

RESPONSES OF THE ARGENTINE MARITIME LAW ASSOCIATION

1 MARITIME AND OTHER CONVENTIONS

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

These conventions have not been ratified by the Argentine Republic.

1.2 If your jurisdiction has not ratified either of the aforementioned conventions, what categories of claim can be brought by way of arrest¹ of a vessel?

Argentine vessels can be arrested in order to protect any kind of credits (art. 531, Navigation Act). Foreign flag vessels can be arrested to protect (i) privileged credits, (ii) debts incurred in Argentina for the benefit of the vessel or of any other vessel that belonged to the same owner at the time the credit was originated, and (iii) debts incurred for the vessel's activity and other credits not related to the vessel's activity provided that they can be claimed before Argentine courts (Navigation Act, art. 532).

The word "arrest" is used just for convenience. In our legal system the approximately equivalent concept is *embargo*. The *embargo* may include the immobilization of the Argentine vessels (*interdicción or prohibición de navegar*), but in case of foreign flag vessels, it always implies their immobilization (Navigation Act, art. 539).

1.3 In particular, can arrest be made:

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

Yes.

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

In the case of foreign flag vessels, art. 600 of the Navigation Act recognizes the validity of foreign mortgages, but reciprocity is required.

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

Only the 1926 Convention has been ratified by the Argentine Republic.

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

The approximately equivalent concept of *lien* in our legal system is *privilegio*. The Argentine Republic recognizes foreign maritime privileges, including liens, which are governed by the law of the vessel's flag (Navigation Act, art. 598). A change of flag does

¹ The term 'arrest' is used throughout for convenience but it is acknowledged that this may not be a concept known to the laws of all jurisdictions. If in your jurisdiction the equivalent concept is attachment or something else, please briefly explain.

not affect the regime applicable to privileges and liens and the applicable law is the law of the state in which the vessel was registered prior to the change of flag (art. 599).

1.6 Does the law of your jurisdiction incorporate the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents?

The 1961 Hague Convention has been approved by the Argentine Republic (Act 23.458).

2 NATURE OF THE SHIPS' REGISTER

2.1 Is the ships' register² in your jurisdiction a register of legal title?

Yes, it is a register of legal title (Navigation Act, art. 158, and Act 19.170, art. 21).

Act 19.170 governs the National Register of Ships (Registro Nacional de Buques).

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

Yes, as provided for in decree 1010/2004, art. 18. However, the Register has never received any such application.

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

2.4 No. What may theoretically be registered is only the bareboat charter (decree 1010/2004, art. 18).

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

No.

2.6 Please describe (briefly) the criteria for registration of a vessel on the ships' register in your jurisdiction, with particular reference to eligibility or not for registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.

Statutory certificates are needed (Navigation Act, art. 52. a). The owner must be domiciled in Argentina. If the owner is a company it must be established in Argentina or, in case of a foreign company, it must be registered as a branch before the Public Registry of Commerce pursuant to Section 118 of the Argentine Companies Act (Navigation Act, art 52.c). In case of vessels that have been entered with a foreign register, the deletion certificate from the previous register (Navigation Act, art. 53) as well as the provisional navigational certificate issued by the Argentine Consul are necessary required. (The latter is only required when the deletion certificate is issued abroad prior to the ship's voyage to an Argentine port). . Assets employed in offshore oil and gas exploration, production, processing and storage are eligible for registration under similar criteria.

3 FORMALITIES FOR MORTGAGE REGISTRATION

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

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

² The term 'ships register' means a specialist register only for ships.

It is necessary to attach the loan agreement. This document should state the loan amount, the interest and the date of payment (art. 12, Act 19.170).

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

Even though it is not strictly necessary to set out those details, in practice they are always mentioned in the loan agreement.

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

The document must necessarily be notarized (Navigation Act, art. 501 and Act 19.170, art. 3.a.1).

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

0,50 0/00 of the amount of the mortgage.

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

Unless its terms provide for a longer period, the mortgage will expire after three years unless it is re-registered (Navigation Act, art. 509 and Act 19.170, art. 36.b).

