Enforcement on Shipping Companies by Creditors

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1. Importance of Enforcement under the Current Market Conditions

The Shipping industry in all its three major segments i.e. dry bulk carriers, tankers and containerships is undergoing one of its major historical downturns. In fact, we are on the fifth year of the downturn and although market participants always have the best intentions to cooperate and find agreed and mutually beneficial solutions, in a large number of cases they have also started to take a more pragmatic approach to the challenges the shipping industry is now facing and in certain instances more radical measures are taken.

The challenges in shipping have been known to shipping creditors which include primarily financiers but also shipping suppliers and other trade creditors, as well as to the owners and the other market participants for quite some time. However, the current issues in the shipping industry as well as in the global economic environment seem to be more acute.

The over-supply of vessels is becoming increasingly evident due to the fact that owners, yards and banks have been delaying vessel delivery dates (e.g. dates originally set for 2009-2010 have moved to 2011-2014). In instances where owners do not take delivery, it is often the case that the yard is able to find another buyer. The result of this is that an increasing number of vessels are, (and will be) nonetheless trading thereby further increasing supply. Consequently, vessel earnings have decreased –in many cases at operating costs levels– and decreasing market values do not show signs of recovery any time soon. In addition, many owners and operators are heavily overleveraged in a European and global economy downturn.

Indeed, on a global scale European banks are facing a number challenges. The Eurozone crisis is set to continue and the chances of recovery any time soon seem remote. Sovereign debt in Eurozone threatens the already exposed European banking system which has also seen heavy losses on their holdings of Greek bonds (and facing possibly more losses from holding other Eurozone sovereign debt). Banks are becoming more and more impatient with their clients. These are worrying signs for all shipping creditors and primarily the lenders who can only be patient and agree to waive covenant breaches and postpone repayment dates for so long, whilst watching the value of the underlying assets shrinking.

By underlying assets we mean both the vessel itself and the income generated by such vessel. By way of illustration, the extent of the plunge in vessel prices and freight rates and taking the dry bulk sector of the industry as an example, we may only need to look at the movement of the Baltic Dry Index (BDI)[1] published by the Baltic Exchange[2]. Indeed, the

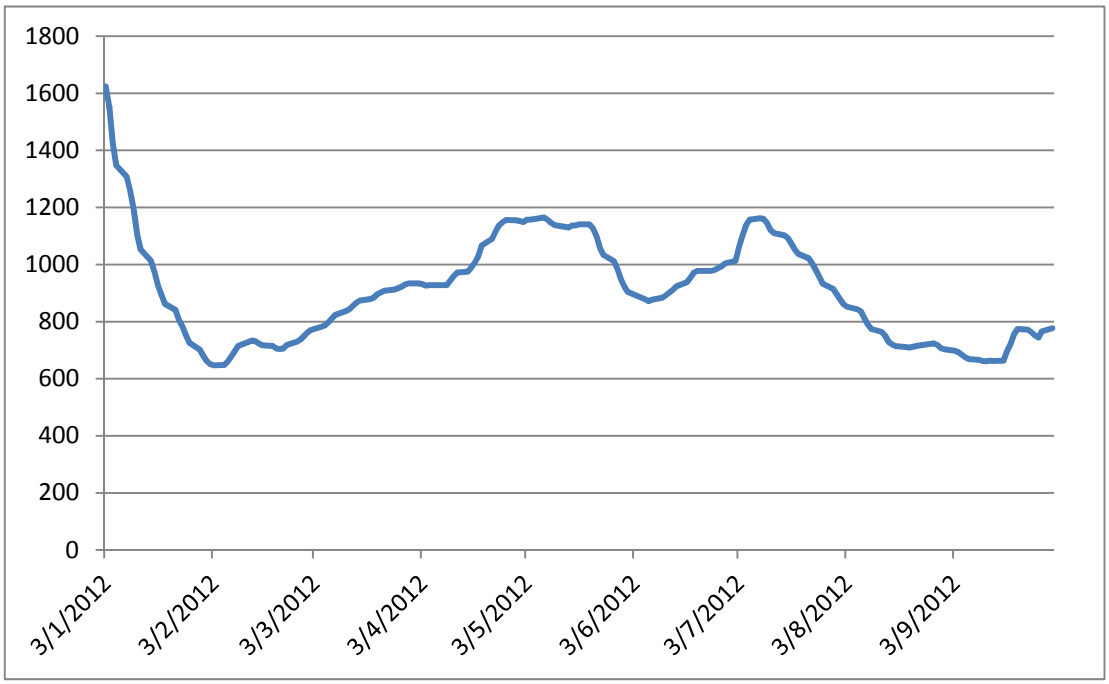
[1] The Baltic Dry Index is one of the seven indices published by the Baltic Exchange. According to the Baltic Exchange, "The Baltic indices are an assessment of the price of moving the major raw materials by sea. The indices are based on assessments of the cost of transporting various bulk cargoes, both wet (eg crude oil and oil products) and dry (eg coal and iron ore), made by leading shipbroking houses located around the world on a per tonne and daily hire basis." (see http://www.balticexchange.com)

