

COMITÉ MARITIME INTERNATIONAL

International Working Group on Cross-Border Insolvency

QUESTIONNAIRE

SECTION I

CROSS-BORDER MARITIME INSOLVENCY ISSUES

RESPONSES OF THE ITALIAN MARITIME LAW ASSOCIATION

A clarification on terminology

In Italian law “insolvency” is the status of a person or company unable to fulfil his obligations with the ordinary means. Insolvency may give rise to a proceeding, conducted by a court, aiming at (normally) liquidating the insolvent company and fairly distributing the proceeds of the sale of its assets to all creditors. Such proceeding is called “fallimento”, a term the equivalent of which in the English language is probably “bankruptcy”. In any event that will be the word used in most of our responses to this questionnaire.

Part 1 General Insolvency Principles Applicable to Foreign Creditors

1. *Has your country adopted any specific rules on cross-border insolvency (such as the UNCITRAL Model Law or any specific domestic, bilateral or multilateral instrument?) Please provide a general description based on the topics discussed in this questionnaire.*

In Italy there is in force Council Regulation (EC) No. 1346/2000 on insolvency proceedings (the “Regulation”) that, pursuant to its art.1(1) applies to “collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator” .

Art. 3 sets out the rules on international jurisdiction and provides in para.1 that the courts of the Member State within the territory of which the centre of a debtor’s main interests is situated shall have jurisdiction to open insolvency proceedings and in para. 2 that where the centre of a debtor’s main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against the debtor only if he possesses an establishment within the territory of that other Member State, but that the effects of those proceedings shall be restricted to the assets of the debtor in its territory.

Art. 4 provides in its para.1 that save as otherwise provided in the Regulation the law applicable to insolvency proceedings and their effect shall be that of the (EU) Member State within the territory of which such proceedings are opened and in its para.2 sets out the basic principles that the law of the Member States must follow.

It regulates inter alia in art. 5 third parties’ rights *in rem*, in chapter II the recognition of insolvency proceedings and in chapter III secondary insolvency proceedings.

Italian bankruptcy law has been amended in order to comply with the directions of the Regulation.

2. *Do your laws recognize the standing of a foreign creditor or other person (such as a foreign flag authority of a locally domiciled shipowner or a foreign administrator of insolvency proceedings) to start or oppose an insolvency proceeding in respect of a local ship operator or in respect of assets located locally? If so, describe in detail those rights or restrictions upon such rights of such foreign entities which differ from those of local creditors, insolvency administrators or public authorities.*

In Italy insolvency proceedings are “started” by the competent court upon application of the debtor, of one or more creditors or of the public prosecutor. Art.9 of the Bankruptcy Law (Royal Decree 16 March 1942, No.267, as amended) states the bankruptcy is declared by the tribunal of the place where the enterprise has its principal place of business. There is no mention of the nationality or domicile of the creditor(s) that may apply for the declaration of bankruptcy of a debtor and therefore anybody, of whatever nationality, whether resident in Italy or not, may apply. The court will, pursuant to art.15 of the bankruptcy law, hold a preliminary hearing at which the debtor and the creditors who have applied for his bankruptcy are invited to attend, and will then decide whether to declare the debtor bankrupt or not. The decision has the form of a judgment.

3. *Do your laws have a procedure for supervising the activities in your country of a foreign insolvency administrator?*

No. Only within the European Union the provisions of the Regulation will apply. Its art.16 provides that any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to art. 3 shall be recognized in all other Member States. An insolvency administrator appointed outside the EU should apply for the recognition and enforcement in Italy of the judgment whereby he has been appointed. But if he is not acting on the strength of a judgment, his position is unlikely to be recognised.

4. *If an administrator is unwilling to pursue a claim by the insolvent ship operator, can foreign creditors apply to an insolvency tribunal for a transfer of the subject matter of the claim from the estate of the insolvent ship operator to a creditor or group of creditors?*

It must first be made clear that foreign creditors have no special status. In any event Italian bankruptcy law has very clear rules on the conduct of insolvency proceedings. The competent court, named “Tribunale Fallimentare” (Bankruptcy Tribunal) appoints:

- (i) a Judge who will be in charge of the insolvency proceedings (the “Giudice Delegato”) whose powers are indicated in art.25 of the Bankruptcy Law and against whose decisions an appeal to the court is permitted;
- (ii) an Administrator (“Curatore”) whose duties and powers are specified in articles 27-39 of the Bankruptcy Law.
- (iii) The “Giudice Delegato” appoints a Committee of Creditors (“Comitato dei Creditori”) consisting of three to five creditors, having the specific task to watch over the action of the administrator. If the action of the administrator is deemed to be unsatisfactory the Committee of Creditors may apply to the Giudice Delegato who may take the appropriate action against him, including revocation and action for damages pursuant to article 38 of the Bankruptcy Law.

