

1 MARITIME AND OTHER CONVENTIONS

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

Neither.

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

According to Article 21 of Special Maritime Procedure Law of the People's Republic of China, 22 categories of claim can be brought by way of arrest of a vessel:

- (1) loss of or damage to property caused by ship operation;
- (2) loss of life or personal injury in direct connection with ship operation;
- (3) salvage at sea;
- (4) damage or threat of damage caused by ship to environment, coast or relevant interested persons; measures adopted to prevent, diminish or eliminate such damage; compensation paid for such damage; expenses for reasonable measures actually adopted or to be adopted to restore environment; losses caused by such damage to or likely to a third party; and damage, expenses or losses of a similar nature as those specified in this subparagraph;
- (5) expenses related to re-floating, removal, reclamation or destroying of a sunken ship, wreck, aground ship, abandoned ship or to making them harmless, including the expenses related to re-floating, removal, reclamation or destroying of the things which have or no longer remained on board the ship or to making them harmless and expenses related to maintaining of an abandoned ship and her crew;
- (6) agreement in respect of employment or charting of a ship;
- (7) agreement in respect of carriage of goods or passengers;
- (8) cargo (including luggage) carried by a ship or loss or damage relating thereto;
- (9) general average;
- (10) towage;
- (11) pilotage;
- (12) providing of supplies or rendering of services in respect of ship operation, management, maintenance or repair;
- (13) construction, re-construction, repair, refurbishment or equipment of a ship;
- (14) dues or expenses for ports, canals, docks, harbours or other waterways;
- (15) crew's wages and other moneys, including repatriation expenses and social insurance premium payable for the crew;
- (16) expenses paid for a ship or a ship-owner;
- (17) insurance premium for a ship (including protection and indemnity calls) payable by or paid for a ship-owner or bareboat charterer;
- (18) commission, brokage or agency fee related to ships payable by or paid for a ship-owner or bareboat charterer;
- (19) a dispute over ownership or possession of a ship;

(20) a dispute between joint owners of a ship over the employment or earnings of the ship;

(21) ship mortgage or rights of a similar nature; and

(22) a dispute arising out of a ship sale contract.

1.3 In particular, can arrest be made:

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

Yes. Article 21 (21) of Special Maritime Procedure Law of the People's Republic of China allows the arrest of a vessel as security for the ship mortgage claims.

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

Yes. Article 21 (21) of Special Maritime Procedure Law of the People's Republic of China does not make a distinction between mortgage claims arising from a domestic registered ship and from a foreign registered ship. Where there is a ship mortgage claim, according to Article 21(21), it can be brought by way of arrest of ships.

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

Neither.

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 claims are recognised as maritime liens?

The current Chinese Maritime Code 1992 ("CMC") recognizes only five groups of maritime liens (article 22). Article 272 of CMC uses the law of the place where the court hearing the case is located as the applicable law to decide if a foreign maritime lien shall be recognised.

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

No. However, China Hong Kong and China Macao have incorporated the 1961 Hague Convention.

2 NATURE OF THE SHIPS' REGISTER

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

Yes. The ships' register in China can confer ownership, mortgage and demise

chartering interests on the ship. According to the Ship Register Measures 2016 released by the Ministry of Transport of China, there are ship ownership register, ship nationality register, ship mortgage register, and demise chartering register in China. It is provided for in the CMC that if the registration is not done in case of the establishment/change of legal title of the ship, it cannot act against a third party in good faith.

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') .

The Ship Registration Regulations of China 1995, revised in 2014, provides that where a vessel flying Chinese flag is demised chartered out to a foreign jurisdiction, and where a vessel flying a foreign flag is demised chartered into China, the demise charter registration must be done in China, which means the original register will be suspended during the demise charter period. So, yes.

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

No.

2.4 Does your jurisdiction allow a vessel registered in the ships register in the name of the holder of legal title also to be registered in another jurisdiction in the name of a demise charterer?

No. It is not allowed.

2.5 Please describe the criteria for registration of a vessel on the ships' register in your jurisdiction.

The Ships Registration Regulations of China 1995 (SRR) applies to all ships that meet the registration conditions provided for in it. In four aspects, the SRR narrows its application to particular kinds of ships. A. Usage: military ships, fishery ships¹ and sports craft are excluded from the application of the SRR. But government ships (public-service ships) are included. B. Navigation: all ships that can navigate, regardless of their self-propelled or non-self-propelled character, are subject to the SRR. Ships that are not movable or navigable are excluded.² C. Length: boats or rafts

¹ In China, registration of fishing ships is subject to regulations other than the SRR and is administered by a different registration authority.

