are entities that are set up for the sole purpose of issuing securities to fund the acquisition of particular assets. The Maltese legislation is also very popular among financiers and shipowners who opt for sale and leaseback transactions due to the benefits offered. Malta also offers a network of double tax treaties with approximately 75 jurisdictions.

Malta has also established its position as a ship finance leasing jurisdiction offering various incentives to the parties involved. The legislation was amended and a certificate of registry in the name of the charterer or lessee might be issued. Maltese law provides that the letting of ships shall be regulated by the provisions of any agreement between the lessor and the lessee. The termination of the lease shall be regulated by the agreement between the lessor and lessee. Any notice of termination that may be required to be given under the agreement may be given by notice in writing in any manner, including by electronic means. The lease of a ship or rights thereunder shall be immediately dissolved or terminated by the lessor (or mortgagee who shall be deemed to have such power unless expressly waived) at any time in the event of a default and upon notice in writing to the lessee (in the manner referred to above), notwithstanding any opposition by the lessee, and without the need of any authorisation or confirmation by any court that an event of default has taken place. In such circumstances the lessor may, after notice to the lessee, take possession of the ship in accordance with the agreement between the parties and may ask the court in Malta for an order authorising or directing these acts, and the court shall render full support to the lessor or the mortgagee as expeditiously as possible.³⁸

A financial institution, whether established or operating in Malta, carrying out the activity of financial leasing and all related transactions, should not require a licence from the competent authority for the purposes of exercising its activities in Malta under the Financial Institutions Act.

37 Chapter 386 of the Laws of Malta.

38 See Article 1526 of the Civil Code (Chapter 16 of the Laws of Malta).

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