

1. MARITIME AND OTHER CONVENTIONS

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

Response: No, India has neither ratified the 1952 nor the 1999 arrest convention.

However, in the landmark judgment of *M. V. Elisabeth and Ors. Vs. Harwan Investment & Trading Pvt Ltd., Goa (1993 AIR 1014)* the Supreme Court of India held that the principles incorporated in the Brussels Convention, 1952 are derived from the common law of nations as embodying the felt necessities of international trade and are as such part of the common law of India and applicable for the enforcement of maritime claims against foreign ships.

Further, in *Liverpool & London S.P. & I Asson vs M.V. Sea Success I & Anr (2004) 9 SCC 512*, the Supreme Court held that the principles underlying the International Convention of Arrest of Ships, 1999 (Geneva Arrest Convention 1999) were applicable for ship arrests in India.

To summarize, the aforesaid arrest conventions apply to ship arrests in India.

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?

Response: In India, laws relating to admiralty jurisdiction, legal proceedings in connection with vessels, their arrest, detention, sale and other matters connected therewith or incidental thereto are consolidated in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

Under this Act, the High Court, possessing jurisdiction may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against any of the following maritime claim, arising out of any:

- (a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;
- (b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
- (c) mortgage or a charge of the same nature on a vessel;
- (d) loss or damage caused by the operation of a vessel;
- (e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;
- (f) loss or damage to or in connection with any goods;
- (g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;

- (h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;
- (i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
- (j) towage;
- (k) pilotage;
- (l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;
- (m) construction, reconstruction, repair, converting or equipping of the vessel;
- (n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;
- (o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958 (44 of 1958);
- (p) disbursements incurred on behalf of the vessel or its owners;
- (q) particular average or general average;
- (r) dispute arising out of a contract for the sale of the vessel;
- (s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;
- (t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;
- (u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;
- (v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and
- (w) maritime lien.

A ship under Indian law can be arrested for maritime claims and maritime liens only in the above circumstances.

1.3 In particular, can arrest be made:

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

Response: Arrest can be made by a mortgagee of a vessel registered under the laws of our jurisdiction as well as under the laws of a foreign jurisdiction, by invoking the admiralty jurisdiction of the Indian courts only if the concerned vessel is in Indian territorial waters.

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

Response: India has ratified the 1993 Maritime Liens and Mortgages Convention.

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 recognized as maritime liens?

Response: Not applicable.

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

Response: Yes.

2. NATURE OF THE SHIPS' REGISTER

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

Response: Yes, the ships' register is register of legal title to the ship.

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').

Response: Presently, the ships' register in India does not provide for registration of interest of a demise charterer.

However, a Merchant Shipping Bill, 2016 (“**MS Bill**”) has been moved in the lower house of the Parliament for replacing the Merchant Shipping Act, 1958. The MS Bill *inter alia* allows registration of the vessel chartered on bareboat cum demise basis by an Indian charterer with the Indian registry. However, under the bill, such registration of the interest of the demise charterer is not mandatory.

- 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?

Response: Not applicable, since India does not provide for registration of the interest of a demise charterer.

- 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? 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?

Response: Indian maritime law does not allow a vessel registered with the Indian ship registry in the name of the holder of the legal title to be registered in another jurisdiction. This is so because India is a closed registry.

- 2.5 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 a registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.

Response: Three acts govern registration of ships in India: the Merchant Shipping Act, 1958 (**MSA**); the Coasting Vessels Act, 1838 (**CVA**); and the Inland Vessels Act, 1917 (**IVA**). Sea-going ships not fitted with mechanical means of propulsion are registered under the CVA. Mechanically propelled inland vessels are not permitted to proceed on a voyage or to be used in any service, unless they are registered under the IVA. Sea-going ships fitted with mechanical means of propulsion of 15 tons net and above have to be mandatorily registered under the MSA.

Under the MSA, a ship is eligible for registration as an Indian ship only when she is owned wholly by persons to each of whom any of the following descriptions apply:

- is a citizen of India; or
- is a company or a body established by or under any Central or State Act that has its principal place of business in India; or

- is a cooperative society that is registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law relating to cooperative societies for the time being in force in any State.