The transfer of the subject matter of the specific claim from the estate of the debtor to a creditor or group of creditors is not conceivable. A global transfer of all

assets, including credits, of the insolvent debtor is only conceivable where a global settlement (“concordato”) is agreed between the insolvent debtor and his creditors and pursuant to its terms all the assets of the debtor are transferred to the creditors (articles 124-145 of the Bankruptcy Law).

5. *Do your laws permit foreign creditors to apply to a court for supervisory orders if they consider the administrator is acting inefficiently or wrongly? Describe the procedure generally.*

See response to Question 4 above. There is no distinction between foreign and national creditors.

6. *Do your laws permit foreign creditors to commence legal proceedings against administrators if they consider the administrator has acted negligently or wrongly?*

Art. 38 of the Bankruptcy Law provides that the action against the administrator may be brought within the insolvency proceedings by his substitute or by the Committee of Creditors.

7. *If a foreign creditor or claimant against a ship operator foresees it will suffer a loss or commercial disadvantage because of the appointment of a private receiver or the way the private receiver is acting, does such a foreign claimant have any legal remedies against the receiver, such as applying to a court for supervisory orders or to put the ship operator into bankruptcy?*

In insolvency proceedings there is only the administrator who is appointed by the court. The figure of the private receiver does not exist.

Part 2 Subject Matter or Territorial Jurisdiction

8. *Do your laws permit assertion of insolvency jurisdiction generally over any asset of an insolvent ship operator domiciled in your country, regardless of the location of the asset within or outside your country? Please comment whether this scope of jurisdiction differs between a ship of your country’s registry owned by persons domiciled in your country, or a ship of another flag owned by persons domiciled in your country.*

Under Italian law all the assets of the insolvent debtor are subject to the insolvency proceedings and the administrator has the power to acquire control over them. Of course if some assets are abroad, it would be necessary for the administrator to obtain the recognition in the relevant country of the Italian judgment pursuant to which the insolvency proceedings have taken place and consequently of the power to dispose of the debtor’s assets, wherever they are. If, however such assets are in a EU Member State, then secondary insolvency proceedings may be opened in that country, pursuant to art. 3(2) of the Regulation, provided there is in that country an establishment of the debtor. In this connection the question has been debated, whether a ship, that is registered in that Member State may be qualified as an establishment and the Italian Supreme Court (Corte di Cassazione) rejected that view with its judgment of 11 November 1982, no.5944, *SIOSA v. Eroico*, (1983) *Diritto Marittimo* 276.

Part 3 Notice to Foreign Creditors

9. *Do any legal or procedural requirements have to be followed to ensure the insolvent ship operator or the insolvency administrator identifies all known foreign creditors?*

Art. 16 of the Bankruptcy Law provides that the judgment whereby the bankruptcy is declared must inter alia order the insolvent debtor to deposit in court within three days the list of all his creditors and that the judgment becomes effective from the date of its publication by its filing in the chancery of the Tribunal. Art.17 then provides that not later than the day following its filing as above the judgment is endorsed in the companies registry where the debtor is registered. No individual notice to creditors, whether Italian or foreign, is required. This gap is however filled by the Regulation, that requires specific notice to all creditors. Article 40 so provides:

Article 40 – Duty to inform creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.
2. That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured *in rem* need lodge their claims.

The duty of information is, therefore, limited to creditors having their domicile in other Member States.

10. *Do your laws require administrators of insolvency proceedings to give notice of the proceedings to foreign creditors? As a general practice, how is such notice given to foreign creditors?*

See response to previous question.

11. *Do your laws require administrators of insolvency proceedings to give notice of time bars for filing of claims to foreign creditors? As a general practice, how is such notice given to foreign creditors?*

See article 40 of the Regulation quoted in the response to question 9.