² In this sense, oil rigs that are capable of moving are accepted and registered as vessels by the Maritime Safety Administration which is responsible for registration of vessels according to the SRR. By contrast, fixed oil rigs cannot be registered as ships and activities concerning them are under the supervision of the State Oceanic Administration of China.

of less than 5 meters in length are excluded. Life boats and life rafts that are part of a ship's equipment are also excluded. D. Ownership: ships not owned by citizens or enterprises of China are excluded.

The Ships Registration Measures released by the Maritime Safety Administration of the Transport Department of China, as the authority higher than the registrar of vessels, regulates ship registration practice. According to this new instrument, vessels requiring registration has now include: 1) vessels less than 5 meters in length;³ 2) dummy barges, floating docks, owned by Chinese enterprises whose proportion of registered capital contributed by foreign investors is more than 50 per cent, where such vessels are used for private purpose but not engaged in domestic water transport operation;⁴ 3) vessels owned or demise chartered by Chinese citizens or enterprises or public service unit or other social organizations; 4) vessels owned or demise chartered by enterprises with legal personality established in the Pilot Free Trade Zone.

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?

Yes, attached documents, such as a loan agreement, is needed.

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

No.

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

Not indicated in the above-mentioned Ship Registration Regulations and Ship Registration Measures.

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

0.5‰ of the total amount secured by the ship mortgage

³ However, it is not compulsory for vessels less than 5 meters in length to be registered. The MSA may use the Ships Registration Measures for reference when owners of such vessels apply for registration. See article 75 of the Ships Registration Measures.

⁴ Such groups of dummy barges and floating docks are excluded from the Ships Registration Regulations 1995. However, confirmation is required from the owners as to whether the insurance requirements can be satisfied without prior registration. Therefore, the Ships Registration Measures extends to cover these groups of vessels.

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

If there are any changes to the ship mortgage contract, ship registration shall be altered/changed accordingly.

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 is only required to be registered in the ship register.

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.

Security interests in ships under Chinese Laws include ship's mortgage, maritime lien and possessory lien.

Based on the provisions under Maritime Code of P.R. China, mortgage of a ship shall be established by being registered with the ship registration authorities, viz. Maritime Safety Administration of China ("MSA"), jointly by the mortgagee and the mortgagor. Failing which, no mortgage may act against a third party.

a) Rights-holder and other ship interest could apply before the ship registration authorities to get the registration information of the vessel, including the mortgage information. In addition, courts, arbitration institutions, law firms etc., subject to the relevant conditions of the MSA, could be allowed to access to the registration information as well.

b) The jurisdiction would not certify the accuracy of the information.

c) Generally, the information could be obtained within 7 working days in case the application seeking for the information is accepted by the ship registration authorities. Otherwise, the ship registration authorities are required to advise the applicants of the reason.

There were no registration provisions under the Chinese laws in respect of the maritime lien and possessory lien in a ship, the information concerning the same therefore is not publicly available.

4.2 May a vessel subject to a security interest be sold by the owner prior to the release of the security interest, and if so, under what conditions or circumstances.

In case a mortgage is established on a ship, the ownership of the mortgaged ship shall not be transferred without the consent of the mortgagee. The vessel subject to maritime lien and possessory lien may be sold by the shipowners before the release of

the liens. The maritime lien will survive in the new ownership in a private sale of the ship. While, the possessory lien shall be distinguished in case the rights-holder no longer possesses the ship.

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, as long as the arrest is lawful, the mortgage should not be liable to charterer or cargo interests in tort.

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?

There is no specific procedure designed for the judicial sale with cargo on board of vessel. And it is not a must to discharge the cargo before sale. For instance, Qingdao Maritime Court once sold a vessel in February 2018 with cargo on board, but there was special risk reminder to potential buyers in the sale notice.

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?

Under Chinese law there is no a system of "priority notice" to enable priority to be reserved for a period before actual ship registration of the mortgage.

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?

Yes. The Chinese law allows a subsequent mortgage to be registered without the consent of first registered mortgagee.

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

The sequence of registration will determine their priority of registered mortgage.

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. Under Article 199 of *Property Law of the People's Republic of China*, the registered mortgage shall be satisfied prior to the unregistered ones.

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

Yes. Under Article 366 of Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, the second registered mortgagee could apply the Court to exercise enforcement remedies directly without the consent of the first registered mortgagee.

