

Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

Published by

Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between May and June 2019. Be advised that this is a developing area.

© Law Business Research Ltd 2019

No photocopying without a CLA licence.

First published 2014

Sixth edition

ISBN 978-1-83862-134-6

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Ship Finance 2019

Contributing editor**Lawrence Rutkowski****Seward & Kissel LLP**

Lexology Getting The Deal Through is delighted to publish the sixth edition of *Ship Finance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Switzerland.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Lawrence Rutkowski of Seward & Kissel LLP, for his continued assistance with this volume.



London

June 2019

Reproduced with permission from Law Business Research Ltd

This article was first published in July 2019

For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	3	Marshall Islands	74
Lawrence Rutkowski Seward & Kissel LLP		Francis X Nolan III and John F Imhof Jr Vedder Price PC	
Brazil	5	Nigeria	81
Camila Mendes Vianna Cardoso Kincaid Mendes Vianna Advogados		Funke Agbor and Chisa Uba Adepetun, Caxton-Martins, Agbor & Segun (ACAS-Law)	
China	13	Panama	88
James Hu, Lawrence Chen, Mervyn Chen and Jasmine Liu Wintell & Co		Jorge Loaiza III Arias, Fabrega & Fabrega	
Cyprus	21	Russia	94
Marion Coukidou-Madella Chrysses Demetriades & Co LLC		Alexander Mednikov Jurinflot International Law Office	
Germany	28	Singapore	101
Benjamin Hub, Lars Frohne and Alexander M Wojtek Luther Rechtsanwalts-gesellschaft mbH		V Hariharan Haridass Ho & Partners	
Israel	35	Sweden	106
Michael Safran S Friedman & Co, Advocates		Gudmund Bernitz HFW	
Italy	42	Switzerland	112
Andrea Berlingieri and Lorenzo Pellerano Berlingieri Maresca Studio Legale Associato		Stephan Erbe ThomannFischer	
Japan	49	United Arab Emirates	119
Norio Nakamura Yoshida & Partners		Tien Tai HFW	
Liberia	55	United Kingdom	125
Mike Timpone Seward & Kissel LLP		Tony Rice and Ian Hughes HFW	
Malta	61	United States	135
Kevin F Dingli, Suzanne Shaw and Louisa Dingli Dingli & Dingli Law Firm		Lawrence Rutkowski Seward & Kissel LLP	

United Arab Emirates

Tien Tai

HFW

DUE DILIGENCE

Demonstrating title or legal ownership

- 1 | How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Vessels are registered at the Marine Affairs Department of the Ministry of Communications. Title to or legal ownership of a vessel is demonstrated by a transcript of the ship's register in which the name and address of the shipowner is set out together with the date on which title was registered.

Liens

- 2 | How can one determine whether there are any liens recorded over a vessel?

A mortgage on a vessel can be recognised in the transcript of the ship register. In respect of other liens (possessory or maritime), there are no means of determining whether any liens are registered against a vessel, since these types of liens are generally not registrable in the UAE.

- 3 | How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

The amount of the mortgage can be ascertained by viewing the transcript of registry. However, in respect of security agreements, liens, charges or other encumbrances, such information is usually private between the parties, and if this is not disclosed voluntarily there is no direct means to ascertain the existence of such obligations.

Public registry searches

- 4 | Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

There is no public registry in the UAE to search for this type of information. There is no concept of good standing in the UAE. However, in practical terms, to ensure the existence and capacity of a UAE company to enter into any proposed transaction, one should request copies of:

- constitutive documents;
- a trade licence;
- the commercial registration certificate; and
- a chamber of commerce certificate.

- 5 | Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

There is no public registry in the UAE to search for this type of information. It is prudent to request copies of the documents set out in question 4, which should be verified by an officer of the company, confirming that it is a true copy and no change has been made to such copy.

Debt obligation

- 6 | What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

There is no restriction relating to the legal capacity of UAE companies entering into a guarantee. However, it would be prudent to obtain a copy of the company's memorandum and articles of association to ascertain any relevant limitations. The UAE company must operate its business within the ambit of the powers provided for in its constitutive documents and relevant trade licence. In terms of entering and performing its obligations under any transaction, the constitutive documents of the company must empower it to borrow, lend, grant security, give guarantees or grant other security, whether on its own account or on account of the debt of a third party (to the extent the transaction involves such activities). In addition, the company needs to hold the necessary quorum of directors' or shareholders' meetings, or both, and obtain the relevant approvals to enable the company to enter into the relevant transaction to which it is a party.

