

CMI SHIP FINANCE QUESTIONNAIRE
Submission by Nigerian Maritime Law Association

1.0 MARITIME AND OTHER CONVENTIONS

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

Although Nigeria has acceded to the 1952 Arrest Convention, the country is yet to promulgate same into municipal law and give it a direct force of law in Nigeria.

- 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?

All claims enforceable in rem can be brought by way of arrest. These will include: claims for possession, ownership and mortgage of a ship or its freight as well as maritime liens. It also includes claims arising in connection with a ship where the person who would be liable on the claim in an action in personam is the owner or charterer of or in possession or in control of the ship at the time the when the cause of action arose - Section 2, Admiralty Jurisdiction Act (AJA) 1991

- 1.3. In particular, can arrest be made:

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

Yes

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

Yes. Our laws make no distinction between the places of registration of a mortgaged vessel for the purpose of enforcement by way of arrest proceedings. The admiralty jurisdiction of our Federal High Court applies to all ships, irrespective of the places of residence or domicile of their owners. Section 3 AJA.

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

Nigeria has not ratified the 1926 convention. However, she is a signatory to the 1993 convention but is yet to promulgate same into domestic law.

- 1.5. If your jurisdiction has not ratified either Maritime Liens and Mortgages Convention, does your jurisdiction recognize foreign maritime liens? If so what types of claims are recognized as maritime liens?

Nigerian law recognizes foreign maritime liens. Under Section 67 of Merchant Shipping Act 2007 (MSA) the following maritime liens are recognized:

- (i) Wages and other sums due to the master, officers and crew**
- (ii) Disbursements of the master on account of the ship**

- (iii) **Claims in respect of loss of life or personal injury occurring whether on land or water in direct connection with the operation of the ship**
- (iv) **Claims for salvage, wreck removal and contribution in general average**
- (v) **Claims for port, canal and other waterways and pilotage dues**

See also section 5(3) of the Admiralty Jurisdiction Act 1991.

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

Nigeria is not a member of the Hague Apostille Convention (Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents). Documents being sent to Nigeria require State, and Nigeria Embassy legalization.

2.0. NATURE OF THE SHIP'S REGISTER

- 2.1. Is the ship's register in your jurisdiction a register of legal title?

The Ship Register in Nigeria is a register of both legal and equitable interests.

- 2.2. Does the ship 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 the legal title is registered in another jurisdiction (the underlying register)?

Yes. Section 17(1) (d) of the MSA mandates the registrar to keep a register for ships on bareboat charter and other charters exceeding 12 months. Also by section 34(1) (C) of the Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007, ships on bareboat charter to Nigerian citizens should be entered into the register.

- 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?

The law is silent on this. However, foreign mortgages are allowed to be entered into the Ship registry. The Coastal and Inland Shipping (Cabotage) Act 2007 also, subject to the acquisition of the Minister's consent, permits the registration of foreign mortgages within the country.

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

Our law prohibits dual registration of a ship. The Nigerian registration would be suspended for the duration of the registration in a foreign registry. The consent of the

registered holders of mortgages as well as that of the Nigerian Registry is statutorily required. See section 29 MSA

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

In line with the Merchant Shipping Act 2007, the following persons can register a vessel in Nigeria;

- (a) Nigerian Citizens**
- (b) Bodies corporate established under and subject to Nigerian laws, having their principal place of business in Nigeria**
- (c) Such other persons as the Minister of Transport may by regulations prescribe**

Section 17 of the MSA obligates the registrar of ships to keep a register for the following:

- (a) Merchant ships;**
- (b) Fishing vessels;**
- (c) Ships under construction;**
- (d) Ships on bareboat charters and other charters exceeding 12 months duration;**
- (e) Licensed ships below 15 gross tons;**
- (j) Floating Production Storage and Offloading (FPSO) and Floating Storage and Offloading (FSO).**

Also, Under Section 34 of the NIMASA Act, the following vessels are eligible to be registered;

- (i) Nigerian Owned Ships**
- (ii) Small Vessels .i.e. fishing vessels (except canoes and primitive boats) which are engaged in artisan fishing and are:**
 - (a) wholly owned by foreign nationals resident in Nigeria or Nigerian Citizens**
 - (b) Operated solely by Nigerian residents or Nigerian citizens or both such residents**
 - (iii) Ships on bareboat charter to Nigerian Citizens**

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 supplied

Yes, see section 53(1) of the MSA 2007. This is a statutory requirement as the aforementioned section does provide that a written instrument e.g. a Deed of mortgage creating the security should exist.

