

Question 6

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?**

Argentina	Yes. The period is 15 days if the Notary Public has his professional domicile in the city of Buenos Aires (capital of the Republic) and 30 days if the professional domicile is outside the city of Buenos Aires (Act 19.170, arts. 40 and 41).
Australia	Because the Personal Property Securities Act 2009 (Cth) provides for a notice filing system (as opposed to a document filing system), it is possible to register a financing statement before the actual security agreement has been concluded (s 161). However, as noted in the answer to 3.1(a), in such circumstances a person must not apply to register a financing statement that describes collateral unless the person believes on reasonable grounds that the person described in the statement as the secured party will become a secured party in relation to the property (s 151).
Brazil	There is no system of priority notice. In order to be considered valid towards third parties (erga omnes effect), the mortgage must be duly registered.
Canada	No
Croatia	Yes
Finland	No
France	No
Germany	Yes, a priority notice can be registered to secure a claim (present, future or contingent) for creation of a mortgage provided that such claim is sufficiently specified.
Greece	There is no system in Greek law for a "priority notice" to enable priority to be reserved for a period before registration of the mortgage. The mortgage becomes effective upon registration.
Ireland	No – priority only runs from the date the mortgage has been actually registered on the Ships register.
Italy	No, it is impossible for creditors to "anticipate" the effect of the hypothèque before its actual registration by filing the Deed of Hypothecation together with the Nota di Trascrizione with the relevant Ship Registrar (see above §3.3).
Japan	A prospective mortgagee may apply for a "provisional register" If a mortgage is registered afterwards, the register is regarded to have been made at the time when the provisional register is made.
Malta	Maltese law does not have a system of "priority notice". This is also acknowledged in Article 41 of the Merchant Shipping Act.
Netherlands	No

New Zealand	No
Nigeria	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.
Norway	No, but it is possible to pre-place the mortgage with the registry in order to allow simultaneous registration of the mortgage and the vessel. The mortgage can be dated prior to the registration date, but priority will in any event only be given from the time of actual registration.
Panama	No. Our jurisdiction and the priority of mortgages whomever register first, has a first priority ranking status.
Spain	<p>There is not a priority notice as such, but there is a mechanism which covers and deals with the time period comprised between the execution of the mortgage and its actual registration.</p> <p>In Spain, the registration of the mortgage within the Title Registry has constitutive effects. This means that the mortgage does not exist as a right in rem until it has been registered. However, given that the registrar has, in general terms, up to 15 business days as of the date the executed mortgage was filed to proceed with final registration, our mortgage legal system states that, once final registration is achieved, the mortgage will be effective as of the date of presentation.</p>
Switzerland	<p>No. When being registered, a mortgage will receive its priority, according to the applicable rules. A possibility of reserving a priority without actually applying for registration of a mortgage at the same moment is not possible.</p> <p>It is possible, however, to register a mortgage in lower priority (e.g. second, third, etc. rank) without a prior mortgage actually being registered. The owner can therefore reserve a certain amount for later first priority mortgages. In the event of enforcement, such reservations will be disregarded, if no actual higher priority mortgage has been registered in the meantime.</p>
UK	An intending mortgagee can register a Notice of Mortgage Intent [MSF 4739] with the Registrar and the mortgage when granted will rank in priority from the date of the Notice of Mortgage Intent.

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

Argentina	In principle yes unless it was agreed otherwise by the parties to the first mortgage (Act 19.170, art. 7.f).
Australia	yes, subject to the terms of the first mortgage
Brazil	There can be more than one mortgage over the same good, provided that the amount of the goods exceeds the amount of the debt of the previous mortgages and that the new mortgage indicates the existence of the previous ones. And this can happen regardless of consent of the first mortgagee, because his right is guaranteed due to the fact that priority is determined by the time of registration. However, the first mortgage can expressly prohibit further mortgages.
Canada	Yes. There is no statutory or regulatory impediment to the subsequent mortgage being registered without the consent of the prior registered mortgagee. However, the deed of covenants between the ship owner and a prior registered mortgagee may stipulate for the prohibition or restriction on the making or registration of any subsequent mortgage. This is a private contractual stipulation between the shipowner and the prior registered mortgagee.
Croatia	Yes, a subsequent mortgage can be register without the consent of the first registered mortgagee unless otherwise provided in the deed of the first mortgage. The first registered mortgage has priority over the subsequent mortgage.
Finland	Yes
France	Once a maritime hypothecation is registered, the consent of the first maritime hypothecary creditor is not required so as to allow a new registration.
Germany	Yes, under German law a subsequent mortgage can be registered without the consent of the first registered mortgagee.
Greece	Once a mortgage is registered it is possible to register a subsequent mortgage without the consent of the first registered mortgagee (art.1290 Civil Code) unless the parties to the mortgage have included a term in the mortgage prohibiting further mortgaging (or transfer) and this prohibition is registered with the ship's register. Of course a second mortgage (registered with or without –when permitted– consent of the first mortgagee) runs in priority after the first mortgage.
Ireland	Yes
Italy	Yes, a subsequent hypothèque can be registered without the consent of the first mortgagee but the second hypothèque will rank after the first hypothèque.
Japan	Yes
Malta	Article 39(3) of the Merchant Shipping Act provides that the Registrar of Ships is to make a note in the register of ships prohibiting the creation of further mortgages over a vessel only if the mortgage instrument relating to the first registered mortgage states that such prohibition is to be put in place.
Netherlands	Yes. No consent of the first hypothecary creditor is required as a matter of law, but the terms and conditions of the hypothecary instrument may and in practice do determine otherwise (negative hypothecary declaration).

New Zealand	yes, subject to the terms of the first mortgage
Nigeria	It is possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee.
Norway	It depends on the terms of the first mortgage, but pursuant to the standard mortgage form the consent of the first mortgagee is required for the registration of any subsequent mortgages.
Panama	Yes, Article 1568 of our Civil Code in its Ordinal 4 allows for subsequent mortgages to be registered even without the consent of the first registered mortgagee. However, the priority ranking status will remain with the first recorded mortgagee.
Spain	Yes, it is possible to register subsequent ship mortgages without the prior consent of the existing registered mortgagees, even when the first mortgage contract states that no further mortgages over the ship will be created.
Switzerland	Yes
UK	Yes

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

Argentina	The priority is determined by the day and time in which the mortgage is registered (Navigation Act, art. 504).
Australia	<p>The priority rules differ depending on whether the security interest has attached to the collateral, and on whether the security interest has been perfected.</p> <p>Pursuant to s 19, a security interest attaches when:</p> <ol style="list-style-type: none"> 1. the grantor has rights in the collateral, or the power to transfer rights in the collateral to the secured party; and 2. either: <ol style="list-style-type: none"> a. value is given for the security interest; or b. the grantor does an act by which the security interest arises. <p>Pursuant to s 21, a security interest is perfected when:</p> <ol style="list-style-type: none"> 1. it has attached to the collateral; 2. certain writing requirements have been met (see s 20); 3. the secured party has done one of the following things: <ol style="list-style-type: none"> a. registered the security interest; b. taken possession of the collateral; or c. assumed control over the collateral. <p>Assuming the mortgages are perfected, priority will be governed by the order in which the 'priority time' for each mortgage occurs (s 55(4)). The priority time for a security interest is the earliest of the following times to occur in relation to the security interest (s 55(5)):</p> <ol style="list-style-type: none"> 1. the registration time for the collateral; 2. the time the secured party, or another person on behalf of the secured party, first perfects the security interest by taking possession or control of the collateral; 3. the time the security interest is temporarily perfected, or otherwise perfected, by force of the Act.
Brazil	Priority between mortgages over the same good is determined by the time of the registration at Admiralty Court.
Canada	Priority is determined in accordance with the time when each mortgage is registered, same and except when the first registered mortgage holder in time has agreed to subordinate its interests to a subsequent registered mortgage holder in time.
Croatia	The respective times of receipt of the applications for registration by Harbour Master Office determine priority of the mortgages. If the applications received at the same time, they will have same priority. (Art. 266 of Maritime Code)

Finland	The priority is based on the date of registration. Earlier registration ranks higher in the order of priority. In case the mortgages are registered on the same date, the rights of mortgagees are equal
France	In a legal publicity system such as the French one, it is the order of registration that determines the priority between maritime hypothecary creditors (Art. 247 Code des douanes).
Germany	<p>The order of the registration of the ship mortgages determines the ranking of the ship mortgages.</p> <p>German law allows, however, a subsequent change of the ranking subject to the agreement of the beneficiaries of the mortgages and consent of the respective owner and registration of such change in the register.</p>
Greece	The order of priority of maritime mortgages is determined by the day of registration. Mortgages registered on the same day have the same order of priority (and they are satisfied proportionately) (Art.1272 of Civil Code and Art.21 of the Law on Preferred Mortgages).
Ireland	The mortgage register is a prioritised register with priority being afforded according to the date and time at which the mortgage is recorded by the Registrar in the ships register and not by reference to the date of creation of the mortgage (section 52 of the 1955 Act). The Registrar will record mortgages in the order in which they are presented to him or her for registration.
Italy	<p>The date and hours of registration on the register by the Ship Registrar (as opposed to the date of issuance of hypothèque/mortgage) renders the hypothèque/mortgage opposable to any third party and determines the priority; art. 567 and art. 574 CN so state; the CN mentions also the registration on the Atto di Nazionalità (the document attesting the nationality of the vessel), but scholars consider it as secondary.</p> <p>Art. 2853 CC provides an exception for the case when two persons appear at the same time for registering hypothèque against the same person and the same immovable; in such a case the two credits get the same priority and the proceeds of sale are distributed proportionally. This principle should apply also for ship mortgages/hypothèque.</p>
Japan	The priority is determined according to the order of registration.
Malta	In accordance with the provisions of article 41 of the Merchant Shipping Act, if there are more mortgages than one registered in respect of the same vessel (or share thereof) the priority amongst the same is determined by reference to the date and time at which each mortgage is recorded in the Register of Ships on the basis of the principle prior in tempore potior in iure.
Netherlands	<p>In principle, the moment of registration. Article 3:21 DCC (identical throughout the Kingdom of the Netherlands) provides:</p> <ol style="list-style-type: none"> 1. The rank of entries pertaining to the same registered property is determined by the order in which they have been registered, unless a different order results from the law. 2. Where two entries are made at the same time and where they would lead to mutually incompatible rights of different persons to the same property, the rank shall be determined:

	<p>a. in the event that the instruments presented for registration have been executed on different days, by the order of those days;</p> <p>b. in the event that both instruments, being notarial instruments and including notarial declarations, have been executed on the same day, by the order of the times of execution of those instruments or declarations.</p>
New Zealand	Priority is determined by time of registration. Parties may also agree to vary the priority of mortgages. ¹
Nigeria	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
Norway	The time of registration, see NMC section 23.
Panama	The mortgagee who registers first its mortgage.
Spain	<p>The priority of mortgages is determined by the date (time and hour) of registration (prior tempore, potior iure). The mortgage which is registered first has priority over subsequent mortgages.</p> <p>However, the priority of registered mortgages can be negotiated between the interested parties. Therefore, the rank of a registered mortgage can be postponed in favour of a subsequent mortgage provided the mortgagees of the postponed mortgage consent to such postposition.</p>
Switzerland	<p>Priority is determined by the parties.</p> <p>It is possible to register a lower ranking priority, even if no higher ranking priority is registered (see above, question 6.1). A mortgage can therefore have a lower rank, even if no prior mortgage exists. In such cases, a higher ranking priority can be registered at a later stage.</p>
UK	The order of registration with the Registrar of Ships [Para 8 Sch.1 MSA 1995].

¹ Ship Registration Act 1992, ss 40, 42.

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?

Argentina	No
Australia	No
Brazil	The mortgage must be duly registered to be valid. However, Article 1.495 of the Brazilian Civil Code provides that when it is presented to the Official Notary a mortgage which indicates the existence of a previous unregistered one, there will be a 30 days term for the interested party to proceed registration of the unregistered one. After this term, if no registration is concluded, the new mortgage will be registered and have preference.
Canada	The Court in the exercise of its equitable jurisdiction would have the power to remedy any unfairness that might exist given the appropriate circumstances and that it would not be just to favour the registered mortgagee over an unregistered mortgagee.
Croatia	A pre-registration note (provisional registration) could be entered in the Ship's register securing priority of a un-registered mortgage pending its proper registration within a period of 15 days from the date of pre-registration note entry (which can be extended).
Finland	No
France	No. In a legal publicity system, there is no such thing as a doctrine of notice relying on private notification. It is the registration of hypothecation that gives it effect to the third parties.
Germany	No, the creation of the mortgage requires (i) an application and consent of the owner and (ii) the registration of the mortgage, i.e. without a registration no mortgage is in place. The owner may, however, in connection with the registration of a mortgage reserve its right to have another ship mortgage (specified by its amount) registered ranking prior to such mortgage which is currently registered.
Greece	Unregistered mortgages are not recognized in Greek law and consequently there is no issue of priority between registered and unregistered mortgages.
Ireland	No
Italy	No, the principles mentioned above apply.
Japan	No
Malta	There is no doctrine of notice applied under Maltese law. Indeed article 41 of the Merchant Shipping Act expressly provides that the order of priority established by reference to the date and time of registration of mortgages is to apply 'notwithstanding any express, implied or constructive notice.'
Netherlands	No. (There is no such thing as an unregistered hypothec under Dutch law.)
New Zealand	No
Nigeria	Our laws do not provide for the postponement of priority of a registered mortgagee

	with notice. Priority is determined by date of registration simpliciter.
Norway	Yes, pursuant to section 24 of the NMC an earlier right shall rank prior to a later registered right if the latter is voluntarily acquired, and the acquiring party at the time his right was registered "knew or ought to have known about the earlier right".
Panama	No
Spain	There is not a doctrine of notice as such. However, as mentioned in section 6.3 above, the priority of mortgages is negotiable between the interested parties, so that the priority of a registered first mortgage can be deferred to that of a non-registered mortgage (earlier or not to the registered mortgage), by way of agreement between the interested parties.
Switzerland	No. There is no such system. The only rights which can take priority over registered mortgages are statutory priority rights and maritime liens. Please refer to question 6.6. for these two categories.
UK	Again this is a complex area of the law. The preferred view is that registered mortgages rank in order of registration and in priority to any unregistered mortgages irrespective of notice. However it is arguable that if a mortgagee had notice of a prior floating charge at the time that the mortgage was granted and the floating charge included a negative pledge then the mortgage will be subordinated to the floating charge.

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

Argentina	The consent of the first registered mortgagee is not needed. Nevertheless the first registered mortgagee will be notified and he will be able to defend his priority (Civil and Commercial Procedural Code, arts. 575 and 576.3).
Australia	<p>Nothing in the Admiralty Act 1988 (Cth) or the Shipping Registration Act 1981 (Cth) requires a second mortgagee to obtain the consent of the first mortgagee before taking enforcement action against a ship.</p> <p>However, if the second mortgagee sought to take possession, it is likely the first mortgagee could object and enforce its superior rights. If court action were taken by a second mortgagee, the court would likely require the second mortgagee to notify the first mortgagee.</p> <p>Further, if the ship were to be subjected to judicial sale, the proceeds would be apportioned in accordance with usual priority rules, under which the first mortgagee would in the ordinary course take priority over the second.</p>
Brazil	The second mortgagee can only exercise enforcement remedies once the first mortgagee has duly enforced his credit and has been paid (overdue). This is due to the fact that the second mortgagee has, as collateral, only the remaining amount of the asset, after the payment of the first mortgage.
Canada	Yes, but only with the consent of the Court. Under s. 69(2) of the Canada Shipping Act 2001, "If there is more than one registered mortgage of the same vessel or share, a subsequent mortgagee may not, except under an order of the Federal Court or of a court of competent jurisdiction whose rules provide for in rem procedure in respect of vessels, sell the vessel or share without the agreement of every prior mortgagee.
Croatia	A second registered mortgagee can exercise enforcement remedy by judicial sale of the ship without the consent of the first registered mortgagee, but for other remedies such as taking possession of a vessel and /or out-of-court sale of a vessel he would need such consent. (Art. 226 of Maritime Code)
Finland	It is always possible to apply, but the application does not change the priorities
France	Yes. However, in a legal publicity system, a second rank maritime hypothecary creditor cannot bypass a first rank maritime hypothecary creditor. Although a second rank maritime hypothecary creditor may trigger first enforcement remedies, he will have to comply with droit de preference to the benefit of the first rank maritime hypothecary creditor that will be paid first at the end of the day.
Germany	Yes, a second ranking mortgagee can enforce its mortgage without the consent of the first ranking mortgagee. However, the first ranking mortgage will remain in place and will be taken over by the acquirer of the vessel.
Greece	A second registered mortgagee may exercise enforcement rights without the consent of the first registered mortgagee. For this reason it is advisable for a mortgagee to include in the mortgage (and register with the register) a term prohibiting the granting of a further mortgage without his consent and when granting his consent to enter a co-ordination agreement with the second mortgagee about the conditions under which the second mortgagee may exercise enforcement rights and/or ask the second mortgagee to include a term to the effect that enforcement rights cannot be exercised without the consent of the first mortgagee.

Ireland	Yes but the first registered mortgagee will still rank in priority, in the event of a judicial sale and distribution of sale proceeds.
Italy	Yes, however the second hypothèque is postponed to the first hypothèque.
Japan	Yes
Malta	In principle a second registered mortgagee may exercise enforcement remedies without the consent of the first (or prior) registered mortgagees. However this is subject to any contractual undertakings (such as intra-creditor agreements) that may be in place. Moreover article 42(1)(b) of the Merchant Shipping Act recognizes that a subsequent mortgagee may not, except under the order of a court of competent jurisdiction, sell the mortgaged vessel (or any share thereof) 'without the concurrence of every prior mortgagee.'
Netherlands	Yes and no. A hypothecary creditor wishing to exercise enforcement remedies will have to inform the hypothecary debtor, the debtor and all others whose right or attachment will be lost by the intended judicial sale. A hypothecary creditor with higher ranking may then 'take over' the enforcement procedure from the lower ranking hypothecary creditor, provided the debtor is (also) in default under the higher ranking hypothec (Article 544 Dutch Code of Civil Procedure (DCCP) - identical throughout the Kingdom of the Netherlands).
New Zealand	Only if the subsequent mortgagee secures an order of the High Court. ²
Nigeria	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
Norway	Yes, but a forced sale of the vessel can only be completed upon request by the second mortgagee without the first mortgagee's consent if the claim of the first mortgagee is fully covered by the sales price, see section 11-20 cf. 11-14 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven.)
Panama	Yes
Spain	Yes. A second mortgage can be enforced before a first mortgage and without the consent of the mortgagees of the first mortgage. However, the enforcement of the second mortgage does not affect the validity of the first mortgage, which will still be in place over the vessel after the enforcement of the second mortgage.
Switzerland	Yes
UK	Yes – in theory. However in practice a mortgagee taking a second mortgage will require the prior consent of the first mortgagee because the first mortgage documents will stipulate this and as a condition of giving such consent the first mortgagee will require the second mortgagee to enter into a subordination agreement in which it will undertake (inter alia) not to enforce its mortgage without the first mortgagee's consent. A second mortgagee cannot exercise its statutory power of sale without the consent of the first mortgagee unless it has obtained an order from the court to do so.

² Ship Registration Act 1992, s 48.

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.

