



10 things to know in Ship Finance

In Azerbaijan, Russia, Kazakhstan and Turkmenistan



Introduction

In general terms, most of the laws related to ship finance in Caspian countries resemble each other due to the inherited civil law system of the Soviet Union. For example, foreign mortgages cannot be registered in either of the listed countries and most of the rights of shipowners, financiers and charterers can be enforced only through local judiciary courts.

Some of the littoral countries, like Russia, have more advanced shipping laws and practices, while others, like Turkmenistan, are still developing, albeit slowly, their shipping laws.

The purpose of this paper is to give an overview of the most frequently asked questions that we came across during our practices. We believe that it will help lenders, lawyers, ship owners and other players to get a snapshot of the main ship finance issues in our region. It should not be viewed as a legal advice as the ever changing legal environment in our countries may alter the status of contents herein.

Centil, August 2013

Turkmenistan

Registration of a vessel.

Registration of a vessel is done by the State Department of Maritime and River Transport of Turkmenistan.

There are two types of registries: State Registry and Bareboat Registry. While the former is used to register vessels owned by Turkmen entities, the latter is used to register foreign vessels bareboat chartered to Turkmen entities. Although both registries are stated to be publicly available, information sometimes is difficult to obtain.

The following particulars are inserted into the bareboat registry:

- 1) name of a vessel;
- 2) details of a vessel's owner;
- 3) details of a vessel's charterer;
- 4) date when bareboat charter has been effected and the date when it shall finish;
- 5) date when a dual flagship right expires;
- 6) details of foreign registry where the vessel is registered;
- 7) details of any encumbrances, including mortgages or arrests.

Registration in a bareboat charter is usually made for one year and is renewable on the annual basis.

Deregistration.

Deregistration is done automatically when the right to fly the Turkmen flag expires. Deregistration is effected by the order written by the State Registry.

Deregistration can also be effected prior to expiration of a dual flagship. A mere letter stating that the charterer would like to deregister a vessel would suffice.

Technically, a mortgagee may deregister the vessel (if there are any other mortgagees, they must also provide their consent), but in order to do so, it must present a duly notarized and legalized power of attorney issued by the vessel's owner. Once the vessel is deregistered, the State Registry will issue a deregistration notice to all the interested parties.

Dual flagship.

Generally, dual flagging is not permitted in Turkmenistan, but foreign vessels are permitted to fly the flag of Turkmenistan provided that they are granted with such

right. There is a long procedure to obtain such right, which is formalized in the form of a governmental decree.

It can only be done if 1) the charterer is a Turkmen entity, 2) ship-owner has consented to dual flagging, 3) foreign mortgagee has consented to dual flagging, 4) the flag of the underlying registry is put on a suspended animation, which is usually evidenced by the letter from the vessel's original registry confirming that original flag is suspended.

Registration of a foreign mortgage.

Foreign mortgages of vessels cannot be registered in Turkmenistan. In case a mortgage need to be issued in Turkmenistan (which can and must be registered), then both parties must be present in Turkmenistan, whether in a form of branch or representative office, and duly authorized representatives of both parties must appear before the notary public and sign pledge agreement before notary.

Turkmen law does recognize foreign mortgages as it is referenced in various parts of the Maritime Code. For example, a foreign mortgaged vessel cannot be registered in Turkmenistan unless clear consent of a foreign mortgagee is given. Apart from that, details of a foreign mortgage can be inserted into a bareboat charter registry and although this is not a registration, we believe, it is rather an annotation, which can be referred to should the necessity arise.

Enforcement of a foreign mortgage.

Turkmen courts shall follow the Maritime Code of Turkmenistan, which says that the fact of creation and the sequence of claims to be honored under the foreign mortgage must be determined in accordance with the laws of the country where such foreign mortgage is registered. Therefore, in order to be enforceable in Turkmenistan, a foreign mortgage must be duly registered in the country where it was created.

