**Reply to CMI International Working Group**

**on**

**Security Interests over Shipping Containers Questionnaire**

**to National Maritime Law Associations**

***Please refer to our replies in bold and italic after each question. Responses are based on laws in force in Norway as per November 2019.***

**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:

1. an owner generally;
2. an owner under a retention of title arrangement;
3. a mortgagee under a mortgage; and/or
4. a lessor under a lease.

***Norway does not allow you to register a property interest in containers by registration in any public register. The same applies to a mortgagee or a lessor. However, the parties may enter include a general retention of title clause in their agreement, that will be considered binding, subject to certain exceptions in Norwegian insolvency proceedings. A container may although not practical also be pawned.***

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?

***The public registers are subject to specific assets, i.e. ships, real estate, cars, factoring, inventory etc. Please note that there is no way of registering title to 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?

***This question raises numerous and complex questions under Norwegian law that are impossible to adequately discuss within a questionnaire. However, we will seek to highlight a few issues with such enforcement.***

***An agreement – governed by foreign law – setting out title/ security rights between two parties to a container will as a starting point be recognised under Norwegian law. The possibility of getting any assistance from the Norwegian courts will nonetheless be limited and would depend on, inter alia, the court’s jurisdiction and whether the mandatory provisions of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) are deemed to apply. Norwegian law only allows for consensual private enforcement.***

***In general, this means that Norwegian courts will not allow a straightforward enforcement of the foreign registered title in/mortgage over a container due to the reason that such security interest is not recognised by Norwegian law. In order to enforce, the party seeking enforcement would either need a foreign judgment that is recognised by Norway or alternatively a Norwegian judgment recognising the foreign security interest. In the latter case, it may prove difficult to establish the jurisdiction of Norwegian courts; especially if the only link to Norway is that the container is situated here due to for instance transit. After having obtain such a foreign or Norwegian judgment, then the party may seek to enforce its rights.***

**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:

1. if the containers are physically located in your jurisdiction when the transfer or grant takes place; or
2. if the containers are physically located in another jurisdiction (not being the jurisdiction of the chosen law) when the transfer or grant takes place?

***In general, Norwegian courts would recognise the chosen law by the parties. But that starting point***

***may be modified if one of the parties is/becomes subject to insolvency proceedings in Norway.***

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?

***N/A.***

**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?

***No.***

5.2 If 'yes', briefly, how and when will it do this?

***N/A.***

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.

***N/A.***

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).

***N/A.***

**6 Enforcement remedies**

6.1 Do the laws of your judicial 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).

***An agreement including self-help remedies (i.e. retention rights) will as a starting point be recognised. However, Norwegian law only allows for consensual private enforcement.***

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.

***Please refer to the answer to question 3 above. The process would be two-fold be requiring the party seeking to enforce to first obtaining a foreign recognisable judgment or a Norwegian judgment confirming the alleged title/security interest and then initiating enforcement procedures in accordance with the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).***

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:

1. located shore-side on property of a third party; or
2. located on a ship in port owned and/or chartered by a third party?

***Please refer to the answer to question 3 above. There is no distinction between the situation in a) or b).***

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?

***The mortgagee/lessor taking re-possession or the like would not have any specific legal liabilities towards cargo consignees. However, the enforcing party could be subject to an obligation to exercise reasonable care based on the nature of the cargo inside the container and if anything is negligently done or omitted, it may face liability in tort.***

**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?

***Yes, pursuant to section 117 and section 17 of the Norwegian Bankruptcy Code of 1984 (Nw. konkursloven), enforcement of rights of secured creditors are stayed for the first 6 months of an insolvency proceeding. Currently, only insolvency proceedings in the other Nordic countries are recognised in Norway, so insolvency proceedings originating in other jurisdictions will not benefit from the Norwegian rules on automatic stay.***

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

***See above.***

**8 Liens**

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

***Norwegian courts may order an arrest of the vessel’s cargo; i.e. containers if there are legal grounds for granting an arrest. The carrier or alternatively the shipper may also exercise a possessory lien if they are in possession of the container and the contract/background law allows for such retention rights.***

**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:

1. problems of identification and tracking containers;
2. establishment and recognition of property rights.

***Not applicable due to the absence of a general legal regime to enforce against or re-possess containers in Norway.***

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22 November 2019, by Benedicte H. Urrang, lawyer at Nordisk Skibsrederforening (Nordisk Defence Club), Norway