Argentina	In addition to mortgages, there are other kinds of securities that must be registered with the National Register of Ships, such as embargos (Act 19.170, art. 7.e), leasing agreements (Civil and Commercial Code, art. 1234) and trusts (Civil and Commercial Code, art. 1669).
Australia	<p>The Personal Property Securities Act 2009 (Cth) applies to 'security interests'. A security interest is defined to mean 'an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation' (s 12). This will cover most consensual maritime security interests.</p> <p>However, the Act does not apply to 'a lien, charge, or any other interest in personal property, that is created, arises or is provided for by operation of the general law' (s 8(1)). As such, the Act does not allow the registration of non-consensual maritime liens. Other excluded interests are listed in s 8.</p>
Brazil	<p>Yes, another category of security for vessels in Brazil would be the chattel mortgage (fiduciary alienation). The chattel mortgage is the transfer made by the debtor to the creditor's property and indirect possession of a good non-fungible or immovable property, as a guarantee of their debt, subordinated to a condition of payment of the debt – the fiduciary alienation ends when it is verified the implement of the condition.</p> <p>Such maritime lien can be registered before the Admiralty Court and must be agreed between the parties (registered before the Maritime Notary and the Admiralty Court).</p>
Canada	There are provincial registries for personal property security interests that may have been registered under provincial law. There is no federal registry whereby a maritime lien holder can give notice of its maritime lien. As per our answer to 4.2, a search of court registries, eg Federal Court and British Columbia Supreme Court, which purport to exercise "in rem" jurisdiction is advisable. There are no federal or provincial registries for non-consensual maritime liens such as maritime death or personal injury claims, or collision claims. As a matter of constitutional law, it is uncertain whether a storer's or repairer's lien granted under provincial law is applicable to registered vessels, at least where the provincial law gives remedies or proprietary rights to the lien claimant which are inconsistent with Canadian Maritime Law: <i>Finning Ltd. v. F.B.D.B.</i> , 1989 CanLii 2678 (BC SC).
Croatia	Croatia law allows registration of liens and securities other than mortgages.
Finland	No
France	There is no system of registration of privileges maritimes (so called liens) that are created by statute to the benefit of specified creditors. It must also be underlined that under French Law, liens may not be created under contract.
Germany	No, under German law, there are no public or private registers for the registration of securities other than the land register for the registration of land charges and mortgages over real estate and registers for aircrafts and vessels (for registration of aircraft / ship mortgages).
Greece	Maritime liens need not be registered. (They arise automatically). However, an arrest of vessel is registered with the register.

Ireland	No
Italy	<p>No, other securities, liens or maritime claims cannot be registered.</p> <p>The fundamental principle governing debtors' liability under Italian law is provided by art. 2740 CC, states that all the debtor's property, present or future, is disposable to meet liability for non-performance of obligations; presently Art. 2447 bis CC provides a sort of security in connection to the goods destined to a specific business; in fact only the creditors of that specific business can attach said goods.</p>
Japan	No. It must be noted, however, that when a title transfer is used for the purpose of secured transaction (transfer by way of security), the transferred ownership can be registered.
Malta	The following security interests may be registered in the register of a vessel under Maltese law: (i) any of the special privileges specified in article 50 of the Merchant Shipping Act (see article 37B(2)I of the Merchant Shipping Act); (ii) the privilege granted to the seller for the price of the sale of a vessel under the provisions of article 2009(d) of the Civil Code (see article 52 of the Merchant Shipping Act); (iii) a special privilege or charge over any part, appurtenance or accessory of a vessel that may attach to the vessel by virtue of any law (see article 40(1)(a) and (2) of the Merchant Shipping Act); (iv) the reservation of ownership rights by a seller of any part, appurtenance or accessory sold to the shipowner under a contract of sale, hire purchase or any similar contract (see article 40(1)(b) and (3) of the Merchant Shipping Act); and (v) a general hypothec attaching to all the assets of the owner of the vessel (see article 37B(2)(b) of the Merchant Shipping Act and articles 1997(2), 2011, 2012 and 2013 of the Civil Code).
Netherlands	Yes. The Dutch and Curaçao ships' registers allow the registration of hypothecs, attachments, and privileges (i.e. claims with preference/priority) which rank higher than hypothec (in short: crew claims, salvage, GA contribution from the ship, and port (safety) dues) (Article 85 Cadastre Act; Article 8:215 DCC).
New Zealand	<p>Liens, charges and security interests arise outside the register. The New Zealand Register of Ships allows for quasi-registration of security or liens other than mortgages by way of caveats on the Register.³ So long as the caveat is in force the Register may not be altered, and no other mortgage may be perfected.⁴ This does not prevent other liens from arising. The registered owner(s) of the ship will be notified when a caveat is placed on the register and it can only be removed with consent of the lodger, or on application to the High Court.⁵</p> <p>Where smaller vessels are concerned, there can be a difficult interaction between mortgages registered under the Ship Registration Act 1992, and securities registered under the Personal Property Securities Act 1999.⁶</p>
Nigeria	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

³ Ship Registration Act 1992, s 54.

⁴ Ship Registration Act 1992, s 55.

⁵ Ship Registration Act 1992, s 53.

⁶ See for example Keybank National Assoc v The ship "Blaze" [2007] 2 NZLR 271 (HC).

Norway	A consensual registration must be done by way of a mortgage. In addition purchase options may be registered. Other rights, such as liens or charter parties are not eligible for registration. A non-consensual registration is only possible if the underlying claim for such security or lien has been confirmed to exist by a court. If so, a legal mortgage (Nw. utlegg) can be registered in accordance with Chapter 7 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).
Panama	No. However, Law No.55 of 2008 as amended by Law No.27 of 2014 in its Article 277-B, provides for the owner of containers to register its bill of sale, financial lease or mortgage agreements or any other lien to be created over the same. However, this is a new concept that has not been proven yet or tested.
Spain	The concept of lien may not have an equivalent under Spanish law. As a general rule, the only security over a vessel which has access to the Title Registry is a ship mortgage. However, according to Law 28/1998 of 13 July 1998 on the hire-purchase of movable assets, the reservation of title can be registered in the terms therein established, and some scholars consider that this reservation of title can be treated as some kind of security (see section 15 below).
Switzerland	<p>Statutory Mortgages: the claim of a seller, claims for repair works and claims of heirs for their share of a ship may be secured by a mortgage. Such mortgage must be registered.</p> <p>Statutory privileges: The Swiss Code on Maritime Navigation refers directly to the Brussels Convention of 1926. The privileges mentioned in Art. 1-13 of the 1926 Convention are considered as statutory mortgages which come into effect without being registered.</p>
UK	No

Question 7

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?

Argentina	The consul of the vessel's flag state must be informed that the judicial sale has been ordered (Navigation Act, art. 593).
Australia	No
Brazil	<p>Yes. As explained previously in item 2.3, this has long been a controversial issue in Brazil. It might be considered that a mortgage will not be valid in Brazil unless it is in accordance with all Brazilian requirements, such as the registry before the Admiralty Court, not viable for foreign vessels. Thus, one may claim that it would not be possible for the foreign mortgage to be recognized in Brazil. However, it might be sustained that provided the mortgage is in accordance with its corresponding foreign law, Brazil should also admit its validity. But this is a line of interpretation and this issue is still controversial.</p> <p>Another argument commonly used is that since the Admiralty Court is not competent, such registry shall take place before the Registry of Deeds and Documents, in order to give publicity, validity and enforceability of the maritime lien over third parties.</p> <p>Furthermore, other issues, such as the application of the Brussels Convention and the Bustamante Code are also discussed under this matter, since they would in theory recognize the validity and enforceability of foreign maritime mortgages in Brazil. However, the Court of Appeals of São Paulo has recently rendered a decision rejecting the validity of foreign maritime mortgages in Brazil.</p> <p>Additionally, the enforcement of a foreign mortgage may only take place if the Brazilian courts are competent, as per Article 21 of the new Brazilian Civil Procedure Code:</p> <p>"Art. 21. Its for the Brazilian judicial authority to prosecute and judge the actions that:</p> <p>I - the defendant, whatever his nationality, is domiciled in Brazil;</p> <p>II - the obligation is to be performed in Brazil;</p> <p>III - the fact which gave rise to the claim results from a fact occurred or an act performed in Brazil.</p> <p>Sole Paragraph. For the purpose of item I, A company is considered domiciled in Brazil, when that</p> <p>company has an agency, branch or subsidiary located here".</p>
Canada	No
Croatia	No
Finland	No

France	French law makes no distinction, as regards enforcement, between the possibility to enforce a maritime hypothecation registered under French law and a maritime hypothecation or mortgage registered under a foreign law. Article 2147 (newly revised) Civil Code (that requires hypothecation contracts over properties located in France to be made in France) is not applicable to maritime hypothecation.
Germany	Yes, there are some minor distinctions pursuant to sec. 171 of the German Act on Enforced Auction and Civil Receivership (Zwangsversteigerungsgesetz - ZVG), e.g. for enforcing any foreign mortgage, the debtor must be in the possession of the ship as owner (Eigenbesitz), there is no requirement for a minimum protective bid and the maximum bid is to be paid in cash in the full amount.
Greece	<p>(a) Under Greek law a mortgage registered on a Greek flag vessel is established by a notarial deed, which is a public authentic document and it is immediately enforceable in Greece for the purpose of seizure of a vessel and its sale in public auction without the need to obtain a judgment.</p> <p>(b) Any authentic document (including a mortgage) which is enforceable in a Member State of European Union, where this State is its state of origin may be enforced in Greece pursuant to the provisions of the Regulation (EU) 1215/2012 on jurisdiction and enforcement (Article 58) without any declaration of enforceability being required.</p> <p>(c) Any mortgage which originates in a State outside EU and it is enforceable in its state of origin, it may be enforced in Greece after it has been declared enforceable by a Greek Court decision following review of its enforceability in the country of origin and that it is not contrary to the Greek public policy (Article 905 of the Greek Code of Civil Procedure – GCCP).</p> <p>(d) Because a mortgage is a right in rem it is governed (pursuant to the Greek private international law – Article 9 of the Greek Code of Private Maritime Law – GCPML) by the law of the flag of the Vessel (as such understood the law where the vessel is registered in respect of its ownership), as state of origin of a maritime mortgage it should be understood in this context the state where the vessel is registered even if the mortgage has been transferred from an earlier registry (cf Art. 203 GCPML).</p>
Ireland	A vessel may be arrested in this jurisdiction to enforce a mortgage registered on a vessel outside of the jurisdiction. An automatic right of sale exists however for registered mortgagees under section 54 of the 1955 Act.
Italy	Yes. Italian jurisdiction recognizes only the creation of a civil law hypothèque, which is regulated by the CN and the CC. In particular, under Article 2808 CC the civil law hypothèque, which can be granted only voluntarily by the debtor, differs from the common law mortgage, particularly that it confers on the secured creditor no immediate right to possession of the property, but only a right against the proceeds of sale of the property after enforcement of the right in judicial proceedings. With regard to the difference in procedure if the vessel to be sold by way of judicial sale is a foreign vessel for instance, reference is only made in Article 653 CN, pursuant to which the request for the sale must be notified to the Consul of the State the flag of which the vessel is flying.
Japan	No
Malta	Article 49 of the Merchant Shipping Act provides that a 'foreign mortgage' is recognized as a mortgage 'with the status and all the rights and powers specified' therein if: (a) such mortgage is recorded in the registry of ships of the country under whose laws the ship is documented; (b) such registry is a public registry; (c) such

	<p>mortgage appears upon a search of the registry; and (d) such mortgage is granted a preferential and generally equivalent status as a mortgage under the Merchant Shipping Act under the laws of the country where it is registered.</p> <p>It is further noted that the civil courts of Malta have jurisdiction in rem against vessels for any claim in respect of a mortgage, hypothec or charge thereon or on any share therein, irrespective of the nationality of the vessel and, or of the mortgage (see article 742B(c) of the Code of Organization and Civil Procedure). The same principle would be applied if a vessel is otherwise arrested in Malta as a result of an existing mortgage in the context of in personam proceedings brought against the owner of the vessel.</p>
Netherlands	<p>As enforcement of hypothecs and mortgages usually takes place on the basis of a judgment or a (notarial) instrument with an enforceable character (executoriale titel), the main question in practice is whether the foreign judgment or (notarial) instrument is enforceable as such in the Netherlands, or whether some extra steps need to be taken to either have the foreign judgment or (notarial) instrument recognized in some way (exequatur) or whether a new fresh judgment or (notarial) instrument needs to be created in the Netherlands.</p> <p>Some international instruments provide for the immediate enforceability of foreign judgments or (notarial) instruments (e.g. Article 40 of the Statuut voor het Koninkrijk der Nederlanden (Charter for the Kingdom of the Netherlands) and provisions of EU Regulation 1215/2012).</p> <p>Other international instruments may provide for some sort of leave for enforcement (exequatur) to be obtained (e.g. the Brussels (1968) Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters, the Lugano (2007) Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, and the New York (1958) Convention on the Recognition and Enforcement of Foreign Arbitral Awards). The outcome may differ between the different jurisdictions in the Kingdom, because these instruments may not apply in each jurisdiction.</p> <p>The (foreign) mortgagee may also obtain a new enforceable instrument from a Dutch civil law notary containing an acknowledgement of debt by the mortgagor (notarial instrument of indebtedness). If the hypothecary debtor/mortgagor is not willing to co-operate, however, this notarial instrument can only be obtained on the basis of a power of attorney given by the hypothecary debtor/mortgagor to the mortgagee (in the mortgage deed or loan agreement) to have such an instrument drawn up, or by obtaining a provisional judgment to the same effect.</p>
New Zealand	No
Nigeria	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.
Norway	In principle no, but if the vessel is a foreign-flagged vessel the Norwegian court and execution officer must involve the registrar of the flag state in the process. This may cause extra procedural steps and delays.
Panama	No

Spain	<p>Spanish jurisdiction makes no important distinctions between the enforcement of ship mortgages registered under the flag of Spanish jurisdiction and those registered in any other foreign jurisdiction; however, the MNA establishes certain special features which concerns to the mortgages on foreign ships.</p> <p>Therefore, the action to enforce a ship mortgage registered under the flag of Spanish jurisdiction or the one registered in any foreign jurisdiction, as well as the rest of provisions related to the procedure to be followed and competence to hear such, shall be subject to the terms set forth in Chapter V of Title IV of Book Three of the 2000 Spanish Civil Procedure Act, notwithstanding the special features established in the MNA.</p> <p>With respect to the recognition of mortgages on foreign ships, Art. 143 MNA states that recognition and enforcement by the Spanish Courts of the mortgages and in rem encumbrances constituted on foreign ships shall be subject to the fulfilment of the following requisites:</p> <ul style="list-style-type: none"> a) For them to have been constituted and registered on a public register pursuant to the laws of the State in which the ship has been registered; b) For such registration, pursuant to the laws of the State of registration of the ship, to be freely available for consultation by the public and it being possible to apply for and obtain statements and copies of the entries or documents recording such from the registry; c) For the registration or some of the documents stated in Section b) to specify at least the name and address of the person in favour of whom the mortgage or encumbrance has been constituted, or the fact that the guarantee has been constituted to the bearer, the maximum amount guaranteed, if the laws of the State of registration to established that requisite, or whether that amount were to be specified in the document of establishment of the mortgage or encumbrance, and the date and other circumstances that, pursuant to the laws of the State of registration, determine their specific rank with regard to other registered mortgages and encumbrances. <p>On the hand, it must be taken into account that in both cases, enforcement of mortgages registered under the flag of your jurisdiction and/or enforcement of any other foreign mortgages, the following requirements must be also followed:</p> <ul style="list-style-type: none"> (i) That in the document constituting the mortgage the price which the parties evaluate the mortgaged ship at, so that this might serve as a rate in the auction, which may not be in any case lower than the 75% of the appraisal value. (ii) That, in the same document, there is an address which sets out the debtor for the purposes o summons and notification. An email address it may also be fixed.
Switzerland	<p>According to the Swiss Supreme Court Swiss authorities will be competent for enforcement as soon as a ship is within the Swiss territory, irrespective of the flag it flies (of course this will only apply to yachts at the best).</p>
UK	<p>No</p>

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

Argentina	Yes, it is necessary.
Australia	Subject to the terms of the mortgage, the mortgagee may ordinarily take possession and sell the property to realise the security. If there are disputes between the mortgagor and mortgagee, court proceedings may be required.
Brazil	In Brazil a mortgage is considered an extrajudicial title and, therefore, the creditor would be able to file an enforcement lawsuit, requesting an immediate payment order, under the penalty of attachment and sale of the goods in case the debtor does not pay.
Canada	No, but it is highly recommendable; the mortgagee's statutory power of sale does not depend on judgment being obtained - subject to deed of Covenants' impact on that right.
Croatia	Mortgage can be enforced directly without obtaining a judgment if Mortgage Agreement contains consent of a mortgagor that in event of default listed in loan agreement or other security document, the mortgagee may directly enforce remedies over the vessel.
Finland	Yes
France	So as to be able to enforce its rights, the maritime hypothecary creditor shall have an enforcement title, prior to the delivery of summons to pay. The usual option for the creditor is a Court decision on the merits of its claim (Navire Biladi). But it could well be any other enforcement title under the laws of France, e. g. an arbitral award or a mediation settlement thereafter controlled by the Court. Another possibility for the creditor could be to get a European Enforcement Order under Regulation EC 805/2004. This is a certificate which enables judgments, court settlements and authentic instruments on uncontested claims to be recognised and enforced automatically in another Member State, without any intermediate proceedings.
Germany	The legal requirement is an enforceable title against the debtor. This can be i.a. a judgment (either from a German court or, if issued by a foreign court, (declared) enforceable in Germany) or a notarized submission to immediate enforcement.
Greece	<p>(a) As long as the mortgage is incorporated to an enforceable title (as it is the notarial deed by which a Greek mortgage is established). Then no judgment is required for the enforcement of the mortgage. The notarial deed of the mortgage is given to a Court bailiff who may proceed to the seizure of the Vessel and the appointment of a notary public who proceeds to the sale of the Vessel in public auction gives the title of ownership (a summary of the deed of auction, which is equivalent to the Admiralty Marshall's Bill of Sale) to the buyer (highest bidder) and distributes the proceeds of the auction to the creditors which have registered their claims.</p> <p>(b) No court involvement is required unless either the defendant (owner of the vessel) or any other person having a legitimate interest challenges the claim (unless it is a judgment debt with res judicata), the title (eg its enforceability) or the compliance with the proper procedure. Such a challenge does not result in automatic stay of the enforcement/auction procedure, unless following a separate petition the Court finds on a prima facie basis that the grounds of objections have chances of success and the auction will cause the petitioner damage which is difficult to be otherwise repaired in</p>

	<p>which case it grants a stay.</p> <p>(c) The same procedure applies for European maritime mortgages, which are enforceable in their states of origin and to mortgages originating in states outside EU provided they have been declared enforceable in Greece.</p> <p>(d) If any foreign mortgage is not enforceable then an enforceable judgment (whether Greek or foreign) is required or the issue of a Court Payment Order (which is an enforceable title, which may be issued in a matter of days by the Piraeus Court if the claim can be proved exclusively by documents.</p>
Ireland	For an Irish registered mortgage there is an automatic right of sale (see above answer). For mortgages registered outside of Ireland, a mortgagee seeking to enforce its mortgage by way of a ship arrest in Ireland, must first obtain judgment prior to seeking the distribution of any monies from a sale of the vessel.
Italy	Yes. Under Article 474 of the Italian Code of Civil Procedure ("CCP"), to start the enforcement procedure it is necessary for the mortgagee to obtain an enforceable title, such being either a judgment, a decision or a deed that is enforceable pursuant to the law or a promissory note, or another credit instrument to which the law confers the same value or a notarial deed evidencing the obligation to pay a sum of money (i.e. an acknowledgment of debt) (see also under §8.2).
Japan	No. A mortgage can be enforced upon production of a notarised mortgage or a certificate of registration for a mortgage (besides a judgment affirming the existence of a mortgage). Artt.181 (1) and 189, Civil Enforcement Act.
Malta	Unless Maltese law it is not necessary for the mortgagee to obtain a judgment on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage. Indeed article 42(1) of the Merchant Shipping Act sets out the rights that the mortgagee may exercise in the event of default of any term or condition either of the registered mortgage itself or of any document or agreement referred to therein.
Netherlands	See under 7.1.
New Zealand	Subject to the terms of the mortgage, the mortgagee may ordinarily take possession and sell the property to realise the security. If there are disputes between the mortgagor and mortgagee, court proceedings may be required.
Nigeria	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
Norway	A registered mortgage is in principle sufficient evidence to have the mortgage enforced, but once the court has preliminary decided to continue with a sale of the vessel the owner of the vessel will be given a chance to protest before the court makes its final decision.
Panama	No but the Vessel must be physically arrested first so that the mortgagee [text unfinished]

