



DENMARK

## CMI International Working Group on Vessel Nomenclature

DANISH BRANCH OF CMI | Questionnaire #1 (March 2016)

The purpose of this questionnaire is to identify variations and conflicts in the definitions of “vessel,” “ship” and related terms, both internally in the Danish legal system and externally between the laws of the member States, and then to assess the impact of those variations and conflicts.

For this exercise it is assumed that the basic general definition of “vessel” in common understanding might be that contained in Article 11b of the International Convention on Salvage, London 28 April 1989:

*Vessel means any ship or craft or any structure capable of navigation.*

It is also assumed that the common understanding of the term “ship” is reflected in the International Convention for the Prevention of Pollution from Ships, London, 2 November 1973, and Protocol, London, 17 February 1978:

*Art. 2/4: Ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air cushion vehicles, submersibles, floating craft and fixed or floating platforms.*

From this starting point we have responded as fully and completely as possible to the questions which follow.

- 1 Is there a statutory, regulatory or other definition in your legal system which conveys a meaning similar to the above definition of either “Vessel” or “Ship”? If so, which is (are) the terms and their corresponding definitions? Please provide details of all qualifiers to such definitions, such as minimum length, tonnage, registry, design, intended trade or usage, etc.**

No - Danish law does not provide a unified definition of either “ship” or “vessel” or any other such terms. However, there are several varying definitions depending on the area of law where the terms are used, cf. the answer to question 2 below.

- 2 In your system, does the definition of “vessel” (or equivalent term) vary depending on the subject of a particular law? For example, does the definition differ for purposes of documentation, registry, flagging and mortgaging or when applied to seagoing labor, environmental, casualty, insurance or taxation law?**

Yes - Danish legislation contains a number of different definitions of the terms “vessel” and “ship”. The below described definitions are not exhaustive, but provide the most prominent of these definitions.



The Danish Merchant Shipping Act (the “**DMSA**”) is the main body of law governing Danish maritime law. The DMSA contains varying definitions of both “*ship*” and “*vessel*”, depending on the specific part of the DMSA. These different definitions derive from both Danish legislation and incorporation of international conventions.

Section 11 of the DMSA provides a definition of ships that require registration in the Danish Ship Register. This definition is based on Danish legislation alone, and it is therefore not derived from any international convention. However, section 11 of the DMSA does not provide a general or extensive definition of the term “*ship*”. Section 11(2) of the DMSA merely nominates types of vessels, which in no case should be considered as a ship, while section 11(3) contains a list of certain vessels that will be considered ships, if these are equipped with machinery for propulsion:

*11(2) Floating docks, cable drums, floating containers and other similar equipment shall not be considered ships when applying the regulations of this part.*

*11(3) Barges, lighters, dredgers, floating cranes and similar shall be considered ships but shall be exempted from the duty of registration pursuant to section 10(1) if they are not equipped with machinery for propulsion.*

It follows from section 11 of DMSA that machinery for propulsion seems to be decisive when assessing whether or not a ship is exempted from the duty of registration in the Danish Ship Register. Nevertheless, as can be seen, section 11 of the DMSA does not provide for a general definition of neither the term “*ship*” nor “*vessel*”.

Moreover, Denmark has adopted the 2007 Nairobi International Convention on the Removal of Wrecks. The definition of “*ship*” contained in the convention was incorporated into section 165 of the DMSA with the exact wording of the convention:

*165 (2) “Ship” in this chapter means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.*

With respect to Danish legislation on salvage, the definition of a ship follows from the 1989 International Convention on Salvage, cf. section 441 of the DMSA. The incorporation of the 1989 International Convention on Salvage also incorporated the wording of the convention:

*441 (1) In this part:*

*[...]*

*b) Vessel shall mean any ship or craft or any structure capable of navigation.*

*c) Property shall mean any physical asset not permanently or intentionally attached to the shoreline and shall include freight at risk.*

A fourth definition was incorporated into the DMSA when Denmark adopted the 1992 Convention on Civil Liability for Oil Pollution Damage. The ship definition of this convention was incorporated into section 191 of the DMSA, without amendment:

*In this part, cf. however section 206(2), ship shall mean any floating unit constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying*



*oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.*

It is expressly stated in the DMSA that the different definitions of “*ship*” and “*vessel*” only apply to the relevant part of the DMSA. However, it is not unlikely that a Danish court would use a definition outside of its respective area of application in the DMSA when determining if an object is a vessel or a ship (U.2013.713H – see section 7).