Let alone the fact that Turkmenistan is not a party to the New York Convention of 1958, the enforceability of foreign mortgages in Turkmenistan has never been tried. Therefore this matter remains somewhat unclear. It also remains unclear whether a foreign mortgagee having

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obtained an arbitration award in its favor, will be able to approach the State Registry and request to deregister the vessel.

Arrest of a vessel.

No vessel can be arrested other than by an admiralty claim. There is a list of cases when admiralty claims may be filed and enforcement of foreign mortgages is amongst them. Others include, disputes over the title, disputes on profit sharing, disputes over the sale of vessel, etc.

In order to have the vessel arrested, however, a foreign mortgagee, or other interested party, or their representative (authorized by a duly legalized PoA) will have to file the claim with a Turkmen court, as the country is not a party to the New York convention and decisions of foreign judiciary courts and foreign arbitration awards are not formally enforceable. To avoid points of contention, it is advisable to mention in the charter contract that a foreign mortgagee has the right to arrest the vessel.

Rights of a mortgagee.

Rights of foreign mortgagees are quite limited in Turkmenistan and although the existence of the most of the rights will not probably be questioned, the problem mainly lies in their practical execution, as the enforceability of foreign mortgagees' rights has not been put on practice yet. The law stipulates that if the borrower is in default of its obligations under a loan facility, the vessel can be sold through the Turkmen judicial auction.

It is believed that in order to enforce its main rights, i.e. the right to take possession, arrest, the right of sale, foreclosure, etc., the mortgagee will need to file a lawsuit with Turkmen courts, since the vessel will be flying the Turkmen flag at that time. Even though a foreign mortgagee obtains foreign arbitration awards, these are not formally enforceable in Turkmenistan.

Change of ownership.

As per Turkmen laws, the State Registry must be notified of any changes in the circumstances and facts, including a change of ownership, that were submitted during the

vessel's registration, within two weeks from the date when such changes occur.

Mortgage priorities.

In most cases, the borrower shall be a non-Turkmen entity and the priority of claims shall be determined as per the laws of the country of the entity's registration. In those cases when the borrower is a Turkmen entity, which run into insolvency, the priority of claims shall be determined as per Turkmen insolvency laws, which state that secured claims shall have the utmost priority. This, however, shall be applicable only to mortgages created and registered in Turkmenistan.

Turkmen maritime law also states that claims arising from a mortgage shall be discharged on a priority basis, after the discharge of all admiralty claims. This, however, applies only to registered mortgages. We believe that foreign mortgages, which by law are not registrable in Turkmenistan, will be discharged on "first come first serve" basis.

Treaties.

Turkmenistan is not a party to any ship finance-related international treaties.

Russian Federation

Registration of a vessel.

As a general rule, to the exception of bareboat, only Russian owned (or foreign owned Russian entity) vessels may fly Russian flag. In the Russian Federation, there are five registries of ships:

- the State Ship registry (SRS), which is the main one;
- the bareboat-charter registry (BCR), intended for temporary registration of the ships which have been bareboat-chartered from the foreign owners;
- the Russian International registry of ships (RIRS), which is open for vessels both owned by and bareboat-chartered to the Russian entities; registration of vessels in this registry entitles the owners/operators to substantial tax and to some other benefits;
- the Small craft registry, which is intended for small non-commercial vessels.

Title to the vessel and mortgages (exception for the cases of bareboat-charter registration) must be registered and registration is the only proof of such right. Registration procedure normally takes around one week, provided that all the necessary documents are submitted.

Maritime liens, charters and arrests in most cases are not registered. Information from the ship registries is open to the public and may be obtained from the registering authorities upon written requests.

Deregistration.

A vessel must be deleted from SRS/RIRS if:

- (1) a vessel is lost or missing;
- (2) there was a constructive loss;
- (3) a vessel is no longer seaworthy;
- (4) a vessel is no longer owned by Russian entity/individual.