Spain	<p>No, in principle a ship mortgage is already an enforceable title, which means that the mortgagee has the right to exercise directly its enforcement before the competent Court.</p> <p>In particular the mortgagee may exercise its right against the ship or ships encumbered to its satisfaction in the following cases:</p> <ul style="list-style-type: none"> a) On expiry of the term to return the capital or pay interest, in the manner that may have been agreed; b) Should the debtor be declared bankrupted; c) Should the ship mortgaged suffer deterioration that makes it definitively not seaworthy; d) When there are two or more ships assigned to fulfil a same obligation and loss or deterioration arises that makes either of them definitively not seaworthy, unless otherwise agreed; e) On fulfilment of the conditions agreed to terminate the obligation guaranteed, and all those that take the effect of making the capital or interest callable. <p>Notwithstanding, said action to enforce shall only be exercised directly in the cases mentioned in the above letters for a) and e).</p> <p>For the cases mentioned in the above letters c) and d), enforcement action may only be exercised when the real situation of the ship has been previously verified through a certification issued by the competent administration; for the case mentioned in the above letter b) it will be necessary to file evidence of Court's bankruptcy declaration.</p>
Switzerland	<p>Under Swiss law, enforcement can be initiated without a judgement. Upon a simple objection of the debtor ("Rechtsvorschlag"), however, the mortgagee will have to obtain a judgement</p> <p>in order to be able to continue the enforcement. If the debtor does not object, an enforcement can therefore be carried out without obtaining a judgement.</p>
UK	No

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

Argentina	<p>If the claim were contested, it would take no less than two/three years to obtain a judgment. Mortgages' enforcement is not frequent in our country, so this is a mere estimation.</p> <p>Theoretically, it is possible to obtain a decision ordering the judicial sale of the vessel without previous judgment, arguing the costs of maintaining and the consequences of the immobilization of the vessel (Civil and Commercial Procedural Code, art. 205). Nevertheless, in some way this is a discretionary decision of the Courts.</p>
Australia	<p>In any arrest, considering the expense to both sides of holding and maintaining the vessel and the inconvenience to the crew, the Court gives this a high priority and would determine a matter very quickly. For example, a few years ago, with a contested arrest the Full Court with the Chief Justice presiding sat for a hearing on a Saturday and delivered an ex tempore judgment which had the effect of releasing a ship under arrest.</p>
Brazil	<p>If the claim is challenged, the estimate time for a decision is two years. However, in view of the costs and risks of having a vessel under arrest, it might be possible to anticipate the sale of the vessel.</p>
Canada	<p>Two years to have the case set down for trial; then possibly trial will take place in six to eight month time. Unless there are exceptional circumstances, the court will not expedite the case; rather, it might order the owner to continue supporting the costs of maintaining the ship as a condition for its contestation. If the ship is a deteriorating asset, or there are other exceptional circumstances, the Court could be persuaded to order it sold pendente lite and hold the sale proceeds in trust pending resolution of the case.</p>
Croatia	<p>It depends of the merits of the case and evidence admitted to hearing. It is up to the judge to determine schedule of trial. He might in his own discretion take into consideration costs of maintaining the vessel against quality preparation of the trial including submitting the evidence.</p>
Finland	<p>LEFT BLANK</p>
France	<p>N/A</p>
Germany	<p>To obtain a final and binding judgment in Germany could take several years. Whether or not a court will expedite the proceedings is at the court's own discretion. The claimant has no specific right to apply for an expedition.</p>
Greece	<p>(a) As noted above a Court Payment Order (CPO) may be issued in a matter of days. Even if it is challenged the challenge does not result in the automatic stay of the CPO unless the stay is separately requested and granted by the Court.</p> <p>(b) In case that a CPO cannot be issued (eg because the claim cannot be proved exclusively by documents) formal proceedings for a first instance judgment require (under the amended GCCP in effect as of 1.1.2016) about 9-12 months. If the judgment is declared by the Court immediately enforceable it may be used as a title for the sale of the Vessel in auction. If it is not, then about another year is required for an appeal judgment, which is automatically enforceable.</p> <p>(c) In some cases, like claims of crew wages, claims (or a part of them) may be</p>

	awarded in summary proceedings (injunctive relief) and such judgment may be used as a title for the auction of the Vessel. It takes 2-3 months to obtain such a summary judgment.
Ireland	The proceedings may be expedited to obtain a judgement. The proceedings will be heard by the Admiralty Court and are case managed to a strict short timetable
Italy	If the claim is contested, it will likely take approximately 3 to 5 years to obtain a first instance judgment. It is possible that a second instance and appeal before the court of cassation will follow, and it will take other 5 years for each instance, for a total of 15 years of trial approximately. During this time the local court will do have regard to the ongoing costs of maintaining the vessel and will be inclined to expedite the proceedings.
Japan	N/A
Malta	See reply to question 7.2 above.
Netherlands	The time it will take to obtain a judgment for an exequatur depends on the particular route chosen, the circumstances of the case and the tenacity of the defendant contesting the claim. But the mortgagee may in the meantime obtain a provisional judgment allowing the sale of the vessel (in separate proceedings, but having a similar effect as a sale 'pendente lite' in so far as the proceedings on the merits are concerned). The (foreign) mortgagee may also obtain a new enforceable instrument from a Dutch civil law notary containing an acknowledgement of debt by the mortgagor (notarial instrument of indebtedness). (See under 7.1.)
New Zealand	Similar considerations apply as in Australia, but assuming an application for summary judgment is made on the grounds the defendant has no defence to the cause of action, the usual High Court rules apply requiring appropriate notice to the defendant. Property under arrest can be sold before judgment where the costs of maintaining the property under arrest are significant, and will, by reason of the high priority accorded to such fees and expenses, significantly reduce the amount available to other claimants. See also answers to 8.2 and 8.3 below.
Nigeria	The court is not obligated to expedite proceedings and the duration of the case may vary depending on its peculiar facts and circumstances.
Norway	The judicial sales process consists of two stages. At the first stage, the claimant files a petition for judicial sale of the vessel. The court will then give the owner an opportunity to present its case where after the court will grant or reject the petition for judicial sale. The second stage consists of the sales process, which will either be by auction or by ordinary (judicial) sale through a court-appointed administrator (normally a shipbroker). The claimant decides whether the final offer is to be affirmed by the court, upon which the court will affirm or refuse the bid. Finally, the court will distribute the sales proceeds. The time needed to get the court's approval for a sale of the vessel will depend on the court's workload, appeal of court decisions and the vessel's market. A fair general assessment suggests that the first stage should be completed between one and three months and the second stage between two and six months after the petition for sale was made.
Panama	Judgment can be rendered in less than 30 days' term. If it is contested, depending on the complexity, it can take more than 6 months, but if the vessel arrested is subject to deterioration, upon petition the Judge will order the Marshall to auction the vessel while proceedings are undergoing.

Spain	N/A
Switzerland	<p>Duration of court proceedings cannot be predicted. The estimations below are therefore made with all reservations (however, running costs are of no concern to the court):</p> <p>If the mortgagee is in possession of an acknowledgement of debt which meets certain criteria, then a judgement of the trial court (first instance) can usually be expected within 6-9 months.</p> <p>If mortgagee is not in possession of such an acknowledgement, then the proceedings in the first instance may take 1-3 years (or in exceptional cases, e.g. when complex surveys or expert witness reports are necessary, even more), depending on the development of the case and the conduct of defendant.</p>
UK	<p>Once the ship is arrested and it is obvious that the owner cannot provide security to obtain its release but there are issues in dispute between the parties, the Admiralty Court may order a sale pendente lite so that the ship is sold and the proceeds of sale are paid into court: the parties may then proceed to a trial if there are still substantive issues in dispute.</p>

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

Argentina	Yes. Forum arresti is a concept admitted by art. 612 of the Argentine Navigation Act.
Australia	Australia is not a party to the 1952 Convention, and there is no exact equivalent of Art 7 in the Admiralty Act 1988. Note that s 29 gives power to the court to stay in rem proceedings (holding the ship as security) on the ground that the claim on the merits should be determined by arbitration (whether in Australia or elsewhere) or by a court of a foreign country. Given the general nature of an action in rem, therefore, an action on the merits could follow on from an action in rem, but subject to the application of ordinary principles of private international law (eg the application of a foreign jurisdiction clause). ¹
Brazil	No, because Brazil has not ratified any Arrest Conventions.
Canada	Yes under the Federal Courts Act, supra, s.22 (2)(c), reproduced in the Answer to 1.2
Croatia	Croatian court shall have jurisdiction to decide upon the merits of the case if the arrest is made in Croatia. (Art. 988 Maritime Code)
Finland	<i>LEFT BLANK</i>
France	According to art. 7 of the 1952 Arrest Convention, the French Courts accept jurisdiction over the merits of the claim that has triggered the arrest, unless a jurisdiction clause has elected another forum. As far as domestic case law is concerned, there are more nuances. In principle, such jurisdiction shall not be established (Navire Ganvie) as there is no forum arresti. However, jurisdiction could be established if the action is an action on validity.
Germany	Yes, German courts would accept jurisdiction under article 7. However this rule is not necessary as the German procedural law already provides for this scenario in sec. 23 ZPO.
Greece	(a) Greek courts do accept jurisdiction under Article 7 of the 1952 Brussels "International Convention Relating to the Arrest of sea-going ships". (b) For vessels which do not fall within the scope of application of the 1952 Arrest Convention, a vessel may be seized for the purposes of enforcement (sale in public auction) if the Vessel lies within the territorial jurisdiction of Greece (i.e. mainly a Greek port or within Greek territorial waters except in the case of innocent passage (see Article 28 of UNCLOS).
Ireland	Yes
Italy	The court in the Italian jurisdiction will accept jurisdiction for the mortgage claim under article 7 1952 Convention if the vessel has the nationality of one of the Convention States parties.
Japan	Under the Japanese law, arrest of a vessel as such does not give rise to international jurisdiction for merits of the mortgage claim. It being said, the Japanese court accepts jurisdiction on a case over a claim secured by a vessel when the vessel is within the territory of Japan. (Art.3-3, Civil Procedure Code).

¹ See eg Bank of China Limited v The Ship " Hai Shi " (No 2) [2013] FCA 225. See also the answer to 14.3, below.

Malta	The provisions of article 742B of the Code of Organization and Civil Procedure are largely modelled on the provisions of the 1952 and 1999 Arrest Conventions.
Netherlands	Although the Netherlands made the reservation under Article 10 Arrest Convention 1952 with regard to maritime claim under Article 1 sub (q) (mortgage/hypothecation), this does not mean that the Arrest Convention 1952 as such does not apply as the reservation is limited to the non-application of Article 3 sub (1). So it would follow that a Dutch court should accept jurisdiction for a mortgage claim under Article 7 Arrest Convention 1952, regardless of whether the ship is flying the flag of a Contracting State (compare District Court Rotterdam, 14 March 2012, S&S 2012/86 'Kaliakra' & 'UK 143 Andries de Vries' and Court of Appeal The Hague, 19 November 2012, S&S 2014/20 'Hero').
New Zealand	While not party to the Convention, the New Zealand courts will accept jurisdiction on the merits of a mortgage claim as the <i>lexi fori</i> following the commencement of proceedings in rem, subject to private international law considerations (such as the existence of a choice of law clause in the loan agreement).
Nigeria	The Federal High Court will accept such jurisdiction. Section 1(a) of the Admiralty Jurisdiction Act, 1991
Norway	As long as the vessel is in Norway, the court will accept jurisdiction for the mortgage claim. However, a foreign flagged vessel in innocent passage cannot be arrested in Norway unless the claim giving basis for the arrest arose while the vessel was in Norwegian waters (which will never be the case for a mortgage).
Panama	Yes
Spain	As mentioned, Spain is not party to the 1952 Arrest Convention, but party to the 1999 Arrest Convention. Therefore, Spanish courts may accept jurisdiction for the mortgage enforcement under Art. 7 Arrest99.
Switzerland	Yes, if the conditions of Art. 7 of the 1952 Arrest Convention are met, then a Swiss court will consider itself competent.
UK	Section 23 of the Senior Courts Act 1981 provides that the court shall not have jurisdiction over claims which are to be determined under the Rhine Navigation Convention 17 October 1868.

Question 8

8 JUDICIAL DECISIONS AND APPEALS

French note: Presently, the restatement of the Code des transports is being carried out as regards decrees. It therefore will be made reference to older decrees that shall be soon consolidated

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?

Argentina	Under Argentine law the judicial sale of a vessel extinguishes all maritime liens and claims (Navigation Act, art. 484.b). Any Argentine federal court in civil and commercial matters will have authority to sell vessels free of maritime liens and prior claims.
Australia	<p>Jurisdiction in respect of actions in rem is conferred by s 10 of the Admiralty Act 1988 (Cth) on:</p> <ol style="list-style-type: none"> 1. the Federal Court of Australia; 2. each of the State Supreme Courts; and 3. each of the Territory Supreme Courts. <p>Those Courts may, by virtue of r 69 of the Admiralty Rules 1988 (Cth), sell unencumbered title to vessels.</p>
Brazil	Yes, all courts in Brazilian jurisdictions have authority to sell vessels free of maritime liens and prior claims.
Canada	No, only the Admiralty Court (the "Federal Court") has the power to sell vessels "free and clear of all encumbrances"; the other courts can only sell whatever rights the owner has in the vessel and pay, pro rata, known claimants. The British Columbia Supreme Court purports to exercise admiralty jurisdiction as part of its historical reception of law. Because the provincial superior courts of the provinces exercise plenary jurisdiction over federal as well as provincial law except where jurisdiction is statutorily excluded, a provincial superior court administering Canadian maritime law may grant a vesting order selling a vessel under judicial sale free and clear of all encumbrances. This has been done in certain instances by provincial superior courts exercising insolvency jurisdiction. There is legal uncertainty whether such orders have the same effect as a judicial sale order by the Federal Court unless the provincial superior court follows similar procedural steps as in a Federal Court judicial sale with an advertisement for sale, public notice to creditors of the ship and provision a claims bar date. In other courts an execution judgment purchaser only obtains the title the judgment debtor had in the ship and no more. A sale under execution is subject to any liens, mortgages, encumbrances or claims against the ship.
Croatia	Only four commercial courts specialized in maritime matters have such authority – the courts are in the cities of Rijeka; Split; Osijek and Zagreb.
Finland	In Finland the execution officers have authority to sell vessels
France	For the arrest of vessels, there is no such thing as specialized admiralty courts. Traditionally, according to art. 36 of 1967 Decree (Dicret n°67-967 du 27 octobre 1967 relatif au statut des navires et autres bâtiments de mer), such jurisdiction belonged to the President of the Tribunal de grande instance vested with territorial

	jurisdiction, that is, practically, the Tribunal of the port.
Germany	There are no special courts, such as admiralty courts, in Germany. Pursuant to sec. 163 ZVG the competent court is the local court where the ship is situated.
Greece	All courts in Greece have authority to sell vessels free of maritime liens and prior claims. In practice this is the court within the territorial jurisdiction of which the vessel was seized and was sold in public auction. More accurately as noted above under the Greek enforcement procedure it is not the Court which grants the title to the buyer (free of liens and other encumbrances) but the notary public in charge of the auction.
Ireland	Proceedings for arresting a vessel in Ireland are generally brought against the ship i.e. in rem proceedings. To arrest a vessel, a summons, a supporting Affidavit, a notice or praecipe for a warrant and a warrant of arrest are required. An in rem Admiralty summons is issued by the High Court to find jurisdiction prior to the application for an arrest. The application to arrest a vessel within Irish waters is made ex parte in person before the Master or the Admiralty Judge in the High Court in Dublin. The High Court, sitting as the Admiralty Division of the High Court, is the only Court which may order the arrest, and/or sale of vessels such as to sell a vessel free of liens or prior claims.
Italy	Article 643 CN provides that an enforcement shall be commenced before the court of the district where the relevant vessel lies. There are no special courts in Italy such as the admiralty courts.
Japan	Yes, they do. There is no specialised admiralty court in Japan.
Malta	We do not have specialised admiralty courts in Malta. Our Civil Courts are the only competent courts or tribunals vested with the authority to sell a vessel free of maritime liens and prior claims. Under Maltese law, a creditor may apply to sell a vessel judicially either by means of a sale by court auction or alternatively, by means of a court approved private sale. In both instances, the vessel is transferred to the new purchaser free and unencumbered.
Netherlands	<p>Registered ships are 'judicially' sold in the jurisdiction of the Netherlands in Europe by a civil law notary or, provided it is a foreign seagoing ship, by the Rotterdam District Court (Article 575 DCCP). Judicial sales of registered ships in the jurisdictions in the Dutch Caribbean always take place before a (first instance) court. Unregistered ships below a certain size will in all Dutch jurisdictions be sold by a gerechtsdeurwaarder (bailiff).</p> <p>The procedure will lead to a sale of the ship free of certain encumbrances. If the sale is initiated by a Dutch hypothecary creditor, the sale will clear the (registered) ship from (1) all hypothecs, from (2) all attachments on the ship, and (3) all other proprietary interests (e.g. usufruct) which cannot be invoked against the hypothecary creditor/seller (usually because they were created at a later date than the hypothec being enforced) (Article 3:273 DCCP).</p> <p>If the sale is initiated by any other claimant, the sale will clear the ship from (1) all claims with priority ranking, (2) all attachments and (3) all other proprietary interests (e.g. usufruct) which cannot be invoked against the seller (Article 578 DCCP).</p> <p>Article 8:375 DCC (identical throughout the Kingdom of the Netherlands) however provides:</p> <p>1. Upon transfer of ownership of a previously chartered vessel, whether or not</p>

	<p>registered, to a third person, this person succeeds to all rights and obligations of the former owner who nevertheless remains bound to the contract next to the new owner.</p> <p>2. Rights and obligations which have become exigible before the transfer of ownership are not transferred to the third person.</p> <p>Article 8:375 DCC is part of a Title of Book 8 DCC which deals with contracts of carriage and not with rights in ships. It is therefore presumed that Article 8:375 DCC will only apply when the charterparty is subject to Dutch law.</p> <p>The article provides for a limited statutory transfer/assignment of contractual (rights and) obligations under a pending charterparty to the new owner. This principle not only applies in case of a voluntary sale by the owner, but also in cases of judicial sale (R.P. Cleveringa, Zeerecht, Zwolle: W.E.J. Tjeenk Willink 1961, p. 717). So a judicial sale may free the ship of previous encumbrances, but the buyer at a judicial sale may become bound by a pending charter party. This may of course have a downward effect on the purchase price at the judicial sale.</p> <p>The hypothecary creditor may overcome this problem by including provisions in the hypothecary documentation about charter conditions (e.g. that the charter ends at an event of default under the hypothec). The registration of the hypothec and this particular provision have the effect that the hypothecary creditor will be able to have the vessel judicially sold without the burden of the transfer (by operation of law) of a pending charter to the buyer. The terms and conditions of the hypothecary instrument provide for a termination of the charterparty from the moment the hypothecary creditor has expressed his desire to initiate a judicial sale. So we are not aware of this ever having been an issue recently in a purely national case, nor in an international case, which would be complicated even further by questions of conflict of laws.</p>
New Zealand	Only the High Court, which has admiralty jurisdiction in rem under the Admiralty Act 1973. The District Court of New Zealand, which is a court of limited statutory jurisdiction has an Admiralty jurisdiction but only with regards to in personam claims and for limited monetary amounts. ¹
Nigeria	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.
Norway	We do not have admiralty courts in Norway. Forced sales are thus dealt with by the general courts. The request for a sale must be made to the court in the district where the vessel is or is expected to arrive, see section 95 of the NMC cf. section 11-3(2) of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).
Panama	The selling of vessels are private competence of our specialized maritime courts or admiralty courts.
Spain	There is not a special court, such as an admiralty court. Depending on whether the sale concerns to enforcement proceedings (e.g. compulsory enforcement, provisional enforcement or a ship mortgage enforcement) or administrative proceedings (e.g. ship abandoning), the vessel shall be sold by the competent judicial or administrative

¹ Admiralty Act 1973, s 3(1)(b).