[2] As stated by the Baltic Exchange on www.balticexchange.com "The Baltic Exchange is the world's only independent source of maritime market information for the trading and settlement of physical and derivative contracts".

current market status is clearly reflected from the Table 1 below as officially published by the Baltic Exchange:

[*Table 1: BDI movement chart from January 2008 to October 2012*]

From the above it is clear that since 2008 where the market was at its peak i.e. close to 11.700 points, with the exception of certain periods where there had been some signs of recovery, the industry has suffered an unprecedented downturn. Even during the 2012 the market has fallen dramatically i.e. from 1.624 points in January this year, now, October 2012, it is at about 700 points:



[*Table 2: BDI movement chart from January 2012 to October 2012*]

In the light of the above, it is evident that although there had always been problem loans and distressed shipping companies, this time, the current market status has made enforcement one of the most important practice areas of shipping law; and it is important not only for the banks who have to examine carefully their enforcement options as lenders, but also for the owners who would have to carefully consider creditor protection options as borrowers.

2. The Basis of Enforcement

The basis of enforcement by creditors is debt. In shipping, debt can take many forms but in this paper we shall deal primarily with enforcement on debt created by way of ship finance by financial institutions and/or hedge funds and distinctions shall be made where appropriately in relation to other common forms of shipping creditors such as suppliers, crew etc. but due to the time limitations we shall not expand on the topic of the other forms of shipping creditors, a topic which would merit a separate paper.

With the above in mind, shipping debt by way of ship finance by itself can take many forms: it could be from a plain vanilla single currency bilateral loan agreement to a multi currency syndicate loan agreement, revolving facilities, swap transactions or mezzanine finance by hedge funds and/or with a series of documents relating to the security the borrower may be granting (also commonly known as security documents) etc. The common place in all forms of shipping debt or ship finance are the terms and documents under which such debt is created or viewing the matter from another angle the terms and documents subject to which a lender makes available to a borrower ship financing. Such terms and documents are one significant factor in deciding the preferred method of enforcement.

2.1 Loan Agreement

In any typical ship finance structure, there is always a form of a loan agreement which contains several critical terms which the creditor and its legal advisors must review when conducting pre-enforcement due diligence and/or assessing enforcement options. More specifically:

(a) Events of Default. From the point of view of enforcement, this is one of the most important sections in any financing document and sets out the circumstances or events that, if they occur give the lender the right to terminate the agreement and/or accelerate the loan (i.e. request that the principal and interest is prepaid in full). An event of default could be a broader term than a breach of contract i.e. it may be that a non-breach of contract constitutes an event of default. The major events of default in a shipping loan include (i) non-payment of any sum payable when due; (ii) breach of covenants or undertakings, particularly insurance covenants, operational covenants and other financial covenants (this are set out in other sections of the loan agreement); incidentally, an important and very usual covenant is an undertaking that the value of security e.g. in case security includes a ship mortgage, the vessel value, or in case of a share pledge, the value of the shares, (security value) is more than a certain percentage of the loan (security requirement) - usually it should be about 120% to 160%. Similarly, there is usually a requirement that the vessel is insured also for a higher value at about 120% to 160% of her actual market value; the idea in all these cases is to cover enforcement expenses and