Indian shipping registry is a closed registry and accordingly a foreign national or a foreign company is not eligible to own an Indian ship or a share thereof.

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?

Response: No, loan or other security documentation are not required to be submitted for registration of mortgage.

For the purpose of registering a mortgage with the Indian ship register), the following documents are required to be submitted:

- (i) Original mortgage (in statutory form 11) and annexure thereto (statutory instrument of mortgage);
- (ii) Copy of the mortgage and annexure thereto;
- (iii) Original resolution passed by the board of directors of the mortgagor (ship owner) permitting creation of ship mortgage;
- (iv) Letter of the mortgagee requesting the registry to register the mortgage with details thereof as also requesting them to inform the mortgagee and/or the mortgagee's solicitors of any attempts by the borrower (mortgagor) to create a subsequent mortgage on the ship; and
- (v) In case of existing mortgages on the ship, no objection certificates from each of the existing mortgagee.

Form 11 is a standard pre-printed form of mortgage creation document issued by the registry, which has to be hand-filled and the particulars such as details of the vessel mortgaged, amount of loan, particulars of the mortgagor & mortgagee, priority of mortgage have to be mentioned therein.

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

Response: No. As stated above, the mortgage creation instrument i.e. Form 11 and the annexure thereto are standard form documents and do not set out the circumstances giving rise to a right of enforcement. However, in India, it is customary for parties to enter into a collateral deed of covenant encapsulating all the terms and conditions agreed between

the parties in relation to the mortgage, enforcement procedure, rights and obligations between the parties etc.

To summarize, the circumstances giving rise to a right of enforcement and the procedure of enforcement are contained in the loan and security documentation.

- 3.2 Does a mortgage in respect of a vessel registered in your jurisdiction need to be notarized and/ or legalized?

Response: No. The statutory instrument of mortgage i.e. Form 11 and annexure thereto are only required to be executed by the mortgagor, under a valid board of directors' resolution authorizing creation of such mortgage.

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

Response: The registry fees in order to have a mortgage registered against an Indian flagged vessel is 10 paise for every Rs.1000/- of the value of the mortgage with the minimum charge of Rs.500/-.

However, if the loan is secured by way of creation of combined mortgage over multiple ships, the fee chargeable at the aforesaid rate are payable at the time of registration of mortgage over the first ship only and for registering every subsequent mortgage on other ships, the fees payable is Rs.500/- only.

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

Response: Provisional registration of a vessel is valid for a period of six months from the date of issue of the provisional certificate or until the arrival of the ship at a port where there is a Registrar, whichever is earlier. However, once the vessel is permanently registered it is valid until the vessel's registry is closed and does not require any re-registration or renewal.

- 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.

Response: In addition to registering the mortgage with the ship's register, the charge created on the ship by way of mortgage is also required to be registered with the concerned Registrar of Companies ('ROC') having jurisdiction over the area where the registered office of the mortgagor company is situated, by filing the prescribed Form CHG-1.

Form CHG-1 is an electronic form which has to be digitally signed (with a Digital Signature Certificate) by both the mortgagor and the mortgagee. A copy of the

mortgage, deed of covenant and such other documents creating security interests in favour of the mortgagee such as insurance assignment, earnings assignment, account security etc. are required to be attached to Form CHG-1

The ROC fees for filing Form CHG-1 is stipulated below:

In case of Indian companies having share capital:

Nominal Share Capital	Fee applicable
Less than 1,00,000	Rupees 200
1,00,000 to 4,99,999	Rupees 300
5,00,000 to 24,99,999	Rupees 400
25,00,000 to 99,99,999	Rupees 500
1,00,00,000 or more	Rupees 600

In case of Indian companies not having share capital – Rupees 200

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.

Response: Yes. The information concerning security interests in ships registered with the ship's register as well as with the Registrar of Companies are publicly available.

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

Response: No, authorization of the vessel owner is not required.

The person undertaking a public search at the vessel's registry must address an official letter to the registry clearly indicating therein the purpose of search and the name of the person on whose behalf the search is being conducted, if applicable. On submission of such letter and payment of prescribed fees, the register of the vessel may be physically inspected, to ascertain the particulars of the mortgages registered thereon.

