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Malta

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MALTA

Law and Practice

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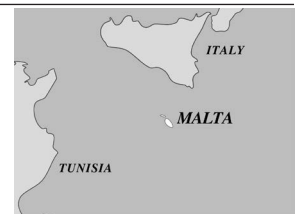

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1. Overview

1.1 Regulatory Bodies

The Authority for Transport in Malta (the Authority) is the principal regulatory governmental authority for all transport-related activities and operations in Malta. Within the Authority, the Merchant Shipping Directorate is responsible for the registration of merchant vessels under the Maltese flag and the provision of all ancillary services. It is responsible for the regulation, control and administration of matters related to merchant shipping, seafarers' certification, and generally the administration and implementation of international maritime conventions and regional treaties into Maltese law. Apart from the various filings requirements which owners must adhere to in order to ensure their vessels can fly and maintain the Malta flag, ship-owners also have reporting obligations in terms of Section 307 of the Merchant Shipping Act, Chapter 234 of the Laws of Malta. Whenever a Maltese ship is involved in any incident resulting in the loss of life or serious injury to any person, or has received any material damage affecting the vessel's seaworthiness or her efficiency, either in her hull or in any part of her machinery, the ship-owner or Master must, within 24 hours, file a report of the accident with the Authority. Moreover, through its Ports and Yachting Directorate, the Authority also regulates and overseas maritime activities and operations within territorial and internal waters of Malta.

In addition, there is also the Marine Safety Investigation Unit (MSIU) established pursuant to the Merchant Shipping (Accident and Incident Safety Investigation) Regulations, Subsidiary Legislation 234.49. The MSIU is an investigation unit, which carries out maritime safety investigations whenever there is a marine incident involving a Maltese vessel. MSIU investigations do not seek to apportion blame or determine liability but rather seek to contribute to the enhancement of maritime safety. Maltese ship-owners are also obliged to file a report with the MSIU whenever their vessels are involved in a casualty or incident.

1.2 Competition Laws and Regulation

The competition law regimes found under European Union legislation and Maltese domestic law are also applied generally to the Maltese maritime sector.

1.3 Top Ten Flag States

Malta has, since 2014, retained its ranking as the largest ship register in Europe and the sixth largest ship register in the world in terms of registered gross tonnage, after Panama, Liberia, Marshall Islands, Hong Kong and Singapore, while overtaking the Bahamas, China, Greece, and Japan. As of the end of December 2019, the number of ships registered under the Malta Merchant Shipping Act was 8,594 for a total gross tonnage of 82.93 million.

1.4 Maritime Conventions

Malta has ratified the majority of Conventions and instruments adopted under the auspices of the International Maritime Organization.

Malta is a party to the 1965 Convention on the Facilitation of International Maritime Traffic, the 1966 International Convention on Load Lines, as amended by the protocol of 1988, the 1969 International Convention on Tonnage Measurement of Ships, the 1972 Convention on the International Regulations for Preventing Collisions at Sea, the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the 1978 Protocol as well as the 1997 Protocol thereto, the 1974 International Convention for the Safety of Life at Sea, as well as the 1978 and 1988 Protocols thereto, the 1976 Convention on the International Maritime Satellite Organization and the 1976 Operating Agreement to the said Convention, the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, the 1979 International Convention on Maritime Search and Rescue, and the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as amended by the 1988 Protocol.

Malta is also party to the 1996 protocol to amend the 1976 Convention on Limitation of Liability for Maritime Claims, as well as the 2002 Protocol to the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

As far as marine pollution is concerned, Malta is also a party to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997, the 1992 Protocol of the International Convention on Civil Liability for Oil Pollution Damage 1969 and the Protocol of 1992 to Amend the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation, the 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, the 2001 International Convention on the Control of Harmful Anti-fouling Systems on Ships, the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments, as well as the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships. Malta is also party to the 2007 International Convention on the Removal of Wrecks.

Lastly, Malta has also ratified the 2006 Maritime Labour Convention, which sought to consolidate and update most pre-exist-

ing maritime labour instruments adopted by the International Labour Organization.

1.5 Classification Societies

The following classifications societies have been recognised by Malta:

- the American Bureau of Shipping (ABS);
- Bureau Veritas (BV);
- the China Classification Society (CCS);
- the Croatian Register of Shipping (CRS);
- ClassNK (NK);
- DNV-GL;
- the Indian Register of Shipping (IRS);
- the Korean Register of Shipping (KRS);
- Lloyd's Register (LR);
- the Polish Register of Shipping (PRS);
- Registro Italiano Navale (RINA); and
- the Russian Maritime Register of Shipping (RS).

