

Liberia

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Due diligence

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

Upon registration of a vessel under the Liberian flag, a certificate of registry, provisional or permanent, is issued to the owner. An unexpired provisional certificate of registry has the same validity and legal standing as a permanent certificate of registry, and is prima facie evidence that the vessel to which it has been issued is registered under the laws of the Republic of Liberia in the name of the registered owner.

Moreover, a third party may request a certificate of ownership and encumbrance (COE) that will set forth the name of the registered owner.

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

The Liberian Ship Registry is a public registry and anyone may request a COE. A COE will set forth all mortgages recorded against a vessel. The COE will provide the inquiring party with information such as the name of the registered owner, the total amount of the mortgage (if any), as well as the ship's details (gross and net tonnage, call sign, etc).

- 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?

Only preferred ship mortgages may be recorded with the Liberian Registry against a Liberian-flagged vessel.

- 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?

A certificate of good standing issued by the Ministry of Foreign Affairs may be ordered through the Liberian International Ship and Corporate Registry (LISCR) to confirm the existence and current status of a Liberian non-resident entity. A certificate of good standing will confirm:

- the name of the entity;
- the date of incorporation or registration;
- the registration number;
- the name and address of the registered agent; and
- that the entity remains a subsisting entity in good standing.

- 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?

Liberia does not maintain a public registry for the filing of the name and contact details of the officers, directors or shareholders (members or partners) of a business entity organised under the Liberian Associations Law, Title 5. The Liberian Registry therefore will only be able to produce such information if the entity voluntarily files this information with the Registry or with the LISCR Trust Company, as exclusive registered agent.

- 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?

In accordance with the Liberian Business Corporation Act, a guarantee must be approved by a corporation's board of directors. If the guarantee is not in furtherance of corporate purposes, the guarantee must be approved by two-thirds of a corporation's shareholders.

- 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?

It is not necessary that a foreign lender be licensed, qualified or otherwise entitled to carry on business in Liberia in order to enforce its rights under a loan document or for the execution, delivery and performance of a loan document. A foreign lender will not be deemed to be resident, domiciled, carrying on business or subject to taxation in Liberia by reason only of the negotiation, preparation, execution, performance or the enforcement or receipt of any payment due from a Liberian entity under a loan document.

Repayment

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

No.

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

While Liberia does have usury laws, such laws do not generally limit the interest payable to a lender in respect of a vessel financing.

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

A non-resident Liberian entity is not required or entitled to make any withholding or deduction with respect to any tax from any payment that it is or may be required to make on principal and interest payments to non-resident lenders.

Registration of vessels

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?

The Liberian Maritime Law, Title 21, section 51, allows for seagoing vessels of more than 500 NT that are engaged in foreign trade to be registered in Liberia. The Commissioner or Deputy Commissioner of the Maritime Authority may grant an application for waiver of the minimum tonnage requirement.

Generally, vessels should be not more than 20 years old at the time of registration; however, vessels that are more than 20 years old may be granted a waiver for registration on application by the owner accompanied by advice from the vessel's classification society confirming that the vessel is in class and that the society is willing to issue all statutory certificates to the vessel.

Offshore drilling rigs and mobile offshore drilling units are considered vessels according to Liberian maritime law and regulations. Liberia has adopted Marine Notice INT-001 Rev 06/12, the 2009 MODU Code's definition of a vessel, which was in turn adopted by IMO Resolution A.1023(26). The definition states in part that a '[m]obile offshore drilling unit (MODU) or unit is a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur or salt.'

12 Who may register a vessel in your jurisdiction?

A vessel may only be registered in the name of a non-resident Liberian entity (ie, corporation, partnership or limited liability company). A waiver of such ownership requirement is customarily granted to permit registration by a non-Liberian entity, provided that the registered owner files in Liberia as a foreign maritime entity.

13 Is there an alternate registry for international shipping operations?

LISCR LLC, a US-owned and operated company, has an exclusive agreement with Liberia to administer the registration of all vessels under the Liberian flag engaged in international trade.

Ship mortgages and other liens over vessels

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?

A Liberian preferred ship mortgage may, among other rights, secure:

- debts owed to a party, including an entity, other than the vessel owner;
- contingent obligations (including swap obligations);
- future advances, and future debts;
- a pledge or assignment of monies or rights, either actually owed or to become due in future;
- revolving credit facilities, including multiple advances and repayments;
- amounts denominated in one or more currencies, as well as options to fund mortgage payments in one or more alternate currencies; and
- currency losses arising from fluctuations between designated currencies where a unit of account is altered.