Specifically in case of RIRS, a vessel is also deleted from the registry in the following cases:

- (1) application of the ship-owner;
- (2) expiration of the period of registration in case if registration was effected for a particular term;
- (3) a failure by the registered owner/bareboat-

charterer to pay the state duty for annual extension of registration of a vessel.

- (4) In case of BCR, vessels must also be deleted in case of termination or expiration of the bareboat-charter.

Consent from all registered mortgagees (to the exception of the bareboat registry) is required to delete a vessel from SRS or RIRS. Since Russian law only provides one case when a vessel can be deregistered from the bareboat registry, and it is deemed to be a termination of the bareboat charter, a mortgagee willing to deregister a vessel has to ground its claim on bareboat terms, which must reflect the due rights of a mortgagee.

Dual flagship.

Dual flagging is widely used in Russia, particularly in cases when vessels sailing under foreign flags must be involved in operations, which are restricted to vessels sailing under the Russian flag (such as off-shore operations, coastal trade or operations involving passage through internal waterways of Russia).

Vessel that is permanently registered under the flag of another country may be granted a temporary right to fly the Russian flag under conditions that: (a) it is bareboat-chartered to a Russian organization or an individual; (b) its owner and a registered mortgagee (if any) consented to such registration; (c) the laws of the country of principal registration do not forbid a temporary reflagging and the right of the vessel to fly the principal flag is or will be suspended for the duration of a temporary registration in Russia.

A temporary right to sail under the Russian flag is granted upon application of the bareboat-charterer for the period of not less than one year and not exceeding the duration of the bareboat-charter (although both the charter and temporary registration may be extended).

Registration of a foreign mortgage.

The Russian law provides that the law of the country where the vessel is registered shall govern a mortgage of the vessel. Therefore, any mortgages in respect of vessels permanently registered in Russia must be registered in the relevant ship registry.

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It is not allowed to register foreign mortgages in Russian registries. However, if a foreign mortgagee wishes to make a note of the mortgage in one of the Russian registries, then it may do so by sending a formal letter during the process of registering the foreign ship in Russia. In this case the particulars of foreign mortgage will be annotated in the relevant register.

Enforcement of a foreign mortgage.

The Russian Federation is a party to the 1993 International Convention on Maritime Liens and Mortgages, which allows enforcement of mortgages, provided that the vessel in question is within Russian jurisdiction and that a foreign mortgage is: (a) registered in accordance with the laws of the country where the vessel is registered, (b) respective registry is open for public inspection, (c) particulars of the mortgage have been duly annotated in the relevant Russian registry.

Technically, enforcement may be effected either by bringing an action in Russia or elsewhere depending on the forum convenience principle. In both cases, the actual enforcement in Russia will most likely be completed by way of judicial sale of the vessel.

Arrest of a vessel.

The arrest of a vessel may be effected only on the basis of a maritime claim. Application for arrest may be made to the commercial court (or to Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation) in the region where the vessel is physically located (i.e. at the port, at the shipyard, etc). Proof of a vessel being physically in the jurisdiction of the court/arbitral tribunal must be produced, as well as the documents, which substantiate a maritime claim.

An application for arrest is considered by the court not later than the day following the day on which the application was filed, without summoning the respondent or its representatives. A counter-security may be required by the court and in most cases provision of a counter-security is of key importance for the successful arrest, so it is advisable that the applicant is prepared to provide a counter-security, preferably in the form of cash deposit equal to 3-4 months worth of costs of maintaining the vessel at the port and related expenses

including crew salaries, etc.

Arrest may be lifted after the provision of a security of applicant's claims. P&I clubs' or major insurance companies' guarantees are starting to be accepted as a security.

Rights of a mortgagee.

Since Russia is a party to numerous international treaties, a foreign mortgagee will generally enjoy the same rights as the Russian mortgagee would and will also be able to enforce them through the court.