	<p>authority.</p> <p>In case of a ship mortgage enforcement, pursuant to Art. 684 Spanish Civil Procedure Act, it shall be competent the Court of First Instance to which the parties submitted in the constitutional entitlement of the mortgage and, in the absence of this, the court of the place in which the mortgage was constituted, or of the port in which the ship mortgaged is located, or the court of the address of the defendant or of the place where the Registry in which the mortgage is registered, at the discretion of the claimant.</p> <p>With respect to the Court of First Instance, it must be pointed out that Art. 684 Spanish Civil Procedure Act forgets to mention the objective and exclusive competence of the Commercial Courts granted by Art. 86 ter of the Spanish Judiciary Act in all claims and matters related to maritime law. Therefore, even though it could be debatable, it must be understood that the mortgage enforcement (and the subsequent ship's sale) must be filed before the Commercial Courts.</p>
Switzerland	<p>The actual sale of a vessel within an enforcement procedure will not be carried out by a court, but rather by the Debt Enforcement Office (an administrative authority).</p> <p>There is no special maritime or ship enforcement office.</p>
UK	<p>Whilst the High Court has the power to order the sale of a ship in the appropriate proceedings only the Admiralty Court has the power to transfer a clean title to a buyer free of all maritime liens, mortgages and other maritime claims.</p> <p>Also a port authority which has a statutory power to sell a ship in order to recover port dues etc can sell the ship free of all mortgages and other claims and possibly free from all maritime liens. [The Blitz [1992] 2 Lloyd's Rep 441].</p>

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

Argentina	See 9.
Australia	<p>A party can apply to the Court (either before or after final judgment) for an order that the ship under arrest be valued and sold, or be sold without valuation (r 50). Such an application must be in the proper form (Form 26) which requires the following details:</p> <ol style="list-style-type: none"> 1. Name of the ship/property; 2. Name of the applicant; 3. Indication as to whether the applicant applies for the ship to be valued before sale; and 4. That the applicant undertakes to pay on demand to the Marshal an amount equal to the costs and expenses involved.
Brazil	The court shall determine the judicial sale of the vessel, which shall happen through a judicial auction. In order to do so, the Court is required to issue a notice in respect to the judicial sale, which will be put on the Courts wall and it will also be published in a major local newspaper.
Canada	In the Federal Court, the vessel must be arrested, and thus placed under the Court's "in rem" jurisdiction; a warrant of arrest cannot be issued without the issuance of a statement of claim "in rem" which asks that if the judgment debt is not paid, then that the court direct the sale of the vessel and a procedure for payment of all claims in which the court has been given notice of, pro rata, in accordance with the order of priorities. As a general practice, the court will require advertisement, even world-wide for valuable vessels depending on the circumstances, of the sale, the eventual distribution of proceeds and the delay to all creditors to file claims.
Croatia	The claimant submits to the court "proposal" for sale that, inter alia, identifies owner of the ship, amount of the claim and the document which gives grounds for judicial sale (like judgment of a court, deed of mortgage etc.) If the court finds the "proposal" justified it passes order on execution of sale.
Finland	<i>LEFT BLANK</i>
France	<p>So as to affect the sale of a vessel, 8 stages have to be followed:</p> <p>Delivery of a summons to pay to the debtor Report of seizure;</p> <p>Notification of the Report of seizure to the services of the port and to the flag State consul</p> <p>Mention of the Report of Seizure in the Register</p> <p>Issuance by Conservateur des hypotheques maritimes of a state of registrations</p> <p>Notification to registered creditors</p> <p>Auction</p>

	<p>Contestations</p> <p>Payment, and distribution of the price among creditors.</p>
Germany	Required is a title (declared) enforceable in Germany (see 7.2 above).
Greece	<p>The formalities for the auction of a vessel include (a) preparation by the Court Bailiff a deed of seizure (i.e. arrest for the purpose of enforcement/auction) describing the vessel, value, reserve price, date, time and place of auction and the name of the notary who will conduct the auction, (b) service of this deed on the defendant/debtor, on the mortgagee, on the mortgagor (if he is a third party and not the debtor), on the local Court of Peace (where the auction will take place), on the notary public (who will be in charge of the auction), on the Greek Shipping Registry where the vessel is registered (if the vessel is a Greek flag vessel), on the harbor master of the port where the vessel was seized (and if the vessel is registered with a foreign registry, the harbor master must forward the deed to the Registrar where the vessel is registered), on the Seamen's Pension Fund (in order to register any claims with the auction) and it is published at a special website where all auctions should advertised (Articles 993, 995, 1011, 1011A, 1013 of the GCCP). The service of the seizure deed should be done in strict time limits which do not exceed 10 days. For the claim no separate evidence is required because it has to be proved by the enforceable title on the basis of which the auction proceeds.</p>
Ireland	<p>Vessels that are sold by way of court sale in Ireland are sold "as is", free from encumbrances, liens and with good title. Any claims that pre-existed a judicial sale are transferred to a claim against the sale proceeds. All parties that have obtained a judgment or who have registered a caution against the vessel must be served with the application to sell a vessel. Any competing contentions in respect of priority over the funds in Court is heard subsequently in a priorities hearing prior to disbursement of the fund in Court.</p>
Italy	<p>Assuming that the relevant creditor does not hold an immediately enforceable title and assuming that Italian courts are those competent to issue a judgment on the merit of the claim, the creditor in order to promptly start the enforcement proceeding, should meet the requirements set out in Article 474 CCP which requires that the relevant claim is constituted by an indisputable, due and payable receivable and is based on an enforceable title ("titolo esecutivo") such as, inter alia, judgements or other measures which the law expressly considers as promptly enforceable or a deed executed before an Italian Notary Public provided that certain requirements are fulfilled (see also under §7.2). For instance, a ship mortgage executed before an Italian Notary Public providing for, inter alia, an acknowledgment of the underlying secured debt and bearing the enforcement formula ("formula esecutiva") is an immediately enforceable title for the purposes of Article 474 CCP. Otherwise, the relevant creditor should, upon the occurrence of an event of default, apply for and obtain an order for payment ("decreto ingiuntivo"), pursuant to Article 633 CCP, to be then declared final and binding. Upon obtaining an enforceable title as per above, the relevant creditor must serve a formal demand of payment to the debtor ("precetto"). If the debtor fails to pay all the sums specified in the demand within 24 hours of receipt thereof, the relevant creditor is entitled to request (within 30 days of the service of the demand) the attachment of the vessel ("pignoramento"). The attachment consists of a service upon the debtor and the vessel's master whereby the shipowner is ordered by the competent judge to refrain from selling and disposing of the vessel and the vessel's master is ordered to stop the vessel at the port where she is located when service is received.</p>
Japan	The judicial sale of a vessel can be made in one of the two procedures.

	<p>One is the enforcement of a mortgage or lien. To commence enforcement of a mortgage, the mortgagee needs to produce a judgment affirming the existence of a mortgage, a notarised mortgage or a certificate of registration for a mortgage (see the answer to 7.2 above). To commence enforcement of a maritime lien, an instrument to prove the existence of a lien is required. (Artt.181 & 189 of the Civil Enforcement Act.)</p> <p>The second type of procedure is the enforcement of a claim. In order to commence this procedure, a claimant is required to produce a certificate of enforceability (Vollstreckungstitel), which is one of the following:</p> <ul style="list-style-type: none"> – a final judgment; – an enforceable arbitral award; – a court decision (other than a judgment); – a court order with provisional enforcement warrant; – a notarised deed of s monetary claim with the debtor's statement of subjecting itself to immediate enforcement; – a foreign court's judgment with final enforcement decision of a Japanese court; – an arbitral award with final enforcement decision of a Japanese court; or – other instrument equivalent to a final judgment. <p>(Art.22, Civil Enforcement Act.)</p>
Malta	<p>The applicant creditor would need to file an application including a demand for such sale and attaching thereto a copy of his final and non-appealable judgments or any other executive title which it holds and which empowers it to make such a demand for a judicial sale.</p>
Netherlands	<p>The formalities to affect a sale of a vessel free of liens and prior claims are as follows:</p> <ul style="list-style-type: none"> - Obtaining a title which may be enforced in the local jurisdiction (executoriale titel) (not necessary for the enforcement of a Dutch hypothec)(see under 7.1); - Service of the executoriale titel or the notification of enforcement on the owner by a Dutch bailiff; - Effecting the executoriaal beslag (attachment in execution) by the bailiff on board of the vessel (not necessary for the enforcement of a Dutch hypothec); if a conservatoir beslag had been effected earlier this beslag will have turned into a executoriaal beslag by operation of law at the moment of obtaining the executoriale titel (without the need therefore of having a bailiff effect another (executoriaal) beslag) ; - Fixing the time and date for the judicial sale as well as the terms and advertisement requirements (for proceedings before a court a judgment may e needed); - Publication of a notice of the judicial sale by placard on board the vessel and by announcement in a newspaper;

	<p>Normally there should be 14 days between publication and the judicial sale, but with regard to foreign ships the period of time will be determined by a judge. Normally an announcement in a newspaper of the location of the vessel suffices, but with regard to foreign ships the judge will (also) order publication in one or more newspapers of the country of the flag of the ship.</p> <ul style="list-style-type: none"> - In case of a judicial sale of a (in the Netherlands in Europe: foreign) ship before the court, filing at the Court Registry 30 days (can be reduced to 14 days in the Dutch Caribbean under certain circumstances) prior to the judicial sale of (1) the conditions of sale, (2) a declaration from the bailiff or advocate that the requirements regarding publication have been fulfilled, and (3) a list of parties which have a known interest in the vessel or which have effected an attachment on the vessel, which list is to be drawn up and signed by an advocate; - In case of a judicial sale of a foreign ship before the court, filing at the Court Registry of a declaration from an advocate that the parties with the known interest in or attachment on the vessel were informed in writing of the day and hour of judicial sale. - Judicial sale by auction before the civil law notary, or court. - The price to be paid consists of the amount of the highest bid made during the auction, often increased by the costs of the sale proceedings. A statement of these costs has to be put up no later than three days prior to the judicial sale. - Upon receipt of the purchase price, the civil law notary court will deliver its adjudication report, evidencing the acquisition of the vessel by the purchaser. - Satisfaction of the purchase price will free the ship of previous encumbrances. <p>See further 8.1.</p>
New Zealand	<p>The judicial sale of a ship free of liens and prior claims is possible either before or after final judgment in an admiralty proceeding, and requires parties to file an application in a short prescribed form. The vessel may be sold immediately if it is deteriorating in value.² Evidence of claim is dealt with in the procedural steps leading up to this point. For example, if judgment is to be given by default the Court must be satisfied that the plaintiff's action is "well founded".³ Notice to other interested parties (in addition to those who have already joined the proceedings following various earlier notice/service requirements) is given by the Registrar via newspaper advertisements after the sale.⁴</p>

² High Court Rules, r 25.51. See eg *Bank of Nakhodka v The Ship "Abruka"* (1996) 10 PRNZ 326

³ High Court Rules, r 25.33.

⁴ High Court Rules, r 25.52.

Nigeria	<ul style="list-style-type: none"> • 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]
Norway	In order to be entitled to apply for a judicial sale of a vessel one must be the beneficiary of a registered mortgage or other registered lien in the vessel and one's claim must be "qualified" for enforcement under the Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) and due for payment. The claims that are qualified for enforcement under the Enforcement Act are typically, in addition to mortgages, final and binding judgements and arbitration awards. If the judgment or award orders that the vessel be sold, a judicial sale may be petitioned for directly, without the need first to obtain an enforcement lien. See also answer to question 7.3 above.
Panama	Not being able to post the required bonds in order to acquire the vessel.
Spain	<p>It must be taken into account that creditors may not be able to request directly for the sale of a vessel free of liens and prior claims, but an enforceable title against the debtor shall be necessary to apply for the enforcement of said (enforceable) title. That said, the main formality is to obtain this (true and valid) enforceable title. Once this enforceable title has been obtained, parties shall exercise an enforcement action. In case of ship mortgage, and as previously mentioned (see 7.2), in principle a ship mortgage is deemed as an enforceable title.</p> <p>Once the enforcement action has been instigated, the sale of the ship shall be followed according to the terms set forth in the Civil Procedural Act, or in the administrative regulations that may be applicable for auction of moveable assets subject to public registration in all matters not provided in the MLM93, and the Maritime Navigation Act.</p>
Switzerland	<p>Claimant may apply at the Debt Enforcement Office for the serving of a Payment Order upon the debtor.</p> <p>The debtor then usually opposes to the Payment Order ("Rechtsvorschlag"). If he does so, Claimant will have to obtain an enforceable judgement (see questions 7.2 and 7.3 above).</p> <p>Once Claimant has obtained such judgement (or if the debtor does not raise an objection), Claimant may apply for sale of the vessel. Such request may be made at</p>

	<p>the earliest one month after the date on which the Payment Order has been served upon the debtor.</p> <p>The vessel will be sold in a public auction (or by private sale, if all parties concerned agree and in some special circumstances as defined by the law). The sale can take place at the earliest one month after the request for the goods to be sold and at the latest one year after such request.</p> <p>Proceeds out of the sale of the vessel will be paid to the Debt Enforcement Office who will be in charge of distributing the proceeds.</p> <p>The distribution will be made according to the priority of the registered mortgages and privileges. Mortgages will be paid out even if they are not due and payable.</p> <p>All mortgages will then be cancelled in the ship register.</p>
UK	<p>An order for a sale pendente lite may be made at any time after the arrest but if such an order has not been made then if the owner has not filed a defence to the claim set out in the claim form the mortgagee has to apply to the court for a judgment in default and produce to the court evidence supporting the claim – e.g. loan and mortgage documents, accounts showing the amounts due, notice of default and demand for repayment etc. If the owner has filed a defence then usually the matter would proceed to trial.</p>

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

Argentina	No. The appeal must be decided before the auction of the vessel.
Australia	If the ship is deteriorating in value, the court may, at any stage of the proceeding, either with or without application, order that it be sold (r 69(5)).
Brazil	The appeal may have a suspensive effect and, therefore, the possibility of selling the vessel would be suspended until a decision is rendered by the Court of Appeals. However, usually arrest and injunction cases have only remanding effect and, therefore, it would be possible to proceed with the sale (and probably the payment of a guarantee would be requested).
Canada	The rule is that an appeal from a judgment "in rem" of the Federal Court does not suspend the Court's process; there is provision for an owner to ask either the Federal Court or the Federal Court of Appeal to suspend the judgment, with or without provision of security that the judgment will be paid.
Croatia	If the appeal against the order on execution of sale is timely, the court of appeal shall decide whether the appeal should be allowed or dismissed before proceeding with the sale.
Finland	The appeal does not stay enforcement unless provided otherwise in the law or the court orders a stay
France	According to article L5114-24 Code des transports, the sale is ordered by a judgement that defines the conditions for the auction.
Germany	Yes, the claimant will generally be allowed to enforce its claim on the basis of a judgment which is not yet final and binding, provided that it deposits a security with the competent court.
Greece	Because the auction under Greek Law proceeds in principle without involvement of the Court, there is no court order for the sale of the vessel pendente lite or pending appeal. The system works the other way around. A court order is required to stay the enforcement/auction if objections are raised by the defendant (or another party having a legitimate interest) if the grounds of objections on a prima facie basis have good chances of success and the petitioner proves (on a prima facie basis) anticipated irreparable damage as a result of the auction, if the auction is allowed to proceed.
Ireland	In certain circumstances an order for sale may be made before final judgement is made on the substantive claim, say for example if the owner agrees to the sale or the arrested vessel is at risk of deterioration. It is also open to the Owner to apply for a stay on the Order grounding an application for a judicial stay pending appeal.
Italy	If the owner presents (i) an appeal against the judgment (prior to the judgment becoming final and binding) or (ii) files an opposition against the order for payment ("decreto ingiuntivo") pursuant to Article 645 CCP within 40 days of the notification thereof, providing for, inter alia, the request to suspend the enforcement pending the appeal or, as the case may be, the opposition, the competent court cannot issue any order for sale until a judgment on the appeal or, as the case may be, the opposition has been issued.
Japan	The decision of the court to sell a vessel is appealable on very limited grounds, such as grave procedural error. (Artt.74, 121 & 189 of the Civil Enforcement Act.) If an appeal is made on one of those grounds, the court may, at its discretion, order

	suspension of the procedure with or without ordering the appellant to provide security, or order the claimant to provide security as a condition to proceed with the procedure. (Art.10 (6) of the Civil Enforcement Act.)
Malta	No, the courts will not normally proceed with the sale of the vessel unless the executing creditor has a final and non-appealable judgment. Article 266 of the Maltese Code of Organization and Civil Procedure states that generally speaking judgments which are not res judicata shall not be enforceable, unless special leave allowing for provisional enforcement is first obtained from the courts.
Netherlands	See generally under 7.3. But often the judgment from the lower court is enforceable pending appeal (uitvoerbaar bij voorraad), so the appeal would not bar the claimant from moving towards a judicial sale of the ship.
New Zealand	There are no specific rules on sale of vessels in this situation, the position in 8.2 above would apply.
Nigeria	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.
Norway	See response to question 9.3 regarding the possibility of a sale of the vessel "pendente lite".
Panama	No, unless as mentioned before, the case has been prolonged and the vessel is in danger of serious damage or mutual consent.
Spain	<p>Assuming that the judgment is not yet final (therefore is subject to appeal) and the sale of the vessel is being conducted as a provisional enforcement measure, said provisional enforcement shall only be suspended (the writ of appeal does not interrupt the provisional enforcement) when the enforcement debtor has deposited in the Court the amount that he has been ordered to pay, to be delivered to the creditor, as well as the corresponding interests and costs for which the enforcement was carried out. After the payments have been settled and the costs assessed, the Clerk Court in charge of the provisional enforcement shall decide on the continuance or shelving of the enforcement. A direct appeal for judicial review against the order issued for this purpose may be lodged with the Court that has authorized the enforcement. Otherwise, in principle the court shall continue with the provisional enforcement.</p> <p>Furthermore, and as far as the provisional enforcement is concerned, the enforcement debtor may not object to the provisional enforcement, but only to the specific enforcement actions of the distraint proceedings if, in his opinion, the said actions shall lead to a situation impossible to restore or to compensate financially by means of the compensation of damages. However, when lodging this objection to specific enforcement measures, the enforcement debtor shall indicate other enforcement measures or proceedings that are possible and shall not provoke situations similar to those that, in his opinion, would be caused by the proceeding or measure to which he objects, and shall offer security sufficient to make up for the delay in the enforcement if the alternative measures are not accepted by the Court and the monetary conviction is subsequently upheld. Otherwise, the objection to the enforcement shall under no circumstances be appropriate.</p> <p>In principle this objection may not interrupt the provisional enforcement but only in</p>

	the cases where the law so orders expressly or all the parties to the enforcement so agree.
Switzerland	No
UK	If an order for sale has been made then in theory the owner could apply to the court for a stay pending an appeal to the Court of Appeal. The Admiralty Court's position would generally be that if the owner wanted to stop the sale it should provide security for the mortgagee's claim and a stay would only be granted in very exceptional circumstances.