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.

Under Chinese law, it only has a system for registration of mortgage to satisfy the priority of mortgage. There is no a system for registration of security or liens.

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?

No distinction between local and foreign mortgages as regards enforcement in Chinese jurisdiction.

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?

According to Article 196 and 197 of Civil Procedure Law of the P.R.C., the holder of real rights for security or the other persons having the right to request the realization of the real rights for security are entitled to file an application for realizing real rights for security before the primary people's court in the place where the property is located or where the real right for security is registered in accordance with the Property Law and other relevant laws. The People's court shall make a written order on auctioning or selling the said property after accepting the application and confirming the application is in conformity with the law. In the circumstance, under

the above premises, it is not necessary for the mortgagee to obtain a judgment before it can enforce that mortgage. However, in case the application shall be rejected as it is not in conformity with the law and the mortgagee or other parties concerned may bring a lawsuit before the people's court in order to obtain a judgment under the loan agreement or other applicable debt instrument as well as confirm the validity of mortgages.

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?

According to Article 149 of Civil Procedure Law of the P.R.C., the first instance for a case in which the ordinary procedure is followed, shall be concluded within six months from the date of the acceptance the case. However, a six-month extension may be allowed subject to the approval of the president of the court, and further extension, if needed, shall be reported to the people's court at a higher level for approval.

The parties are entitled to appeal against the first instance judgment before the people's court at the next higher level within at most 30 days from the date on which the judgment is served. The second instance shall be concluded within three months from the date of the acceptance the case. Any extension of such period necessitated by special circumstances shall be subjected to the approval of the president of the court.

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?

Pursuant to Article 19 of Special Maritime Procedure Law of the P.R.C., after execution of the preservation of a maritime claim, in case the legal proceedings or arbitral proceedings are not commenced relating to a maritime dispute, the parties concerned may bring an action in respect of the maritime claim in the maritime court that adopts measures for preservation of the maritime claim, unless a jurisdiction agreement or arbitration agreement has been reached between the parties.

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?

The authority to sell vessels free of maritime liens and prior claims in China is limited to maritime courts and their superior courts.

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?

Usually the effective judgement or arbitral award is needed, or in other special conditions the court may have discretion on the expiration of the period of arresting or after initiating the legal proceedings. The formalities for the sale of a vessel usually included as below: 1) set up an auction committee by the court; 2) survey the vessel; 3) value assessment of the vessel; 4) announcement of auction notice; 5) display the auction vessel; 6) set the retentive price; 7) bidding registration; 8) vessel auction; 9) delivery of the auction vessel; 10) announcement of the auction ending and the delivery of vessel.

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?

Usually no, but the court have discretion to auction the vessel if the owner fails to provide enough guarantee when the vessel is not suitable for being arrested longer on the expiration of the period of arresting or if the application for auction the vessel is submitted by owners or interested party.

9 SALE PROCEDURE

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

Yes, a mortgagee has the right to enforce his mortgage by applying for a judicial sale by auction in China.

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?

The criteria for an application for a judicial sale by auction is as follows:

1. Where the debtor defaults or the conditions for enforcement of the mortgage interest thereof, as agreed upon by the parties concerned, arise, the mortgagee may enter into an agreement with the mortgagor that he be given the priority in being paid with the money into which the mortgaged property is converted or the proceeds obtained from auction or sale of the property; or

2. If the mortgagee and mortgagor fail to reach an agreement on the means of enforcing the mortgage interest, the mortgagee may apply to the people's court for auction or sale of the mortgaged property.

A people's court trying a case in which special procedure is followed shall conclude the case within 30 days from the date of placing the case on the docket or within 30 days after expiration of the period stated in the public notice. Any extension of the

time limit necessitated by special circumstances shall be subject to the approval of the president of the court.

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

Yes, in accordance with the Articles 28-29 of Special Maritime Procedure Law, if a ship is arrested for more than 30 days, security has not been provided to secure the release of vessel, and the ship is not suitable for being arrested longer, maritime court can order a sale of the vessel by way of auction. An judgment or effective judgment will not be a pre-condition of such auction sale order made by court.

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 fix a minimum bid price (reserve price) in accordance with appraisal and will never disclose to interested parties.

At the first auction, the reserve price must not be less than 80% of appraisal and the first auction will fails if the maximum amount bid for the vessel is lower than the reserve price. At the second auction, the reserve price can be appropriately reduced no more than 20% of previous reserve price. If the second auction fails again, the vessel shall be sold by the court .