A preferred Liberian mortgage follows the American model and is a unilateral document made by the owner in favour of the mortgagee or mortgagees. There is no prescribed standardised form.

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

Mortgages submitted for recordation in Liberia must be in English. For a mortgage to be in 'recordable form' the following should be mentioned:

- name of the vessel and official number;
- names of parties to the mortgage and their interest in the vessel;
- interest in the vessel transferred or affected;
- evidence of debt;
- recording clause, setting out the total amount of the mortgage;
- recording details of any senior mortgage or mortgages when a junior or subordinate mortgage is recorded;
- the intended effect of the instrument; and
- any separate discharge amount.

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?

The Liberian Maritime Law, in accordance with the International Convention on Maritime Liens and Mortgages, 1993, provides for the maintenance of a public register at which documents, including Liberian mortgages, may be registered. Registration may be carried out through LISCR at the Office of the Deputy Commissioner of Liberia Maritime Affairs located in New York, which is the central office of the relevant index or at any other location appointed for this purpose by the Liberian Maritime Authority from where electronic access may be made to the relevant index for the purpose of recordation and inspection.

Registration of a Liberian preferred ship mortgage entitles the parties to receive a COE and certified extracts of the preferred mortgage index as official evidence of recordation, containing the time, date, book and page number of recordation, the name of the vessel, the names of the parties, and the amount secured by the mortgage instrument.

Registration also gives notice to creditors, purchasers, suppliers and other third parties of the underlying transactions, and furnishes an internationally enforceable structure for the protection of legal rights afforded to concerned parties with respect to Liberian-flagged vessels. Preferred status accorded to a mortgage gives priority to the lender's mortgage lien over those of certain other claimants.

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?

For a mortgage to be in registrable form the instrument must contain a sum certain total amount. Obligations to be secured representing portions of the total amount can be separately described (for example currency or interest rate swap obligations). In certain circumstances a maturity date is not required. The material terms of the mortgage (principal amount, interest rate, repayment term and schedule) need to be set forth in the mortgage. There is no requirement that the underlying instrument evidencing the owner's indebtedness has to be filed or be attached to the recorded mortgage. However, most practitioners strongly recommend attaching the underlying instrument of indebtedness.

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

In the case of a consortium or syndicate of lenders, one such lender may act as a mortgagee and hold the mortgage on behalf of the lenders (including itself). A Liberian mortgage is a title instrument and should be held directly by the lenders or by a trustee. Most

practitioners take the view that an agent does not have standing to hold legal title. Nevertheless, the Deputy Commissioner's Office will accept the recording of a mortgage if there is an express agreement giving that lender the authority to sign and hold security on behalf of the other lenders.

- 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?

It is not compulsory under Liberian law to make any filings upon transfer of the underlying debt among existing lenders or to a new lender.

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

Any transfer of a mortgage to a new secured party must be filed with the Liberian Deputy Commissioner's office. The written consent of the existing mortgagee(s) is required when a junior, new, or subordinate mortgage is recorded or assigned. No new mortgage shall be recorded unless the written consents of all current preferred mortgagees are also presented. The mortgagor's consent is not required for the transfer of a recorded mortgage.

- 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 Liberian Maritime Law, Title 21, section 83(3) provides that all unpaid annual taxes, fees, penalties and other charges arising under Title 21 or under Liberian Maritime Regulations constitute a maritime lien on the vessel in respect of which such amounts are due. In addition, liens for damages arising out of tort; liens under section 83(3) of Title 21 as mentioned above; liens for crew's wages, general average and for salvage (including contract salvage); and expenses and fees allowed and costs taxed by the court are recognised in Liberia.

Each of the above-mentioned liens will give rise to the right to arrest a vessel. There is no mechanism for recording 'notices of claim' or similar obligations.

Sister ship arrest is not recognised in Liberia.

With respect to the above, Liberia does not preclude foreign courts' recognition of liens for necessities and other similar liens.

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

According to Liberian Maritime Law, Title 21, section 113, preferred mortgage liens have priority over all claims against the vessel, except liens that arose before the recording of the preferred mortgage; liens for damages arising out of tort; liens under section 83(3) of Title 21 as mentioned in question 21; liens for crew's wages, general average and for salvage (including contract salvage); and expenses and fees allowed and costs taxed by the court.

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

Liberia does not maintain a public registry for the recording or filing of notices of claims or liens against Liberian-flagged ships.

- 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?

A Liberian court should recognise a mortgage on a foreign-flagged vessel.