interest. In those cases, if the borrower is unable to cover the shortfall (either by prepayment or by granting additional security) then this is a typical event of default which enables the lender to begin enforcement. Other important events of default include (iii) misrepresentation which in effect elevates the importance of the representations and warranties clause; (iv) cross default which is an equally important event of default and heavily debated between the parties. In effect, this is the prime example of a clause which is not a breach of the agreement in question, but it allows the lender to commence enforcement on the basis of a breach in another financial agreement (usually non-payment). There are several other events of default which are typically included such as (v) unlawfulness/impossibility (i.e. if it becomes impossible or unlawful for the borrower to fulfill its obligations or for the bank to continue the financing and/or exercise its rights), (vi) material adverse change (the clause exists in practically every loan agreement but its use is recommended only in rare cases) etc.

From the foregoing it is evident that the Events of Default clause is central and goes to the heart of any loan agreement for enforcement purposes and mainly for pre-enforcement assessment. Indeed, save for the non-payment event of default, many if not the majority of the events of default serve as early warning signs (e.g. cross default, security requirement etc.) which will allow the lender to assess the situation as early as possible.

(b) Set-Off. The clause allows the lender/bank to apply any credit balance of the borrower towards satisfaction of any sum due and payable by the borrower. The clause may be important particularly when the borrower holds deposits (e.g. loan account, earnings account etc.) with the lender in more than one jurisdictions and/or in more than one currencies. Despite the above, the use of the clause is limited both for commercial and legal reasons which are outside the scope of this paper to discuss.

(c) Notices. The function of this clause is particularly important in enforcement proceedings and it is aimed to ensure that all notices, demands and letters are sent to the right person through a pre-agreed method of communication so that there is limited room for dispute.

(d) Governing law and Jurisdiction. Last but certainly not least this clause for obvious reasons is central to any contemplated enforcement action. Regarding the governing law, the majority of the shipping loan agreements are governed by English law. However, in recent years there has been a tendency in the broader area of finance (similar to that in other areas of law) to see other laws to be governing loan agreements, such as German law or French law[3]. It is also not uncommon in large shipping jurisdictions to see local law to be applicable[4].

As for the jurisdiction, it is generally advisable that both governing law and jurisdiction are the same, mainly for practical reasons; however, this is not mandatory. Hence, similarly with the governing law, the large majority of shipping loans are also subject to the jurisdiction of the English courts. In such a case two things need to be noted: first, in case the lender wishes to issue proceedings before the English courts against a foreign borrower

[3] For example the loan market association (LMA) has published standard facility agreements under German and French law (see http://www.lma.eu.com).
[4] This is certainly the case for example in Greece, Germany and Norway.

the parties and particularly the borrower is required to designate a process agent who will accept service of process in England[5]. The second aspect of a typical English jurisdiction clause is that it is for the benefit of the lender[6]. This in practice means that the lender may initiate proceedings against the borrower in any competent jurisdiction, but restricts the borrower from bringing proceedings anywhere else other than in one jurisdiction agreed (that is English courts). This has significant implications from enforcement point of view particularly when contracting with a party domiciled in an EU member state or 2007 Lugano Convention[7] country. In such cases the lender should perform careful due diligence on the optimal forum in which it may enforce its claim.

2.2 Security Documents

A lender can also achieve enforcement of its claim through (and the method of such enforcement depends on) the type of security a lender holds. Security document may be divided into two types: (a) security over the ship; (b) other types of security. In terms of importance, the mortgage certainly has primacy.

2.2.1 The Mortgage

The Mortgage over a ship is one of the central securities a lender can take to secure the repayment of the loan. Every commentary about ship mortgages usually involves a definition of what is a "ship". For the purposes of this paper, suffice it to say that different jurisdictions have taken varying approaches as to what they consider a "ship"; however, common place is that although the ship is movable asset it can be mortgaged[8] and as such, it has to be properly registered in accordance with the formal requirements of the law of the flag of the ship.

Two types of mortgages are generally encountered which also affect the method of subsequent enforcement and particularly the place of enforcement and, to the extent possible, the governing law. First, it is the English-style mortgage which is adopted in the majority of the English based legal systems (that would include Cyprus, Singapore, Malta, Bahamas, Bermuda etc.). This type of mortgage is typically one pre printed sheet of paper which describes the details of the mortgagee, the ship and the amounts and obligations secured. This type of mortgage is usually accompanied by a separate document called "deed of covenants" which contains various terms that the mortgagor has to comply with, primarily the insurance and operational covenants[9]. The other type of mortgage is encountered in non-English based jurisdictions (main examples include Liberia, Panama,

[5] In the alternative the lender would have to effect service of proceedings outside the jurisdiction with the permission of the English court.