12. *If the insolvent business is a shipowner, do your laws require notice of insolvency proceedings to be given to the ship registrar for domestically registered vessels?*

There is no provision in this respect in the Bankruptcy Law. However since the judgment whereby the ship owner is declared bankrupt deprives him of the power of administer his assets and thus to operate his ships, the administrator, to whom their operation is transferred, will no doubt take care of endorsing the judgment on the ships registry in order to make officially known to all third parties that the owner has no power to operate his ships anymore.

The Regulation instead so provides in art. 22(1):

Article 22 – Registration in a public register

1. The liquidator may request that the judgment opening the proceedings referred to in Article 3(1) be registered in the land register, the trade register and any other public register kept in the other Member States.

Even if no reference to ships registries is made, it is thought that ships registries are included in the general reference to “any other public register”. However registration is not a duty, as it appears from the permissive verb “may”. Furthermore, this provision

applies only in respect of ships registered in Member States registries.

13. *Do your laws require notice of insolvency proceedings to be given to diplomatic or consular officials of the flag states of foreign registered vessels which are assets of a local insolvent ship operator?*

No. But that is an implied duty of the administrator.

14. *If a foreign creditor later learns of the existence of insolvency proceedings, is the foreign creditor permitted to file late claims or have a right to claim against any of the assets of the insolvent ship operator which have not yet been distributed to creditors?*

Pursuant to art. 93 of the Bankruptcy Law claims must be filed in the chancery of the tribunal that issued the judgment at least 30 days before the hearing at which the statement of liabilities will be considered. Pursuant to art. 101 late claims may be filed within twelve months of the date when the statement of liabilities has been filed but the tribunal in its judgment whereby bankruptcy has been declared may extend the period to eighteen months. The procedure relating to the verification of late claims is conducted in the same manner as that relating to the claims timely filed. Late claimants are entitled to participate in the distributions that take place after the acceptance of their claims by the administrator. However holders of claims relating to title to movable or immovable assets of the debtor may request that actions relating to the disposal of such assets be suspended, provided they prove that the delay in filing their claims is due causes beyond their control.

Part 4 Recognition of Foreign Claims

15. *Please describe the conflict of laws rules for recognition of foreign maritime claims in insolvency proceedings. For example, if the claim is a maritime lien under the law of the place where the claim arose but not in the country where the insolvency proceeding is being conducted, will the insolvency administrator or tribunal recognize the foreign maritime lien?*

There are no Italian ad hoc conflict of law rules in respect of foreign maritime claims in insolvency proceedings. There are some in the Regulation: art.11 provides that the effects of insolvency on the rights of the debtor in ships subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept and art.14 provides that where by an act concluded after the opening of the bankruptcy proceedings the debtor disposes for consideration of (inter alia) a ship, the validity of the act shall be governed by the law of the State under the authority of which the register is kept. Pursuant to the Bankruptcy Law each claim is first considered by the administrator on the basis of the documents submitted by the claimant and then the judge will decide whether to allow it or not. In doing so he will have to consider which is the governing law and his assessment will be made on the basis of the Italian conflict of law rules, that are based on those of the EU Regulation.

As respects the law applicable to maritime liens the tribunal will first see whether the 1926 MLM Convention, to which Italy is a party, is applicable. And this is the case where the ship flies the flag of a Contracting State. Where the Convention is not applicable, pursuant to art. 6 of the Italian Navigation Code, the law of the flag will apply. The country where the maritime claim arose is not a connecting factor.

16. *Apart from the characterization and priority of claims, are there any other procedural differences in the handling of claims between those by foreign creditors and those by local creditors? With reference to the types of claims listed in the table, please describe any differences in detail.*

There may be substantive differences, depending on the applicable law, but no procedural differences.

17. *Does your law recognize rights of claims to property rights, sale or enforcement given by foreign law to particular types of creditors, such as, for example, to financial institutions or spouses for their entitlement to business property interests of the other spouse on separation or divorce?*

The manner in which this question is put is unclear. We suggest the issue is whether in case a given issue has foreign elements, whether and in which manner they are taken into consideration by Italian conflict of law rules. For example, in respect of family rights, art. 30 of Italian private international law rules, enacted by law 31 May 1995, no. 218 (Law 218/1995), provides that patrimonial relationships between husband and wife are governed by their national law, if it is the same, and where it is different, are governed by the law of the State in which their matrimonial life is mainly localized.