1.6 Types of Registrations

Various registration options are available pursuant to the Maltese Merchant Shipping Act. An application for registration of a vessel may fall under one of the following categories:

- straight registration – a vessel is registered in full ownership of the registered owner;
- bareboat-out registration – the interests of the owner are registered in Malta and all ownership and mortgage registration matters are regulated by Maltese law, while the interests of the charterer are registered in an overlying compatible registry, which will also regulate the operations of the vessel;
- bareboat-in registration - the interests of the charterer are registered in Malta as overlying registry, while the owner's interests are registered in another compatible registry as underlying registry. While ownership-related matters are governed by the laws of the underlying registry, the vessel will effectively fly the Malta flag and therefore the operations of the vessel are governed by Maltese rules and regulations;
- dual registration - owner interests are registered with the Malta Ship Registry while charterers also operate the vessel under the Malta flag. In this case, charterers may apply to obtain vessel certificates in their name, provided the owner and any registered mortgagees provide their written consent and charterers pay registration fees equal to those due by owners.

1.7 Types of Discounts

Malta offers reduced fees according to the age of the vessel, in order to attract younger-aged vessels to the Malta Registry - the younger the vessel, the greater the reduction in applicable registry fees.

Maltese law affords a number of fiscal benefits to shipping organisations (a status automatically conferred on a company, partnership, trust or foundation which has as its activities the owning, operating, administration or management of vessels) which are duly organised and existing under the laws of a Member State of the EU, and which own, manage or operate, whether under charter or otherwise, a tonnage tax ship. A tonnage tax ship is a ship of any net tonnage engaged in shipping activities, which include the international carriage of goods or passengers by sea.

Shipping organisations operating tonnage tax ships pay annual tonnage tax to the Maltese registry calculated according to the net tonnage of the vessel (in addition to an annual registration fee).

These shipping organisations are exempt from Malta tax in respect of:

- all income derived from their shipping activities;
- any income, profits or gains derived from the sale or other transfer of a tonnage tax ship which had been acquired and sold whilst under the tonnage tax system or from the disposal of any rights to acquire a ship which when delivered or completed would qualify as a tonnage tax ship;
- the distribution of profits derived from shipping activities or from other transactions referred to above; and
- any gain arising upon the liquidation, redemption, cancellation, or any other disposal of shares, securities or any other interest, including goodwill that is held in any shipping organisation owning, operating, administering or managing a tonnage tax ship.

While the sale or other transfer of a tonnage tax ship currently falls outside the scope of Malta's Income Tax Act (chapter 123) and Duty on Documents and Transfers Act (chapter 364), the issue or allotment of any equity or other interest in a shipping organisation and the registration, transfer or assignment of any security or interest in a shipping organisation would very likely be exempt from transfer duty, subject to the shipping organisation applying for a determination from the Commissioner for Revenue and upon that determination being issued and still being in force at the time of the transaction in question.

1.8 Citizenship Requirements for Registration

The registered owner or charterer (as applicable) of a vessel registered under the Malta flag may be a Maltese or non-Maltese entity or an individual (provided that the individual holds a valid EEA, EU or Swiss passport). In the case of a non-Maltese entity or individual, that non-Maltese owner/charterer is required to appoint a resident agent in Malta to act as a chan-

nel of communication between the Maltese authorities and the non-Maltese owner/charterer.

1.9 Cabotage Laws
The provision of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States, which regulates maritime cabotage, is directly enforceable within all EU Member States and accordingly also applies in Malta.

2. Ship Finance and Securities

2.1 Ship Finance Centre
Malta is considered to be a financier-friendly jurisdiction, due to the strength and reliability of the security that can be provided to financiers and the ease of enforcement of that security. Maltese banks are not, however, themselves heavily involved in commercial vessel financing transactions.

2.2 Document Registration
The registration of a mortgage over a Malta-flagged vessel takes place by means of a statutory mortgage instrument which is produced to the Registrar of Ships for registration and is recorded in the register of the relevant vessel. This registration determines the exact date and time from when the mortgage becomes effective vis-à-vis third parties and consequently also determines its ranking. The mortgage instrument is generally executed by a local representative of the mortgagor acting pursuant to a power of attorney, which is also presented to the Registrar of Ships together with the mortgage instrument. Although the statutory mortgage instrument is generally accompanied by a collateral Deed of Covenants, this latter document is not registered.