[6] The so called "for the benefit of" clauses are very often encountered in loan agreements (a typical example may be found in the standard LMA Multicurrency Term and Revolving Facilities Agreement at http://www.lma.eu.com)

[7] Convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed in Lugano on 30 October 2007 and published in the Official Journal on 21 December 2007, (*L339/3*) replacing the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters. Today only three countries are members, namely Iceland, Switzerland and Norway.

[8] An interesting debate is whether a ship under construction can be mortgaged. Assuming that the borrower owns the ship, under English law, it will be subject to a charge. In other jurisdictions such as Scandinavian jurisdictions, Germany and Greece for instance, a ship under construction may, subject to certain requirements, be registered in the ship registry and subsequently be mortgaged.

[9] These are also included in the loan agreement but their "natural" place is to be included in the mortgage.

Greece etc.) where the mortgage is one single (longer) document which also includes all the covenants referred to above.

From an enforcement perspective, the type of mortgage is important. For instance in the case of the English-style mortgage, while the mortgage itself may in most cases be governed and be subject to the jurisdiction of the flag of the ship, the deed of covenants may be governed and be subject to a different law and jurisdiction. Indeed, in case of ships trading worldwide, no one can predict at the stage of drafting the document which jurisdiction will be called to enforce the terms of the mortgage and which governing law such jurisdiction will apply. Therefore, if a ship is arrested in a jurisdiction with a comparatively less developed shipping law system and jurisprudence then the deed of covenants as a separate agreement may be enforced if needs be in the jurisdiction and under the governing law of the parties' choice.

One final point that should be made in relation to the governing law and jurisdiction provision of the mortgage is that all jurisdictions generally require that the mortgage is governed and be subject to the jurisdiction of registration (flag) of the vessel.

2.2.2 Other Security Documents

Other security documents typically encountered in ship finance transactions which may be a basis for the enforcement of the lender's rights against the borrower, include but are not limited to the following:

(a) Assignments. An assignment is generally an agreement by which the rights/claims of a party are transferred to another party. In this way a situation is created where one party (in this case the lender) may enforce the rights of a third party (in this case the borrower) arising from a separate contractual relationship. The first point to be made is that under that contractual relationship the rights of the borrower must be assignable. As a matter of practice in the shipping industry such contracts are assignable but it is generally prudent for the lender to confirm it in advance as the absence of assignability in an enforcement scenario will render such security useless. Another point to be made is that most of the jurisdictions usually require the assignee or (preferably) the assignor (i.e. the borrower) to send a notice of assignment to the third party. It may not be the case that an acknowledgement is required; however, it is always good practice for the lender to get one as it would significantly facilitate enforcement of the security from the point of view of evidence. Depending on the rights assigned, a bank may take an assignment of earnings and an assignment of insurances.

(i) Assignment of Earnings. The essence of the assignment of earnings is that in case of a default of the borrower, the bank would be entitled to the monies payable to the borrower as a result of the employment of the financed ship. A bank will usually take both a general assignment of earnings and a specific assignment of earnings where a specific (usually long term) charter is in place in respect of the financed vessel.

(ii) Assignment of Insurances. The essence of the assignment of insurances is that in case of a default (including total loss of the ship) all monies payable to the borrower as insured party will be payable to the bank. Of course this does not apply to certain small amounts which are paid directly to the borrower so that it may have a chance to repair damages to

the ship and carry on its ordinary course of business. The lender should ensure that all formalities are complied with including the transmission of the proper notice of assignment which is attached to the insurance policy and the so called "loss payable clause"[10] is attached to the insurance policy as well.

(ii) Pre-delivery Assignments. These are securities taken by the bank at the stage of construction of a ship and consist mainly of the assignment of the borrower's rights under the shipbuilding contract and any refund guarantees thereby securing the pre-delivery installments paid by bank to the borrower to finance the construction of the ship.