Further, all documents filed with the Registrar of Companies by the mortgagor company can be publically viewed and downloaded from the web-portal of the Ministry of Corporate Affairs on payment of the prescribed fees.

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

Response: The ships' registry certifies the accuracy of the information mentioned in the Transcript.

The Registrar of Companies reflects the information as submitted by the mortgagor and the mortgagee and is not certified by the Registrar.

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

Response: Information relating to security interests can be obtained from the ship's registry as well as from the web-portal of the Ministry of Corporate (for documents filed with the Registrar of Companies) within a day or two.

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.

Response: Yes, a vessel may be sold subject to a security interest by the owner. However, the ships' registry will not delete the vessel from the register unless all mortgages are duly discharged.

5. ARREST OF A CHARTERED VESSEL

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

Response: Yes. A mortgagee may arrest the vessel which is on a bareboat or time charter in our jurisdiction, if the vessel is in the Indian territorial waters.

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 ground of interfering with the contractual relationship between owner and charterer or bill of lading holder)?

Response: Yes. A mortgagee could be held liable in tort to charterers or cargo interests.

If the vessel is on charter, this may have an impact on the decision as to the most appropriate method of enforcement because a charterer has rights of quiet enjoyment under Indian law.

The position as regards quiet enjoyment rights in India is similar to that under English law. Under Indian law, the only exception to the general rule is where (i) the charter is of such kind and/or is made in circumstances that would impair the security of the mortgagee and, (ii) the owner is unwilling and/or unable to perform the charter. Therefore, where the mortgagee takes an enforcement action pursuant to the mortgage and interferes with the charter in circumstances in which this is not permitted, the charterer would have a claim in tort against the mortgagee and may, under Indian law, claim damages or seek an injunction restraining the mortgagee from taking possession or seeking to sell the vessel.

- 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?

Response: Based on the facts and circumstances of a case, the court would permit the cargo to be discharged from the vessel subject to the judicial sale.

Advertisement would be published by the Sheriff which would invite cargo interests to come forward. If the cargo interests can establish its title to cargo and comes forth to discharge the cargo, the Court will permit the cargo to be discharged at its costs.

If the cargo interests do not come forward, the Sheriff will discharge the cargo and the costs of discharge will initially be borne by the Applicant/mortgagee who intends to put the vessel for sale. The same could be recovered from the sale proceeds as first priority Sheriff's expenses.

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?

Response: No. There is no system of 'priority notice', as such in our jurisdiction. If there is more than one mortgage recorded in respect of the same ship, the mortgages shall have priority according to the date on which each is recorded in the register book and not according to the date of the instrument of the mortgage itself.

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

Response: No. A subsequent mortgage on a ship will be recorded in the register of the ships only after a no objection certificate from the existing mortgagee(s) has been obtained.

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

Response: When there are two or more registered mortgages, the priority is determined in accordance with the date on which each is recorded in the register book with the ship register.

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?

Response: No. Priority is decided only on the basis of registration and not on the basis of notice or knowledge.

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

Response: Yes. The consent of the first registered mortgagee is required only at the time of creation of mortgage by the second mortgagee, but not at the time of enforcement. However, the rights of the registered first mortgagee will always enjoy priority over the second or subsequent one.

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.

Response: Yes. All charges created by the mortgagor company (in the form of assignment of insurance and/or earnings of a ship, pledge of shares, etc.) have to be registered with the ROC by filing Form CHG-1 within 30 days of its creation.

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?

Response: No, domestic and foreign mortgages are treated at par.

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

Response: The mortgagee must establish that there is an event of default under the loan agreement whereby the right for enforcement of the mortgage has arisen and can enforce the mortgage before obtaining a final decree/judgement.

However, it is necessary for a mortgagee to establish its claim and obtain a mortgage decree prior to any distribution of sale proceeds of the secured asset. The mortgagee can withdraw from the sale proceeds only to the extent of the mortgage decree.

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

Response: Not applicable.

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

Response: The courts will accept jurisdiction for the mortgage claim under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

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?

Response: Under the Act, admiralty jurisdiction is conferred on High Courts of each coastal State.