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

No. This is fixed by court in its own discretion.

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

In accordance with Articles 32-33 of *Special Maritime Procedure Law*, a maritime court that orders to auction a ship shall issue a public notice through newspapers or other new media, and in case a foreign ship, public notice shall be issued through newspapers or other news media distributed abroad. The public notice shall contain a number of specific particulars, and period of such notice for auction shall not less than 30days. Apart from these, the court shall 30 days prior to the date of auction, issue notice to the ship's registration authorities and know lienor, mortgagee and owner of the ship subject to auction. Such notice shall be in writing or take other appropriate forms by which receipt can be confirmed.

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

In accordance with Article 30 of Special Maritime Procedure Law, if a party is not satisfied with the order, he may apply for reconsideration once within five days of the date of receiving the written order for auction of Vessel, and the Court shall make a reconsideration decision within five days of receiving the reconsideration application.

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?

Yes. If the auction is aborted twice, the auctioned vessel can be sold by a court-approved sale but the price of the sale shall not lower than 50% of value assessed. If the sale as mentioned above is yet successful, the vessel can be sold at a price lower than 50% of the value assessed subject to an agreement of the creditors who took up 2/3 of the total shares of the registered debtors. If the sale is yet successful again, the maritime court may abort the arrest of the vessel.

As for the sale of this kind, there is no other clear timetable in this respect.

9.9 Can a mortgagee bid its debt (animo 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?

No.

10 SALE PROCEEDS

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

Yes, but the interest wouldn't be distributed to the creditors in most cases.

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

Most sales shall take place in local currency and the sale proceeds would be held in local currency.

(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?

The sale proceeds would rarely be restricted by exchange control. However, the court fees, expenses incurred by the custody and auction of vessel and other expenses incurred in the common interest of creditors should be deducted from the sale

proceeds before distribution. After completion of the above deduction, the sale proceeds shall be distributed among the creditors as per the distribution proposal agreed by the creditors or awarded by the court. The procedure to remove the funds for the creditors mayn't be complex and time-consuming once the court has made an order to distribute the sale proceeds.

11 PRIORITIES GENERALLY

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

There is no special rules regarding the application of law of the priorities of different maritime claims.

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?

If Chinese law applies, according to Article 25 of Maritime Code of the P.R.C., mortgagee ranks after maritime lien and possessory lien, but ranks ahead of other maritime claims. The claims rank ahead of a mortgagee in China does not depend on the jurisdiction where the mortgage is registered.

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

No special rules on priority for local creditors.

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

Yes, pursuant to Article 111 of Special Maritime Procedure Law of the P.R.C., the creditors shall apply for registration of their claims pertaining to the vessel to be auctioned within the time limit announced after announcement of the maritime court's order for auction of a vessel. Otherwise, their rights for such claims to be satisfied from the proceeds of the auction shall be deemed to have been abandoned. The above said time limit should be no less than 60 days.

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

Firstly, the creditors shall apply for registration of their claims within the time limit announced after announcement of the maritime court's order for auction of a vessel;
Secondly, the maritime court shall examine the application submitted by the creditors, and make an order to allow the registration if debt evidence is provided or rejected the application if it is not;

Thirdly, the creditor shall bring an action to confirm his rights before the maritime court where the claims are registered within 7 days from the registration of such maritime claim, if the maritime claim evidence provided is not judgment, written orders, conciliation statement, arbitral awards or the notarized documents concerning the creditor's rights to debt;

Fourthly, the maritime court shall issue a notice to the creditors and convene the creditors meeting. Agreement on distribution of the proceeds from auction of the vessel may be reached and signed through negotiation by the creditors, which shall be legally binding after the maritime court makes an order to confirm the same. In case the creditor failed to reach such agreement, the maritime court shall decide on the plan for distribution in accordance with the ranking of claims provided for in Maritime Code of the P.R.C. and other related law.

11.6 Is the distribution order decided by the court?

Yes.

11.7 Is that order subject to a right of appeal?

No.

12 MORTGAGE'S SELF-HELP REMEDIES

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

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

The PRC law does not confer the right upon the mortgagee to take any of the above enforcement steps without a court order. According to PRC law, the mortgagee has to be enforced by way of court proceedings, unless the mortgagee and mortgagor can be in an agreement.