- 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?

Liberia is not traditionally used as a jurisdiction for enforcing ship mortgages. A creditor would normally enforce in the jurisdiction where the vessel is located.

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

A Liberian preferred mortgage may provide for a vessel to be sold privately by a mortgagee. A private sale will not discharge liens over the vessel.

- 27** What are the limitations on rights of self-help by a mortgagee?

Liberian law does not limit the rights of self-help by a mortgagee.

- 28** What duties does a mortgagee owe to an owner or third-party creditors?

Liberian law does not set out any particular duties a mortgagee owes to an owner or to third-party creditors.

Collateral

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

Financing charters may not be recorded over vessels flagged under the Liberian flag at this time. An amendment allowing for the recording of financing charters has been submitted to the Liberian legislature for consideration.

Section 85, Title 21 of the Liberian Maritime Law allows for the recording of a bareboat charter party where parties seek to have a vessel dually registered. In essence, while registered pursuant to a bareboat charter party, a vessel is allowed, with the consent of its owner's state of registry, to fly the Liberian flag for two years, with the possibility of extensions, or, if for a shorter time, by the term fixed in the bareboat charter party.

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

Not applicable.

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

Security interests created over earnings of a vessel, charter parties and insurances are generally assigned to the lender or mortgagee by agreement. These agreements are traditionally not governed by Liberian law and are perfected in accordance with the governing laws of such agreements.

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

Security interests against non-vessel collateral are traditionally not governed by Liberian law and are perfected in accordance with the governing laws of such assignments.

- 33** How is a security interest over a deposit account established? How is a security interest perfected?

Security interests created over a deposit account (eg, an earnings account, retention account or collateral account) are generally established by an assignment to the lender or mortgagee. These assignments are traditionally not governed by Liberian law and are perfected in accordance with the governing laws of such assignments,

or the location of the accounts or jurisdiction of the debtor's principal place of business.

34 How are security interests in non-vessel collateral enforced?

See question 31. Security interests in non-vessel collateral are enforced in accordance with the governing law of the security agreement covering the non-vessel collateral, as well as in accordance with the law of the location of such collateral.

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

Pledges of the shares of a Liberian entity are accomplished by a pledge agreement traditionally governed by the law of another jurisdiction. The ancillary documents customarily required to perfect the share pledge include undated director and officer resignations, an undated stock power and an irrevocable proxy. Physical delivery of the share certificate, if certificated, is required to perfect.

Liberian law permits the issuance of bearer share certificates. Shares need to be released by the pledgee in order to be voted upon by the shareholder. Share pledges are common in the financing of Liberian-flagged ships.

36 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?

While indemnified by the owner, there is 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, especially if the pledgee exercises control over the entity.

Tax considerations for vessel owners

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

Under section 804(b) of the Liberian Revenue Code of 2000, as amended, non-resident Liberian entities are not subject to taxation in Liberia.

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

For a vessel to be registered under the Liberian flag, and in order to retain its registration, an annual tonnage tax payable to the government of Liberia is imposed. The rate of taxation follows a formula based on the net tonnage of the registered vessel.

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

See question 37.

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

No. Non-resident Liberian entities are not subject to tax in Liberia on income from shipping.

Insolvency and restructuring

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

Liberia does not have a bankruptcy or debtor and creditor law. The Liberian Insolvency Law is limited to a simple 'assets versus liability' test.

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

A final, non-appealable, judgment of a foreign court should be admissible as evidence and enforceable in Liberia without a retrial on the merits if:

- the court rendering the judgment had jurisdiction over the persons and the subject-matter;
- the judgment is for a definite sum of money and is final and non-appealable in the jurisdiction in which the judgment was rendered;
- the defendant was present in person or by a duly appointed representative and the judgment was not a default judgment;
- the judgment was not obtained by fraud; and
- the judgment does not offend the principles of Liberia as to due process, natural justice or public policy.

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

Generally, secured creditors have priority over unsecured creditors. Since transaction documents traditionally are not governed by Liberian law (other than a Liberian mortgage), in most cases these issues are governed by various foreign laws.



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

A Liberian corporation may provide security on behalf of other related or unrelated companies if an obligation is undertaken and authorised by two-thirds of its shareholders.

45 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?

No. See question 41. The parties look to the governing law of the finance documents.

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

Any such claim may be filed with the regular courts.

47 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?

Liberia has not adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA). We know of no reason why a swap provider could not exercise its close-out netting rights under an ISDA master agreement before a Liberian court.