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

Response: Mentioned below are the formalities involved in obtaining an order of arrest from Admiralty courts in India and a subsequent sale of the vessel/s through a court supervised auction:

- Institution of an admiralty suit by the mortgagee by submitting a plaint in the court possessing jurisdiction and payment of prescribed court fees. The plaint has to be supported with the evidence of the claim. The plaintiff has to provide an undertaking to the court for the damage and losses that may be sustained due to wrongful arrest.
- On submission of the plaint along with the supporting documents, if the court is prima facie satisfied, it usually issues an order of arrest (ex-parte) and a warrant of arrest would be served on the ship;
- If the owner does not come forward to release the vessel/ fails to put up security, and If the vessel is deteriorating in value or is exposed to the vagaries of wind and weather or if the cost of maintaining the vessel is high, it is possible to apply to the Court for sale of the vessel pendente lite.

- The sale of a vessel pendente lite or after adjudication on the mortgagee's suit has to be carried out by the Marshal/Sheriff. Upon the formalities conducted by the Sheriff under a court supervised public auction and once the highest bidder is identified, the Court passes an Order of sale to the new buyer.
- The Admiralty Registrar will then execute all the sale documents in favour of the successful bidder. The Admiralty Registrar will also execute the Bill of Sale declaring the vessel clear from all claims, maritime liens, and encumbrances.

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

Response: If the owner presents an appeal against the judgement, the court will not order the sale of the vessel until the appeal has been heard and decided by the appellate court.

9. SALE PROCEDURE

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

Response: Yes. A mortgagee can enforce his mortgage in our jurisdiction by applying for a judicial sale by auction, provided that the vessel is in Indian territorial waters.

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?

Response: The admiralty jurisdiction of the Indian courts can be invoked by the mortgagee to arrest a vessel, only when such a vessel is within Indian territorial waters.

Procedure and Timetable

- Drafting and submission of a plaint;
- Obtaining an order of arrest;
- Filing an application for sale of the vessel and obtaining an order of sale
- Public auction
- Submission of valuation report and fixing of reserve bid and deposit amount;
- Publishing of advertisement inviting bids for the auction sale of the vessel;
- Within 4 – 5 weeks of the advertisement, an open court auction will be conducted amongst parties who have deposited the bank drafts towards the deposit;

- Identification of the successful bidder on the basis of the highest bid and execution of the sale documents in favour of the successful bidder.

Once the vessel is sold, the sale proceeds will be held by the Court for distribution to the claimants in accordance with the order of priorities.

The Application for sale could be heard in about 4 to 8 months, depending on the facts in each case and oppositions if any by the owners/interested parties.

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

Response: Yes. An order for sale of the vessel may be made pendent lite.

- 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?

Response: On receipt of the ship's valuation report, the Court fixes a minimum bid price (reserve bid). The auction is open to members of the public. The bidders may be present personally or may act through a Constituted Attorney. Bids have to be presented in writing.

The bids are not disclosed to other possible bidders. It is open to the Sheriff to ask the bidders to re-bid if he or she finds the bids to be lower than the reserve bid.

However, the Court at its discretion may disclose the reserve bid if an open auction is conducted in Court and ask bidders to match the reserve price in Court.

If no party comes forth, there will be a re-auction with the same procedure with a lower reserve bid.

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

Response: No. The reserve price is fixed by the Court on the basis of valuation report received from the valuer.

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

Response: The Advertisements are usually published by the authorized court personnel in local newspaper as well as in newspapers with global circulation viz. Lloyds and Tradewinds.

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

Response: The owner may intervene and file its defense/ application for release of the vessel which may influence the timetable for sale.

If prior to the confirmation of the sale by the Court, the owner/any party complains that the price is grossly inadequate, the Court may consider the grievance/complaint, and if the complaint has merit, the Court may decline to confirm the sale and order that the vessel be auctioned again.

- 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 for sale?

Response: There is no mechanism in our jurisdiction for having a private sale approved by a court.

- 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?

Response: While a mortgagee can by itself or through its subsidiary bid in Court, there is no precedence where a Court has allowed a set-off of the debt against the purchase price. The Court sale is via auction and the successful bidder is required to deposit the amounts in Court. Only, on receipt of such purchase price, the Court will direct the Admiralty Registrar to execute the Bill of Sale and other documents.