(b) Guarantees. This is another important security, provided of course that at the time of enforcement the guarantor has assets on which to enforce. In some cases the guarantee may be included in the loan agreement or in a separate document (which is common in practice). Depending on who is providing the guarantee, guarantees can be corporate (usually the ship owning company if it is not the borrower and/or the holding (parent) company) or personal (usually the ultimate beneficial owner). From the borrower's point of view personal guarantees should generally be avoided because they allow the lender to enforce against the personal guarantor's assets worldwide. Of course from the lender's perspective, the lender should always check prior to obtaining such security that the intended person does actually have assets.

Regardless of the type (corporate or personal) of a guarantee, its function is or should be that in case of a default it allows the lender (a) to enforce directly against the guarantor without having to demand or try to get payment first by the borrower (that is why a guarantee should be drafted in such a way that it creates primary and not secondary obligations); (b) to have comfort that the guarantee is valid and enforceable under its governing law throughout the life of the loan agreement; most jurisdictions provide for several defences in favour of the guarantor that can be put forward and events that allow a guarantor to be discharged from its obligations[11] but most of these defences may be waived in advance. One of the most important is an amendment to the underlying (secured by the guarantee) contract i.e. the loan agreement. For this reason any amendment of the loan agreement should always be made with the consent of the guarantor.

(c) Charge of Bank Account or Bank Account Pledge. This is another security that may be taken by a bank on several occasions; it may be taken on the operating accounts of the borrower (e.g. earnings account) and be activated only in case of a default; it may also be taken as a separate security by way of cash collateral (which is given in the form of an account pledge); similarly in case there is a need for the borrower to cover a security shortfall, the borrower may opt to provide cash by way of cash collateral. In all these cases what should be pointed out is that this type of security should always be subject to the law of the place where the account is situated.

(d) Share Pledge. Sometimes the borrower is required to procure its shareholders to grant in favour of the lender the right to acquire its shares and effectively take over the company. This is not a particularly strong security because it largely depends on the assets of the

[10] This is an instruction to the insurers as to the method of payment of the insurance money.
[11] The reason for this is that as a general rule the guarantor is becoming liable for third party obligations and almost all jurisdictions recognising that are generally pro-guarantor.

acquired company. It is common practice in shipping industry to see signle-ship owing companies which means that without the ship, acquiring the company is useless. Also, this is somehow similar to the rights of the mortgagee to take over the ship and/or its management and for reasons we shall discuss later on in this paper it might not be advisable.

3. Pre-Enforcement Considerations

Having examined above the main elements of the structure of a ship finance transaction with particular focus on the enforcement aspects of the documents, we will now consider what happens if things go wrong (and things can go wrong especially nowadays for the reasons discussed at the beginning of this paper).

Before considering however the steps that both a borrower and a lender should take in such a situation, it is worth pointing out that whether and how the bank will enforce its rights against a borrower will largely depend upon the relationship between the bank and the borrower. For instance an honest and straightforward borrower is likely to be treated more leniently and it is possible that the bank may adopt a more helpful approach than with a more obscure borrower that refuses to provide information or even tries to hide its true financial condition. Of course, both the bank and the borrower should be aware that if the market is as bad as it is these days then possibly there is not much room for a bank to be helpful.

Turning to the pre-enforcement considerations, a lender (and a borrower for that matter) should at first be able to recognise the signs of a problematic loan so that it has notice of the situation early on. These include the degree of compliance with financial covenants, the assessment of the information provided pursuant to the information covenants (e.g. financial statements, cash flow projections, vessel employment etc. -this type of information is more readily accessible in the case of listed companies), status of financial ratios such as the asset cover ratio described above (that the security value should be more than the security requirement i.e. at a certain percentage of the loan usually about 120% to 160%). In such a case valuation of the financed ship(s) is particularly important. For example, at the moment the values of the ships have hit a historical low thereby making the majority of the loans problematic.

Apart from the above early indicators of a failing borrower, the lender should also look out for other signs such as arrests (not only of the ship in questions but other ships of the same group), serious breaches in charter parties (especially if they are long term time charters), delays or deferrals of payments to trade creditors, insurers and other suppliers. All the above signs seen individually might not be a big source of concern; however, if we see more than one signs then a prudent bank should start preparations for restructuring of the loan (to help the borrower to survive) or for enforcement with a view to recovering as much as possible from its loan.