18. *Is the recognition of foreign arbitral awards for purposes of proof of claim in insolvency proceedings different from the recognition of foreign arbitral awards for general legal purposes? Please explain any differences.*

No.

19. *If the insolvent ship operator is a state-owned enterprise, are there any differences in the rights or procedures available to a foreign creditor under your country's insolvency law?*

No, if the State-owned enterprise is a private legal entity.

Part 5 Recognition of Foreign Insolvency Proceedings

20. *Do your laws permit the administrator of a foreign insolvency proceeding to publish notices of such proceedings in local news media or to communicate directly with local creditors concerning proofs of claim and payment of any recoveries in the insolvency proceedings? If there any legal restrictions on direct handling of claims by foreign administrators, please provide details.*

Several of the questions of this questionnaire are difficult to understand for a civil lawyer and this is one of them. The administrator of a foreign insolvency proceeding may only act in Italy as a private person and as such has the same rights of a citizen. It appears, therefore, that the actions mentioned would be all permissible.

21. *Will your country's courts recognize a request for the recognition of foreign insolvency proceedings?*

Within the European Union the Regulation applies and the answer to this question may be found in its articles 16 and 17. If the insolvency proceedings take place outside the EU, then the relevant rules of Law 218/1995 would apply. However the issue of conflict of jurisdictions is dealt with in its art. 6 only in respect of proceedings between the same

parties in respect of the same claim. There does not appear, therefore, to be any provision relating to the situation that has been envisaged.

22. *Will such a request be recognized if it comes directly from a foreign trustee in bankruptcy, liquidator or administrator, or does the request have to be in the form of a letter of request issued by the foreign bankruptcy tribunal?*

See response to previous question.

23. *What legal standards do your country's courts apply for the purpose of recognition of foreign insolvency proceedings? Please provide details.*

See response to question 22.

24. *Do your laws have a procedure for a request for the recognition by a foreign insolvency administrator or insolvency court of a local insolvency proceeding? Are such requests generally made by the administrator or the insolvency court? Generally describe the procedure.*

No, except for the EU jurisdictions, to which the Regulation applies.

25. *Can an administrator of insolvency proceedings request the courts of your country for assistance in obtaining recognition of insolvency proceedings of foreign insolvency administrators or foreign courts? Generally describe the procedure.*

See response to question 22.

26. *Will your courts enforce any compulsory transfer of a contractual obligation involving a vessel formerly owned by an insolvent ship operator, if this contractual obligation affects parties located in your country?*

We have difficulties in understanding this question. As respects the rules applicable to contracts in course when the debtor is adjudicated bankrupt, see our response to question 45.

27. *Does your legal system have a procedure for the coordination of concurrent insolvency proceedings involving maritime assets insolvent ship operators or creditors in your country and abroad? Is this procedure set out in laws or regulations or has it been developed through practice of insolvency tribunals? Please provide details including any generally used precedent forms of procedural orders.*

This is the case within the European Union and the relevant provisions have been mentioned previously.

28. *Is your country a party to any bilateral or multilateral agreements for the coordination of multi country insolvency proceedings or the recognition of foreign insolvency proceedings? Please list such agreements.*

Italy has no bilateral agreement in respect of bankruptcy matters with non EU States. All bilateral or multilateral agreements in force between Member States when the Regulation entered into force have been terminated and it appears that at present the EU has exclusive competence to enter into agreements with States not parties to the EU in respect of bankruptcy matters. The position is the same as for treaties on jurisdiction

and recognition and enforcement of foreign judgments.

Part 6 Need for Reform

29. *Have any provisions of your insolvency law created legal uncertainty or difficulties in the administration of cross-border maritime insolvencies? Please refer to any legal commentary or case law.*

We are not aware of any difficulties having arisen.