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

The mortgage agreement would ordinarily set out the instances that will give rise to the right of the financier to enforce its security.

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

A registered mortgage need not be notarized.

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

CONSENT FEE	REGISTRATION OF MORTGAGE FEE
₦50,000 (\$139)	₦100,000 (\$278)

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

There is no requirement for re-registration.

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

Mortgages are not only kept in the ship's register. Mortgages may also be registered as charges with Nigeria's Companies Registry (the Corporate Affairs Commission in accordance with section 197 of the Companies and Allied Matters Act (CAMA)).

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.

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

This information is publicly available. An interested person may apply to the Ship registry to conduct a search and/or obtain certified true copies of documents. The authorization of the owner is not required to conduct the search. The search fee is ₦5000 per search although it is to be reviewed upward to ₦20,000 per file.

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

Yes

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

Upon payment of the prescribed fees, the search can be conducted immediately.

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.

No. The mortgagor is obligated by law to refrain from doing anything that imperils the mortgaged property and jeopardises the mortgagee's interest.

5. ARREST OF A CHARTERED VESSEL:

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

A mortgagee may arrest vessels on a bare-boat or time-charter. Once the maritime claim is commenced as an action in rem, a ship or other property, maybe arrested at any place within the limits of the territorial waters of Nigeria. Sec 7(2) Admiralty Jurisdiction Act.

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

By Order 13 Rule 1 of the Admiralty Jurisdiction Procedure Rules, an interested person (which may include charterers or cargo interests) may apply to court and obtain security for costs from the plaintiff at whose instance the ship is arrested. The purpose of security for cost is to indemnify such interested party for any loss sustained by him on account of a frivolous arrest.

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

Where a ship is under arrest but its cargo is not, a person who is entitled to immediate possession of the ship or cargo, respectively, may apply to the court to discharge the cargo from the ship. The arrestor or other interested party may also apply to court to discharge the cargo. The applicant bears the costs and risks of discharge. Order 9 Rule 5 AJPR.

6. PRIORITY ISSUES BETWEEN MORTGAGES REGISTERED IN THE SHIP'S REGISTER IN YOUR JURISDICTION

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

Our jurisdiction does not have a system of priority notice. Mortgages are recorded by the Registrar in the order in which they are produced to the him for that purpose and

he shall endorse and sign a memorandum on each mortgage, stating the date and time of the record. Sec 54 (3) MSA.

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

It is possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee.

- c. When there are two or more registered mortgages, what determines their priority?

Priority in respect of two or more registered mortgages is determined by the date on which each mortgage is recorded on the register. Sec 57(1) MSA

- d. Is there a 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?

Our laws do not provide for the postponement of priority of a registered mortgagee with notice. Priority is determined by date of registration simpliciter.

- e. Can a second registered mortgagee exercise enforcement remedies without the consent of the first registered mortgagee?

A second registered mortgagee shall not dispose of the ship or a share of it in respect of which it is registered without the consent of the first registered mortgagee on the same ship or share except under an order of a court of competent jurisdiction Sec. 58 (2) MSA

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

Section 26 of the Merchant Shipping Act 2007 (MSA) requires the Nigerian Ship Registration Office to keep a record of liens and other similar charges created on the ship in the Ship Register. Also, the Corporate Affairs Commission (Nigeria's Company's Registry) keeps with respect to each company, a register in the prescribed form of the charges created by a company. Sec. 198 of the Companies and Allied Matters Act

7. GENERAL ENFORCEMENT ISSUES

- a. Does your jurisdiction make a distinction between the enforcement of a registered mortgage under the flag of your jurisdiction and the enforcement of foreign mortgages?

Our law makes a small distinction between enforcement of mortgages registered in Nigeria and foreign mortgages. A foreign mortgagee has to obtain the consent of the Minister of Transport to register the mortgage in the Nigerian Registry. Once the

foreign mortgage is noted in Nigerian Ship Registry and the ship is within jurisdiction, the mortgage may be enforced.

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

A registered mortgagee does not have to obtain a judgment on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage. Once the mortgage is registered in the Nigerian Ship registry the mortgagee may go ahead to exercise its rights under the mortgage deed without recourse to court. Sec 57(2) MSA

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

The court is not obligated to expedite proceedings and the duration of the case may vary depending on its peculiar facts and circumstances.