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

A mortgage of a vessel must be registered only in the National Register of Ships. No additional registration is required, but a note must be included in the Vessel's Register Certificate and in its notarized property deed(Navigation Act, art. 501).

4 INFORMATION CONCERNING SECURITY INTERESTS IN SHIPS

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

The information is available to anyone interested in obtaining it (Act 19.170, art. 38). In the application form the applicant must state his interest.

(a) Does a person seeking such information need the authorization of the vessel owner to get such information?

The authorization of the vessel owner is not needed.

(b) Does your jurisdiction certify the accuracy of the information?

Upon written request, a certificate regarding the ownership, mortgages and *embargos* will be issued by the National Register of Ships (Act 19.170, art. 40). In case of error, the Government will be liable for damages.

(c) How much time is generally required to obtain such information?

Between three and five working days.

(d) May a vessel subject to a security interest be sold by the owner prior to the release of the

security interest, and if so, under what conditions or circumstances.

Yes, but the buyer will have been informed about the mortgage through the certificate he must obtain from the Register (see 4.1.b). If the original debtor does not pay the debt, the creditor will be able to obtain the judicial sale of the vessel (Navigation Act, art. 509), but other assets of the new owner will not be affected (Civil and Commercial Code, art. 2199).

5 ARREST OF A CHARTERED VESSEL

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

Yes.

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

No.

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

We have neither specific legal provisions nor judicial precedents on this issue. Considering the time that proceedings for a judicial sale of a ship may take it is unlikely that any cargo will remain on board at the time the ship is auctioned. In any case, the disbursements for the disposal of the cargo ashore will be likened to disbursements incurred for the purpose of making the judicial sale possible. Therefore, it should be made good with the sale proceeds and will have precedence over other creditors (Navigation Act, art. 476.a).

6 PRIORITY ISSUES BETWEEN MORTGAGES REGISTERED IN THE SHIPS' REGISTER IN YOUR JURISDICTION

6.1 Does your jurisdiction have a system of "priority notice" to enable priority to be reserved for a period before actual registration of the mortgage?

Yes. The period is 15 days if the Notary Public has his professional domicile in the city of Buenos Aires (capital of the Republic) and 30 days if the professional domicile is outside the city of Buenos Aires (Act 19.170, arts. 40 and 41).

6.2 Once a mortgage is registered in your jurisdiction is it possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee?

In principle yes unless it was agreed otherwise by the parties to the first mortgage (Act 19.170, art. 7.f).

6.3 When there are two or more registered mortgages what determines their priority?

The priority is determined by the day and time in which the mortgage is registered (Navigation Act, art. 504).

6.4 Is there any doctrine of notice such that the priority of a registered mortgage is deferred to

that of an earlier but unregistered mortgage of which the registered mortgagee has notice?

No.

6.5 Can a second registered mortgagee exercise enforcement remedies without the consent of the first registered mortgagee?

The consent of the first registered mortgagee is not needed. Nevertheless the first registered mortgagee will be notified and he will be able to defend his priority (Civil and Commercial Procedural Code, arts. 575 and 576.3).

6.6 Does your jurisdiction have a system for registration of security or liens other than mortgages, whether consensual or non-consensual? If so, please describe.

In addition to mortgages, there are other kinds of securities that must be registered with the National Register of Ships, such as *embargos* (Act 19.170, art. 7.e), leasing agreements (Civil and Commercial Code, art. 1234) and trusts (Civil and Commercial Code, art. 1669).

7 GENERAL ENFORCEMENT ISSUES

7.1 Does your jurisdiction make a distinction between the enforcement of mortgages registered under the flag of your jurisdiction and the enforcement of any other foreign mortgages?

The consul of the vessel's flag state must be informed that the judicial sale has been ordered (Navigation Act, art. 593).

7.2 Is it necessary for the mortgagee to obtain a judgment in your jurisdiction on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage?

Yes, it is necessary.

7.3 If so, how long is it likely to take to obtain a judgment if the claim is contested? Will the local court expedite the proceedings having regard to the ongoing costs of maintaining the vessel?

If the claim were contested, it would take no less than two/three years to obtain a judgment. Mortgages' enforcement is not frequent in our country, so this is a mere estimation.