Question 9

9 SALE PROCEDURE

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

Argentina	<p>The procedural means to enforce a ship's mortgage is the executory process. The relevant provisions are included in arts. 553 to 560 of the Navigation Act. Matters which are not provided for in the Navigation Act, are ruled by arts. 563 to 572 and 575 to 589 of the Civil and Commercial Procedural Code ("the Procedural Code"). The executory process is described in the next paragraphs.</p> <p>The purpose of executory proceedings is not to obtain a declaration of the existence of a particular right, but rather to obtain the payment of a debt, the validity and existence of which was legally assumed by virtue of a particular type of document.</p> <p>Executory proceedings are simplified and theoretically expeditious proceedings which mainly consist of the claimant's request for an attachment over the debtor's assets to obtain payment of a debt. When enforcing a ship's mortgage, the claimant may apply for an attachment or embargo and immobilization (arrest) over the ship.</p> <p>The Court will issue a formal payment request to the debtor, who has 5 days from the date of reception of the request, to submit a defence.</p> <p>The only admissible defences are:</p> <ul style="list-style-type: none">(i) lack of jurisdiction;(ii) lack of legal capacity to take part in such an action or of sufficient powers;(iii) the existence of another pending claim, between the same parties, with the same object and for the same causes;(iv) falsified or invalid instruments, provided however that the debtor also denies that the debt actually exists;(v) expiry of the limitation period;(vi) prior payment of the debt;(vii) set off;(viii) partial or total discharge of the debt, grace period, novation, settlement, conciliation or compromise; and(ix) res judicata. <p>All documentary evidence must be produced (or if not in documentary form an indication of the type of evidence that the defendant intends to rely upon at the same time as the defence is submitted to the court.</p> <p>If the defences filed are not clear or do not fall within the above categories, the court will render judgment. If the defences are properly filed and fall within the categories above, the claimant will have 5 days from the date it is notified of the defenses, to answer them (and submit any evidence supporting such answer). Once all the</p>
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	<p>evidence has been produced, the court will render its judgment within 10 days.</p> <p>The judgment may either reject the claim or order the sale of the vessel at a public auction.</p> <p>Once the judgment is issued by the court, the claimant may intend to enforce it. A judgment is final when the defeated party accepts it, when the terms for applying for all available appeals have expired or when all available appeals have been finally decided.</p> <p>If the judgment is not for an ascertained amount, either the successful or the defeated party may submit a breakdown of damages amounts to the court along the lines established by the judgment. A copy of this breakdown will be forwarded to the debtor, who may challenge this within 5 days, after which the court will resolve.</p> <p>When the judgment to be enforced is for an ascertained amount (or the sum to be enforced has been ascertained through the mechanism explained above) the court will summon the debtor to file any defence that it may have within 5 days.</p> <p>The only admissible defences are:</p> <ul style="list-style-type: none"> (i) invalid judgment; (ii) expiration of the limitation period for the enforcement of the judgment; (iii) payment; or (iv) partial or total discharge of the debt or grace period. <p>All these defences must have been raised subsequent to the judgment being enforced and must be substantiated solely with documents already available in the file or with any document that the party who seeks enforcement may have issued after the judgment.</p> <p>If the debtor fails to file its objections or once these objections have been resolved, the court will order the sale of the arrested ship. This decision will be notified to the other mortgagees and to other creditors that arrested the ship (Navigation Act, art. 553), and published in Boletín Oficial (Official Gazette). The proceeds will be distributed by the court among the creditors (Navigation Act, arts. 553 / 560) but priorities are governed by the law of the flag of the vessel (Navigation Act, art. 598).</p>
Australia	If the mortgagee has a power of sale under the mortgage, they may of course exercise that power without applying to the court. If an application of the type referred to in the answer to 8.2 is made, the court may direct that the sale be by auction, public tender or any other method (Admiralty Rules 1988 (Cth), r 70). The sale must be conducted by the Marshal (r 70).
Brazil	Yes, he can apply for a judicial sale by auction.
Canada	Yes
Croatia	Yes
Finland	Yes, once the mortgagee has a judgment.
France	Presently, the consolidation of the Code des transports is being carried out as regards decrees. It therefore will be made reference to older decrees that shall be soon

	<p>restated.</p> <p>The Arrest (saisie conservatoire) being usually efficient, it is very rare that a saisie-vente is asked for. Nevertheless, as a first step, a maritime hypothecary creditor shall apply for a judicial sale by auction, after having issued a summons to pay (commandement de payer).</p>
Germany	Yes
Greece	As long as the mortgage itself is an enforceable title (and a Greek mortgage is) or another enforceable title like a court judgment or a CPO (see replies 7.1 and 7.2 above) exists, the mortgagee may proceed to the sale of the vessel by auction (without involvement of a court) by appointing a Court Bailiff and a notary public to conduct the enforcement (seizure of the vessel) and the auction.
Ireland	Yes – the mortgagee must first arrest the vessel. If no security is forthcoming or there is no agreement between the mortgagee and the owner reached, an application can be made by the arresting party for the courts to have the vessel sold.
Italy	Yes, a mortgagee can enforce its mortgage by applying for a judicial sale by auction before the competent court.
Japan	Yes
Malta	<p>Yes, under Maltese law a mortgagee can indeed enforce its rights under a mortgage by applying for a judicial sale by auction. A Maltese registered mortgage is deemed to be an executive title and is given a special status under our law. Whilst any ordinary creditor alleging that a debt is owed to him by a debtor will have to commence legal action against the debtor and must ultimately be in possession of a favourable court judgment prior to being in a position to enforce such judgment, a mortgagee need not commence any action on the merits whatsoever against the mortgagor. Since a mortgage is deemed to be an 'executive title' (similar to a judgment) in terms of Article 253 et seq. of the Code of Organization and Civil Procedure, a mortgagee is in a position to bypass any lengthy judicial proceedings completely and to proceed directly to the enforcement of its executive title. All the mortgagee need to do is simply render its mortgage enforceable by filing a judicial intimation in the Registry of the Superior Courts in Malta calling upon the debtor to settle all the outstanding indebtedness within two (2) days. This intimation takes the form of a judicial letter which is to be filed in the Malta Court registry and immediately served on the debtor or on the vessel. If no payment from the debtor is forthcoming within the said 2 days from such service, the mortgage is rendered immediately enforceable and the mortgagee may proceed with all the various available enforcement mechanisms under Maltese law and consequently, the mortgagee may proceed directly with the judicial sale by auction of the vessel.</p> <p>For all intents and purpose and in accordance to Article 49 of the Maltese Merchant Shipping Act the above would also apply to foreign registered mortgages provided that they satisfy the four conditions listed in our reply to question 7.1 above</p>
Netherlands	Yes, all judicial sales in principle take place by auction.
New Zealand	Yes. If the mortgagee chose to proceed by way of court proceeding in admiralty (as opposed to relying on a right of sale under the mortgage) then it would be possible for a judicial sale to occur just as in any other admiralty proceeding as outlined above. There are also provisions on judicial sale in the ordinary civil context which the mortgagee could rely on if they preferred not to take advantage of the admiralty

	jurisdiction. ¹
Nigeria	Yes
Norway	Yes, as stated in our response to question 7.3 above the sale can be done either by auction or by ordinary (judicial) sale through a court-appointed administrator (normally a shipbroker).
Panama	A vessel subject to a maritime lien may be sold judicially upon request of its creditors following special procedures as set out in Article 545-A of Law No.12 of 2009 (Proceedings for the Execution of a Naval Mortgage).
Spain	Yes. The enforcement of a mortgage in Spain can be made by applying for a judicial sale by auction, which is the general enforcement remedy available to mortgagees.
Switzerland	<p>A judicial sale based on an arrest following the 1952 arrest convention will most likely not happen in landlocked Switzerland (possible exception re. yachts; the 1952 arrest convention is not applicable on river vessels). Switzerland does neither know a formal admiralty jurisdiction act nor is there an admiralty court. In case a yacht would be arrested in the territory of Switzerland based on art. 2 of the 1952 arrest convention such arrest would have to be ordered by the ordinary court. The sale procedure would follow the general enforcement rules as described hereafter.</p> <p>An arrest following the 1952 arrest convention is an “actio in rem”; hence against the vessel. Swiss enforcement law does not know this concept. According to art. 271 DEBL (Swiss Federal Act on Debt Enforcement and Bankruptcy Law, DEBL, SR 281.1) a creditor may apply for an order freezing assets of the debtor with respect to an unsecured matured claim if e.g. the debtor does not live in Switzerland, provided the claim has a sufficient connection with Switzerland or is based on an enforceable court judgment or on a recognition of debt. Such freezing order would have to be qualified as an attachment (proceedings against the debtor not against the asset) and not as an arrest.</p> <p>However, a vessel registered in the Swiss Ship register is mandatorily owned by a legal entity domiciled in Switzerland. A claim against such owner secured by a mortgage on the vessel can therefore be enforced in Switzerland at the domicile of the owner via specific Swiss debt enforcement proceedings (see DEBL).</p> <p>The enforcement of a mortgage is governed by art. 54 to 61 Swiss Federal Law on the Ship Register (SLSR; SR 747.11). Subsidiarily are applicable the rules and regulations regarding the judicial sale of immovable property (art. 54 al. 1 SLSR; art. 130 to 143b DEBL and the Ordinance of the Swiss Federal Court on the judicial sale of immovable properties (VZG, SR 281.42). For a brief description of the enforcement proceedings, be referred to Question 8.2 above. In the enforcement proceedings, the creditor may request a judicial sale by auction 8 (art. 125 PILA)</p>
UK	A mortgagee has the right to arrest the ship and apply to the Admiralty Court for an order for sale: such a sale, which is conducted by the Admiralty Marshal, is usually by tender rather than by public auction.

¹ High Court Rules, rr 11.22(c), rr 17.74(1)(a).

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?

Argentina	Obtaining a final judgement on a contested claim may take not less than two/three years (see 7.3), and carrying out the judicial sale and distribution of the funds, an additional two/three years. Mortgages' enforcement is not frequent in our country, so these are mere estimations.
Australia	<p>The Admiralty Act 1988 (Cth) and Admiralty Rules 1988 (Cth) provide only general requirements about judicial sales. Further guidance is to be found in the Marshals' Manual, which is applicable to Marshals in the Federal Court of Australia.</p> <p>As to the criteria for an application for judicial sale, see the answers to 8.2 and 9.3.</p> <p>Assuming the court makes an order for the valuation and sale of the ship, the Marshal will notify the broker and ensure that a valuation is received. The valuation is confidential and will not be disclosed to anyone without a court order.</p> <p>The sale will then be advertised. The court order may specify the wording of the advertisement and the publications in which it is to be placed. The broker may make recommendations as to the advertising strategy and length of the advertising campaign.</p> <p>After bidding closes, the Marshal, the Marshal's solicitor and the District Registrar will meet to open and record each bid. After all the bids have been opened the Marshal will open the valuation from the broker. Where the highest bid (or a number of bids) are above the valuation, the Marshal will generally accept the highest bid. If all bids are below the valuation the Marshal will prepare a short minutes of order seeking an order to accept the highest bid.</p> <p>Assuming the highest bidder will proceed to buy the ship, a bill of sale will be executed and title thereby transferred.</p>
Brazil	<p>Mortgages on ships are enforced through judicial actions and a forced sale at public auction (asset biddings) – which can be proposed by the mortgagee. And in order to be able to seek the judicial sale of the vessel, the creditor needs to have a previous final court decision for subsequent enforcement. In case the mortgage is over a foreign flagged vessel, creditor will need to follow the steps for the enforcement in Brazil of the foreign judicial decision/arbitral award that recognizes its credit and lien.</p> <p>The bidding acts are conducted by the public auctioneer in the course of a judicial proceeding, who will adopt all necessary formalities to conduct the auction and sell the vessel under a commission that may vary between two to five percent of the sale price.</p> <p>A minimum initial bid will be indicated by the judge based on the accounting report and the vessel will not be sold at the first auction in case the minimum price is not reached. However, in a second auction, which will take place between 10 and 20 days after the first one, the vessel may be sold for any price provided it is not considered a vile amount by the Court (there is no legal definition of vile amount as this varies depending upon the circumstances of the matter. But, there is a certain jurisprudence setting out a limit of 40% of the appraised value).</p> <p>The order of sale usually requires that the highest bidder deposit 20 percent of the bid in cash or by certified check immediately following the auction, with the balance to be paid within a certain number of business days. If the residual amount is not</p>

	<p>paid, the auction may be aborted and the vessel offered to the next bidder.</p> <p>Once the sale is duly performed, the judge will release an order of sale and the bidder will register ownership of the vessel at the Maritime Court, free of any encumbrances.</p> <p>When different privileged creditors disputes the product of the judicial sale, the release of the deposit made by the bidder will respect the ranking of priorities and the chronology of the respective judicial attachments. The Court will render a decision with the final order to be respected for creditor payments.</p>
Canada	<p>The criteria are set out in Rule 490 which can be adjusted, revised, dispensed with by the Court, depending on the circumstances. Rule 490 reads as follows:</p> <p>490 (1) On motion, the Court may order, in respect of property under arrest, that</p> <ul style="list-style-type: none"> (a) the property be appraised and sold, or sold without appraisal, by public auction or private contract; (b) the property be advertised for sale in accordance with such directions as may be set out in the order, which may include a direction that <ul style="list-style-type: none"> (i) offers to purchase be under seal and addressed to the sheriff, (ii) offers to purchase all be opened at the same time in open court, that the parties be notified of that time and that the sale be made pursuant to an order of the Court made at that time or after the parties have had an opportunity to be heard, (iii) the sale not necessarily be to the highest or any other bidder, or (iv) after the opening of the offers and after hearing from the parties, if it is doubtful that a fair price has been offered, the amount of the highest offer be communicated to the other persons who made offers or to some other class of persons or that other steps be taken to obtain a higher offer; (c) the property be sold without advertisement; (d) an agent be employed to sell the property, subject to such conditions as are stipulated in the order or subject to subsequent approval by the Court, on such terms as to compensation of the agent as may be stipulated in the order; (e) any steps be taken for the safety and preservation of the property; (f) where the property is deteriorating in value, it be sold forthwith; (g) where the property is on board a ship, it be removed or discharged; (h) where the property is perishable, it be disposed of on such terms as the Court may order; or (i) the property be inspected in accordance with rule 249. <p>(2) The appraisal or sale of property under arrest shall be effected under the authority of a commission addressed to the sheriff in Form 490.</p> <p>(3) Property sold under subsection (1) is free of any liens under Canadian</p>

	<p>maritime law.</p> <p>(4) As soon as possible after the execution of a commission referred to in subsection (2), the sheriff shall</p> <p>(a) file the commission with a return setting out the manner in which it was executed;</p> <p>(b) pay into court the proceeds of the sale; and</p> <p>(c) file the sheriff's accounts and vouchers in support thereof.</p> <p>(5) An assessment officer shall assess the sheriff's accounts and report the amount that the assessment officer considers should be allowed.</p> <p>(6) Any party or caveator who is interested in the proceeds of sale referred to in subsection (4) may be heard on an assessment under subsection (5).</p> <p>(7) On motion, the Court may review an assessment done under subsection (5).</p>
Croatia	The regular method of the court's sale is by a public auction. Public auction has to take place latest 30 days after the public announcement of the sale.
Finland	Judicial sale is applied for at the enforcement authority by a written application to which a document showing the ground for execution, i.e. an enforceable judgment or arbitral award, has been attached. Once judicial sale has been granted an amount of the defendant's property corresponding to the value of the creditor's claim will be distrained and liquidated. The procedure generally lasts at least 2 to 3 months.
France	The criterium is that the creditor has a title. Formalities shall be followed. A proces-verbal de saisie shall be issued containing 8 compulsory mentions among which the summons to pay, the identity of the hypothecary creditor, the designation of the Tribunal that shall organise the sale by auction, the identity of the shipowners, the name and registration of the vessel... Two judgements shall be delivered in a succession, the first on setting the criteria of the sale by auction to be organized and the second one auctioning the vessel.
Germany	The claimant has to file an application for judicial sale by auction ("Zwangsversteigerung") together with the original of its enforceable title with the competent court. If the application and the title comply with the legal requirements, the court will order the enforced sale and fix a date for the auction which will be published. Further the court will order the service of its order for enforced sale on the debtor (i.e. the vessel's owner) and any other interested parties. The auction shall take place not earlier than 6 weeks and not later than 6 months after the date of the auction has been published, and not earlier than 4 weeks after the court order for enforced sale has been served on the debtor.
Greece	<p>(a) The basic requirement for enforcement and sale by auction is the existence of an enforceable title (i.e. the mortgage or a judgment adjudicating the claim or a CPO).</p> <p>(b) Following the seizure the auction takes place the first Wednesday (which is not a holiday) following a period of 40 days as of the seizure.</p> <p>(c) For the publications and service of the deed of seizure see reply 8.2 above.</p> <p>(d) Any objections to the enforcement and auction should be filed within 30 days as of the seizure and any petitions for stay of the auction must have been decided by</p>

	the Court latest up to 12.00 noon of the Monday prior to the day (Wednesday) of the auction.
Ireland	Subsequent to the arrest of the Vessel, if within a reasonable period of time, no security is supplied by the Owner of the Vessel, the arresting party may apply to the Admiralty Court for the vessel to be sold by way of a judicial auction. The Admiralty Judge can also order the vessel to be sold under Rule 35 of Order 64 of the Rules of the Superior Courts. The procedure and timetable for such an application and sale is at the discretion of the Admiralty Marshall and the presiding judge.
Italy	<p>Provided that the relevant vessel has been attached ("pignorata") as per §8.2 above, in the period commencing 30 days after the service of the attachment and ending 90 days thereafter, the application for the public sale of the vessel can be filed with the court of the district where the vessel lies.</p> <p>If the application for the public sale of the vessel is duly filed, the court appoints a judge in charge of the proceedings and an expert who appraises the vessel. The expert is granted with a time limit of up to thirty days in order to file the appraisal with the competent court. Once a five-day period of the filing of the appraisal with the competent court has elapsed, such appraisal is reviewed before the judge at a hearing. At the end of such hearing, the judge sets the date for the public sale of the vessel by way of an order of sale. The public sale is made by way of an auction directed by the judge who awards the vessel to the best bidder. In case there are no bids, the judge may reduce the reserve price by up to 40%; if there are still no bids the judge orders the sale without auction determining the terms and conditions thereof.</p> <p>Pursuant to Article 664 CN, when the purchase price is paid by the winning bidder, the judge issues a decree whereby title to the vessel is transferred to the purchaser and the competent ships' registry is ordered to delete all mortgages and other registered encumbrances. The purchaser therefore acquires title to the vessel free from any registered encumbrances.</p> <p>The mortgagee will be paid upon distribution of the proceeds of the sale subject to the full satisfaction of any Italian statutory maritime lien on the relevant vessel having priority over the mortgage, provided that the relevant vessel permanently fly Italian flag. It should be noted in this respect that creditors secured by Italian statutory maritime liens, whose claim is not time barred and that have not intervened in the auction proceeding, can still enforce their claim against the vessel once the relevant property is transferred to the new owner.</p> <p>The time involved from the application until the sale of the vessel by auction should not exceed one year. However, the time involved may also be affected by, inter alia, the type of vessel to be sold at auction and the prevailing market conditions at the time of the sale.</p>
Japan	<p>Unless the debtor discharges the claim secured by the mortgage, the court will proceed to sale of the vessel. The judicial sale is made by either a bidding on a specified day, bidding with a certain period of time or public auction, as the court finds appropriate. (Artt.64, 121 & 189 of the Civil Enforcement Act.) In case the bidding or auction is not successful, the court may find a purchaser by other means (i.e. private sale), if agreeable with the mortgagee. (Artt.51, 83 & 174 (5) of the Supreme Court Rules on Civil Enforcement.)</p> <p>The timetable depends on the case, and a general statement is difficult due to the scarcity of the cases ending up in a judicial sale of the vessel. In a recent unreported case at Hakodate District Court, it took five months from the arrest of the vessel to</p>