Obligations of foreign lenders

- 7 | Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

No. UAE companies may borrow abroad and in foreign currencies directly. Foreign lenders will not be considered to be resident simply by extending a cross-border loan or credit to a UAE-based obligor.

REPAYMENT

Central bank and regulatory approval

8 | Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

No, UAE Central Bank or other regulatory approval is not required.

Usury laws

9 | Do usury laws limit the interest payable to a lender in respect of a vessel financing?

Article 76 of the Commercial Code allows lenders to charge simple interest, which cannot exceed 12 per cent per annum.

Withholding taxes

10 | Are withholding taxes payable on principal or interest payments to non-resident lenders?

There is no withholding tax in the UAE and, accordingly, principal or interest payments by a UAE company to a non-resident lender is not subject to any withholding tax.

REGISTRATION OF VESSELS

Eligibility for registration

11 | What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

A vessel under construction may not be registered for the purpose of recording a mortgage over it. Article 18(1) of the UAE Maritime Code (the UAE Code) provides that all vessels are eligible for registration under the UAE flag with limited exceptions – these include fishing and pleasure boats. The UAE Code also prohibits the registration of any oil tanker that is over 10 years old (unless special dispensation is obtained).

A vessel is defined as any structure normally operating in navigation at sea, without regard to its power, tonnage or purpose for which it sails. A hovercraft is deemed to be a vessel and can be registered on the UAE Ship Registry.

Offshore drilling rigs and mobile offshore drilling units are considered 'vessels' and, as such, can be registered on the UAE Ship Registry.

The registration of vessels in the UAE can now be done online via the Federal Transport Authority website: www.nationaltransportauthority.ae.

12 | Who may register a vessel in your jurisdiction?

A vessel under construction may not be registered for the purpose of recording a mortgage over it. Article 18(1) of the the UAE Code provides that all vessels are eligible for registration under the UAE flag with limited exceptions – these include fishing and pleasure boats. The UAE Code also prohibits the registration of any oil tanker that is over 10 years old (unless special dispensation is obtained).

A vessel is defined as any structure normally operating in navigation at sea, without regard to its power, tonnage or purpose for which it sails. A hovercraft is deemed to be a vessel and can be registered on the UAE Ship Registry.

As stated in question 11, offshore drilling rigs and mobile offshore drilling units are considered 'vessels' and, as such, can be registered on the UAE Ship Registry.

The registration of vessels in the UAE can now be done online via the Federal Transport Authority website: www.nationaltransportauthority.ae.

Registry for international shipping operations

13 | Is there an alternate registry for international shipping operations?

There is no alternate registry in the UAE for international shipping operations, such as an offshore register, for foreign owners to have their vessels registered.

SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

Types of ship mortgage

14 | What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

There are no standardised forms of mortgage agreements and, provided that the agreement meets the basic requirements (set out below) generally as stated in the law, the parties are free to draft the agreement. The main points to bear in mind are as follows:

- the mortgage must be effected through an 'official instrument'. In practice, this means that the mortgage must be in Arabic and should be properly notarised. There is no statutory short form mortgage or prescribed form for drafting a mortgage; it should contain all the essential elements as set out in the UAE Code; and
- the loan amount set out in the mortgage should have a specific maturity date, the maximum mortgage amount should be fixed, interest, if any, should be stipulated and the mortgage should cover a particular vessel.

Also it should be noted that:

- the law in respect of provisional mortgages over a vessel that has not been registered is unclear; it is preferable to ensure that a mortgage is created over a vessel that is already registered with the National Transport Authority (NTA); and
- the mortgage can be in any currency; however, should proceedings be initiated in a UAE court (or if a UAE court accepts jurisdiction) the amount will be converted into dirhams.

Required form

15 | Give details of any required form for ship mortgages in your jurisdiction.

Under UAE law, a ship mortgage agreement has no prescribed form. In practice, dual English and Arabic documentation is accepted; however, it is important to bear in mind that the Arabic version will generally prevail if there is a dispute over language. In the mortgage agreement itself, the parties may, by and large, insert whatever provisions they wish. This can include the rights and obligations of the mortgagor and mortgagee. We have seen recently that loans or guarantees of obligations of considerable complexity can be expressed to be secured by such a mortgage deed. The mortgage must be notarised.