12.2 If, under the law of the ship's register (where that is a different law from the law of your jurisdiction) a mortgagee is given the right to take the enforcement steps referred to at (a) – (d) of 12.1 without a court order would its right to do so be

recognised or prohibited in each case in respect of a vessel physically located in your jurisdiction?

The PRC law may recognise all the enforcement steps referred to at (a)-(d) of 12.1, provided always that those steps would not be in violation of public policy, which should be determined on a case-by-case basis. However, if the enforcement of the rights requires the assistance of PRC court, for example in the form of a court order, it will be subject to the procedural law of PRC. In other words, there has to be a corresponding procedure under PRC law to enforce it. Taking “ (b) to appoint a receiver, manager or other party to operate the vessel” as an example, the PRC Court may have difficulties in assisting the mortgagee this respect.

12.3 Where answers to the question in 12.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ship’s register?

Assuming that the right is prohibited by PRC law and a court order were obtained in the jurisdiction of the ship’s register, the first question is that whether such court order can be recognised and enforced in accordance with international treaty acceded by PRC or alternatively on basis of the principle of reciprocity. If enforceable, there may still be a problem in how PRC Court would secure the enforcement of right by relying on the procedural law of PRC, like the answers at 12.1 above.

13. Insolvency Processes

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)

Yes. The insolvency proceedings can be recognized if they meet the requirements of Article 5 of Chinese Enterprise Bankruptcy Law, which provides, “Where any legally effective judgment or ruling made by a foreign court involves any debtor's assets within the territory of the People's Republic of China and if the debtor applies with or requests the people's court to confirm or enforce it, the people's court shall, according to the relevant international treaties that China has concluded or acceded to or according to the principles of reciprocity, conduct an examination thereon and, when believing that it does not violate the basic principles of the laws of the People's Republic of China, does not damage the sovereignty, safety or social public interests of the state, does not damage the legitimate rights and interests of the debtors within

the territory of the People's Republic of China, grant confirmation and permission for enforcement.”

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?

Yes. According to the Article 19 of Chinese Enterprise Bankruptcy Law, “After the people's court accepts an application for bankruptcy, the relevant measures for preserving the debtor's assets shall be released and the procedures for execution shall be suspended.”

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

No.

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?

There are some disputes in Chinese judicial practice, but the current leading position is that the insolvency proceedings take precedence over the sale proceedings. In 2016, Shanghai Maritime Court once dealt with a judicial sale case, in which Shanghai Maritime Court held that the judicial sale proceeding should take precedence over the insolvency proceeding. However, in 2017, a judge of the Supreme People’s Court of the PRC considers the insolvency proceedings should take precedence over the judicial sale proceedings as per the article 19 of Chinese Enterprise Bankruptcy Law, “After the people's court accepts an application for bankruptcy, the relevant measures for preserving the debtor's assets shall be released and the procedures for execution shall be suspended”,.

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

No.

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. If the circumstance falls within the claw-back rules contained in the article 31 and article 32 of Chinese Enterprise Bankruptcy Law, the receiver is entitled to apply a court to revoke the mortgage.

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

No.

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?

Yes. According to article 5 of Chinese Enterprise Bankruptcy Law, “The procedures for bankruptcy which have been initiated according to the present Law shall have binding force over the assets of the relevant debtor beyond the territory of the People's Republic of China.” As long as the vessels can be recognized as the debtor’s assets, it should be under the receiver’s control.

14 Leasing

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

Yes.

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)?

Chinese laws give effect to a lease in accordance with the form of the document (Art.127 Of China Maritime Code and Art. 238 of China Contract Law).

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

-

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?

Yes. Contract of Lease of ship is in the form of bareboat charter party, which are provided for in Charter 6 of China Maritime Code, under which, the parties to the contract are permitted to expand rights and remedies.

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?

Yes. the rights and remedies include to terminate a leasing and re-take possession of the vessel both through self-help and assistance of the court.

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 as assets of the lessor (Art. 242 of China contract Law) .

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?

A leased vessel shall not be considered as assets of the lessee as under the insolvency procedure (Art. 242).

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?

The lessor can arrest the leased vessel and can join the arrest procedures initiated by the third parties.

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?

There is no priority to the lessor with maritime liens.

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.

No.

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.

Yes. Relevant two articles are to be revised in the revision of China Maritime Code.

15 Reservation of Title

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

No.

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 15.2, what rights and remedies are given to the holder of title?

No.

15.4 Do the laws of your jurisdiction recognise foreign reservation of title arrangements of a type referred to in 15.2? If so, please give brief details of how these arrangements would be recognised.

No.