	the court's decision, and the purchaser paid the purchase price in full within a month and a half from the judicial sale decision. (See Takase, <i>supra</i> , answer to Question 1.5.)
Malta	<p>Once a creditor has obtained an executive title or <i>res judicata</i> judgment, he may file an application demanding the court appoints a date for the judicial sale by auction of the vessel. The Court will normally proceed to then schedule the auction date of the respected vessel. However, alternatively the court may decide to first fix a short time limit within which the debtor has a final chance to pay the outstanding sums and failing which, the vessel is sold by auction. That said, in relation to auctions of vessels, the Courts tend to fix the auction date immediately, which is usually around 4-6 weeks after the date of filing of the auction application. This gives the Registrar of Court time to publish in the government gazette and the executing creditor to publish 2 advertisements in local newspapers as well as to general as much interest as possible in the vessel. In its order affixing the auction date, the court will also give notice of the time and place of the judicial sale by auction</p> <p>At the auction, a court appointed public auctioneer conducts the judicial sale in the presence of the Court Registrar. Bids are made orally and the vessel is sold to highest offer received. The buyer has seven days to deposit the purchase price in court. Once the funds are deposited, a court appointed person will issue a bill of sale in favour of the buyer transferring the vessel free and unencumbered.</p>
Netherlands	See under 9.1 and 8.2.
New Zealand	<p>In the admiralty context the sale can be by way of public auction or private contract, with or without appraisalment, at the Court's discretion.² The Registrar will arrange the practicalities of the sale.</p> <p>In the ordinary civil context sale can be by public auction on terms and conditions approved by the Registrar.³ by a person with or without an auctioneers licence, with or without a reserve, and as often as necessary until sold.⁴</p>
Nigeria	The procedure stated in 8.2 above is adopted.
Norway	See our response to question 7.3 above.
Panama	The criterias are set out in Article 545-A of our Procedural Law as amended. For the foreclosure of the mortgage, it is required documental evidence of what is owed and what the mortgagor has not complied in the contract. Within 30 days the hearing will take place. If there is no contest, the judicial auction can take place in two months' time. If it is contested, then the proceedings will continue following the rules set out in Article (Maritime Ordinary Proceedings).
Spain	<p>Art. 141 MNA states that the enforcement (and procedure for the enforcement) of the mortgage shall be subject to that provided under Arts. 681 et seq. of the Spanish Civil Procedure Act, which governs the special enforcement procedure over mortgaged assets. Once the mortgagor has breached the secured obligations, the mortgagee can enforce the mortgage by initiating the procedure set out in Arts. 681 et seq. Basically:</p> <p>(i) the mortgagee files an enforcement claim against the mortgagor before the competent court; (ii) if the enforcement is admitted by the court, a request for payment will be submitted to the mortgagor; (iii) once a 20 day period has elapsed</p>

² High Court Rules, r 25.51.

³ High Court Rules, r 17.74(1)(a).

⁴ High Court Rules, r 17.75.

	<p>since the payment request was made, the procedure for the judicial auction may be requested by the mortgagee, the mortgagor, or third party in possession of the mortgaged vessel; (iv) the auction will be publicized on the Spanish Official Gazette (Boletín Oficial del Estado);</p> <p>(v) the auction price paid by the winning bidder will be applied towards payment to the mortgagee up to the maximum secured amount stated in the mortgage.</p>
Switzerland	<p>As to the procedure, see para 8.2 above. Judicial sale by auction is the sale method envisaged by the law (art. 125 PILA). A private sale of a vessel is only possible if all involved parties agree (art. 130 PILA). The enforcement proceedings from its beginning until the completion of a sale by auction may easily take one or two years or even more. The time needed depends largely on the behaviour of the involved parties. In case the creditor has an enforceable judgment confirming his claim, an ideal timetable could look as follows:</p> <ul style="list-style-type: none"> • Issuing payment order: 10 days until the debtor declares objection against the payment order. • Requesting a court order to put the objection aside based on the enforceable judgment confirming the claim in summary proceedings (if the judgment was made by a foreign court, including recognition of the foreign judgment): three months. • The creditor can request for judicial sale not earlier than one month and not later than one year after the payment order has been served on the debtor. • Execution of the judicial sale: 6 months.
UK	<p>An order for sale pendente lite may be made at any time after an arrest by the Admiralty Court "for good reason" – e.g. the ship is a wasting asset and the costs of maintaining the arrest will significantly reduce any ultimate sale proceeds. If no order for sale pendent lite is made then the mortgagee can apply to the court for an order for sale when it has obtained a judgment on its claim. In summary when an order for sale has been made the Admiralty Marshal will arrange for the ship to be appraised [inspected and valued] by a ship surveyor and will then instruct ship brokers to offer the ship for sale on the Admiralty Marshal' terms and conditions: the ship may be advertised in shipping newspapers such as Lloyd's List or Tradewinds. Usually tenders by prospective buyers are required within 28 days of the appraisal, although this time may be abridged or extended in the Admiralty Marshal's discretion. The Admiralty Marshal will generally accept the highest tender and on acceptance of its bid the buyer then has to pay a 10% deposit: after seven days the buyer has to pay the balance of the price in exchange for the delivery of the ship and the Admiralty Marshal's Bill of Sale.</p>

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

Argentina	See 7.3
Australia	As noted in the answer to 8.3, a court may order that a vessel under arrest be sold if it is deteriorating in value (r 69(5)). The court will only order the judicial sale of a vessel pendente lite if there is a 'good reason' for doing so. ⁵
Brazil	If the vessel is deteriorating or causing danger to other vessels, or to the environment, the judge may anticipate the sale.
Canada	<p>This is a matter for the discretion of the court which takes into account the following factors:</p> <p>a) Is the owner supporting the costs of maintaining the vessel and is the vessel being maintained;</p> <p>b) Has the crew abandoned the vessel, and, if not, are the crew's needs (eg groceries, supplies, wages) being provided for;</p> <p>c) Is the vessel moored in a safe place, and if so, is the vessel being provided with electricity, drinking water and garbage disposal services;</p>
Croatia	<p>The Croatian law has no concept of the vessel as a wasting asset.</p> <p>However, it recognizes such a concept in relation to the cargo when it allows selling of the cargo prior to the expiry of prescribed period of time provided selling of the cargo under the timeframe of regular procedure (i) would not generate sufficient proceeds to cover the claim and the costs of safeguarding the cargo or (ii) the cargo is of perishable nature or is already under decay.</p> <p>It could be argued that in order to achieve accelerated sale of the ship the above concept (related to the cargo) should be applied by analogy in case there is a pending risk that the ship might sink and/or that she creates a threat to the environment. In such circumstances the proceeds shall be put by the court in an escrow account pending the outcome of the case.</p> <p>However, practice of the courts shows that they are very reluctant to execute such an accelerated sale under the argument that the value of the ship is too low to cover the costs and expenses of the sale procedure and upkeep of the ship by the end of the regular sale procedure.</p>
Finland	The main principle under Finnish law is that it is not possible to sell the ship pendente lite. According to the Finnish Judicial Enforcement Act, if property which is subject to rapid deterioration or which is expensive to retain in custody has been arrested but the court has not yet given a judgment, the Bailiff is entitled to sell such property at the request of the claimant. In theory these principles may apply also to vessels under arrest.
France	<i>LEFT BLANK</i>
Germany	No

⁵ *Marinis Ship Suppliers (Pty) Ltd v Ship Ionian Mariner* (1995) 59 FCR 245, applying *The Myrto* [1977] 2 Lloyd's Rep 243 (EWHC).

Greece	As noted above the enforcement and auction is conducted without involvement of the Court unless a stay is ordered by the Court. Consequently the system under Greek law works the other way round i.e. the court does not order the sale while proceedings (on objections) are pending but it may order the stay of enforcement/auction if it is so requested by the defendant (or another party having a legitimate interest) and the petitioner proves on a prima facie basis that his objections have good chances of success and the auction (if it is allowed to proceed) will cause irreparable damage.
Ireland	In certain circumstances an order for sale may be made before judgement is made on the substantive claim, say for example if the owner agrees to the sale or the arrested vessel is at risk of deterioration.
Italy	A sale of the vessel pendente lite has been authorised in few instances where the claimant successfully proved that the value of the vessel under arrest was dramatically deteriorating and the costs (e.g. custody, berth and port dues, maintenance of the vessel and so forth) were much higher than the likely sale value. The proceeds of the sale are of course in this case frozen until the claimant obtains a final and binding judgment.
Japan	No. But note that a judgment is not necessary for the mortgagee to enforce its mortgage and apply for a judicial sale of the vessel.
Malta	Article 864 of our Code of Orgnaizatio and Civil Procedure grants our courts the power to order the sale of an arrested ship or vessel pendente lite if it appears to the court upon the application of a creditor that the debtor is insolvent or otherwise unlikely to be able to continue trading and maintaining the asset. The said article also dictates that the court should take into consideration all the circumstances connected therewith, including the nature of the plaintiff's claim, the defence raised against such claim, if any, and such other steps which the debtor has taken to secure the claim, or otherwise to preserve the asset. That said, to date and to the best of our knowledge there has to date only been one request made to our courts for a sale pendente lite of a vessel, which was turned down by our courts.
Netherlands	See under 7.3.
New Zealand	Yes, see 8.2 above.
Nigeria	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.
Norway	When a ship has been arrested, the owner does no longer have legal rights to dispose of the ship. On the other hand, an arrest does not give the claimant the legal rights to dispose of the ship or seek enforcement in and to the ship. Consequently, enforcement is subject to a final award on the merits of the substantive claim and thereafter proper enforcement proceedings. However, the courts can agree to a sale "pendente lite" if the arrest holder requests it, and it is necessary to avoid substantial decrease in the value of the ship. The mortgagee requesting the sale may, however, be asked to put up security, see section 6-5 of the Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).
Panama	Yes

Spain	No. There are, however, certain events which allow a mortgagee not the sale of the mortgaged vessel but its interim possession to (i) preserve its value (Art. 117 of the Spanish Mortgage Act), or (ii) to benefit from payment of hire, if any, derived from the employment of the vessel which can be used to maintain and conserve the vessel and, should there be any surplus, to repayment of the secured amounts (Art. 690 of the Spanish Civil Procedural Act).
Switzerland	No. But as soon as the payment order is served on the owner, the enforcement authority is responsible for the management of the vessel (art. 59 SLSR). As such the enforcement authority could under certain circumstances order the "premature" sale of the vessel upon request from the debtor (the owner) in order to mitigate damages (see art 124 DEBL). Further it is possible to order a sale of the vessel pending judgment if in the course of enforcement proceedings insolvency- or bankruptcy proceedings are opened against the owner. In such case, the liquidator or trustee is under certain circumstances allowed to sell the vessel before a court has decided on the creditors claim against the debtor.
UK	Yes – see 9.2.

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?

Argentina	The court will require an appraisal of the vessel. The minimum bid price will be 2/3 of the value resulting from the appraisal (Procedural Code, art. 578), and this minimum bid price will be announced publicly at the judicial auction. If the offers do not reach the minimum bidding price, a new auction will be ordered with a 25% deduction on the minimum bidding price. If again the offers do not reach the new minimum bid price, an additional auction will be ordered without a minimum bid price (Procedural Code, art. 585).
Australia	See the answer to 9.2. The valuation will operate as a de facto reserve price. The valuation remains confidential. If the highest bid is lower than the valuation, the Marshal will seek an order of the court authorising him or her to accept the highest bid.
Brazil	The judicial sale of vessels follows the same general rules as asset bidding. The minimum initial bid is set by the judge based on the accounting evaluation report. The vessel cannot be sold at the first auction for an amount below its official appraisal. However, at the second auction (10 to 20 days after the first auction), the vessel may be sold at any price that the court considers proper (within a limit of 40 per cent of the appraised value).
Canada	The Court has the power and discretion to set a reserve price under Rule 490; moreover, the Court has the power and discretion not only to refuse to award the vessel to the highest bidder, but to ask bidders to continue submitting bids until the highest bid is not being exceeded by any further bidding. The Court may order a valuation survey to be conducted and kept sealed until the bid prices are reviewed. The bid prices will be reviewed and compared to the valuation survey to determine the reasonableness of the offers.
Croatia	Yes, the price shall not be lower than 1/2 of the assessed market price (answer to 1st question). In case the ship is not sold at the auction, new auction shall be fixed for the sale. At the new auction the ship cannot be sold below 1/3 of the assessed ship's market price. (answer to 2nd question)
Finland	No minimum bid price is fixed. However, the bailiff may not accept the highest bid in an auction of a vessel if in the bailiff's assessment that bid is clearly less than the current price of the vessel at the locality.
France	Yes a minimum bid price is defined by the Court. If the maximum amount bid for the vessel is lower than the reserve price, then a new sale is organized with a lower bid price.
Germany	For vessels / mortgages not registered in Germany, there is no requirement for a minimum protective bid. For vessels / mortgages registered in Germany, the minimum protective bid must be higher than the aggregate of all claims that rank higher than the claimant's claim and the costs of the proceedings.
Greece	<p>(a) A minimum (reserve price is fixed by the Court Bailiff (assisted where necessary by valuers) at the time of the seizure of the vessel. The reserve price should not be less than two thirds of the value of the vessel.</p> <p>(b) This price is mentioned in the deed of seizure which is served to all parties concerned (see reply 8.2 above) and published at the website for auctions.</p> <p>(c) The bids should be at least equal to the reserve price. If no bit is submitted to the notary the auction is cancelled and a new auction may be fixed (following new service</p>

	of documents and publications) on the first Wednesday after the expiration of a 20 days period starting from the date of the instructions of the Claimant to the Court Bailiff to fix a new date for auction.
Ireland	The Admiralty Marshall appoints an expert and an auctioneer to appraise the vessel and fix a reserved price
Italy	<p>In the order of sale, providing for, inter alia, the description of the vessel, the judge sets the reserve price as provided under the expert's appraisal. Such order of sale is notified to the persons who have not taken part to the hearing, provided under article 655 CN, during which the expert's appraisal is reviewed. Such persons are the debtor owner, the creditor/applicant, the mortgagee(s), other intervening creditors and the consul of the flag state (if the vessel is a non-Italian flagged vessel).</p> <p>The public sale is made by way of an auction directed by the judge who awards the vessel to the best bidder. A price lower than the reserve price will not be taken into consideration. Therefore, if there are no bids or these are lower than the reserve price, the judge may reduce the reserve price of up to 20% from time to time. Once the reserve price has been reduced of 40% and provided that there are still no bids or these are lower than the reserve price, the judge can order the sale without auction determining the terms and conditions thereof.</p>
Japan	The court determines the "reference price for bids." The reference price is disclosed and constitutes a condition of the auction. If the highest bid is lower than 80 percent of the reference price, the bid is void. (Artt. 60, 121 & 189 of the Civil Enforcement Act.)
Malta	There is no minimum reserve price for vessel sold by judicial sale by auction provided that the said vessel exceeds 10m in length. For smaller crafts of less than 10m, the law imposes a minimum reserve price of 60%. In such cases, an appraiser may be appointed upon the request of the creditor or debtor, to examine the craft and file his valuation in court, which may be accessed by interested parties. If in such cases, no offer below 60% of the value may be accepted and if no such offer is forthcoming, then the creditor may ask the small craft to be auctioned again at a later date.
Netherlands	The conditions of sale are determined by the creditor seeking enforcement of his claim (with possible court supervision). The civil law notary or court conducting the judicial sale will therefore not fix a minimum bid price. The creditor seeking enforcement of his claim could include a minimum bid price in the conditions of sale (and sometimes does).
New Zealand	Information not available. The New Zealand legislation does not go to this level of detail, so it is a matter for the Court and Registrar to determine on a case by case basis. There are rules in Part 17 of the High Court Rules on the sale of chattels by the Court, but these are unlikely to be suitable for the sale of a large vessel in the international context. The Australian response to this question will provide a useful point of reference as a similar procedure is likely to be followed in New Zealand.
Nigeria	No. There are no statutory provisions relating to the fixing of a minimum bid price. Also see the answer to 9.5 below.
Norway	No system with reserve price is in place in Norway. The offered price must, however, be accepted by the claimant and cover liens with higher priorities. If the offered price does not cover liens with higher priorities, a sale cannot be completed without their acceptance, see section 11-10 of the Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).

Panama	Yes. The auction shall be carried out by the Marshall and will be put in auction at the price established by an appraisal appointed by the court, unless the parties chooses to appoint by mutual agreement their own appraiser.
Spain	<p>One of the requisites for enforcing a mortgage through the special enforcement proceedings set out in Arts. 681 et seq. of the Spanish Civil Procedure Law (the so called "direct enforcement") to which Art. 141 MNA refers, is the inclusion in the mortgage deed of the value that the parties assign to the vessel so that it serves as the reserve price in the auction. Thus, it is up to the mortgagee and the mortgagor to agree in the mortgage deed such reserve price (or starting price for the auction). Moreover, Art. 132 MNA states that the mortgage agreement shall include, among others, the value or appraisal of the vessel which may be taken as the auction reserve price.</p> <p>The reserve price is registered together with the mortgage and third parties can have access to such information by requesting the relevant certificate or excerpt to the Title Registry.</p> <p>If the highest bid is equal to or higher than 70% of the value at which the vessel was put up for auction, the Court Clerk shall approve the final bid in favour of the highest bidder. If it is the mortgagee the person who made the highest bid, the Court Clerk shall carry out the settlement of the amount due as principal, interest and costs, and after such settlement is made, the mortgagee shall lodge the difference, if any (art. 670.1 and 2 of the Spanish Civil Procedure Act).</p> <p>If the highest bid placed at the auction is lower than 70% of the value at which the vessel was put up for auction (art. 670.4 of the Spanish Civil Procedure Act): (i) the mortgagor may, within a time limit of ten days, present a third party improving the bid by offering an amount in excess of 70% of the appraisal value or that, albeit lower than such amount, proves to be sufficient for the complete satisfaction of the right of the mortgagee; or (ii) if the mortgagor has failed to present a third party, the mortgagee may, within the next five days, seek the award of the vessel at 70% of the aforementioned value or for the amount owed to the mortgagee for all items, provided that such amount exceeds sixty per cent of its appraisal value and the highest bid.</p> <p>If the mortgagee does not make use of its right to request the award of the vessel as stated above, the auction will be approved in favour of the highest bidder, provided that the amount offered by the latter is higher than 50% of the appraisal value, or, if lower, covers at least the amount for which the enforcement proceeding was opened (including interest and costs). If the highest bid fails to meet these requirements, the Clerk, after hearing the parties, shall resolve in view of the circumstances of the case, and taking into account particularly the behaviour of the mortgagor in relation with secured obligations, the possibility of achieving the satisfaction of the mortgagee through the sale of other assets, the patrimonial implications on the mortgagor and the benefit of the same for the mortgagee.</p>
Switzerland	The enforcement authority is obliged to estimate the market value and has to publish its estimation (art. 8 VZG). The enforcement authority adjudicates the lot to the highest bidder after three calls, provided the amount realised exceeds the sum of any secured claims having priority over the claim of the applicant creditor. If no such bid is forthcoming, enforcement proceedings cease with regard to the lot in question (art. 126 DEBL).
UK	The appraised value is not disclosed to interested parties. The Admiralty Marshal may only accept a tender lower than the appraised value with the approval of the

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

Argentina	The mortgagee and other creditors as well as the owner are allowed to object the result of the appraisal (Procedural Code, art. 578).
Australia	See the answer to 9.2. The valuation will be completed by the broker and will be kept confidential.
Brazil	The parties may disagree with the amount and impugn the amount. The matter will be decided by the judge or in a new assessment.
Canada	Yes
Croatia	The starting bidding price for the auction sale is determined by the court based on the evaluation of the appointed expert, and it might also take in consideration proposals of the parties.
Finland	No
France	There is a contradictory debate on the amount of the reserve price before the judgment is delivered
Germany	For vessels / mortgages not registered in Germany: Not applicable; for vessels / mortgages registered in Germany: Only by paying (and thereby reducing) claims ranking higher than the claimant's claim and / or the costs of the proceedings.
Greece	If the defendant owner or even the claimant and any other party having a legitimate interest (usually other creditor) believe that the value of the vessel determined and the reserve price fixed by the Court Bailiff is too low or too high may apply to the court in summary proceedings to adjust the reserve price. The relevant petition should be filed within 30 days latest as of the date of seizure. A hearing is fixed immediately and the decision should be issued latest at 12.00 noon on the Monday before the Wednesday of the auction i.e. without causing delay to the auction (Articles 954 para 4, 993 para 2 and 1011A para 2 GCCP). If the price is adjusted the Court (by the same decision) fixes as a new auction date the first Wednesday following a period of 30 days as of the issue (publication) of the summary judgment (Article 1011A para 3 GCCP).
Ireland	No, this is done independently without any influence from the owner or other creditors. The reserve price is not disclosed to the auctioneer or any other party until the auction commences.
Italy	The debtor owner and the creditors may try to influence the amount of the reserve price at the hearing, provided under Article 655 CN, during which the expert's appraisal is reviewed.
Japan	No. The reference price is determined on the basis of an expert examiner's opinion.
Malta	In view of the above reply, the following response only applies in relation to ships not exceeding ten (10) meters in length. A creditor or debtor may request the appraisal of such ship.
Netherlands	See under 9.4.
New Zealand	Information not available.