**3 Does your legal system provide for a unique process of seizure, foreclosure, forced sale or ranking and priority of claims against a vessel that is different from such processes for other types of property? If so, please explain.**

Danish law provides several instruments and processes in relation to enforcement of creditor’s monetary claims. These are generally contained in the Danish Administration of Justice Act (the “**AJA**”). For the sake of clarity, please note that foreclosure and forced sale as legal instruments in Denmark differ from other jurisdictions.

We have outlined below the main principles available under Danish law.

**3.1 Arrest (seizure)**

With respect to arrest (seizure) of ships, Denmark has ratified the 1952 International Convention on Arrest of Sea-Going Ships (the “**1952 Arrest Convention**”) which has been incorporated into part 4 of the DMSA without amendments. Danish rules on arrest (seizure) are similar to those contained in the 1952 Arrest Convention.

**3.2 Forced administration**

Pursuant to Section 520(2) of the AJA, the Danish Bailiff’s Court can make a decision on the forced administration of property, if this is required due to risk of the property losing capital value as a consequence of debtor’s neglect.

Generally, the decision of forced administration is made following the Bailiff’s Court’s receipt of a request from the creditor in possession of the foundation of enforcement, cf. section 520(1) of the AJA. A foundation of enforcement exists when a creditor has levied execution against the debtor’s property. The court will then appoint a manager to administrate the property.

Profits following the manager’s administration of the property do not belong to the creditor requesting the forced administration. The requesting creditor can only use potential profit to cover expenses imposed as a consequence of the forced administration. This is contrary to the rules on taking possession in relation to real estate (see below). Real estate, registered ships and aircrafts can be subject to the AJA’s rules on forced administration. Conclusively, Danish rules on forced administration of property are the same, whether the assets are real estate or a ship.

**3.3 Taking possession of a mortgaged asset**

In Denmark the rules on taking possession of a mortgaged asset are limited to real estate, cf. section 588 of the AJA. However, Danish literature suggests that the rules should be extended to cover ships as well, since commercial ships have several similarities to real estate. Thus, both real estate and ships are operational assets and mortgage can include revenue generated by such assets. Nevertheless, Danish law does not currently provide the possibility of taking possession of a mortgaged ship.



### 3.4 Public auction

The AJA does not contain rules on forced sale, as this is not a legal instrument under Danish law. However, the AJA contains rules on public auction of property, which is a similar legal instrument that requires the courts' intervention. Public auction is a way for a creditor to force the sale of an asset in order for the proceeds of the auction to be used to fulfil outstanding debt.

Public auction of property is governed by the general rules in part 49 and 50 of the AJA. Hence, the DMSA does not contain any specific rules on public auction of vessels or ships. However, article 544(2) of the AJA states that a public auction of a vessel or ship must be announced six weeks in advance – two weeks for other assets. Nevertheless, this is merely a rule on the formal procedure and has no material effect.

### 3.5 Ranking and priority of claims against vessels

Denmark has ratified the 1967 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (the “**MLM-67**”) by incorporating the convention into the DMSA. The rules on liens and mortgages deriving from the MLM-67 are the only unique rules in Danish legislation regarding ranking and priority of claims against vessels.

## 4 **Has the 1993 Convention on Maritime Liens and Mortgages (“MLM-93”) been adopted or followed in your jurisdiction?**

Denmark has signed, but not yet ratified, the MLM-93. However, Denmark has ratified the MLM-67 which is incorporated in the DMSA.

## 5 **In your jurisdiction is the acceptance by a registrar or other governmental body of property as a “ship” or “vessel” or equivalent term dispositive of its status under your law?**

The fact that a registrar accepts a vessel as a ship is not dispositive of a vessel's status. However, the fact that a registrar accepts a vessel as a ship or similar would be given weight in the court's evaluation of the vessel definition.

## 6 **If property is categorized as a “vessel” in another jurisdiction and is so registered and flagged, but would not be a vessel under the definition in your jurisdiction, would the courts or relevant authorities in your jurisdiction treat that property as a vessel for all purposes, including arrest and foreclosure? Or would the Courts in such a circumstance decline to enforce an asserted claim or mortgage if the subject is not a vessel under your jurisdiction?**

In general, Danish courts have an open and pragmatic approach towards finding durable solutions to legal disputes. Hence, if a craft is categorized as a “vessel” in another jurisdiction and is so registered and flagged, such circumstances could constitute aid to interpretation of the vessel definition.

Apart from situations where Denmark has an obligation to recognise a specific categorisation of a craft etc. under the various conventions, Danish courts will generally categorize a craft in accordance with Danish law and treat the craft accordingly.