The signed mortgage agreement, together with the respective application and other supporting documentation, must be submitted to the relevant authorities. We have noted in some instances that the bank must also consent for mortgage registration through a simple letter addressed to the NTA. Again this needs to be in English and in Arabic, but it does not need to be notarised.

Registration of mortgages

- 16 | Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

A ship mortgage is registered with the ship registry in which the relevant ship is registered. The main registries are in Abu Dhabi, Dubai and Sharjah. Upon an application being filed, the registrar will enter the mortgage into the registry. The transcript of register is endorsed by a stamp confirming the mortgage registration. The mortgage only becomes effective upon its registration.

- 17 | Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?

The beneficiary bank, the amount of the secured debt and the interest rate (if any) must be recorded. The mortgage needs to specify a maturity date. There is no requirement for the underlying debt instrument to be filed with or attached to the recorded mortgage; however, it is commonplace to do so.

- 18 | Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?

Yes, a security agent can be used in the UAE jurisdiction for the purpose of holding and administering security. The UAE does not recognise the concept of a trust and, to the extent that this concept is used, there is no certainty that this will be enforced by the courts. Other techniques, such as parallel debt, are also used.

Filings on transfer

- 19 | If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?

Although it is not necessary to make any fresh filing on transfer of a portion of the underlying debt among existing lenders to a new lender, as a matter of good practice, financial institutions usually amend their filings to accommodate such modifications. With a security agent structure, transfers of underlying debt positions need not be registered at the UAE Ship Registry.

- 20 | If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?

The transfer of the mortgage position by assignment is not required to maintain the validity of the mortgage, but should be done for the protection of the assignee mortgagee's rights with regard to the assignor and also to avoid difficulties and delays in establishing the assignee's right to foreclose on the mortgage in the future. We have received conflicting responses when conducting our enquiries at the various ship registries in the UAE. To be certain, it may be worthwhile to register a new mortgage in the name of the new lender.

Maritime liens

- 21 | What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?

The UAE Code lists the debts that give rise to maritime liens. In summary, these are as follows:

- legal and judicial costs in maintaining and selling the ship;
- crews' wages;
- claims for salvage reward and the ship's share in general average;
- damages for collisions, bodily injury to passengers and crew, and loss of or damage to goods; and
- debts arising from contracts made by the master within the scope of his or her authority for the supply of necessities to the ship while the ship was away from her home port.

Under UAE law, a maritime lien gives rise to a right to arrest the respective vessel regardless of who the vessel's owner is. Maritime liens cease to exist on either a judicial sale of the ship or on a commercial sale if the purchaser has taken certain steps to advertise and register the sale.

Article 116(1) of the UAE Code permits the arrest of a sister ship at the time the debt arose, except where the claim concerns disputes over ownership, joint ownership and mortgages. The arresting party is only entitled to arrest the vessel to which the debt refers. Mere associated ship arrests are not permitted under the UAE Code.

In relation to a claim against a vessel not owned by the owner but by a demise charterer, the claimant may arrest either the vessel in respect of which the claim arose or any other vessel owned by the demise charterer. The claimant may not arrest other vessels owned by the owner of the vessel in respect of which the claim arose.

- 22 | What maritime liens rank higher than a mortgage lien?

Under the UAE Code, ship mortgages rank immediately after the first five categories of maritime liens set out in question 21.

Non-mortgage liens

- 23 | May non-mortgage liens be recorded over a vessel?

Non-mortgage liens cannot generally be recorded over the vessel. The UAE Code provides for the endorsement in the Ship Registry of any claim in rem against a registered ship. This procedure is certainly followed in respect of registered mortgages; however, we have never had experience of the registration of, for example, a maritime lien over a registered ship. Our due diligence has shown that it is unclear whether, in practice, the Ship Registry would be prepared to make such a registration.

'Foreign' flag vessels

- 24 | Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?

Mortgages on foreign-flagged vessels are recognised and may be enforced in the UAE. The UAE courts will normally treat a foreign-registered mortgage in the same way as a UAE-registered mortgage, insofar as both are maritime debts under the UAE Code. The UAE courts will also generally uphold claims from foreign lenders for debts secured over vessels that are registered in another jurisdiction provided that the UAE court is satisfied that they have jurisdiction and the mortgage is validly recorded in the relevant foreign jurisdiction and contains no provisions that are considered contrary to the public policy of the place of enforcement.