From a practical standpoint, it should be noted, that at present, the Russian law does not provide for the possibility to effect foreclosure (to exercise the rights of the mortgagee) in respect of the ships without applying to the court or arbitral tribunal. At the court's discretion, a claim to allow enforcement of the mortgage (foreclosure) may be refused in case if the violation of the secured obligation by the debtor is immaterial (under 5% of the total value of the secured obligation). The Russian courts are also unlikely to uphold the right of the mortgagee to take a physical possession of the vessel and the right to operate it.

Change of ownership.

In accordance with the current regulations, the registering authorities must be notified of any changes to details, which are entered into the ship registry within two weeks from the date when such changes occur. No change in title can occur, no deregistration can be effected and no changes to bareboat charter details will be valid unless such particulars are not duly registered in the relevant Russian registry. Therefore, a timely update of all details is very important.

In all cases concerning vessels permanently registered in Russia, consent of all registered mortgagees or satisfaction of all claims secured by mortgages over the vessel is a necessary condition for deletion of the vessel from the registry.

Mortgage priorities.

Claims secured by mortgage of the vessel have a priority over all other claims. This is true to the exception of

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1) claims of the shipbuilding/ship repair organization, which is in physical possession of the ship at the time of its forced sale, 2) claims secured with a maritime lien and 3) claims of the port authorities for expenses related to salvage of the grounded or foundered vessel. Certain specific rules also are applicable in cases when the enforcement of the mortgage takes place in the course of a mortgagor's bankruptcy.

Treaties.

The Russian Federation is a party to the following international treaties, which may be considered relevant in issues related to ship finance:

- 1) 1982 UN Convention on the Law of the Sea;
- 2) 1958 International Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- 3) 1952 International Convention Relating to the Arrest of Sea-Going Ships;
- 4) 1993 International Convention on Maritime Liens and Mortgages.

Kazakhstan

Registration of a vessel.

Registration is done by the relevant maritime harbour administration (which is a territorial department of the Transport Control Committee of the Ministry of Transport and Communications of Kazakhstan (the "Committee"). There are three types of registries: 1) State Registry of Sea Vessels (the "State Registry"; 2) Ship's Book; and 3) Bare-boat Chartering Registry.

The first two registries are used to register vessels owned by the (i) State, (ii) Kazakh legal entities and individuals and (iii) foreign legal entities performing activities at the Caspian Sea through their duly registered branches, in accordance with the North Caspian Production Sharing Agreement of November 18, 1997. The third registry is used to register foreign vessels bareboat chartered for a term of up to two years (with subsequent extensions of such term for another two years) to (i) Kazakh entities or (ii) foreign legal entities performing activities at the Caspian Sea through their duly registered branches, in accordance with the production sharing agreement (contractors and subcontractors, operators, agents, etc.), upon a decision of the Committee.

The following particulars are inserted into one of the above-mentioned registries (depending on the type of registry):

- 1) name of a vessel;
- 2) details of a vessel's owner;
- 3) details of a vessel's charterer;
- 4) type and purpose of a vessel;
- 5) technical parameters of a vessel;
- 6) date when bareboat charter has been effected and the date when it shall finish;
- 7) date when a dual flagship right expires;
- 8) details of foreign registry where the vessel is registered (home port details);
- 9) charter port details;
- 10) details of mortgages.

In addition, information on the registered rights (encumbrances) to a vessel shall be included into the Unified Register of Registered Rights to Immovable Property and Associated Transactions, which is maintained by the justice authorities. Such information to the justice authorities should be provided by the

relevant maritime harbour administration.

Deregistration.

Deregistration of a vessel must be made upon the application of a vessel's owner (party to the share production agreement).

If a vessel is mortgaged, the harbor administration is not entitled to deregister such vessel from the respective registry until (i) the secured obligations have been performed in full, or (ii) a written consent of all mortgagees has been obtained. This does not, however, apply to a forced sale of a vessel.