SECTION II

GENERAL MARITIME INSOLVENCY ISSUES

Part 7 General Insolvency Issues Applicable to Ship Operators and Maritime Property

30. *Are ships registered in your country or ship operators incorporated in your country subject to insolvency laws of general application or do your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators?*

In the Bankruptcy Law there are provisions applicable to companies that regulate inter alia the obligations and liabilities of directors. Ships operators are subject to the general insolvency law except, as is the case for companies in general, whether maritime or not, where the dimension of the insolvency is great. Special rules have in fact been enacted by the legislative decree 8 July 1999, n.270 when specified conditions materialize, namely a) the number of employees and workmen has been greater than two hundred in the last year and b) the debts are in excess of two thirds of both the assets shown in the state of assets and liabilities and of the gross income from sales and services rendered during the last year. On application of the company the court, if the conditions required by the law are met, appoints a judge in charge of the proceedings and one or three commissioners who will be temporarily in charge of the operation of the company with the view to trying to cure the insolvency. The biggest recent and successful example has been that of Parmalat.

31. *If your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators or ships under your registry as distinct from assets of commercial enterprises generally, please provide details of how these rules applying to ships or ship operators differ from general insolvency administration.*

As previously stated, there are no special rules for ships operators.

32. *Is there a monetary or asset value threshold for the application of various forms of insolvency procedure? For example, is there a form of simplified insolvency administration for ship operators with assets of limited value?*

The Bankruptcy Law does not apply to small enterprises, and by such are meant the enterprises the business of which is conducted personally by the entrepreneur or that in

the last three years had a gross average yearly income of less than 300,000 euro.

33. *Do rights to commence insolvency proceedings or insolvency procedures differ if the debtor ship operator is a natural person as distinct from a legal entity? Describe any differences generally.*

No, except that special additional rules exist for companies and big enterprises. See response to question 30 above.

34. *If creditors are asserting claims against all or substantially all the assets of an insolvent ship operator, does this result in distinct or additional procedural or legal requirements?*

No, except where the conditions for the application of legislative decree 8 July 1999, no. 270 mentioned in the response to question 30 materialize.

35. *Are insolvency procedures administered by courts of general jurisdiction, or by specialized courts or tribunals exercising commercial or insolvency jurisdiction?*

In large tribunals there is normally a section dealing with insolvency proceedings.

36. *Describe generally the threshold tests set out in your law for the status of insolvency.*

Art. 5 of the Bankruptcy Law provides that the entrepreneur who is in an insolvency status is declared bankrupt and that the status of insolvency manifests itself with the failure to fulfil obligations or other facts that indicate that the debtor is not any more in a position to regularly satisfy his debts.

37. *If the threshold tests for insolvency proceedings in your country differ for a foreign ship operator with assets in your country which wishes to begin insolvency proceedings in your country, describe these differences in detail.*

No. The threshold tests are the same.

38. *Do your laws permit a private creditor to obtain a court order to begin insolvency proceedings against a ship operator? If so, describe generally what facts or legal grounds the creditor must show to obtain such an order.*

As previously stated, article 6 of the Bankruptcy Law provides that bankruptcy is declared by the tribunal upon request of the debtor, of one or more creditors or of the public prosecutor. Although it is unclear what is meant by "private creditor" the answer to the question is that the creditor who applies for a declaration whereby his debtor be adjudicated bankrupt must provide the evidence indicated by art. 5 of the Bankruptcy Law.

39. *Do your laws permit a public authority to obtain a court order or to exercise its own jurisdiction to begin insolvency proceedings against a ship operator other than procedures available to private creditors? If so, describe generally what are the factual or legal grounds for such public authority to begin such insolvency process?*

Public authorities generally have no power to begin bankruptcy proceedings. Only tribunals have such power. There is only one procedure available to all creditors, whether public or private, with one exception: There is a procedure parallel to

bankruptcy, called “liquidazione coatta amministrativa” (force administrative liquidation), to which articles 194-215 of the Bankruptcy Law apply, used mainly for banks and insurance companies. In that case also the authority in charge of the vigilance over banks or insurance companies may apply to the tribunal for the liquidation.

40. *Does a ship operator have rights to defend or oppose an insolvency proceeding begun by private creditors or public authorities? If so, describe generally what defences are available.*

The answer is yes. Art. 15 of the Bankruptcy Law provides that the tribunal convenes the debtor and applicant(s) at a hearing to be held not less than fifteen days after the notice and allows the parties to file pleadings not later than seven days before the hearing. Basically the defence of the person whose bankruptcy is applied for is that the alleged insolvency does not exist or in any event is not such as to justify a declaration of bankruptcy.

41. *Do your laws permit a ship operator to voluntarily begin an insolvency proceeding? If so, describe generally what facts or legal grounds a ship operator must demonstrate to begin voluntary insolvency proceedings.*

Yes. He must prove the status of insolvency and deliver all his books to the Court.