The sale proceeds will then be distributed to the mortgagee in priority of the rankings under the Admiralty Act, 2017.

10. SALE PROCEEDS

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

Response: After the monies are deposited by the successful bidder and the sale is confirmed in its favor, the monies are invested in an interest-bearing account until the Court decides the priority of the claimants who have a claim against the vessel and/or her sale proceeds.

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

Response: The sale proceeds are held 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?

Response: The proceeds of sale will not be subject to any exchange control or similar restrictions when they are paid out if the pay-out is directed pursuant to a Court order.

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 cause), or the law of the flag of the vessel?

Response: Indian Courts determine the question of priorities of claim exclusively on the basis of lex fori (law of the forum).

- 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?

Response: The Order of priority is determined based on Section 10 of the Admiralty Act, 2017, which are as follows:

(1) the order of maritime claims determining the inter se priority in an admiralty proceeding are as follows:-

- (a) a claim on the vessel where there is a maritime lien;
(b) registered mortgages and charges of same nature on the vessel;
(c) all other claims.*

(2) The following principles apply in determining the priority of claims inter se –

- (a) if there are more claims than one in any single category of priority, they rank equally;
(b) claims for various salvages rank in inverse order of time when the claims thereto accrue.*

The claims which rank ahead of a mortgage in our jurisdiction do not vary depending on whether the mortgage is:

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

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

Response: No, there are 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?

Response: Once the vessel is sold, the sale proceeds lie in the Court for distribution to the Claimants in accordance with law. Rule 951 of the High Court (Original Side) Rules, 1980, contemplates that any party who has obtained a decree or order against the property or the proceeds of sale may apply to the Court for determination of priorities of claims. Once such an order is passed by the Court, an advertisement is placed in various newspapers in India and sometimes abroad inviting claims from the world at large. Generally, a time period of 90 days is given to creditors to lodge their claims in Court.

Once the notice is published, all the claimants are required to file their actions within 90 days or such other period stipulated by the court. If a creditor requires more time to do so, he may seek an extension from the court. The court would grant extension if sufficient cause is shown by such a claimant for not filing the claim within the time limit.

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

Response: Time usually elapses between (i) the date of arrest and the date of auction and (ii) the date of auction and the date of distribution of sale proceeds. In an ex-parte application it will take at least 2 days to prepare the pleadings and to get an order of arrest from the court, while an application for auction can be made approximately after 10 days of the ship arrest. The whole auction procedure may take about 6 to 8 months assuming unopposed. Distribution of sale proceeds is only after final hearing and disposal of the suit - approximately 4 to 6 months assuming not many claims are against are received against the sale proceeds and no appeal is filed.

11.6 Is the distribution order decided by the Court?

Response: Yes, the Court decides the priority of the various claimants who have a claim against the sale proceeds.

11.7 Is that order subject to a right of appeal?

Response: Yes, the distribution order is subject to a right of appeal.

12. MORTGAGEE'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 mortgagee;
- (d) to sell the vessel as attorney in fact of the owner.

Response: A sole mortgagee of a ship or share in the ship has the rights to take all of the aforesaid enforcement steps without approaching a court to recover the amount due under the mortgage. However, in case of two or more registered mortgagees of a ship or share, the mortgagee/s have to approach the court for sale of the mortgaged ship or share and recovery of the amount due under the mortgage.

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 12.1 without a court order would its right to do so be recognized or prohibited in each case in respect of a vessel physically located in your jurisdiction?

Response: Yes, such right to take the enforcements steps without approaching the court, would be recognized in India.

12.3 Where answers to the questions in 12.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ships' register?

Response: Not applicable.

13. INSOLVENCY PROCESS

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

Response: The Government of India has proposed to adopt the UNCITRAL Model Law, with certain modifications. On 20 June 2018, the Indian Government released a suggested draft chapter on cross-border insolvency to be included into the Insolvency & Bankruptcy Code, 2016 inviting responses till 30th June 2018. However, till the date of submissions, India has not adopted the UNCITRAL Model Law on cross-border insolvency.

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?)