Theoretically, it is possible to obtain a decision ordering the judicial sale of the vessel without previous judgment, arguing the costs of maintaining and the consequences of the immobilization of the vessel (Civil and Commercial Procedural Code, art. 205). Nevertheless, in some way this is a discretionary decision of the Courts.

7.4 Will the court in your jurisdiction accept jurisdiction for the mortgage claim under Article 7 1952 Arrest Convention, or equivalent domestic legislation in your jurisdiction?

Yes. *Forum arresti* is a concept admitted by art. 612 of the Argentine Navigation Act.

8 JUDICIAL DECISIONS AND APPEALS

8.1 Do all courts in your jurisdiction have authority to sell vessels free of maritime liens and prior claims, or is such authority limited to special courts, such as admiralty courts?

Under Argentine law the judicial sale of a vessel extinguishes all maritime liens and claims (Navigation Act, art. 484.b). Any Argentine federal court in civil and commercial matters will have authority to sell vessels free of maritime liens and prior claims.

8.2 What formalities, including evidence of claim, or evidence of notice, are required to affect the sale of a vessel free of liens and prior claims?

See 9.

8.3 If the owner presents an appeal against judgment, will the court make an order for sale of the vessel before that appeal has been heard and decided?

No. The appeal must be decided before the auction of the vessel.

9 SALE PROCEDURE

The procedural means to enforce a ship's mortgage is the executory process. The relevant provisions are included in arts. 553 to 560 of the Navigation Act. Matters which are not provided for in the Navigation Act, are ruled by arts. 563 to 572 and 575 to 589 of the Civil and Commercial Procedural Code ("the Procedural Code"). The executory process is described in the next paragraphs.

The purpose of executory proceedings is not to obtain a declaration of the existence of a particular right, but rather to obtain the payment of a debt, the validity and existence of which was legally assumed by virtue of a particular type of document.

Executory proceedings are simplified and theoretically expeditious proceedings which mainly consist of the claimant's request for an attachment over the debtor's assets to obtain payment of a debt. When enforcing a ship's mortgage, the claimant may apply for an attachment or embargo and immobilization (arrest) over the ship.

The Court will issue a formal payment request to the debtor, who has 5 days from the date of reception of the request, to submit a defence.

The only admissible defences are:

- (i) lack of jurisdiction;**
- (ii) lack of legal capacity to take part in such an action or of sufficient powers;**
- (iii) the existence of another pending claim, between the same parties, with the same object and for the same causes;**
- (iv) falsified or invalid instruments, provided however that the debtor also denies that the debt actually exists;**
- (v) expiry of the limitation period;**
- (vi) prior payment of the debt;**
- (vii) set off;**
- (viii) partial or total discharge of the debt, grace period, novation, settlement, conciliation or compromise; and**

(ix) *res judicata*.

All documentary evidence must be produced (or if not in documentary form an indication of the type of evidence that the defendant intends to rely upon at the same time as the defence is submitted to the court.

If the defences filed are not clear or do not fall within the above categories, the court will render judgment. If the defences are properly filed and fall within the categories above, the claimant will have 5 days from the date it is notified of the defenses, to answer them (and submit any evidence supporting such answer). Once all the evidence has been produced, the court will render its judgment within 10 days.

The judgment may either reject the claim or order the sale of the vessel at a public auction.

Once the judgment is issued by the court, the claimant may intend to enforce it. A judgment is final when the defeated party accepts it, when the terms for applying for all available appeals have expired or when all available appeals have been finally decided.

If the judgment is not for an ascertained amount, either the successful or the defeated party may submit a breakdown of damages amounts to the court along the lines established by the judgment. A copy of this breakdown will be forwarded to the debtor, who may challenge this within 5 days, after which the court will resolve.

When the judgment to be enforced is for an ascertained amount (or the sum to be enforced has been ascertained through the mechanism explained above) the court will summon the debtor to file any defence that it may have within 5 days.

The only admissible defences are:

- (i) invalid judgment;
- (ii) expiration of the limitation period for the enforcement of the judgment;
- (iii) payment; or
- (iv) partial or total discharge of the debt or grace period.