In a ship finance transaction, the parties may agree to pledge the shares of a Maltese company as further security. In such a case, a Notice of Pledge on a statutory form is to be filed with the Registrar of Companies within 14 days from the execution of the share pledge agreement following which the pledge becomes effective vis-à-vis third parties.

The statutory mortgage instrument is in the English language and must be completed in English for acceptance by the Registrar of Ships.

2.3 Preferred Modes of Ship Finance Registrations
The registration of a mortgage is the main form of security in a ship finance transaction involving a Malta-flagged vessel. The mortgage is registered with the Registrar of Ships, with priority ranking granted to the mortgagees according to the date and time of registration.

2.4 Collateral Guarantees
In addition to a mortgage, additional security is frequently provided in the form of securities pledged by their holder in favour of any person as security for any obligation. These include a pledge of shares, pledge of accounts and assignment of insurances and earnings.

2.5 Public Registry
The Maltese Ship Registry is distinct from the Public Registry and is itself a public registry accessible to the general public. Accessibility is, however, limited to physical searches at the Ship Registry itself and information is not available online. A transcript of register of any registered vessel may, however, be ordered from the Ship Registry which will reflect the publicly available information.

2.6 Certified Information
All documents released by the Maltese Ship Registry are in the English language.

Information available to the general public through physical searches or a transcript of register inter alia includes:

- specifications of the vessel (length, tonnage, builders, etc);
- registered owners and charterers;
- registered mortgage(s).

The Malta Ship Registry endeavours to provide certificates within the same day of a request being filed, although there may be instances when certificates are made available the following day. With a view to providing constant assistance to ship-owners and financiers, the Maltese Ship Registry offers a 24-hour, seven-day a week service.

2.7 Reflagging
The Maltese Registry provides the necessary assistance and liaises with other registries as necessary during reflagging. Its 24-hour, seven-day a week service is intended to assist with smooth reflaggings involving registries in different time zones.

2.8 Costs of Registering a Ship Mortgage
The Ship Registry costs for the registration of a mortgage and an amendment thereto amount to EUR500 and EUR250 respectively.

Containers (portable compartments) are not registered with the Malta Ship Registry and consequently mortgages cannot be registered thereon either.

2.9 Multiple Mortgages
There is no limitation under Maltese law on the number of mortgages which may be registered over a Malta-flagged vessel.

The date and time of registration of each mortgage will determine its priority ranking.

Mortgage instruments may specifically prohibit the creation of further mortgages over a vessel without the prior written consent of the mortgagee and accordingly the Registrar of Ships shall not record any such further mortgage unless the consent in writing of the holder of a prior mortgage is produced to him or her. If the new mortgage is to be registered in favour of an existing mortgagee, the consent of that mortgagee will not be required.

Any amendment to an existing mortgage may only be registered if the consent in writing of all other mortgagees is produced to the Registrar of Ships.

Maltese law provides in addition for the possibility of a registered mortgagee opting to postpone or waive its rights and ranking in favour of another mortgagee.

2.10 Pledge Agreements

Pledge agreements are not registered under Maltese law. A notice of share pledge is, however, to be delivered by the pledgor or the pledgee to the Registrar of Companies within 14 days of the granting of the pledge for effectiveness vis-à-vis third parties.

2.11 Maritime Liens

Maltese law does not provide for "Maritime Liens." The closest thing to Maritime Liens under Maltese law is the Maritime Privilege under section 50 of the Merchant Shipping Act. This list has a dual function. It serves the purpose of listing those claims which survive the voluntary sale of the vessel by one year and acts as a list according to which creditors will be paid in order of priority in the event that there are insufficient funds to pay the judgment debt in the case of the judicial sale of the vessel. The mortgage is not one of the maritime privileges. This is because the law gives the mortgage its own protection and rights separately and in different paragraphs. A registered mortgage survives the voluntary sale of the vessel for as long as it is registered and, as far as ranking is concerned, section 54 of the Merchant Shipping Act provides specifically for the ranking position of the mortgagee in the case of a judicial sale.

2.12 Duly Recorded Mortgages

Mortgage instruments are generally drafted to include wording to prohibit the transfer of the vessel without the prior written consent of the mortgagee. In such a case, the registration of a transfer of ownership and/or deletion of the vessel will not be accepted by the Registrar of Ships unless the consent in writing of the mortgagee is provided. The exception to this general rule is in instances where the transfer is made pursuant to a court order in a sale by auction or pursuant to any other court order.

Should a vessel be deleted subject to an existing registered mortgage, the position of the registered mortgagee continues to be protected by law.

A registered mortgage has no expiry date and may only be cancelled upon the mortgagee's request to discharge the registered mortgage.