42. *Do creditors or any other persons with a legal standing (such as public authorities, shareholders or employees of a ship operator) have rights to oppose a ship operators' voluntary insolvency proceeding? If so, describe generally what classes of persons other than creditors have such legal standing and what grounds of opposition are available.*

Only the persons applying for the bankruptcy are convened at the preliminary hearing. However, after the judgment by which bankruptcy has been declared has been issued, pursuant to art. 18 of the Bankruptcy Law any interested person may appeal, whereupon the court holds a hearing at which all interested parties may attend. The grounds of the appeal will obviously be that the condition for the debtor being adjudicated bankrupt do not exist, that the interruption of the ordinary conduct of his activity would adversely affect the prospect of a recovery, etc.

43. *Do your laws provide for a time bar for filing of claims in insolvency proceedings which is different from limitation periods or prescription for commencement of maritime claims generally? If insolvency proceedings have different time bars for filing of claims, are these time bars set out in legislation or are they decided by insolvency administrators or tribunals on a case-by-case basis?*

Indeed there are special time bar periods, set out in the Bankruptcy Law.

Pursuant to art.93 of the Bankruptcy Law claims must be filed at least thirty days prior to hearing at which the status of liabilities of the debtor will be considered and must contain the information specified in that article. In respect of late claims see our response to question 14.

44. *Do your laws permit an insolvency administrator to carry on the ship operator's business for a temporary period in order, for example, to complete voyage or charter party commitments?*

Yes. Art. 104 of the Bankruptcy Law provides first that in the judgment by which the

debtor is adjudicated bankrupt the tribunal may order the temporary continuation of the conduct of the debtor's business or a specific part of it and secondly that, on the proposal of the administrator, the judge in charge may, after having heard the opinion of the committee of the creditors, authorise the temporary continuation of the debtor's activity.

45. *Do your laws permit an insolvency administrator to disclaim or otherwise set aside future contractual obligations such as charter parties or contracts of affreightment?*

Yes. There are specific rules in the Bankruptcy Law on the effect of the bankruptcy on existing contracts, including contracts of financial leasing and "appalto" (that generally may be translated as contracts for work and materials, but that in Italian legal terminology includes charter parties and contracts of carriage). There follows a summary of the relevant provisions for such categories of contracts.

- a) Contracts of financial leasing: art. 72 *quater* provides that if the temporary continuation of the debtor's activity is authorised, the contract will remain in force save that the administrator declares to terminate it.
- b) Contracts of "appalto", that include contracts of affreightment: pursuant to art. 81 the contracts terminate unless the administrator, after having sought the opinion of the Committee of the Creditors, decides to step in the contracts giving notice to the other party and offering suitable securities.

46. *Do your laws permit or require an insolvency administrator to compulsorily transfer contractual obligations such as contracts of affreightment or employment agreements with crew from the insolvent ship operator to the purchaser of the vessel from the estate of the insolvent owner?*

As regards contracts of affreightment see response to previous question. As regards transfer of employment agreement to the purchaser of the debtor's ship, this, albeit theoretically possible, has never to our knowledge taken place and is unlikely will take place in the future, for no buyer would accept to step in existing labour contracts.

Part 8 Acceleration of Remedies

47. *Do your laws permit a creditor to contract for immediate repayment of an entire debt, such as future obligations under a ship mortgage, if a ship owner becomes insolvent?*

No. The assets of the debtor are sold and the proceeds of their sale is distributed between the creditors in accordance with their priorities, if any. Therefore a mortgagee may apply for the immediate sale of the mortgaged ship by the administrator and for the subsequent distribution of the proceeds of sale. If there are no maritime liens that take priority over the mortgage, the net proceeds, after deductions of costs would be paid to the mortgagee.

48. *If there are differences in the application of these laws to acceleration remedies by foreign creditors as distinct from local creditors, describe these differences in detail.*

There are no differences.

Part 9 Classes of Claims and Creditors

49. *Do your insolvency laws apply differently to differing types of claims or creditors? Please respond to this question using the attached table. For example, is a bank or financial institution permitted to enforce a ship mortgage by procedures outside of an insolvency which would not be available to a ship mortgagee other than a bank or financial institution?*

No.