Enforcement of mortgages

- 25 | What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?

A vessel may only be arrested to secure payment of a 'maritime debt' as defined in article 115 of the UAE Code.

To arrest any vessel in the UAE, the claimant bank must first prepare a power of attorney (POA) in favour of the lawyers with a right of audience in the UAE to represent them in the UAE courts. If the POA is executed abroad, it must be notarised, legalised by the relevant Ministry of Foreign Affairs of the country of execution and authenticated by the UAE embassy in that country. Upon its arrival in the UAE, the POA must be further authenticated by the UAE Ministry of Foreign Affairs and then translated into Arabic. This can take time, which can be an issue, especially if the arrest is urgent. If an arrest order is granted, a letter from the UAE court will be sent to the relevant port authority requesting the arrest of the vessel.

The claimant needs to file substantive proceedings within eight days of an arrest order being granted, otherwise the arrest can be challenged. The UAE court will then, typically, schedule a number of hearings and determine the case on its merits. In the meantime, the arrest order will remain in place unless the defendant provides a UAE bank guarantee or pays cash into court. A judicial sale typically takes between two and three years. This is for a relatively straightforward case of non-payment.

Costs vary depending on the emirate, however, and these are roughly US\$4,000 in Dubai and US\$8,000 in the other emirates.

Sale by mortgagee

- 26 | May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?

The private sale of mortgaged vessels by a mortgagee is not allowed. In the UAE, the enforcement process is only possible through a court and under UAE law there is no provision for 'self-help remedies' whereby lenders can take possession of and sell the vessel in the event of a default free from a court order.

Default under mortgage

- 27 | Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

It is common for ship mortgages to appoint a receiver following a default. In general, the UAE law recognises the appointment of receivers or administrators following the insolvency or bankruptcy of the owner.

Limitations on rights of self-help

- 28 | What are the limitations on rights of self-help by a mortgagee?

There is no express prohibition on self-help remedies. These are contractual arrangements between parties. Accordingly, if all parties agree, self-help remedies can be exercised, but it should be noted that it is possible for a third party to approach the court and challenge such arrangement.

Duties to owner or third-party creditors

- 29 | What duties does a mortgagee owe to an owner or third-party creditors?

In the emirate of Dubai, simultaneously with an arrest application, an undertaking needs to be given by the arresting party indemnifying the port authorities in Dubai if the vessel under arrest is abandoned. We are not aware of similar undertakings requested by other emirates, although this may change.

COLLATERAL

Finance leases

- 30 | May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

No, finance leases or other charters may not be recorded over UAE-flagged vessels.

- 31 | May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

It is possible that the UAE courts may recharacterise certain finance leasing transactions as being conventional loans or other arrangements. We are aware of a Dubai Court of First Instance decision that recharacterised an Islamic lease as a sale by way of instalments. This is indicative of how the UAE courts may recharacterise lease financings. To the extent that the UAE Civil Code is applicable, it contains various provisions that impact upon leasing arrangements and that could prevail over contractual provisions contained in a lease. The Civil Code contains a number of provisions that protect the lessor's interests: for example, one of the statutory provisions include the lessee not being able to sublease unless the lessor consents (article 787).

Security interests

- 32 | How is a security interest created over earnings of a vessel, charter contracts, insurances, etc? How are these security interests perfected?

Usually, the security interest over a vessel's earnings is established by the owner assigning all earnings and all other income of the vessel in favour of the financier. It is recommended that the relevant debtor (ie, the charterer) is notified of the assignment.

- 33 | Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

Except for land charges, security interests against non-vessel collateral historically did not have to be registered to be enforceable. With the entry into force of Federal Law 20 of 2016, and the recent introduction of the implementing regulations (March 2018), this means a significant change in the security-taking and perfection regime in the UAE. The new law covers accounts payable, bank accounts and documents of title and raw materials, such as hard and soft commodities.

- 34 | How is a security interest over a deposit account established? How is a security interest perfected?

A security interest over accounts is established by pledging the relevant account and notifying the relevant account holder of the pledge. It is recommended that such account is blocked or fixed in order to be valid

security under UAE law. It is appreciated that for operating accounts this may not be feasible and there are various methods such as the use of addenda to address this. Federal Law 20 of 2016 also changes the existing position, but at the time of writing the implementing regulations have not yet been published. Accordingly, specific legal advice for the updated positions should be sought.

35 | How are security interests in non-vessel collateral enforced?