All these defences must have been raised subsequent to the judgment being enforced and must be substantiated solely with documents already available in the file or with any document that the party who seeks enforcement may have issued after the judgment.

If the debtor fails to file its objections or once these objections have been resolved, the court will order the sale of the arrested ship. This decision will be notified to the other mortgagees and to other creditors that arrested the ship (Navigation Act, art. 553), and published in Boletín Oficial (Official Gazette). The proceeds will be distributed by the court among the creditors (Navigation Act, arts. 553 / 560) but priorities are governed by the law of the flag of the vessel (Navigation Act, art. 598).

9.1 Can a mortgagee enforce his mortgage in your jurisdiction by applying for a judicial sale by auction?

Yes. See 9.

9.2 What are the criteria for an application for a judicial sale by auction and what is the

procedure and timetable for such an application and sale?

Obtaining a final judgement on a contested claim may take not less than two/three years (see 7.3), and carrying out the judicial sale and distribution of the funds, an additional two/three years. Mortgages' enforcement is not frequent in our country, so these are mere estimations.

9.3 Will the court in your jurisdiction order a sale of the vessel pending judgment (*pendent lite*), recognising that the vessel is a wasting asset?

See 7.3.

9.4 Will the court in your jurisdiction fix a minimum bid price (reserve price) for the vessel and will the amount of that minimum bid price be disclosed to interested parties? What happens if the maximum amount bid for the vessel is lower than the reserve price?

The court will require an appraisal of the vessel. The minimum bid price will be 2/3 of the value resulting from the appraisal (Procedural Code, art. 578), and this minimum bid price will be announced publicly at the judicial auction. If the offers do not reach the minimum bidding price, a new auction will be ordered with a 25% deduction on the minimum bidding price. If again the offers do not reach the new minimum bid price, an additional auction will be ordered without a minimum bid price (Procedural Code, art. 585).

9.5 Can the owner or other creditors influence the amount of the reserve price?

The mortgagee and other creditors as well as the owner are allowed to object the result of the appraisal (Procedural Code, art. 578).

9.6 What arrangements will be made for public advertisement of the sale?

The auction, the minimum bid price and the particulars of the ship, must be published in the *Boletín Oficial* (Official Gazette) and in another newspaper of wide circulation (Procedural Code, art. 566). Additional publicity costs are to be borne by the creditor (Procedural Code, art. 567).

9.7 To what extent is it possible for the owner or other creditors to influence the timetable or procedure for sale?

The process is intended to be expeditious. However, given the formalistic and bureaucratic practices, the owner or other creditors may influence the timing for the sale.

9.8 Can a mortgagee enforce its mortgage in your jurisdiction by applying for a court approved private sale? If so, what are the criteria for an application requesting the court to approve a private sale and what is the procedure and timetable for such an application and sale?

Argentina does not have any specific legal provisions regarding private sales. Supposing that creditor, owner and all other creditors agree on a private sale, the court will likely accept it.

9.9 Can a mortgagee bid its debt (*animus compensandi*) so as to allow a set off of the debt against the purchase price (and provide security for the claims of potential prior lien holders)? Or does a mortgagee (or its preferred bidder or buyer) have to pay the full price in cash?

Yes, the mortgagee may bid its debt.

10 **SALE PROCEEDS**

10.1 Will the sale proceeds be held in an interest bearing account?

The proceeds of the sale must be deposited in an official bank. At an interested party's request, the court may further order the deposit to be made in an interest bearing account.

(a) Will they be held in the currency of the sale or will they be converted into local currency?

In the currency of the sale.

(b) Will the proceeds of sale ultimately be subject to any exchange control or similar restrictions (and/or court fees) when they are paid out? If so, what is the procedure and likely timetable for obtaining permission to remove the funds?

No restrictions are currently in place.