50. *Does the existence of an insolvency proceeding under your country's law alter the priority of creditors' claims against a ship owned or operated by an insolvent person? Please respond to this question with reference to the types of claims listed in the attached table.*

No.

51. *If a shipowner commences proceedings to establish a limitation fund under the LLMC Convention or to establish a limitation fund under domestic law, describe the relationship between such fund and any insolvency proceedings involving that shipowner. For example, can creditors begin insolvency proceedings if a limitation fund has been established? Can an insolvent shipowner establish a limitation fund?*

Italy is not yet a party to the LLMC Convention. At present the relationship between limitation proceedings and bankruptcy proceedings, is governed by art.639 of the Navigation Code, pursuant to which limitation proceedings are not affected by bankruptcy of the owner declared after either the expiry of the term by which objections to the statement of the assets to be distributed amongst the claimants subject to limitation may be raised, or after the judgment whereby such objections have been rejected has become final. The consequence is that the limitation amount does not in such case become part of the general assets of the debtor.

Part 10 Proposals for Reorganization or Compromise

52. *Do your laws permit an insolvent ship operator to make a proposal for the reorganization of its business or compromise of claims in which the ship operator would continue to operate into the future if the proposal is approved?*

Yes. Two different proposals are regulated by the Bankruptcy Law: a) a proposal aiming at preventing bankruptcy proceedings (the "Concordato Preventivo"), and b) a proposal during the course of bankruptcy proceedings "Concordato").

a) "Concordato Preventivo". Article 160 of the Bankruptcy Law provides that the entrepreneur who is in a state of crisis may propose to the creditors a compromise and then indicates the various alternatives that basically are reorganization and transfer of the enterprise to a third party. To this effect the entrepreneur must file an application to the tribunal of the place where the principal place of his business is located, accompanied by the documents enumerated therein (art.161) and if the tribunal finds that the conditions required by the law exists, issues a decree with which the proceedings are started, appoints a judge in charge of the proceedings and a commissioner. The main effects of that decree are that while the applicant may continue to carry out his business under the supervision of a judicial

commissioner and that the creditors existing at the time of the application may not enforce their claims on the assets of the enterprise.

b) See our response to question 4.

53. *Do your laws permit such proposals to be conducted through private contractual arrangements between an insolvent ship operator and some of its creditors, or do such proposals need to be conducted under supervision of a court or with approval of all identifiable creditors?*

See the response to the previous question.

54. *If it is lawful to conduct a proposal through private contractual arrangements, are such private contractual arrangements affecting a ship legally binding on other claimants against that ship who have not participated in such private contractual arrangements?*

Not applicable.

55. *If a proposal is required to be conducted under supervision of a court or approval of all known creditors, please provide a general description of the reorganization procedure.*

The judicial commissioner notifies to all creditors the date of the meeting at which the proposal of the entrepreneur will be discussed (art.171). At that meeting the proposal is discussed and voted. Only ordinary creditors have the right to vote. Creditors whose credits are secured by a *hypothèque*, pledge or (maritime) lien cannot vote save where they waive their right to invoke the priority. The majority is calculated with reference to the amount of the credits and therefore it is actually reached when the proposal is approved by creditors who globally have the majority of the credits.

Once approved, a hearing is held at which the entrepreneur, the commissioner and the creditors appear and the tribunal, after having heard the objection of the creditors who had voted against the proposal, decides whether to homologate the agreement or not.

56. *Are secured creditors of an insolvent shipowner subject to court orders approving a reorganization or compromise?*

See the response to the previous question.

57. *Do your laws permit an insolvent ship operator to transfer an insolvency proceeding into a proceeding for reorganization or compromise?*

No. Pursuant to art. 124 of the Bankruptcy Law a proposal may only be made by one or more creditors, or by a third party.

Part 11 Receiverships

58. *Does your law permit a private creditor such as a ship mortgagee to take over the business of a ship operator or to sell part or all of its fleet or generally act to recover a debt without needing to commence insolvency proceedings for the benefit of all creditors?*

No. The proposal of a “Concordato Preventivo” may only be made by the debtor. See our response to question 52.

59. *Does your law set out minimum requirements which a private receiver of an insolvent shipowner must follow such as giving notice to other registered ship mortgagees, the procedure for sale, etc.*

Not applicable. See our response to question 7.