Security interests in non-vessel collateral are normally enforced by notifying the relevant debtor of the event of default and granting him or her a reasonable period to rectify such default before enforcement action commences.

Share pledges

36 | How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Taking a local pledge of shares is relatively uncommon, as it requires a local UAE licensed bank to hold such security. The Companies Law (Law No. 2 of 2015) expressly permits shareholders in limited liability companies to pledge their shares. Any such pledge must be made in accordance with the company's memorandum of association, under an official notarised document and entered into the Commercial Register maintained by the Department of Economic Development in the relevant emirate. However, as the vessel is usually registered and flagged offshore, a shares pledge is sometimes taken by UAE financiers in respect of the shares of an offshore special purpose company.

37 | Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

If the lender exercises the shares pledge and either the lender or a third-party purchaser becomes a shareholder in the company, it will be exposed to the debts or other liabilities under the same conditions that would apply to a shareholder of the company.

TAX CONSIDERATIONS FOR VESSEL OWNERS

Domestic taxation

38 | Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

There is no income tax or corporate tax regime in the UAE.

Tonnage tax

39 | Is there an optional tonnage tax exempting vessel owners from tax on income?

The UAE does not have an optional tonnage tax regime.

Tax incentives

40 | What special tax incentives are available to shipowners registering vessels in your jurisdiction?

There are no particular tax incentives to note.

Other tax provisions

41 | Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

There is no particular tax regime to note, and the UAE introduced value added tax on chargeable goods and services in January 2018.

There is a broad exemption for shipping services.

INSOLVENCY AND RESTRUCTURING

General scheme of reorganisation or insolvency administration

42 | Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

The insolvency regime in the UAE was recently developed by a new UAE Insolvency Law (Federal Law No. 9 of 2016), which came into force on 29 December 2016 (the Insolvency Law). The objective of the Insolvency Law is to modernise and streamline insolvency procedures for UAE companies. The Insolvency Law offers two court procedures: (i) a court-based debtor-led composition process and (ii) formal bankruptcy. It applies to companies incorporated in the UAE and individuals trading for profit (such as lawyers and accountants).

Foreign court rulings

43 | Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

In the absence of a treaty or convention, a foreign judgment will not be enforced in Dubai if the local courts have jurisdiction over the subject matter of that judgment.

Model Law on Cross-Border Insolvency

44 | Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

The UAE has not adopted the UNCITRAL Model Law on Cross-Border Insolvency and we are not aware of any proposal to adopt it in the immediate future.

Order of priority

45 | What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

Regardless of the contractual provisions in the underlying finance documents, the position of lenders will rank after those interests having priority pursuant to law. The following claims are given priority:

- the government has a privilege for taxes due to it, but this only extends for taxes in the two years preceding the pronouncement of bankruptcy – other taxes rank as ordinary debts;
- pursuant to Federal Labour Law (Federal Law No. 8 of 1980, as amended) employees have priority in respect of wages and benefits owed to them by their employer over all other indebtedness of the employer; and
- the Civil Code contains certain provisions relating to priorities enjoyed by certain categories of persons.

Under the UAE Insolvency Law, certain transactions (such as security granted for a pre-existing debt or disposals without sufficient consideration) that take place during the two years prior to the commencement of insolvency proceedings may be declared invalid and unwound by the

court if it is found that the relevant transaction occurred at a time when the creditor knew, or ought to have known, that the debtor was insolvent and where it can be shown that the transaction has caused detriment to the other creditors. The court may refuse to reverse the transaction to the extent that the court finds that the transaction was made in good faith and for the purpose of continuation of the debtor's business, and that there were grounds for the debtor to believe that the transaction would be of benefit to the business. Personal liability may also accrue to directors and general managers in connection with preferential treatment of creditors and transactions at an undervalue.

Security provision by vessel owner

46 | May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

An owner of a vessel may provide security on behalf of other related or unrelated companies and no particular relation to the owner or borrower is required.

Law of fraudulent transfer

47 | Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Pursuant to article 168 of the Insolvency Law, unless the court approves, a debtor may not, within the two years preceding the date of initiating the proceedings, create any new security over its assets to secure pre-existing debts.

Under article 159, with the exception of the case of getting new financing pursuant to article 181, no security taken over the debtor's assets after the issuance of the decision initiating the proceedings shall be effective unless the court permits otherwise.