4. Considerations When Examining Enforcement Options

Having established that a loan has become problematic or a bad debt, then a lender should as soon as possible start preparing for the worst case scenario.

(a) Due diligence on security. At first it should perform due diligence on the security that is in place. This has been dealt with in the first part of this paper i.e. review of the loan agreement, the securities including proper registration of the mortgages, the proper transmission of notices of assignment etc. Once the lender and/or its lawyers are satisfied that all the documentation is in place, the security is still valid and enforceable and all formal requirements have been complied with, only then may it consider further enforcement steps.

(b) Out-of court restructuring. Of course, right before initiating any enforcement proceedings the lender should consider any possible way to work out the issues of the borrower. If, for instance, the bank has identified the reasons of the borrower's fall out it may deem appropriate, before any enforcement action, to give the borrower the chance to recover. Of course, as discussed, above this largely depends on the relationship of the two parties, however, it is not uncommon even under the current market conditions to see formal waivers and deferrals of the repayment installments, restructurings, further financing (usually on more onerous terms), agreements with the borrower to sale certain assets etc.

(c) Calling a Default. If the above do not prove fruitful or do not lead to a constructive result and the only option is enforcement by foreclosure then the lender must ensure that the proper notices of default and demands are served properly and timely (the notices and the service or process provisions referred to above are of particular importance). One thing to note is that it should be ensured that the default is clear and not subject to any counter arguments. As discussed above the most obvious and common event of default is non-payment of principal and interest.

(d) Place of Enforcement. Once a lender calls a default then the place of enforcement is possibly the next most important aspect of any enforcement proceedings. Shipping is by definition a multi jurisdictional activity. By way of illustration, in a typical shipping /ship finance structure we may have, for example, a Marshall Islands holding company, listed or not in a US exchange, wholly owning Liberian companies each owning a vessel under the same or different flag, financed by a Dutch bank, chartered to a French or a German operator, trading worldwide, with its finance and commercial relationships governed by English law documents and subject to English jurisdiction (usually as discussed at the lender's option) and managed by a Liberian company with an established office or branch in Greece. In such a case, the financier would have to evaluate which is the most favourable jurisdiction in the light of the specific circumstances of each case. More specifically, in deciding where it may launch enforcement proceedings the lender should take into account several factors; some of them have been discussed earlier and include amongst others the documentation governing their relationship with the borrower, the type of security obtained, the governing law and jurisdiction clauses of those documents and the value of the assets (it could be, apart from the vessels, the assets of any guarantor, shares in the borrower etc.). Of course, the governing law and jurisdiction is not always within the lender's control i.e. despite the agreed governing law and jurisdiction, the location of the assets is critical (in many cases the place of incorporation of the security parties is also important). The other factors will be examined below in conjunction with the specific enforcement measure chosen by the lender.

(e) Place of Arrest and Judicial Sale of a Ship. The most obvious recourse that a lender/mortgagee has is against the ship. The choice of the arrest of ship and judicial sale of vessel is paramount. Of course this is one of the main topics of the main CMI Conference as well as the topic of the first part of this Young CMI Event where we had the chance to have an overview of four legal systems with respect to arrest of vessels and the judicial sales of ships. Therefore, it is out of the scope of this paper to examine this topic. However, very briefly it should be noted that the review of the procedures, costs of process, quality of correspondents, timing, priorities and even the effect of the existence of cargo on board is an important exercise for both the lender and the borrower. As to the priorities, it is worth noting that in general all jurisdictions accept that few categories of claims rank before the mortgage (hence the mortgage is possibly the most strong security a lender can get over the ship). The question of what law will be applied by the court of enforcement can easily be the subject of a separate thesis. Without getting into any detail, some courts will apply the law of the flag (Panama), some will apply the law of forum (England) and some will apply both (Greece) i.e. for a claim to qualify as a maritime lien running in priority over the mortgage it should be recognised as such by both the law of the flag and the law of the forum. However, as a general rule, the fees and expenses of the enforcement process are usually ranked first, then any port or harbor charges, then the maritime liens and as it can be appreciated this can also be the topic of a separate paper (usually include crew wages, collision and salvage liens) and then the mortgages which as between themselves are ranked by the date of registration (and not the date of execution). Therefore, careful planning in advance is critical and a sound understanding of both the arrest jurisdiction and the mortgage jurisdiction is essential: it may well be for example that some jurisdictions are more favourable than others when it comes to arresting a vessel or enforcing a mortgage or it may be quicker or more effective to enforce against the guarantor's assets. Of course, the single most important factor is the place where the ship or other assets are located at the time of the enforcement.

