

CMI INTERNATIONAL WORKING GROUP ON SECURITY INTERESTS OVER SHIPPING CONTAINERS

INTERIM SUMMARY OF RESPONSES TO QUESTIONNAIRE TO NMLAS

1 INTRODUCTION, EXECUTIVE SUMMARY AND NEXT STEP

- 1.1 Responses have been received from seven NMLAs, which is not a sufficiently wide response from which to draw conclusions. The responses seem to have 'dried up' and further responses to be chased.
- 1.2 That said, some points do emerge from the seven responses so far received (China, Columbia, Germany, Italy, Japan, Netherlands, Norway and Venezuela) which are summarised below.
- 1.3 This interim summary has been prepared by the Co-Chairs without input yet from the other members of the International Working Group. It is therefore subject to review by the IWG, which will be obtained in due course (certainly once further NMLA responses have been received).
- 1.4 The responses varied in clarity and detail. The summary may therefore not be fully accurate (and inevitably risks being over-simplified). The summary follows the ordering of the questions.
- 1.5 One of the next steps the IWG will undertake is to contact the industry to see whether there is at all any interest in the project.

2 REGISTRATION OF INTERESTS

- 2.1 Generally, there are not registers which are specific and exclusive to containers. The exception to this is Columbia, where there appears to be a container-specific register.
- 2.2 There are general personal property registers in: China, Columbia and Japan.
- 2.3 In Japan, it is possible to register title but not security; in the Netherlands, the position is the opposite (registration of security but not title).
- 2.4 There is no register at all in Germany, Italy, Norway and Venezuela.

3 RECOGNITION OF FOREIGN REGISTERED INTERESTS

- 3.1 Jurisdictions which appear positive to recognition of foreign registered interests: China, Columbia, the Netherlands.
- 3.2 Jurisdictions where the position is negative or qualified:
 - (a) Japan: requirement for *lex situs* test to be satisfied.
 - (b) Italy and Norway: recognition only in the context of recognition of foreign judgement.
 - (c) Venezuela: subject to treaty recognition or apostilling in Venezuela.
 - (d) Germany: position unclear/tbc.

4 RECOGNITION OF CHOSEN LAW FOR PROPERTY MATTERS

4.1 Jurisdictions which are generally positive to recognition of chosen law: China, Columbia, Norway, Venezuela. This is subject to qualifications:

- (a) Columbia: recognition only when limited to/coupled with arbitration.
- (b) Norway: subject to the position in Norwegian insolvency proceedings.

4.2 Jurisdictions which are negative to recognition of chosen law: Germany, Japan, the Netherlands, possibly Italy (to be confirmed). Germany, Japan and the Netherlands look to be *lex situs* (with Germany and Japan applying *renvoi* in respect of property located abroad).

4.3 China looks to be *lex situs* where no law is chosen.

5 RE-CHARACTERISATION OF LEASES

5.1 Jurisdictions which do not re-characterise: China, Germany (except possibly in sale and leasebacks), Italy and Norway.

5.2 Japan does not re-characterise generally – but significantly does re-characterise in Japanese insolvency.

5.3 Venezuela does re-characterise where there is a foreign choice of law but the conditions for recognition of that are not satisfied.

6 ENFORCEMENT REMEDIES

6.1 We have not focused on 6.2 and 6.3 in relation to details of the enforcement process but on 6.1 (Self-Help Remedies) and 6.4 (Liability to Cargo Interests).

6.2 Jurisdictions which are positive towards self-help remedies: Columbia, (possibly) Italy, Japan (with some limitations) and Norway (again, with some limitations).

6.3 Jurisdictions which are negative towards self-help remedies: China, Germany, the Netherlands and (probably) Venezuela.

6.4 Jurisdictions where there generally appears not to be liability to cargo interests: China, Columbia and Japan.

6.5 Jurisdictions where there generally appears to be liability of cargo interests: Germany, Italy, (possibly) the Netherlands, Norway and Venezuela.

7 INSOLVENCY

7.1 There is some kind of stay on enforcement of both leases and security in insolvency proceedings in most jurisdictions.

7.2 The exception is the Netherlands, where there is no stay in respect of lessors (other than sub-lessors).

7.3 In Japan, the stay in insolvency is a function of the re-characterisation of leases in insolvency.

8 LIENS

Liens of various types can arise in some of the jurisdictions. The common themes are: carriers/transportation, port operators, reporters and taxes.

9 PROBLEMS IN PRACTICE AND ENFORCEMENT

- 9.1 Practical problems of identification were flagged, notably by China and Germany (large container ports, including Germany referring to the Hanjin insolvency). China mentioned the usefulness of the BIC register.
- 9.2 Japan mentioned the effect of insolvency stay (where recognised in the enforcement jurisdiction).
- 9.3 Venezuela mentioned customs liens/fines.
- 9.4 The following jurisdictions had nothing to report: Columbia, Italy, the Netherlands and Norway.

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23 September 2021