Response: The present cross-border insolvency related provisions under the Insolvency and Bankruptcy Code, 2016 of India, require bilateral agreements to be entered with other countries to administer the cross-border ramifications of insolvency proceedings. This calls for the application of the doctrine of reciprocity, whereby letters of request may be issued by the National Company Law Tribunal (NCLT) or the authorized court to a foreign court or tribunal where the corporate debtor's assets are located. However, at present, India has not entered into any bilateral treaty with any other nation to further the development of the same.

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?

Response: Under Indian laws, the rights of a registered mortgagee are not affected by the insolvency of the mortgagor, and the mortgagee's preferred status will be maintained. A registered mortgage of a ship or share shall not be affected by any act of insolvency committed by the mortgagor after the date of the record of such mortgage, notwithstanding that the mortgagor, at the commencement of his insolvency, had the ship or share in his possession, order or disposition or was the reputed owner thereof, and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the insolvent or any trustee or assignee on their behalf.

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?)

Response: As stated in our response to queries 13.1 and 13.2 above, India has still not adopted the UNCITRAL Model laws on Cross-Border Insolvency and under the Insolvency & Bankruptcy Code, 2016, foreign insolvency proceedings of countries with which India has signed bilateral agreement will only be

administered in India. Presently, India has not signed bilateral agreements with any country. Hence, the question is not applicable.

- 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?

Response: The maritime court sale proceedings take precedence over the insolvency proceedings. A secured creditor stands outside the winding up proceedings.

- 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)?

Response: As stated in our response to queries 13.1 and 13.2 above, India has still not adopted the UNCITRAL Model laws on Cross-Border Insolvency and under the Insolvency & Bankruptcy Code, 2016, foreign insolvency proceedings o countries with which India has signed bilateral agreement will only be administered in India. Presently, India has not signed bilateral agreements with any country. Hence, the question is not applicable.

- 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?

Response: Yes, if a vessel is sold through a maritime court sale, the mortgagee's claim to sale proceeds are subject to the risk of the mortgage being challenged or set-aside, if such mortgage was entered into within one year preceding the insolvency commencement date and the mortgage falls within the set parameters stipulated under the Insolvency and Bankruptcy Code, 2016, upon satisfaction of which a transaction is treated as a preferential transaction.

- 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 recognised in your jurisdiction by whatever means)?

Response: As stated in our response to queries 13.1 and 13.2 above, India has still not adopted the UNCITRAL Model laws on Cross-Border Insolvency and under the Insolvency & Bankruptcy Code, 2016, foreign insolvency proceedings o countries with which India has signed bilateral agreement will only be administered in India. Presently, India has not signed bilateral agreements with any country. Hence, the question is not applicable.

- 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?

Response: The provisions of the Insolvency and Bankruptcy Code, 2016 extend to all the assets owned by the insolvent, whether lying in India or in a foreign country. The resolution professional appointed as per the provisions of the Insolvency and Bankruptcy Code, 2016 is empowered to take control and custody of vessels owned by the insolvent & located in a foreign country.

Further, a company incorporated in a foreign country may be wound up as an unregistered company as per the provisions of Sections 375–376 of the Companies Act, 2013, if it has its office and assets in India, and the pendency of a foreign liquidation does not affect the jurisdiction to pass winding up orders.

14. LEASING

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

Response: Though finance lease of vessels is not a very common method of financing in India, it is used in transactions involving long term charter commitment involving multiple jurisdiction and substantial loan amounts, where the tonnage is ultimately controlled by an Indian entity.

- 14.2 Do the laws of your jurisdiction give effect to a lease 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)?

Response: The courts in India will consider and give effect to the content of the document rather than the form of the document, especially in case of tax and accounting matters.

- 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.

Response: If the governing law of the lease follows the formal approach, courts in India would adopt the formal approach. Courts in India decide disputes in accordance with the governing law of the document (provided one of the parties to the agreement is located in the country which is the governing law of the document **OR** if such governing law is neutral law i.e. law of a country to which none of the parties belong). Such foreign law is matter of fact to be proved by expert evidence.

That said, Indian laws (i.e. the functional approach) will still apply for regulatory, filing, tax and accounting purposes. For instance, under the Foreign Exchange

Management Act, 1999, financial lease is one of the forms of external commercial borrowing (**ECB**) (i.e. borrowing by an Indian party of monies from a foreign party) and hence has to comply with the ECB regulations, irrespective of the governing law of the document.