(e) Powers of the Mortgagee: Management of the Ship and Private Sale. Apart from the enforcement by arrest and the judicial sale of a ship which is possibly the most common method of enforcement, in most cases the lender as mortgagee has several other options including the assumption of the management of the ship and/or the power to sell it in a private sale. As to the former quite apart from the practical difficulties of the task, it is also doubtful from legal perspective that a lender would want to be in the shoes of an already failing ship and assume all the liabilities that such task entails. The only real advantage in such a case is to sail the ship in a jurisdiction with a developed legal framework allowing the lender to perform all the actions outlined above. As to the private sale, there are indeed some advantages, the main disadvantage compared to a judicial sale however is that the prior claims in rem are not extinguished (including other mortgages) and , consequently, the old creditors may lawfully arrest the vessel even though it is under new ownership[12]. In addition, the borrower (previous owner) may allege that the lender did not sell the vessel at an appropriate price and in this way the borrower suffered damage. Of course with the appropriate preparatory work and documentation it may be possible even for a private sale to proceed safely and quickly.

[12] In some jurisdictions however very few claims may also survive a judicial sale. For instance in Greece in case of judicial sale of a Greek flag vessel, the claims of the seamen's pension fund survive.

5. Bankruptcy - Options for the Borrower

From the foregoing the importance of the choice of forum is more evident than ever and it should thus be carefully considered by the borrowers as well. However, apart from the enforcement actions, both parties should also identify the most appropriate forum to initiate possible insolvency or restructuring proceedings (experience though shows that borrowers usually spend more time looking into this aspect). Indeed, while banks appreciate good intentions and efforts, at some point, the only realistic alternative would be to initiate liquidation or formal restructuring proceedings before a bankruptcy court. Similarly, for a heavily indebted borrower that is unable, on any reasonable basis, to service its debts, its only option would be to resort to bankruptcy or creditor protection.

Regardless of the view point from which the issue is considered e.g. whether it is the lender's or the borrower's perspective, the choice of forum is central in insolvency matters as well. Indeed, while there have been several efforts globally to harmonise and coordinate insolvency proceedings such as the EU Insolvency Regulation[13], the UNCITRAL Model Law on Cross-Border Insolvency etc. there are still jurisdictions which have a more developed and sophisticated insolvency legal framework and/or with a seemingly pro-insolvent debtor regime than others and, therefore, parties may choose to resort to the forum which serves them better. It is interesting to note that there have been arguments that for a US Court to accept a bankruptcy protection filing (Chapter 11) a simple deposit e.g. in a client account of a US law firm could suffice. However, it must also be mentioned that Chapter 11 proceedings are effective restructuring proceedings from the point of view of preserving the going-concern value of a business that should allow creditors to recover as much, or more, than they would recover in ordinary liquidation proceedings. Whilst there are several other reasons in choosing the insolvency regime of one jurisdiction over another, it is the recognition (legally or de facto) of the effects of bankruptcy in other jurisdictions which is a deciding factor. By way of illustration in the US legal framework, upon filing of a Chapter 11 petition, the debtor automatically has the benefit of an extensive moratorium or automatic stay of creditor actions. Although, similar provisions exist in several European jurisdictions as well, the world-wide effect of such automatic stay is more theoretical. If a US court on the other hand grants a Chapter 11 petition, major lenders, particularly those with US branches and activities would in practice be generally unwilling not to respect the moratorium.

6. Conclusion

This is a continuingly and rapidly developing legal area, particularly within the current market conditions, so what has been discussed is just a glimpse of what enforcement against shipping companies may involve both from the lender's and the borrower's point of view. Hopefully, within the time allocated, this paper gave a brief overview and certain points to be aware of both when drafting finance documents and when considering enforcement actions.

[13] Council Regulation (EC) No 1346/2000 on insolvency proceedings