Nigeria	<p>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:</p> <p>...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)</p>
Norway	N/A as no system with reserve price exist.
Panama	No
Spain	See 9.4 above.
Switzerland	Yes, the owner or the creditor is entitled to file within 10 days upon the enforcement authority informing them on their estimation file a request for review of the estimation with the supervisory authority of the enforcement authority (art. 9 al. 2 VZG).
UK	No

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

Argentina	The auction, the minimum bid price and the particulars of the ship, must be published in the Boletín Oficial (Official Gazette) and in another newspaper of wide circulation (Procedural Code, art. 566). Additional publicity costs are to be borne by the creditor (Procedural Code, art. 567).
Australia	See the answer to 9.2 above. The court order may specify the wording of the advertisement and the publications in which it is to be placed.
Brazil	In the judicial sale, the Judge will issue a notice that will be put on the Courts wall and it will also be published in a major local newspaper.
Canada	Usually, the Order of Sale - the contents of which contain the representations of the various party creditors moving for such order - will direct the Marshall (or Sheriff) of the Sale to place one or more advertisements in specific publications, normally trade publications which are consulted by the trade - to obtain the greatest exposure among all likely interested purchasers. The extent of advertising will largely depend on the nature of vessel, its age, its future likely use.
Croatia	The public auction shall be publicly announced and the bidders who put down required deposit shall participate in the auction where the selling price shall be determined by the highest bid.
Finland	<p>An announcement of an auction shall be published in one or more newspaper with general circulation in the locality. In addition the notice may be published in a national newspaper, another publication or an information network if this is necessary. If there is a compelling reason for this, an announcement of an auction may be made in a sufficiently effective manner other than publication.</p> <p>Also a sale brochure shall be prepared indicating information essentially affecting the sales and the conditions of sale. The general conditions of the auction shall be attached to the sale brochure.</p> <p>A presentation shall be arranged before the sale, unless this is unnecessary. The person who has possession of the property to be sold is obliged to permit the presentation.</p>
France	Article 42 & 43 of the former 1967 Decree required publicity to be given to the auction through the display of posters upon the mast of the vessel, upon the main door of the Court, upon the place where the vessel is berthed, upon the "Chambre de commerce" and the Customs office. Advertisement may also be published in newspapers
Germany	The date of the auction, the name and a rough description of the vessel as well as the contact details for questions will be published in the official communication gazette or information system generally used by the competent court. Further, this information will also be published in a "suitable shipping magazine" in the choice of the court.
Greece	The deed of seizure or a summary of same is served to all parties concerned and it is published at the website for auctions (see reply 8.2).
Ireland	The auction of the vessel will be advertised internationally.
Italy	Article 657 of the Italian Navigation Code provides, inter alia, that the order of sale shall be recorded on the attachment ("pignoramento") and published on the legal

	<p>announcements' sheet. A copy of the order is also advertised, at least ten days prior to the sale, in a special register held at the chancellor's office of the competent court. The judge in charge of the enforcement may also order other arrangements for public advertisement of the sale that he deems appropriate (e.g. a notice on Italian and foreign shipping press).</p>
Japan	<p>The bidding and public auction is posted on the bulletin board within the court presiding the sale procedure and the court of the place where the ship is registered (in case of a ship of Japanese nationality) as well as on the bulletin board of the local municipality where the ship is located. (Artt.36, 49, 50(4), 82, 83 & 174 (5) of the Supreme Court Rules on Civil Enforcement.)</p> <p>There is no equivalent statutory provision for judicial sale of a foreign vessel. There is an anecdote (from 1970s) that the court put advertisement in open markets of London and New York. (See H.Ogawa, Hanrei Times no.345, p.70.)</p>
Malta	<p>Given that there is no minimum threshold for ships over ten metres, public advertisement of the sale plays a crucial role in judicial sales by auction in Malta. The more interest generated in a vessel, the better the chance of a higher sale price being attained. The Registrar has the responsibility to advertise the judicial sale by auction of the vessel in the Government Gazette, a newspaper in Maltese and a newspaper in English. The advertisement shall include details of the vessel and of the sale. Moreover, whilst the law does not oblige creditors to do so, it is common for them to also advertise the sale in foreign shipping journals and newspapers to generate as much interest as possible in the sale.</p>
Netherlands	See under 8.2.
New Zealand	Information not available.
Nigeria	<ul style="list-style-type: none"> • 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].
Norway	Usually the sale will be done through a shipbroker using his or her standard channels for advertising the sale.
Panama	The Maritime Court that orders the auction will issue a resolution to set 3 days for the judicial sale. Said resolution must be published at least twice a week until proceedings for the judicial sale are concluded and the actual sale be carried out by the Marshall on the dates set by the court. If this cannot be carried out, the next working day will be the one for the judicial sale to take place.
Spain	<p>The judicial auction will be published in the Spanish Official Gazette (Boletín Oficial del Estado). Also, at the request of the mortgagee or the mortgagor and if the relevant judicial secretary deems it appropriate, the auction may be made public by other means taking into account the nature and the value of the asset.</p> <p>The advertisement of the auction in the Official Gazette will contain important information such as the date of the auction, the Court where the enforcement proceedings are being carried out and the identification number and type of the</p>

	proceedings.
Switzerland	The sale will be published in the Swiss official gazette of commerce (www.shab.ch ; art. 29 VZG). All involved parties receive the publication also personally.
UK	See 9.2 above.

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

Argentina	The process is intended to be expeditious. However, given the formalistic and bureaucratic practices, the owner or other creditors may influence the timing for the sale.
Australia	The Federal Court has a procedure to follow for a judicial sale under the rules referred to in 9.2, above, and the Marshal's manual. Every sale throws up different problems, so if anyone wanted to vary that procedure they would be heard by the Court. It seems unlikely that they would influence the procedure by much.
Brazil	Taking into account the low pace of Brazilian Courts, as well as the high level of red-tape, the parties may delay the development of the case by presenting several questionings and appeals.
Canada	There are often different interests as between the owner and the creditors. The owner may be desirous to obtain the longest time possible to secure financing to prevent the sale of the ship, while the creditors will want the shortest time possible, bearing in mind that the sale must be publicized to targeted markets, and time must be given for possible inspections.
Croatia	The owner and the creditors alike can influence the time table only by appealing the court's decision (against which appeal is allowed) during the process which would prolong the procedure.
Finland	<i>LEFT BLANK</i>
France	The best way to influence the timetable is to obtain a title as soon as possible, for example a European Enforcement Order or an interlocutory injunction. Article 45 & 46 of the former 1967 Decree also define the stages that influence the timetable. Claimant, and then Defendant have, each, a 3 days delay to set forth their arguments. Once the auction has been organized, objections are barred after a 3 days delay.
Germany	<p>Prior to the auction: Within the statutory time frames, the claimant can seek the court's cooperation and try to agree the timetable and details with the court. The owner can only use procedural remedies, such as an application to set aside the enforced sale proceedings. Other creditors (who have not themselves filed an application for an enforced sale) have no formal influence on the time table or procedure for sale.</p> <p>During the auction: If the claimant is not satisfied with the highest bid, he can withdraw the application for sale, or apply for a stay of the proceedings before the bid has been accepted by the court. In that case a new auction will be held at a later date upon the claimant's respective application. Other "interested parties" (for example, the owner) can apply for a new auction before the highest bid has been accepted by the court if they undertake to cover the additional costs and other damages incurred until the next auction and put up security; and in the new auction they will be deemed to having given a bid for not less than the highest bid in the first auction.</p>
Greece	(a) The procedure for a auction is fixed by the law and (subject to the special cases mentioned in this paragraph) and it cannot be influenced either by the debtor, owner (if he is other than the debtor e.g. third party mortgagor) or any creditor. The debtor may stop the auction, if (before the completion of the auction) he pays the debt of the claimant and of all the creditors who have registered their claims at least those who have an enforceable title (Art 1002 para 2 GCCP). Similarly the auction does not proceed if the claimant, the defendant and all the creditors who have registered their

	<p>claims agree the auction not to proceed and they jointly so instruct the notary in charge of the auction (Article 1002, para 3 GCCP). Finally the claimant may withdraw his instructions to the Court Bailiff and the notary and stop the auction. These cases simply stop the auction but do not otherwise amend the enforcement/ auction procedure.</p> <p>(b) The debtor/defendant may influence the timing in three ways:</p> <p>i. By applying to the court for the adjustment of the reserved price and been successful. Then a new auction date is fixed on the first Wednesday after a period of 30 days as of the issue/publication of the Court decision adjusting the reserve price (Article 1011A paras 2 and 3 GCCP).</p> <p>ii. By filing objections and then the Court grants a stay following a separate petition and determination by the Court on a prima facie evidence that the grounds of the objections will be successful and that the auction will cause irreparable damage to the defendant (Art. 1011A, para 2 GCCP). This stay is maintained up to the time which will be determined by the Court (usually the time when a first instance decision on the objections is issued); and</p> <p>iii. If the defendant owner requests the postponement of the auction for no more than 3 months in order to repay the debt and/or for achieving higher auction price, provided that the petitioner pays the enforcement costs and 25% of his debt. The petition should be filed within 30 days as of the seizure of the vessel and the decision is issued prior to the auction date (Articles 1000, 1011A para 3 and 1012 para 1 GCCP).</p> <p>(c) The stay petitions under (i) and (ii) above may be filed also by any other party having a legitimate interest (usually another creditor).</p>
Ireland	The owner and other creditors have little influence on the timetable or procedure for sale as the Admiralty Marshall can order the vessel to be sold under Rule 35 of Order 64 of the RSC if no appearance is made by the shipowner.
Italy	Articles 667, 668 and 669 CN provide the possibility to influence the timetable or procedure for sale by, respectively, (i) allowing the debtor to challenge the right of the claimant to enforce its claims over, or to attach ("pignorare"), the vessel (or any of the relevant shares ("carati"); (ii) allowing the debtor to challenge the formal validity and notification of the enforceable title ("titolo esecutivo"), the formal demand of payment ("precetto") and each single act of the enforcement; and (iii) allowing any third party to challenge the enforcement provided that (a) the sale of the relevant vessel still has to take place and (b) such third party claims to be the owner of, or the holder of a right in rem over, the relevant vessel.
Japan	It is not anticipated that the owner or other claimant (or the applying claimant) affects the timetable. It is the court's power to decide it.
Malta	Generally speaking, the Courts tend to schedule the auction around 4 to 5 weeks after the application requesting the said auction is filed. This gives the creditor time to advertise the sale and generate interest in the vessel. That said, if the owner and the creditor file an application asking to postpone the judicial auction and presenting valid grounds therefore, the Court will most likely postpone the auction. It is also possible for the owner to try and cancel the judicial sale by auction where it can be proven that the creditor does not have a valid res judicata judgment or executive title.

Netherlands	If the party enforcing his claim does not proceed with 'reasonable urgency', other parties may ask the court to take measures (Articles 545 and 569 DCCP).
New Zealand	Information not available.
Nigeria	See the answer to 9.5 above.
Norway	Limited possibilities, but if they agree on the procedure and claim it will of course be a more straight forward process than if any of make objections/appeals.
Panama	It is possible that the parties request the court by mutual agreement, to postpone the sale of the vessel, but unilaterally once it is set is not possible, unless sufficient legal grounds are given and proven for the sale to be postponed.
Spain	The way the owner or the mortgagee act in a judicial auction has direct impact on the overall timetable so, to a certain extent, it is possible for these parties to influence the procedure.
Switzerland	N/A
UK	The timetable is decided by the Admiralty Court and generally it is not possible to influence this.

9.8 Can a mortgagee enforce its mortgage in your jurisdiction by applying for a court approved private sale? If so, what are the criteria for an application requesting the court to approve a private sale and what is the procedure and timetable for such an application and sale?

Argentina	Argentina does not have any specific legal provisions regarding private sales. Supposing that creditor, owner and all other creditors agree on a private sale, the court will likely accept it.
Australia	<p>If the mortgagee has a power of sale under the mortgage, it may exercise it and sell the vessel to a buyer it has located (insofar as it is not inconsistent with the procedure regulating such sales, as specified in the property law acts of the Australian States and Territories). However, such a sale would not confer unencumbered title in the same way that a judicial sale would.</p> <p>If the mortgagee applies to the court to have the vessel sold, the Marshal must ordinarily appraise the vessel and advertise and invite offers for its sale. A court will only order the Marshal to sell to a purchaser found by the arresting party in special circumstances.⁶ This is so even if the proposed price is at or around the vessel's market value. To do otherwise would tend to undermine the impartiality of the Marshal, who is an officer of the Court.</p>
Brazil	<p>The creditor may opt for the private sale of the good, as per Article 879 of the new Brazilian Civil Procedure Code.</p> <p>The creditor may request the private sale to the Court by its own initiative or by an accredited broker. The judge will fix a term within which the sale must be effected, the way it shall be published, the minimum amount, the payment conditions, any guarantees and broker commission.</p> <p>It can be formalized in the proceedings, signed by the judge, the judgment creditor, the purchaser and, if present, the debtor. A letter informing the sale will be issued to the Real Estate Registry, or, if movable, delivered sent to purchaser.</p> <p>Local courts may issue local regulations detailing the private sale procedure and on the accreditation of brokers.</p>
Canada	Yes, but usually the burden is on such mortgagor (or any creditor who has effected an arrest) to show that the net proceeds of sale from a private sale will likely exceed any return from a public auction.
Croatia	The private sale is done without court's intervention.
Finland	<i>LEFT BLANK</i>
France	Out-of-court sales might be asked for. However, they are not private sales.
Germany	No
Greece	Greek law does not provide in principle for a Court approved private sale, unless the auction failed (i.e. no bidders showed up) twice (Article 966 para 3 and 1003 para 4 GCCP).
Ireland	There is no provision in the rules for a private sale and only for a court sale.

⁶ Assuming that Australian courts would follow Bank of Scotland Plc v "Union Gold", The Owners of the M/V [2013] EWHC 1696 at [20].

Italy	No, a mortgagee cannot enforce its mortgage in our jurisdiction by applying for a court approved private sale. The only recourse for the mortgagee in our jurisdiction is to arrest the vessel and apply for a foreclosure sale at public auction in pursuance of the claim.
Japan	No
Malta	<p>With regards to a court approved private sale, the applicant creditor must submit an application which shall be served on the vessel and all the known creditors and shall include a demand for such a court approved private sale of a vessel in favour of an identified buyer and in consideration for a predetermined price. Accordingly, the applicant creditor usually concludes a Memorandum of Agreement with a prospective buyer, which would be conditional to the court's approval. The creditor must also submit a copy of his final and non-appealable judgments or any other executive title to show that it has the right to request such a sale. Moreover, the executing creditor would need to submit appraisements by two independent and reputable valuers confirming the value of the ship or vessel. Lastly, the creditor must also adduce to the court evidence that the private sale is in the interest of all known creditors and that the price offered by the proposed buyer is reasonable in the circumstances of the case.</p> <p>The court will then schedule a first hearing date within 10 days from the filing of the application. Subject to no objections that the offered purchase price is not in the best interest of all interested parties, the Court will then schedule a final judgment date where it shall approve the sale. If there are such objections, the court must first delve into the merits of the allegations to see whether or not the court should acceded to the request to approve the sale. To date, only one court approved private sale application has ever been rejected by our courts.</p> <p>Generally speaking, the procedure takes around four to six weeks depending on whether or not any objections are forthcoming and provided that the mortgagee has identified a prospective buyer.</p> <p>The Court it is judgment approving the sale shall in its decree nominate a person who shall thereupon be entitled to transfer the ship or vessel in accordance with the terms and conditions approved by the Court, and as if he were the registered owner thereof. Moreover, the buyer has seven (7) days to deposit into court the purchase price of the vessel through the court agents.</p>
Netherlands	<p>Yes. Article 3:268 sub (2) DCC as in force in the jurisdiction of the Netherlands in Europe provides:</p> <p>2. On the application of the hypothecary creditor, the hypothecary debtor and the person having effected an attachment in execution the Provisional Measures Judge of the District Court may determine that there be a private sale by contract submitted to him for approval together with the application. If the hypothecary creditor, hypothecary debtor, attachor or holder of a limited right who has an interest in obtaining higher proceeds for the property, submits a more advantageous offer to the Provisional Measures Judge before the end of the hearing of the application, the Provisional Measures Judge may determine that the sale be made according to such offer. (...)</p> <p>The jurisdictions in the Dutch Caribbean have a similar provision, but in that provision the right to request a private sale is (still) only granted to the hypothecary creditor and the hypothecary debtor (and not the person having effected an attachment in execution (executoriaal beslag)).</p>

	<p>Article 548 DCCP (applying throughout the Kingdom) further provides:</p> <ol style="list-style-type: none"> 1. Until one week before the day fixed for the sale the application of Article 268 of Book 8 of the Dutch Civil Code that there be a private sale may be submitted to the Provisional Measures Judge of the District Court. 2. This application may only be made if a complete contract of sale is produced, with the proviso that, if the application is not made by the enforcing creditor, the contract need not be signed by him or on his behalf. Also should be produced copies of biddings received by the notary or a statement from the notary that he has not received any such biddings. 3. The application shall include a list of the interested parties referred to in Article 544. The Court Registrar shall inform them immediately that the application was made, and that they may be heard by the Provisional Measures Judge at their desire. 4. By timely submitting the application the day fixed for the public sale lapses. When the application is denied, the judge shall also fix the date on which the public sale shall take place. This sale shall be publicized at least fourteen days before in the manner set out in Article 516. The Provisional Measures Judge may determine that the person having made the application is to pay the costs of the publication, without prejudice to his obligation to compensate for the loss caused by the applications, if there are grounds therefor. <p>Although the legislative history of the Dutch Code of Civil Procedure (DCCP) made it clear that Article 548 DCCP is not applicable to the judicial sale of ships as a private judicial sale of ships was not thought desirable, the Court of Appeal of the Hague held (19 December 1995, S&S 1996/34 'All-Ways') this to be contrary to the substantive provision of Article 3:268 sub (2) DCC allowing a private judicial sale. Whereas the 'All- Ways' was a purely national case, the same was held to apply in case of a judicial sale of a foreign ship by the Rotterdam District Court (29 April 2009, S&S 2009/122 'Hannes C'). As a consequence, parties that desire a private judicial sale of a ship will take heed of the requirements of Article 548 DCCP, although the Article is not (directly) applicable.</p> <p>The law allows the private sale as it may result in a higher purchase price than can be obtained during an auction. To convince the court that the price offered by the prospective purchaser in a private sale is satisfactory, an independent valuation of the ship may be submitted to the court when applying for the private sale.</p>
New Zealand	There is no separate procedure for a court approved private sale of a vessel by a mortgagee.
Nigeria	See the answer to 9.5 above.
Norway	Sale through a broker is as private as it gets if the court's help is sought under Norwegian law. Non-consensual enforcement without following the rules of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) is not possible.
Panama	A mortgagee can, based on Article 272 of Law No.55 of 2008 as amended, carry out a private sale even without the court approval, by giving the owner and recorded mortgagees, at least 20 days' notice prior to the sale or its intention to privately sell the vessel. For this, the mortgagor must give the mortgagee an irrevocable power of attorney.