In case of a forced sale of a mortgaged vessel, a harbor administration must notify the respective mortgagee on the expected deregistration so that such mortgagee could protect its interests. If a mortgagee's consent to deregistration has not been provided to a harbor administration, a vessel will be deregistered from the respective registry after three months following the date of notification of the mortgagee.

Deregistration is confirmed by the certificate of deregistration of a vessel from the respective registry.

Deregistration of a vessel from the Bare-boat Chartering Registry is made upon 1) termination of a bare-boat charter; 2) expiration of a term of temporary right to sail under Kazakhstan flag; and 3) invalidation (annulment) of the Committee's permission for temporary sail under Kazakhstan flag. A Kazakh charterer must return to the harbor administration certificate for temporary right to sail under Kazakhstan flag within 7 days following the expiration date of the respective permission.

Dual flagship.

Generally, dual flagship is not permitted, but foreign vessels are permitted to sail under the state flag of Kazakhstan, provided that such vessels have been bareboat chartered by a Kazakh charterer or by foreign legal entities performing activities at the Caspian Sea through their duly registered branches, in accordance with the production-sharing agreement.

There is a long procedure to obtain such right, which is

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formalized in a form of government's consent. It can only be done so if 1) a charterer complies with the above-mentioned requirements, 2) a ship-owner has consented to dual flagship in writing, 3) a foreign mortgagee has consented to dual flagship in writing, 4) a vessel's original flag is suspended while a vessel sails under the flag of Kazakhstan, which is usually evidenced by presenting a letter from the vessel's original registry confirming that original flag is suspended or will be suspended from the moment of the registration of a vessel in Kazakhstan Bareboat Chartering Registry.

Registration of a foreign mortgage.

Foreign mortgages cannot be registered in Kazakhstan.

Kazakhstan laws recognize foreign mortgage as the reference to it can be found in various parts of the Trade Shipping Law and legal acts adopted in furtherance thereof. For example, a foreign mortgaged vessel cannot be registered in Kazakhstan unless a clear consent of a foreign mortgagee is given; apart from that, the bareboat charter registry may contain information about a foreign mortgagee. Foreign mortgagees usually send a formal letter to the registering authority, asking to insert particulars of a foreign mortgage into a register.

Enforcement of a foreign mortgage.

The Trade Shipping Law does not clearly address this issue. However, under the said law, the title and other property rights to a vessel, as well as creation and termination of such rights, must be governed by the law of a country where such vessel is registered.

Given that a foreign mortgage cannot be registered in Kazakhstan, we believe that the enforcement procedures of a foreign mortgage must be determined in accordance with the laws of the country where such foreign mortgage is registered. In addition, in our view, in order to be enforceable in Kazakhstan, a foreign mortgage must be duly registered in the country where it was created.

It is noteworthy that Kazakhstan is not a party to the International Convention on Maritime Liens and Mortgages dated 6 May 1993 (Geneva). Therefore, the remedies and rights of a mortgagee under the said

Convention would not be recognized and enforced in Kazakhstan.

Arrest of a vessel.

No vessel can be arrested other than by admiralty claim. There is a list of cases when admiralty claims can be filed, including among others, claims related to the title and other property rights to a vessel. Although mortgage is not expressly included into the above list, in view of the fact that mortgage rights are types of property rights, we believe that admiralty claim can be filed in connection with mortgage rights. Other cases include, disputes on salaries, disputes on profit sharing, disputes over the sale of vessel, etc.

A vessel cannot be arrested in case of:

- 1) a transfer of ownership rights to a vessel to third parties prior to the time of arrest; and
- 2) charter of a vessel by a third party charterer,

except for the cases where admiralty claims relate to the title and other property right to a vessel. In order to have a vessel arrested, however, a foreign mortgagee, or other interested party, will have to file a claim with Kazakhstan court.

Rights of a mortgagee.