Pursuant to article 165(2), the initiation of restructuring proceedings shall not cause the expiration or termination of any contract in force between the debtor and the third parties unless the contract is based on personal consideration. Any transfer between a debtor and a third-party creditor could therefore be challenged if it were based on personal considerations.

Article 181 dictates that a debtor is able to raise new financing to hopefully assist in its rehabilitation and secure the financing by mortgaging any of its unencumbered or encumbered assets subject to the provisions in article 181.

Petitions by creditors

48 | How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

Pursuant to article 69 of the Insolvency Law a creditor with an ordinary debt of at least 100,000 dirhams may submit an application for the initiation of bankruptcy proceedings when the creditor has given the debtor a written notice demanding that he or she pays the due debt, but the debtor has not paid the same within 30 consecutive working days of the date of the notice.

On making the application under article 69, a creditor shall attach a copy of the notice demanding the payment of the due debt as well as any data relevant to the debt, including the debt amount and any available securities. In addition, the creditor will file with the court's treasury a sum of money or a bank guarantee of no more than 20,000



Tien Tai
tien.tai@hfw.com

Building 6, Floor 8
Emaar Square, Sheikh Zayed Road
Dubai
United Arab Emirates
Tel: +971 4 423 0555
Fax: +971 4 425 7941
www.hfw.com

dirhams to cover the expenses of the initial proceedings to decide on the application.

In addition to the above, an application may also be made by the debtor under article 68, by a relevant regulatory authority under article 71 and by the Public Prosecution under article 72.

Model Netting Act

49 | Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

The UAE has not adopted the Model Netting Act of the ISDA, but it should be noted that it has been adopted by the Dubai International Financial Centre (DIFC) as per DIFC Law No. 2 of 2014, which came into force on 14 December 2014.

UPDATE AND TRENDS

Emerging trends

50 | Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

The long awaited new maritime law is expected to be issued in the second half of 2019. It will include provisions for an admiralty court with specialised maritime judges, a federal maritime chamber and a maritime development fund. An electronic ship registration department will also be established.

Other titles available in this series

Acquisition Finance	Distribution & Agency	Islamic Finance & Markets	Real Estate M&A
Advertising & Marketing	Domains & Domain Names	Joint Ventures	Renewable Energy
Agribusiness	Dominance	Labour & Employment	Restructuring & Insolvency
Air Transport	e-Commerce	Legal Privilege & Professional Secrecy	Right of Publicity
Anti-Corruption Regulation	Electricity Regulation	Licensing	Risk & Compliance Management
Anti-Money Laundering	Energy Disputes	Life Sciences	Securities Finance
Appeals	Enforcement of Foreign Judgments	Litigation Funding	Securities Litigation
Arbitration	Environment & Climate Regulation	Loans & Secured Financing	Shareholder Activism & Engagement
Art Law	Equity Derivatives	M&A Litigation	Ship Finance
Asset Recovery	Executive Compensation & Employee Benefits	Mediation	Shipbuilding
Automotive	Financial Services Compliance	Merger Control	Shipping
Aviation Finance & Leasing	Financial Services Litigation	Mining	Sovereign Immunity
Aviation Liability	Fintech	Oil Regulation	Sports Law
Banking Regulation	Foreign Investment Review	Patents	State Aid
Cartel Regulation	Franchise	Pensions & Retirement Plans	Structured Finance & Securitisation
Class Actions	Fund Management	Pharmaceutical Antitrust	Tax Controversy
Cloud Computing	Gaming	Ports & Terminals	Tax on Inbound Investment
Commercial Contracts	Gas Regulation	Private Antitrust Litigation	Technology M&A
Competition Compliance	Government Investigations	Private Banking & Wealth Management	Telecoms & Media
Complex Commercial Litigation	Government Relations	Private Client	Trade & Customs
Construction	Healthcare Enforcement & Litigation	Private Equity	Trademarks
Copyright	High-Yield Debt	Private M&A	Transfer Pricing
Corporate Governance	Initial Public Offerings	Product Liability	Vertical Agreements
Corporate Immigration	Insurance & Reinsurance	Product Recall	
Corporate Reorganisations	Insurance Litigation	Project Finance	
Cybersecurity	Intellectual Property & Antitrust	Public M&A	
Data Protection & Privacy	Investment Treaty Arbitration	Public Procurement	
Debt Capital Markets		Public-Private Partnerships	
Defence & Security		Rail Transport	
Procurement		Real Estate	
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)