

## **CMI International Working Group on Security Interests over Shipping Containers**

### **Questionnaire to National Maritime Law Associations**

#### **1 Background**

1.1 This questionnaire is addressed to National Maritime Law Associations in order to gather information and experience in relation to legal issues around the financing of containers, in particular repossession and enforcement.

1.2 Containers can be financed by security being granted by the owner, financed by way of lease from a leasing company or by way of hire purchase, conditional sale or other arrangement involving retention of title. An express grant of security is for convenience referred to as a 'mortgage' even though in many jurisdictions that is not the concept known to the law.

1.3 The aim of the questionnaire is to establish whether or not a case can be supported for a Container Protocol to the Cape Town Convention on International Interests in Mobile Equipment.

#### **1.4 Responses are requested by 15 February 2020 to:**

Benoit Goemans at: [benoit.goemans@GDSadvocaten.be](mailto:benoit.goemans@GDSadvocaten.be)

David Osborne at: [dosborne@wfw.com](mailto:dosborne@wfw.com)

#### **2 Registration of interests**

2.1 In your jurisdiction is it possible to register a property interest of any nature in containers, for example as:

- (a) an owner generally;
- (b) an owner under a retention of title arrangement;
- (c) a mortgagee under a mortgage; and/or
- (d) a lessor under a lease.

2.2 Is any register in your jurisdiction specific to the applicable party or is it specific to the type of asset, i.e. containers?

#### **3 Recognition of foreign registered interests**

3.1 If an interest in containers is registered as referred to in question 2 in a jurisdiction which is not your jurisdiction, would your jurisdiction recognise that interest (ie in circumstances where a party sought to enforce that registered interest in your jurisdiction)?

3.2 If 'yes', on what legal basis?

3.3 If 'no', on what legal basis?

#### **4 Recognition of chosen law for property matters**

- 4.1 Do the laws of your jurisdiction recognise the law chosen by the parties to govern the property aspects of a transfer of title or grant of mortgage:
- (a) if the containers are physically located in your jurisdiction when the transfer or grant takes place; or
  - (b) if the containers are physically located in another jurisdiction (not being the jurisdiction of the chosen law) when the transfer or grant takes place?
- 4.2 If the answer to question 4.1(a) and/or (b) is 'no', how would the law of your jurisdiction determine which law does apply?

#### **5 Re-characterisation of leases**

- 5.1 Are there circumstances in which your jurisdiction would re-characterise a lease or a retention of title arrangement as a security interest?
- 5.2 If 'yes', briefly, how and when will it do this?
- 5.3 If 'yes', could re-characterisation take place in certain circumstances under the laws of your jurisdiction even where the law chosen by the parties to govern the lease would not re-characterise? If so, please explain.
- 5.4 If 'yes', is it necessary or possible for the lessor to protect its interest by any security registration or filing? (See question 2).

#### **6 Enforcement remedies**

- 6.1 Do the laws of your jurisdiction permit an owner, a mortgagee or a lessor to exercise 'self-help' remedies to enforce and repossess in respect of containers located in your jurisdiction? (Assuming this is permitted by the chosen governing law and the terms of the documents).
- 6.2 Please outline briefly the judicial process (ie not involving 'self-help') which would be necessary in order to enforce and repossess in respect of containers located in your jurisdiction.
- 6.3 In particular, in your jurisdiction what legal steps would need to be taken in order to allow a mortgagee or lessor to take steps to repossess containers:
- (a) located shore-side on property of a third party; or
  - (b) located on a ship in port owned and/or chartered by a third party?
- 6.4 If a mortgagee or lessor took enforcement or repossession action in respect of a loaded container in your jurisdiction would the mortgagee or lessee have legal duties or liabilities to cargo consignees and, if so, of what nature?

#### **7 Insolvency**

- 7.1 Under the insolvency laws of your jurisdiction can there be any stay or restriction on the right to enforce or repossess if the applicable counterparty enters into insolvency proceedings?

7.2 If the answer is 'yes', please outline briefly.

**8 Liens**

8.1 Please briefly outline the types of non-consensual liens affecting containers which can arise under the law of your jurisdiction.

**9 Problems experienced in practice on enforcement**

9.1 Please briefly outline any know problems which have arisen in relation to enforcing against or re-possessing containers in your jurisdiction, including:

- (a) problems of identification and tracking containers;
- (b) establishment and recognition of property rights.

**1 November 2019**