However, in one case (U.2013.713H) the Danish Supreme Court emphasised the fact that a barge was registered as a ship with the Swedish Ship Register and ruled that the vessel therefore also should be considered as a ship according to the DMSA. However, the fact that the barge was



registered as a ship with the Swedish Ship Register was not the only fact supporting the ruling. Hence, at best the case can only be used as an unclear Obiter Dictum.

- 7 Are there any reported decisions in your jurisdiction which address the legal classification of any of the following property: 1) non-self-propelled barges, 2) self-propelled barges, 3) accommodation barges, 4) Mobile Offshore Drilling Units, 5) wind turbine towers (floating or permanently fixed), 6) jack up drill rigs, 7) construction barges, 8) submarines, 9) seaplanes, 10) hydroplanes (air cushion), 11) Vessels under construction, 12) unmanned vessels, 13) Vessels devoted temporarily or permanently to storage of bulk commodities, 14) Vessels in “cold layup”, 15) Derelict Vessels or “Dead Ships”, 16) Vessels under Conversion or Renovation.**

A recent judgment rendered by the Danish Supreme Court considered the issue of a *non-self-propelled barge*. The Danish Supreme Court delivered its judgment on 4 December 2012 in case 37/2011 (“**U.2013.713H**”). The court found that the barge – Carrier 5 – was considered a ship in the sense of section 151 of the DMSA regarding owner’s liability. The court applied the definition in section 11 of the DMSA, even though the provision does not apply to this specific chapter in the DMSA. The court stated that it is not a requirement for a ship to be self-propelled in order to be considered as a ship according to section 11 of the DMSA, and in fact also emphasised that the barge was actually registered as a ship with the Swedish Ship Registry.

There are no other printed Danish cases considering the legal classification of the above listed property.

- 8 We attach a most excellent summary by Professor Bülent Sozer of Istanbul regarding the variations in definitions, usages and limitations on application of terms in many international conventions. Please identify any of the Convention usages and limitations which are at variance with equivalent terms in your national system and explain the variations.**

Since Denmark does not have any definitive definitions other than those derived from conventions, the Danish national system is generally not at variance with the conventions.

- 9 Are there any instances involving your jurisdiction in which inconsistent or conflicting definitions of “vessels”, “ships” or equivalent terms have impacted results in any legal proceeding of which you are aware? If so, please provide details.**

In a case from the Danish Western High Court delivered on 14 September 1999 (“**U.1999.2074V**”), the court had to determine whether four small rubber dinghies could be considered as ships within the meaning of the DMSA and the Act on Safety at Sea. The rubber dinghies in question were bought in a toy store, at a price of DKK 220 apiece and they each held one or two persons. According to the public prosecutor, the definition of a ship included all kinds of floating arrangements, among others rubber dinghies, that are used or can be used as a vehicle on water. The defendant argued that the rubber dinghies could not be considered as ships since they did not have the required size. The court found in its judgement that the Act on Safety at Sea did not contain a definition of a ship. Further, the court stated that a clear legal authority was required to reach a verdict of criminal liability. On that basis - and due to the characteristics and the limited size of the rubber dinghies - it was not proven beyond reasonable doubt that the rubber dinghies should be considered as ships in the meaning of the Act on Safety at Sea.



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In a Supreme Court case delivered on 14 March 1975 (“**U.1975.415H**”), the court considered whether the Danish State could oppose the permanent placing of a houseboat in territorial waters. The houseboat was registered with the Danish Ship Register as a ship, but was permanently placed close to land with four anchors, a bridge to shore, and had no means of navigation available. The Danish State therefore argued that the houseboat could not be considered as a ship anymore. The Danish Maritime Authority had allowed the houseboat to remain registered as a ship with the ship register and pointed out that a transformation of a registered ship into a houseboat or a residential ship does not automatically result in a deletion from the register. Moreover, the Danish Maritime Authority stated that Danish legislation does not contain a basis for the assessment of whether a ship or vessel that has been transformed into stationary use must be deleted from the register. In respect of ship registration, it is a fundamental principle that ships are only deleted from the Danish Ship Register, if i) the ship is sold to a foreign country, ii) the ship is lost, or iii) the ship becomes decommissioned or condemned. The court did not consider whether the houseboat was a ship or not, but ruled that it had to be removed from territorial waters since a permanent placing required a permit from the relevant authority.

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Copenhagen 28 March 2017

For and behalf of the Danish branch of CMI