Kazakh law does not provide guidance as to the rights of foreign mortgagees in Kazakhstan (and/or enforcement thereof) and although the existence of most of the rights should not probably be questioned, the problem mainly lies in their practical execution, since to the best of our knowledge, the enforceability of foreign mortgagees' rights has not been put on practice yet. As a general rule, the law says that if the borrower is in default of its obligations secured by the mortgage of a vessel, the vessel can be sold based on the decision of a court at the place where the arrested vessel is located. As per Kazakh laws, a vessel can be arrested in order to secure admiralty claim regardless of provisions of the relevant agreement requiring a settlement of admiralty claims by a court of another state.

It is believed that in order to enforce its main rights, i.e. the right to take possession, arrest, the right of sale, foreclosure, etc., a mortgagee would need to apply

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to Kazakh courts (since the vessel will be flying the Kazakh flag at that time) in order to obtain an order of enforcement of arbitral award as described above.

Change of ownership.

As a matter of law, a vessel's owner or a charterer must notify within two weeks the respective maritime harbor administration where the vessel is initially registered of any change of the information on such vessel included into the relevant registry. As such, a change of vessel ownership will require the relevant changes to be made to the respective local registry.

Mortgage priorities.

Priority of claims related to foreign mortgage shall be determined in accordance with the laws of the country where a vessel (mortgage) is registered.

Claims under a local mortgage (i.e. registered in local registries) prevail over any other claims, except for (i) maritime lien claims; (ii) claims for expenses of maritime harbor administration related to refloating of a vessel (wreck) by such administration; and (iii) claims of ship repair and ship building entities.

Claims of every preceding mortgagee must be satisfied prior to claims of all other subsequent mortgagees. The priority is determined by the date of the state registration of a mortgage in the respective registry. In the meantime, Kazakh laws allow to contractually agree on the priority of satisfaction of mortgagees' claims based on the agreement between the mortgagor and mortgagees. Such agreement is subject to mandatory registration with the registry where the mortgage has been registered. Based upon the above, we understand that the above provisions apply only to a local mortgage of a vessel (given that a foreign mortgage cannot be registered in Kazakh registers).

Treaties.

Kazakhstan joined the International Maritime Organization (IMO) in 1994 and is a party to the following major maritime international treaties:

- 1) Convention on International Maritime Organization dated 6 March 1948;
- 2) International Convention for the Safety of Life at Sea (SOLAS), 1974;
- 3) International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL);
- 4) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), including the 1995 and 2010 Manila Amendments;
- 5) Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972;
- 6) International Convention on Load Lines (LL), 1966;
- 7) International Convention for Safe Containers (CSC), 1972;
- 8) International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969; and
- 9) International Convention on Tonnage Measurement of Ships (TONNAGE), 1969.

Azerbaijan

Registration of a vessel.

There are three registries in Azerbaijan, the State Vessel Register ("SVR") – for Azerbaijani owned vessels, the Vessel Book; and the Bareboat Charter Register ("BCR") – for temporary registration.

Registration with the SVR and the Vessel Book must be concluded within one month of the date of arrival of an Azerbaijani owned vessel in the ports of the Republic of Azerbaijan or within one month of the date of launch of a vessel.

Registrations in the SVR and BCR are made in the name of the owners and charterers of vessels, respectively. Among other things, the following information is to be included in the SVR, the Vessel Book and BCR registration:

- name of a vessel;
- name and address of the vessel owner and the vessel operator (if applicable);
- name and address of the operator;
- details of any mortgage of the vessel;
- date of execution and duration of the bareboat charter (BCR only);
- date of cessation of the right to fly the Azerbaijani flag (BCR only); and
- details of registration in the foreign registry prior to change of flag including ownership and mortgage rights (BCR only).

Deregistration.

Azerbaijani law makes no provision for de-registration of vessels from the bareboat charter registry in Azerbaijan before a bareboat charter term ends, except in circumstances where Azerbaijani law was violated.