11 PRIORITIES GENERALLY

Under Argentine law (Navigation Act, art. 476, the following credits will rank over a mortgage:

- (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;**
- (b) Credits of the master and crew members arising from their labor contracts, labor laws and collective bargaining agreements;**
- (c) Duties, taxes and other public charges arising from services connected with the navigation and commercial operation of the vessel;**
- (d) Damages arising from death or personal injuries occurring on board, on land or on water, directly connected with the operation of the vessel;**
- (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**
- (f) Salvage, wreck removal and contribution in general average credits.**

A mortgage will rank over the following credits:

- (g) Credits for damage to cargo and luggage;**
- (h) Credits arising from bareboat or voyage charterparties, and from contracts of carriage;**
- (i) Credits arising from the supply of equipment for the vessel, for her operation or preservation;**
- (j) Credits arising from the building or repair of the vessel or from drydocking;**
- (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**
- (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.**

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?

Priorities are determined under the law of the flag of the vessel (Navigation Act, art. 598).

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:

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

See 11.1.

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

No.

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

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).

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

There is very little judicial experience on this issue so it is not possible to provide an estimate timetable.

11.6 Is the distribution order decided by the court?

Yes (Navigation Act, arts. 555/557), but the applicable law is the law of the flag of the vessel (art. 598).

11.7 Is that order subject to a right of appeal?

Yes.

12 MORTGAGEE'S SELF-HELP REMEDIES

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.

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;
- (b) to appoint a receiver, manager or other party to operate the vessel;
- (c) to sell the vessel as mortgagee;
- (d) to sell the vessel as attorney in fact of the owner.

No. See 9.

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 11.1 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?

No. See 9.

12.3 Where answers to the questions in 11.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ships' register?

No. Judicial sale of vessels is a procedural matter governed by the *lex rei sitae* (Navigation Act, art. 611).

13 INSOLVENCY PROCESSES³

Argentine Bankruptcy Act (Act 24,522 as amended), contemplates three insolvency proceedings: (i) out-of-court agreement, (ii) reorganization and (iii) bankruptcy.

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

No.

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)

No.

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?

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.

13.4 Is the answer to 12.3 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

Judicial sales of vessels are governed by the *lex rei sitae* (Navigation Act, art. 611), so foreign insolvency proceedings should not interfere in a judicial sale of a vessel in Argentina.

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?

Bankruptcy proceedings attract all claims and foreclosure against the debtor (Bankruptcy

³ If your jurisdiction is subject to the EU Insolvency Regulation and will be subject to the 'Recast' EU Insolvency Regulation, please so indicate - but also respond to the questions.

Act, art. 132). In reorganization proceedings the maritime sale can continue in the original court.

13.6 Is the answer to 12.5 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

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.

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?

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.

13.8 Is the answer to 12.7 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

Challenge of a mortgage could be made applying the rules of the Civil and Commercial Code.

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?

No, except the court may order an *embargo* and arrest of the vessel under the rules of the Navigation Act.

14 LEASING⁴

Leasing (including leasing of vessels) is governed by the Civil and Commercial Code (arts. 1227 to 1250).

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

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.

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)?

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

⁴ By 'leasing' is meant a demise chartering of a vessel where the holder of legal title ('lessor') is a financier rather than a commercial shipping company and the vessel is demise chartered to a shipping company ('lessee'). It might or might not involve the lessee having an option to purchase for a pre-agreed price or title automatically passing to the lessee at the end of the lease term. It covers both finance leases, where the lessee by one means or another has substantially the whole economic interest in the vessel and operating leases where the lessor retains some economic risk and interest in the vessel.

included in Argentina's regulation. Therefore, there is practically no risk that a court would re-characterize certain leases as security interests.

14.3 If the laws of your jurisdiction adopt a functional approach (13.2) 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.

See above

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?

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.

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?

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).

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?

A leased vessel is considered an asset of the lessor (Civil and Commercial Code, art. 1242).

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?

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 redelivered to the lessor (Act 25.248, art. 11, third paragraph).

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?

Yes. The effect of the arrest will be the immobilization of the vessel.

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?

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.

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.

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).

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.

No.

15 RESERVATION OF TITLES

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

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.

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.

No.

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?

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.

April 2016

⁵ References to 'reservation of title' are intended to include arrangements where a seller retains title to the vessel until the buyer pays the full price in circumstances where the buyer's obligation to pay the full price is deferred over time.