- d. Will the court in your jurisdiction accept jurisdiction for the mortgage claim under Article 7 1952 Arrest convention, or equivalent domestic legislation in your jurisdiction?

The Federal High Court will accept such jurisdiction. Section 1(a) of the Admiralty Jurisdiction Act, 1991

8. JUDICIAL DECISIONS AND APPEALS

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

The jurisdiction to hear and determine any question relating to a proprietary interest in a ship or any maritime claim is by virtue of Section 1(1)(a) of the Admiralty Jurisdiction Act 1991 vested in the Federal High Court of Nigeria. This Admiralty Jurisdiction of the Federal High Court is also exclusive to it by virtue of Section 251 of Constitution of the Federal Republic of Nigeria 1999.

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

- **A party interested in the sale files an application for same in court accompanying it with supporting documents[Order 16 Rule 1(1)(b) and Order 16 Rule 1 (3) AJPR 2011].**
- **The court will make an order that the vessel be valued [Order 16 Rule 1(1)(b) and Order 16 Rule 1 (3) AJPR 2011].**

- **An officer of the court (The admiralty marshal) will give 21 days' notice of the auction sale by an advertisement in two national newspapers calling for bids[Order 16 Rule 2 AJPR 2011].**
- **No less than 30 days' notice must be given by the Admiralty Marshal of the time and place of the auction sale to all interested parties including the ship's registrars, registered mortgagees and holders of maritime liens [Section 74 (a-c) MSA 2007].**
- **Upon conclusion of the auction, the admiralty marshal shall file a return of the sale to the court and will pay the sale proceeds into a court**
- **Applications for determination of priorities may be made to the court by interested parties and the court may order that a Notice of such applications be published specifying the time of such Notice[See Order 17 Rules 1 and 2 AJPR 2011]**

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

By virtue of section 17 of the Court of Appeal Act 2004, an appeal under the Act shall not operate as a stay of execution. The Court of Appeal may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed in accordance with the rules of court. An application may also be made to the court of first instance for stay of execution of its judgment pending the hearing and determination of an appeal.

9 SALE PROCEDURE

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

Yes

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

The procedure stated in 8.2 above is adopted.

9.3 will the court in your jurisdiction order a sale of the vessel pending judgment (pendete lite), recognizing that the vessel is a wasting asset?

Yes. By virtue of Order 16 Rule 1(3) of the Admiralty Jurisdiction Procedure Rules 2011, if a ship or other property under arrest in an action *in rem* is deteriorating in value, the court may at any stage in the proceedings, on notice to the parties order it to be sold subject to valuation.

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?

No. There are no statutory provisions relating to the fixing of a minimum bid price. Also see the answer to 9.5 below.

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

No specific provisions are made for a reserve price. The courts however have a wide latitude to do substantial justice in circumstances of judicial sale of a vessel. Order 20 Rule 1 of the Admiralty Jurisdiction Procedure Rules 2011 allows a judge to make any order which he considers necessary for doing justice whether the order has been expressly asked for by the person entitled to benefit from it or not. Thus a trial court has in fact made an order on the following terms:

...that the Admiralty Marshall of the court will look for a buyer within two weeks from today's date and get the views of the two parties within two weeks of his finding a buyer with a price. Whichever of a party does not agree with the price must provide a new buyer with a higher price within one month from today's date. See *FIRST FUELS LIMITED V. THE VESSEL 'LEONA II' & ANOR (2002) LPELR-1284(SC)*

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

- **Upon an order of the court for valuation and sale of a vessel, an officer of the court (The admiralty marshal) will give 21 days' notice of the auction sale by an advertisement in two national newspapers calling for bids [Order 16 Rule 2 AJPR 2011].**
- **No less than 30 days' notice must be given by the of the time and place of the auction sale to all interested parties including the ship's registrars, registered mortgagees and holders of maritime liens [Section 74 (a-c) MSA 2007].**

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

See the answer to 9.5 above.

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 time table for such an application and sale?

See the answer to 9.5 above

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?

There are no statutory provisions specifically dealing with this point. However the court may have discretion to make orders as the justice of each case demands. See the answer to 9.5 above.

10 Sale proceeds

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

The AJPR 2011 only provides that the proceeds be paid into court. However, if a specific application is made for the proceeds to be paid into an interest bearing account, it is opined that the court may readily grant same.