- 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?

Response: Yes, Indian laws permit parties to expand the rights and remedies of the lessor on default by the lessee by express stipulation in the contract, as long as rights and remedies do not contradict the laws of India or are expressly prohibited under the laws of India. For instance, the lessor can enforce its rights under the contract within the period prescribed under the Limitation Act, 1963 of India, which period cannot be expanded by parties by express stipulation in the contract.

- 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?

Response: While the lessor is entitled to terminate the lease, in case of breach of the lease by the lessee under the lease agreement, self-help is unlikely to be effective, since resistance will always be made by the crew employed on the vessel. It is always advisable to seek court's assistance rather than resorting to self-help. A court's order would then be respected by all the stake holders including lessee, ship agent, port, suppliers, third parties etc.

- 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?

Response: A leased vessel is considered to be an asset of the lessor.

- 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?

Response: Commencement of an insolvency process is usually stipulated as an event of default under a lease agreement, upon the happening of which the lessor has a right to terminate the lease agreement and obtain re-delivery of the vessel from the lessee.

- 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?

Response: No, a lessor being the owner of the vessel cannot arrest its own asset. If the lessee fails to perform its part of the lease contract or re-deliver possession of the vessel back to the lessor, the lessor can file a maritime suit for re-possession of the vessel.

Also, a lessor cannot join in the arrest proceedings initiated by a third party. In fact in India, when any arrest proceedings are filed by any third party, it is customary to add the vessel as also the lessor (i.e. the vessel owner) as defendants to the suit.

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?

Response: Third parties with maritime lien enjoy priority over the rights of a lessor of a leased vessel.

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.

Response: The laws of our jurisdiction does not recognize the concept of registered leases. If however, the court of such jurisdiction have enforced such registered leases, courts in India will recognize and give effect to such orders, based on the reciprocity arrangement between India and such foreign country.

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.

Response: Yes, efforts are being made in our jurisdiction for promotion of bareboat cum demise charter (**BBCD**). The Merchant Shipping Bill, 2016 (“**MS Bill**”) has been moved in the lower house of the Parliament for replacing the Merchant Shipping Act, 1958. The MS Bill *inter alia* allows registration of the vessel chartered on bareboat cum demise basis by an Indian charterer with the Indian registry. However, the registration is not mandatory.

Such registration of vessels chartered on BBCD basis will remain in force till the end of charter period, provided any provisions of the Act (i.e. MS Bill once enacted) are not violated. The vessel chartered on BBCD, once registered under chapter II of the new Merchant Shipping Act (i.e. MS Bill once enacted), shall become an Indian vessel and be entitled to fly the Indian flag.

If the Indian charterer opts for registration under chapter II of the new Merchant Shipping Act (i.e. MS Bill once enacted), the BBCD contract must include the following provisions:

(i) The charter period must not be less than three years;

- (ii) The Indian charterer must enjoy the possession & control of the vessel chartered on BBCD basis including the right to appoint its master and other seafarers;
- (iii) At the end of the charter period, the ownership of the vessel shall stand transferred to the Indian Charterer.

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?

Response: No. The holder of title under reservation of title continues to be the owner of the ship itself. Hence, the question of holding the security interest in the ship does not arise.

Section 25 (1) of the Sale of Goods Act, 1930 stipulates that - Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

- 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.

Response: Not applicable. Please see the response to query 15.1 above.

- 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?

Response: Not applicable. Please see the response to query 15.1 above.

- 15.4 Do the laws of your jurisdiction recognize 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 recognized.

Response: Yes, foreign reservation of title arrangements, as long as valid under the laws of the country where such arrangements are made and upheld by the courts of such country will be recognized in India based on the reciprocity arrangement between India and such foreign country.

16. INSURANCE PROCEEDS

16.1 Does a mortgage registered in your jurisdiction extend by law to the vessel's insurance policies in the event of a casualty affecting the vessel?

Response: No, the registered mortgage does not extend to the vessel's insurance policies. However, the mortgagor's rights under the vessel's insurance policies can be assigned to the mortgagee under the deed of covenant collateral to the mortgage or the deed of insurance assignment.