3. Government Requisition of Vessels

3.1 Authority to Requisition Vessels

Although it is not known whether this eventuality has ever occurred, the law provides that, should there be a suspension of any service or route in Malta usually served by commercial vessels, which may affect the transport requirements of Maltese inhabitants, the relevant Maltese authorities are authorised (subject to appeal) to seize and take possession of, and use, any commercial vessel and provide compensation accordingly.

4. Capital Markets

4.1 Typical Means of Raising Capital

Commercial vessels registered under the Maltese flag are typically financed by way of secured loan facilities issued by international banks, even where alternative financing in the form of leasing is utilised. Local banks are not typically heavily involved in such financing arrangements.

4.2 Fleet Mortgages and Syndicated Loans

While fleet mortgages are not registered over Malta-flagged vessels, the provision of syndicated loans is not uncommon. Syndicated loans are typically issued by syndicates of large international banks with security, which are provided by the borrower group in favour of a security trustee. The security trustee acts under a trust for the benefit of the syndicate and as such will be recognised as the mortgagee of the particular mortgage.

4.3 Role of the Flag of the Vessel

Before providing financing, a risk assessment is carried out by the financier, which includes a review of the jurisdiction in which the vessel is registered, the strength of the security that the borrower can provide and the ease of enforcement of that security, principally, the mortgage and the ease with which the shares in the ship owning company can be appropriated upon enforcement of the security, should this be necessary. Maltese law in this respect provides financiers with the necessary com-

fort and for this reason it is a flag of choice and a condition precedent in many transactions.

4.4 Securitisation

Although not yet very common in shipping, securitisation has been gaining ground in light of traditional financiers' reluctance to finance shipping activities. There have been a number of asset-backed securitisation transactions in Malta.

4.5 Participation of Capital Markets in Shipping Transactions

According to recent surveys, global ship financing has continued to retreat and is now at its lowest since the world financial crisis of 2008. Needless to say, this situation has also affected the Maltese jurisdiction.

Non-banking finance is on the rise, especially leasing. Although leasing has not replaced bank finance, it has gained both in popularity and volume. In fact, the growth of the global fleet currently continues to be funded from non-banking sources.

It is too early to predict whether banks will continue to reduce their exposure in the shipping sector and much will depend on the overall available lending resources of banks and their commercial strategy, as well as the competition by unregulated non-banking funds, leasing companies and other providers.

5. Maritime Labour

5.1 Labour Laws and Conventions

The Laws of Malta include two principal frameworks of laws which generally regulate seafarer employment.

The first framework comprises the Merchant Shipping Act (Chapter 234 of the Laws of Malta) and an additional 56 subsidiary laws enacted thereunder, which mainly apply to Malta-flagged vessels and foreign-flagged vessels whilst in Maltese territorial waters. Special rules apply for fishing vessels, private yachts, and offshore drilling facilities.

The 2013 Merchant Shipping (Maritime Labour Convention) Rules (S.L. 234.51 of the Laws of Malta) transposed the provisions of the Maritime Labour Convention (MLC Convention as amended – hereinafter referred to as "the Rules") into Maltese law after Malta ratified the Convention in 2013. These apply to Malta-flagged sea-going vessels used for commercial purposes, subject to some exceptions.

In Malta, ship registration and the provision of all ancillary services is the responsibility of the Merchant Shipping Directorate, a body set up by an act of Parliament within the Ministry responsible for maritime affairs. This Directorate is responsible for the regulation, control and administration of all matters related to merchant shipping, including the certification of seafarers and the administration and implementation of international maritime conventions and agreements. The Directorate has the power at law to issue binding Merchant Shipping Notices, such as Shipping Notice 108 (Rev2) establishing the minimum wage for able seafarers in line with the MLC and Shipping Notice 144 on the implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (as amended).

The secondary framework of laws is that which regulates the minimum conditions for standard onshore employment - enshrined in the "Employment and Industrial Relations Act" (Chapter 452 of the Laws of Malta) and an additional 118 Subsidiary Laws enacted as Regulations or as National Standard Orders pursuant to Chapter 452. Some provisions contained in Chapter 452 (mainly those relating to probationary periods, termination for redundancy and termination for "good and sufficient cause", which apply to typical onshore employees, are excluded for seamen and women engaged on board Malta-flagged vessels.

This general employment law framework is deemed to include, subject to some exceptions, ancillary frameworks of laws dealing mainly with health and safety, equal treatment, disability, and privacy and data protection which generally apply to the engagement of seafarers.