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

There are no specific provisions relating to this. However, it must be borne in mind that a Nigerian court, in its discretion, can give judgment in foreign currency, see *Broadline Enterprises Ltd. v. Monterey Maritime Corporation (1995) 9 NWLR (Pt. 417) 1; (1995) 10 SCNJ 1at 26*

(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?

- i. The expense of the Admiralty Marshal in connection with the valuation and sale of the ship shall be computed and filed - Order 4 Rule (1) AJPR 2011.**
- ii. The Admiralty Marshal shall deduct two percent from the proceeds of the sale of a ship or other property to cover his expenses including bank charges - Order 4 Rule (2) AJPR 2011.**
- iii. A person who is interested in relation to the proceeds of the sale may apply to the court for taxation of the expenses of the Admiralty Marshal - Order 4 Rule(3) AJPR 2011**

11. PRIORITIES GENERALLY

11.1. Are priorities determined under local law (lexfori), or the law of the jurisdiction in which the claim arose (lexcausae), or the law of the flag of the vessel?

LexFori. Section 213 of the Merchant Shipping Act provides that where there is a conflict of laws, the provision of the act shall apply to a ship except there is no local law governing the matter relating to the ship, in which case the law of the flag of the vessel shall apply.

11.2. If local law, where does the mortgage rank amongst other maritime claims in the order of priority and which are those claims which rank prior to the mortgagee.

The following claims rank prior to the mortgage:

Maritime Liens

Possessory Liens:

- Admiralty Marshall's Expenses**
- Claims by a ship builder and ship repairer for expenses in building or repairing the ship**

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?

No.

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

No.

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

No. There are no special rules. The processes and remedies available to a local creditor are also applicable to a foreign creditor.

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

Prior to the forced sale of a ship, the court is mandated to give at least thirty days' written notice of the time and place of the sale to all interested parties including the ship's registrars, registered mortgagees and holders of maritime liens. Section 74 (a-c) MSA 2007. This will allow the interested persons sufficient time to come forward and declare their interests.

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

The Admiralty Marshall of the court is obligated to give 21 days' notice in 2 newspapers advertising the auction sale. He further gives 30 days' notice of time and place of sale to all interested parties. Within 21 days of the sale, he is required to file a return of the sale and pay into court the proceeds thereof. An application may be made to court for determination of the order of priorities and same is advertised. Thereafter, the court decides the order as to priorities.

11.6. Is the distribution order decided by the court?

The distribution order is determined by the court.

11.7. Is that order subject to a right of appeal?

Yes. An aggrieved party has the right to challenge the order before the Court 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;

Yes. Provided he is the owner of controlling shares in the ship. *National Bank OF Nigeria Ltd. V. Okafor Lines Ltd. (No. 3) 1967 1 NSC 110.*

(b) To appoint a receiver, manager or other party to operate the vessel;

Yes if provided for in the mortgage deed.

(c) To sell the vessel as mortgagee;

Yes. However, if he is a subsequent mortgagee, the consent of every prior registered mortgagee must first be obtained. Section 58(2) MSA.

(d) To sell the vessel as attorney in fact of the owner.

Yes, if a valid Power of Attorney has been executed.

12.2. If, under the law of the ship's register (where that is a different law from the law of your jurisdiction) a mortgagee is given the right to take the enforcement steps referred to at (a) – (d) of 12.1 without a court order would its right to do so be recognized or prohibited in each case in respect of a vessel physically located in your jurisdiction?

It will not be recognized. The laws of Nigeria (lexfori) are what determine whether or not the enforcement steps can be taken without a court order.

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

Yes. If a court order is granted in a foreign jurisdiction, it can be recognized and registered in Nigeria subject to the provisions of the Foreign Judgments (Reciprocal Enforcement) Act.

13. INSOLVENCY PROCESSES

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

No.

13.2. Do the laws of your jurisdiction provide for recognition of foreign insolvency proceedings? (If the UNCITRAL Model Law has been adopted, in addition to its provisions)

There is no specific law that provides for the recognition of foreign insolvency proceedings.

- 13.3. Do the laws of your jurisdiction provide that the enforcement rights of secured creditors (such as the mortgagee of a vessel) can be stayed or suspended during applicable insolvency proceedings?

Yes. The enforcement rights of secured creditors may be stayed pending the determination of insolvency proceedings.

- 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)?