Spain	<p>Under Spanish law, there are two main alternatives to a judicial sale under an enforcement procedure: (i) realisation agreements (convenios de realización), foreseen in article 640 of the Spanish Civil Procedure Act; and (ii) realisation by a specialized person or entity (realización por persona o entidad especializada), regulated in articles 641 and 642 of the Spanish Civil Procedural Act. Both alternatives were introduced in our procedural law with the aim of obtaining better prices for the enforced assets than those obtained in judicial auctions. However, their utilization is very limited if compared with auctions, basically, due to the uncertainty surrounding the procedural rules and other registration issues.</p> <p>Regarding the realisation agreement, the mortgagee, the mortgagor and other parties evidencing a direct interest in the enforcement may seek the Court Clerk to summon an appearance in order to reach an agreement on the most efficient manner to realise the mortgaged vessel. Should the mortgagee and the mortgagor reach an agreement (which shall not be in detriment of third parties), the Court Clerk shall approve the agreement. Once the realisation has been fulfilled in accordance with the agreed terms and conditions, the Court Clerk will bring the enforcement procedure to an end. Should the agreement fail to be fulfilled as agreed, the mortgagee may request a judicial auction to be conducted.</p> <p>The realisation by a specialized person or entity can be requested by the mortgagee or the mortgagor (with the mortgagee's consent). The Court Clerk may agree to this alternative if the nature of the enforced asset makes it advisable and, if so, will order the proceedings to move forward so that the asset is realised by a person or entity with knowledge of the market in which such assets are bought and sold and who meets the legal requirements, if any, to operate in said market (e.g., ship brokers).</p>
Switzerland	Yes, in case all involved parties (debtor resp. owner and all secured creditors) agree with the private sale (art. 130 al. 1 and 143b DEBL).
UK	Save in exceptional circumstances it is not possible to arrange a 'private sale' approved by the Admiralty Court. An example of an exceptional circumstance would be where a delay in the sale of the ship would result in the loss of a valuable charter.

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?

Argentina	Yes, the mortgagee may bid its debt.
Australia	This issue arose in the sale of the "Beluga Notification" (file NSD432/2011) and the Court in effect made the mortgagee bank (which was the successful bidder for the vessel) pay full value for it.
Brazil	Although there is no legal provisions on this matter, we understand that the mortgagee would not be able to bid its debt with another credit, in order not to prejudice the interests of other creditors.
Canada	It is possible given the right circumstances. All maritime lien holders and any other interest which ranks before the mortgage will have to be secured/ paid off, such that no creditor, including the Marshall, will be put into a disadvantageous position as a result of the set-off.
Croatia	There is no provision in the Maritime Code or Enforcement Act which would allow a bidder to set off the purchase price against its debt.
Finland	<i>LEFT BLANK</i>
France	The general provisions of the Civil Code (Art. 1347 newly revised Civil Code) regulating set-off are not applicable.
Germany	For vessels / mortgages registered in Germany: Yes, there are certain provisions in the law allowing for this possibility but the prior ranking claims (including the costs of the proceedings) have to be paid in cash. For Vessels / mortgages not registered in Germany: No, the law strictly requires "payment of the full amount of the bid".
Greece	(a) In order to participate to the auction, a prospective bidder must deposit (with the notary in charge of the auction) either cash or a bank guarantee or banker's draft equal to 30% of the reserve price as security. (b) If the mortgagee is the highest bidder the notary public may allow the mortgagee not to pay immediately the auction price (which corresponds to the mortgage) until the list of priorities become final, but this may be subject to depositing an additional guarantee, if the claims of other creditors registered with the notary (especially if claiming priority over the mortgage) exceed the original guarantee deposited by the mortgagee (Article 1004, para 2 GCCP).
Ireland	The full proceeds of sale are lodged in court and can only be distributed according to court order.
Italy	A judgment of the court of Naples excluded the possibility for any creditor (including the mortgagee(s)) to request to the competent court the assignment of the vessel in satisfaction of the relevant claim as enforcement proceedings concerning vessels, according to such court, are governed exclusively by the provisions of the CN and/or the provision of the CCP expressly referred to in the CN. Indeed, the provisions of CCP providing for the assignment of an asset in satisfaction of the claim of the applicable creditor are not expressly referred to in the CN. Therefore, a mortgagee (or its preferred bidder or buyers) has to pay the full price in cash.

Japan	If the mortgagee is the highest bidder, such an arrangement is possible. (Art.78 (4) of the Civil Enforcement Act.)
Malta	Any person to whom a liquidated debt is owing under any judgement or executive title or deed or other obligatory writing has the option to bid <i>animo compensandi</i> in a judicial sale by auction. Prior to bidding <i>animo compensandi</i> and before the process of judicial sale by auction commences, the bidder must register his name through a note delivering a sworn declaration in front of the Registrar declaring the reason why he wishes to bid this way. This means that the creditor may set-off the purchase price against the said creditor's outstanding dues. It should however be noted that after the sale, interested parties can oppose the demand for such a <i>animo compensandi</i> bid. No such opposition can be made before or during the sale. To protect the sale, the law provides that any bid <i>animo compensandi</i> is made on condition that the bidder shall bind himself to pay the price into court in case it shall be so adjudged by the court. Accordingly, if the opposition is upheld after the sale, the purchasing creditor will need to deposit the whole purchase price amount in Court.
Netherlands	No, a mortgagee/hypothecary creditor cannot bid its debt so as to allow a set-off. The buyer must in principle pay the full price. The conditions of sale may allow deferment of payment if it is secured by an irrevocable demand guarantee, subject to prior approval by the creditor enforcing his claim.
New Zealand	Information not available.
Nigeria	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.
Norway	Yes, a mortgagee can bid its debt so as to allow for set off of the debt against the purchase price, but claims with higher priority must be settled in cash and security may be requested for potential claims.
Panama	No. The Mortgagee will have to pay the full price on cash, unless he is the sole bidder.
Spain	<p>The mortgagee can be allotted the vessel as payment (<i>adjudicación en pago</i>) when there are no admissible bids in the auction. There are two situations under which the allotment of the vessel to the mortgagee, as enforcing creditor, is allowed (article 670.2 and 670.4 of the Spanish Civil Procedure Act):</p> <p>(a) When the mortgagee, as enforcing creditor, is the bidder who placed the highest bid equal to or higher than 70% of the value at which the asset was put up for auction. In this case, once the final bid (<i>remate</i>) has been approved, the Court Clerk shall carry out the settlement (<i>liquidación</i>) of the amount due as principal, interests and costs and, after such settlement has been notified, the mortgagee shall lodge the difference, if any.</p> <p>(b) If the highest bid placed at the auction is lower than 70% of the value at which the vessel was put up for auction and the debtor does not suggest a third party improving the bid within ten days. If the debtor fails to do so in the terms of article 670.4 of the Spanish Civil Procedure Act, the enforcing creditor/mortgagee may, within five days, seek the award of the vessel at 70% of the aforementioned value or for the amount owed to him/her for all items, provided that such amount exceeds 60% of its appraisal value and the highest bid.</p>

Switzerland	The mortgagee who bids in the judicial sale and who is adjudicated the vessel may set off the debt against the purchase price but has to pay off the claims of potential prior lien holders in cash.
UK	No. The buyer (whether mortgagee or otherwise) must pay the full price in cash.

Question 10

10 SALE PROCEEDS

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

Argentina	The proceeds of the sale must be deposited in an official bank. At an interested party's request, the court may further order the deposit to be made in an interest bearing account.
Australia	<p>As soon as practicable after the sale, the Marshal must pay into court the proceeds of sale (Admiralty Rules 1988 (Cth), r 71). Whether the money is held in an interest bearing account, and what form it is held in, will ultimately depend on the rules of court of the relevant court.</p> <p>For example, in the Federal Court of Australia, money paid into court must be paid into the Litigants' Fund (r 2.42 of the Federal Court Rules 2011 (Cth)). The Court has an Australian Currency Account. In order to open a foreign currency and investment account, the Marshal needs to obtain an order of the court. However, the court has a dedicated US Currency Account.</p>
Brazil	The sale proceeds will be deposited in a judicial account, in which, usually, is applied indexation and interest rate (the criteria varies according to each State).
Canada	The normal rule is that the proceeds of sale are paid into Court which in turn deposits the funds into the Consolidated Revenue Fund controlled by the Minister of Revenue. Interest is paid at a lower rate than that paid on bonds and is compounded semi-annually. It is possible if unanimous agreement can be achieved among all parties who have appeared at the sale and filed claims that the proceeds of sale should be deposited into a private interest bearing trust account in Canada and the holder of such account is subject to the jurisdiction of the Court. In Canada, only Canadian funds can be deposited into Court, and if the proceeds of sale are in another currency and the parties do not wish to convert that currency into Canadian funds, then an unanimous agreement is necessary.
Croatia	The court's account into which the proceeds shall be paid does not bear interest.
Finland	<i>LEFT BLANK</i>
France	The proceeds of the sale will be held in an account at the Caisse des depots et Consignation.
Germany	<i>LEFT BLANK</i>
Greece	<p>(a) The sale proceeds are deposited by the notary public in charge of the auction to an interest bearing account with a special public fund (Articles 965 para 4 and 1002 para 4 GCCP).</p> <p>(b) Auctions (in the context of enforcement) in Greece are made in local currency (Euro). However, specifically for vessels flying a foreign flag or even Greek flag Vessels mortgaged in foreign currency the whole enforcement procedure and the auction takes place in the foreign currency specified by the claimant (almost invariably US dollars), the auction proceeds are deposited in the foreign currency paid and the distribution of the auction proceeds is made in the foreign currency for claimants having claims in foreign currency (Article 1012 para 4 GCCP).</p> <p>(c) The proceeds of the auction were not subject to any exchange control restrictions</p>

	<p>until 2 years ago when due to the economic crisis capital controls were imposed. Capital controls have now been relaxed and if the auction price has been imported in Greece from abroad, it can be re-exported up to 50% of the imported amount. It is expected to permit free export of the 100% of the imported funds up to the end of this year (2017).</p> <p>(d) At the time of payment of the various creditors there are no withholdings except notarial fees (0,8% - 0,6%) depending on the amount.</p>
Ireland	The sale proceeds are held in the Courts Accounts which is not an interest bearing Account.
Italy	<i>LEFT BLANK</i>
Japan	No. Once the vessel is sold, the court proceeds to distributing the proceeds immediately.
Malta	<i>LEFT BLANK</i>
Netherlands	Theoretically yes, unless payment is deferred and guaranteed by an irrevocable demand guarantee (which will include a provision about interest.) But in the current market circumstances the interest is practically 0%.
New Zealand	The proceeds are paid into court, but no further requirement is specified. ¹
Nigeria	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.
Norway	Yes, see section 11-27 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).
Panama	Yes
Spain	In those cases where a judicial auction takes place, the sale proceeds are held in an account controlled by the Spanish ministry of justice that bears interests (Cuentas de Depósitos y Consignaciones Judiciales) although those interests will be paid to the Spanish public treasury (Tesoro Público) (article 2 of Royal Decree 467/2006 of 21 April).
Switzerland	No. The sale proceeds will be deposited with a bank (official deposit bank; Depositenstelle). Currently the official deposit banks in fact charge negative interest under certain circumstances (amount to be deposited exceeding CHF 1000.000.-).
UK	The sale proceeds will be held in the currency of the sale – usually US Dollars or UK Sterling on a one day call interest bearing account. There are no exchange control regulations relating to the payment out of the sale proceeds.

¹ High Court Rules, r 25.51.

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

Argentina	In the currency of the sale.
Australia	See above.
Brazil	The payment at court will be always in local currency – Brazilian Reais.
Canada	The Federal Court in Canada can only receive Canadian currency and by law can only order the sale in Canadian dollars. Thus if the vessel is sold in a foreign currency, then the amount to be deposited will be subject to the rate of exchange on the date of the order of sale. However, the parties could agree (with court approval) that the sale proceeds be kept in a private interest bearing trust account denominated in foreign currency in appropriate situations.
Croatia	If the creditor is a foreigner or the mortgage is registered in a foreign currency the sale shall be ordered in such foreign currency and proceeds shall be kept in currency of the sale.
Finland	<i>LEFT BLANK</i>
France	The sale proceeds are held in the currency of the sale, i.e. in Euros.
Germany	Sale proceeds paid to the court or centralized depository will be converted into Euro.
Greece	See 10.1 above
Ireland	Local currency as the sale proceeds are lodged in the Court.
Italy	<p>Article 656 CN allows the competent court to discretionally set out terms and modalities of the payment of the sale price. Therefore, it is not possible to exactly predict what such terms and modalities of payment will be. However, it has happened in practice that the competent court has ordered the transfer of the sale proceeds into an interest-bearing bank saving book ("libretto di deposito bancario"). Furthermore, please note that the sale proceeds shall always be converted into local currency (i.e. Euro).</p> <p>Moreover, pursuant to Article 656 CN, the estimated amount of the expenses relating to the auction and the registration of the decree whereby, inter alia, title to the vessel is transferred to the purchaser shall be transferred on top of the deposit to be paid by each bidder in order to participate to the auction sale. Therefore, such expenses shall not be deducted from the sale proceeds once these are paid out.</p>
Japan	The proceeds needs to be paid in Japanese yen (local currency).
Malta	No the sale proceeds are held in a non-interest bearing court bank account and these are held in the currency of the sale, which must be concluded in Euros (the local currency in Malta)
Netherlands	The sale proceeds will normally be held in the currency of the sale.
New Zealand	Information not available

Nigeria	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 <i>Broadline Enterprises Ltd. v. Monterey Maritime Corporation</i> (1995) 9 NWLR (Pt. 417) 1; (1995) 10 SCNJ 1 at 26
Norway	As a starting point the sale will be made in Norwegian Kroner (NOK), but it is possible to agree on settlement in a different currency if this is deemed appropriate in the circumstances. The court fees will have to be covered in NOK.
Panama	Yes, they will be held in the currency of the sale, which in Panama is always converted in US Dollars. It does not matter if the claim is in other currency.
Spain	In a judicial auction in Spain, the currency will be euros.
Switzerland	Both is possible.
UK	See 10.1 above

10.1(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?

Argentina	No restrictions are currently in place.
Australia	Once settlement is complete and all the funds on the sale are received, and there is no dispute for the settlement money from another party, the Marshal will seek an order from the Court for payment out of the money. The Marshal will estimate his expenses for the sale which will be retained. The money will be paid into the account directed by the legal practitioner for the plaintiff. There is no "poundage fee" for the sale of a vessel by the Court.
Brazil	The amount deposited in a judicial account cannot be directly remitted abroad. It will have to be, first, transferred to an account in Brazil and then remitted abroad. And this transfer will need prior authorization from the Central Bank in Brazil – the judicial decision would justify this remittance to the Central Bank. This is a red-tape procedure that usually take 20 days.
Canada	No
Croatia	The proceeds shall not be subject to exchange control, but the court fees and expenses shall be deducted.
Finland	<i>LEFT BLANK</i>
France	No
Germany	No exchange control or other restrictions apply, the payment will be made to the recipient by order of the court in accordance with the final distribution plan established following the auction.
Greece	See 10.1 above
Ireland	<p>10% of the sale proceeds is payable by the purchaser for court duty. This is deducted from the funds in court. In addition there are usually court costs for the sale process of approximately 5% of the purchase price.</p> <p>Payment out requires order of the court. Once an order has been made, the time to remove the funds depends on the Court office but is usually around 2 weeks after the Court office receive the relevant bank account details in which the money is to be lodged and copy of the relevant court order for distribution.</p>
Italy	The proceeds of sale shall not be subject to any exchange control or similar restrictions. Payments to the creditors are made on the basis of payment orders issued by the competent court at the request of the interested party/ies. It is not possible to predict the likely timetable for obtaining permission to remove the funds as this may vary depending on the court involved and the relevant workload.
Japan	The proceeds are subject to ordinary procedure of foreign exchange transactions. There is no general limitation on conversion into a foreign currency or transfer abroad of Japanese currency under the Japanese law.
Malta	No, the proceeds are not subject to any exchange control or restrictions or court fees where they are paid out. A creditor must merely file an application requesting the

	withdrawal of the funds wherein it must prove it is entitled to do so and that there are no known pre-ranking creditors.
Netherlands	No exchange control permission is required to export the funds.
New Zealand	New Zealand does not operate exchange controls.
Nigeria	<p>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.</p> <p>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.</p> <p>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</p>
Norway	No exchange control will apply. Court fees and other costs incurred as part of the sales process will be deducted. Such costs will be published as part of the proposed settlement. The funds will be released once the court's decision on distribution and sale is binding, see section 11-38 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).
Panama	<p>No, it will not be subject to exchange control, but the expenses incurred by the Marshall in the maintenance of the vessel or other assets shall be deducted from said sums, after the expenses have been approved by the Court at a hearing with the presence of all the parties to the action and other consolidated actions, within five working days from the presentation of the accounting report by the Marshall. The Marshall shall present said report no later than 30 days after the approval of the judicial sale.</p> <p>The sums collected from the judicial sale shall be applied by the Court to the payment of the final judgment rendered pursuant to the order of priority of the different creditors.</p> <p>The plaintiff shall be reimbursed those sums that he delivered to the Marshall for the conservation, maintenance and custody of the auctioned property from the proceeds of the judicial sale of said property before payment is made to the respective creditors of the sums derived from the execution of the judgment and after payment of the costs of the proceedings.</p>
Spain	In accordance with Art. 486 MNA the proceeds of the sale shall first be used to pay the procedural costs and expenses arising from the arrest, or for the enforcement and subsequent sale of the ship. Such costs and expenses include, among others, the expenses of conserving the ship and maintaining the crew, as well as the wages and other sums, and the expenses to which Art. 4.1.a) MLM93 refers, accrued from the moment of the arrest, or from commencement of the enforcement. The remainder shall be distributed according to the terms set forth in the MLM93. Once all the credits are settled, the balance, if any, shall be delivered to the owner and shall be freely transferable.
Switzerland	No. Just the costs of the enforcement authority will have to be covered (art. 140 DEBL).
UK	See 10.1 above.

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