It is possible to de-register the vessel from the BCR upon application of the charterer or ship-owner in the event of enforcement of the mortgage over the vessel, however, the lack of a procedural mechanism may make it difficult for the mortgagee to remove the vessel from the bareboat charter registry. The law envisages no specific fee for de-registration of vessels from the BCR.

Dual flagship.

Azerbaijani laws do not expressly prohibit the concept of dual registration of vessels. They do, however, state that foreign flag shall be suspended for the time a vessel flies Azerbaijani flag. Therefore, it may be inferred that the dual-flagged vessels would not be in a position to operate in the Azerbaijani sector of the Caspian Sea.

The right to fly the foreign flag of the jurisdiction where the ownership of a vessel is registered is suspended while the right temporarily to fly the Azeri flag is exercised.

Registration of a foreign mortgage.

A concept of a foreign mortgage over foreign owned vessel is recognized under the Azeri law. However, as per Azerbaijani law, foreign mortgages are not registrable in Azerbaijan. Instead, state maritime administration may insert all material facts of the foreign mortgage by way of annotation.

Enforcement of a foreign mortgage.

Although there are no statutory obstacles to enforce foreign mortgages, there is no developed practice in Azerbaijan on the enforcement of foreign mortgages or the arrest of foreign registered vessels under the mortgage.

Azerbaijani law provides the basis for the enforcement of foreign court awards and arbitral awards. Generally, arbitral awards and judgements of foreign courts are enforceable in Azerbaijan, unless they are contrary to the laws of Azerbaijan, principles of legal order and public policy in Azerbaijan.

Azerbaijan is a party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Therefore, a party would likely be able to seek recognition of a foreign arbitral award in Azerbaijan.

Arrest of a vessel.

As per Azerbaijani laws a vessel may be arrested by the order of a court on the basis of mortgagee's application. The law specifies a number of contractual and third party maritime claims which may be brought before the court in order to obtain its order on vessel arrest and

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specifically states that one of the grounds for seeking the arrest of a vessel is the enforcement of a registered mortgage.

Azerbaijani law establishes the following maritime liens (listed in the order of priority), which would rank over the mortgagee's security:

- (i) salaries and other sums payable to the captain and crew members for their services, including repatriation expenses and social insurance payments made on their behalf;
- (ii) compensation for any damage caused to health or life of a person as a direct result of the operation of a vessel;
- (iii) a salvage award;
- (iv) harbor, pilotage and navigation fees; and
- (v) compensation for any actual loss or damage to property other than cargo, containers or passenger baggage board of the vessel, caused through the operation of the vessel.

Claims under paragraphs (ii) and (v) would not rank in priority to the mortgagee's security if such claims related to oil pollution, damage arising from the transportation of hazardous, dangerous or radioactive products or nuclear fuels because the law establishes different rules for compensation of such claims.

Rights of a mortgagee.

Under Azeri law a mortgagee may request the court to issue the enforcement order or an order on arrest after the mortgagee files a claim on merits against a respondent in the Azeri court. There is a risk that if no claim on the merits against a respondent is filed with the Azeri court, the court may refuse to consider the request on enforcement or arrest.

Change of ownership.

Yes, any change in ownership over a foreign owned vessel or the change of foreign mortgagee need to be updated with the state maritime administration.

Mortgage priorities.

Under the laws of Azerbaijan, a pledgee is entitled to satisfy any claims it may have (if any, at the relevant

point in time) on pledged assets in priority to any other creditor of the pledgor who obtains foreclosure order over such pledged assets, except for (a) another creditor which has a prior ranking claim (i.e. in respect of security created, and if relevant registered, earlier) and (b) the Azerbaijani State, if foreclosure is ordered as a sanction for a crime or other illegal act committed by the pledgor. The laws of Azerbaijan do not specifically provide that the same priority of claims applies to the holder of assignment or other form of security.

Treaties.

Azerbaijan is a party to the International Convention of 1976 on Limitation of Liability in connection with Marine claims.

Centil

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