Yes. Foreign insolvency proceedings are not recognized in Nigeria. However, foreign insolvency judgments and orders may be enforced in Nigeria where they are registered in a High Court.

- 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?

The right of a registered mortgagee is not affected by and takes precedence over any insolvency proceedings of the vessel owner. Section 57(2) MSA

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

No.

- 13.7. If a vessel is sold in your jurisdiction through a maritime court sale is the mortgagee's claim to the sale proceeds subject to the risk of the mortgage being challenged or set-aside by applicable insolvency claw-back rules for transactions prior to insolvency?

No. The rights of registered mortgagee are not affected by the applicable insolvency claw-back rules. Section 57(2) MSA

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

No.

- 13.9. Do the insolvency courts of your jurisdiction have, or claim, extraterritorial jurisdiction, such as over vessels located in a different jurisdiction? If so, how?

The jurisdiction of the court is generally restricted to the territorial waters of Nigeria which is within 12 Nautical Miles from the baseline. However, the court may, for the purpose of arrest proceedings, exercise extraterritorial jurisdiction over vessels expected to arrive Nigerian territorial waters within three days. Order 7 Rule 1 Admiralty Jurisdiction Procedure Rules.

14 LEASING

14. 1 In your jurisdiction is leasing of vessels common as a method of financing?

An agreement for the hire or use of a ship is more commonly referred to as a charter of a ship rather than a ship lease. It is a common method of financing.

- 14.2 Do the laws of your jurisdiction give effect to lease in accordance with the form of the document (formal approach) or is there a risk there will re-characterize certain leases as security interests (functional approach)?

Our courts will give effect to the lease in line with the form of the document

- 14.3 If the laws of your country 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.

Not applicable

- 14.4 Do the laws of your country 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.

The rights of the parties herein are exclusively governed by contract as there is no law that specifically deals with ship lease in our jurisdiction.

- 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?

Our law generally frowns upon self-help. A lessor keen on re-taking possession of the vessel can bring a proprietary maritime claim for the purpose of obtaining an order of court against the lessee.

- 14.6 Under the laws of your jurisdiction is a leased vessel considered to be an asset of the lessor or lessee, or both?

This will depend on what type of charter it is. A vessel under a bareboat charter may be considered as the property of the charterer such that certain claims against the vessel may be made against the charterer as if he were the owner.

- 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 the vessel? Is this affected by the type and terms of the lease?

In the absence of any legislation according preferential rights to the lessor, the insolvency proceedings of the lessee may affect the former in the exercise of his remedies.

- 14.8 Under the laws of your jurisdiction can a lessor arrest a vessel which it leases? Can it join arrest in arrest proceedings initiated by a third party?

A lessor may arrest a vessel which it leases by bringing an action in rem for possession of the vessel (sec. 2 AJA). He may also apply to join arrest proceedings instituted by a third party against the said vessel.

- 14.9 Under the laws of your jurisdiction what priority is given to the rights of a lessor of a leased vessel as against third parties with maritime liens/claims?

Maritime liens rank above the rights of a lessor. Section 68 MSA

- 14.10 Do the laws of your jurisdiction recognize registered leases in respect of vessels registered in a different jurisdiction? If so, please give brief details.

Yes. By Section 51 MSA, a copy or transcript of the register of ships kept by the Registrar of Ships at any port of registry in any foreign country, or a copy or transcript of any master register of ships kept under the authority of the Government of the foreign country shall be admissible in evidence and have the same effect to all intents as the original register of which it is a copy or transcript.

- 14.11 In your jurisdiction is there generally a wish to promote leasing of vessels, including by reforming the law?

There has been no active discussion on this. However, foreign bareboat chartered vessels are recognized under the Coastal and Inland Shipping (Cabotage) Act 2003 and may be registered in the Cabotage Register.

15 RESERVATION OF TITLE:

There is no provision for this shipping practice under our law.

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

See answer to 15 above

- 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 details.

See answer to 15 above

- 15.3 If the laws of your jurisdiction do provide for reservation of title arrangements to be registered as referred to in 15.2, what rights and remedies are given to the holder of title?

See answer to 15 above

- 15.4 Do the laws of your jurisdiction recognize foreign reservation of title arrangements of a type referred to in 15.2? if so, please give brief details of how these arrangements would be recognized?

See answer to 15 above

16.0 Insurance

- 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?

Nigerian law does not recognize the right of a registered mortgagee to take benefit of an insurance policy taken out by the mortgagor on the vessel.