As Malta is a member of the European Union, EU Directives and Regulations (and decisions the Court of Justice of the European Union interpreting those Directives and Regulations) apply as part of the Laws of Malta. EU Directives (such as those on "transfer of business", "fixed term employment" and "posting of workers", amongst others) are transposed into the Laws of Malta in the form of subsidiary laws. EU Regulations, such as those on the governing law of employment contracts (Regulation (EC) No 593/2008), the jurisdiction of disputes arising out of contracts (Regulation (EU) 1215/2012), and data protection (Regulation (EU) 2016/679), each have direct binding effect as part of the Laws of Malta without the need of secondary transposition.

Additionally, local laws on social security as well as EU legislation on the co-ordination of social security systems (mainly, Regulations (EC) Nos 883/2004 and 987/2009), as well as local and international rules on the taxation of income, are of relevance to the subject of the engagement of seafarers.

Malta has ratified 63 ILO Conventions and two Protocols, of which 46 are in force.

5.2 Local Seafarers
There is no minimum percentage.

5.3 Minimum Wage Requirements and Overtime
As per Shipping Notice 108 (Re2) and in accordance with Rule 51 of the Rules, the minimum basic wage for a calendar month of service for an able seaman engaged on board a Malta-flagged sea-going vessel for the year 2020 is USD625. As of 1 January 2021, this shall increase to USD641.

This minimum basic wage for an able seaman serves as a benchmark for other ranks.

In terms of Rule 39, the minimum hours of rest of a seafarer engaged on board a Malta-flagged sea-going vessel must be not less than (a) ten hours in any 24-hour period; and (b) 77 hours in any seven-day period. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between such consecutive periods must not exceed fourteen hours. Musters, fire-fighting and lifeboat drills must be conducted in a manner which minimises the disturbances of rest periods and does not induce fatigue. A seafarer who is on call must have adequate compensatory rest period if his or her normal period of rest is disturbed by call-outs of work. The Registrar-General may authorise collective agreements permitting exceptions to the limits but any exceptions must nonetheless have due regard for the general principles of the protection of the health and safety of seafarers.

Special rules apply for (i) seafarers who are under the age of 18 and (ii) emergencies.

The Rules specify that for the purposes of calculating wages, "overtime" is to mean time worked in excess of the "normal hours of work" of a seafarer. In the case of seafarers whose remuneration includes separate compensation for overtime worked, for the purpose of calculating wages, the normal hours of work at sea and in port shall not exceed eight hours per day and, without prejudice to more favourable collective bargaining agreements, for the purpose of calculating overtime, the number of normal hours per week covered by the basic pay or wages shall not exceed 48 hours per week. The rate/s of compensation for overtime must not be less than one and one quarter times the basic wages per hour and in the case of seafarers whose wages are fully or partially consolidated, they are to have specified in their seafarer's employment agreement the number of hours of work expected of the seafarer in return for such remuneration, and any additional allowances which might be due in addition to the consolidated wage, and in what circumstances.

5.4 Justified Dismissal
The law on the termination of seafarer engagement on board a Malta-flagged vessel may be subject to certain statutory and/or contractual terms in a seafarer employment agreement or collective agreement.

In terms of the Merchant Shipping Act and the Rules, a seafarer's employment agreement shall be terminated by:

- the mutual consent of the parties thereto; or
- the death of the seafarer; or
- the loss or total unseaworthiness of the ship; or
- the sale of the ship; or
- the expiry of time.

The seafarer employment agreement is to specify the conditions applicable to the termination of the agreement, including:

- if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the ship-owner than for the seafarer;
- if the agreement has been made for a definite period, the date fixed for its expiry; and
- if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged.

Any termination to the seafarer's employment agreement shall in no circumstances be shorter than seven days if notice of such termination is from the ship-owner. Notice of termination from the seafarer may be less than seven days or without notice, if for compassionate or urgent reasons, as the Registrar-General may approve through Merchant Shipping Notices from time to time.

As regards the termination of contracts resulting from the sale of vessels as part of a going concern, attention must be paid to the rules on transfers of business regulated by the "Transfer of Business (Protection of Employment) Regulations" (S.L. 425.85, as amended).

Special rules apply to the engagement and termination of a captain/Master of a vessel. A Master shall not be entitled to any compensation if he or she is dismissed with good cause or is removed by the court. Conversely, where a Master is dismissed without good cause he or she shall, unless it is by agreement otherwise provided, be entitled to an indemnity related to the length of his or her service with the ship or the owner thereof and, where the Master is so dismissed during the course of the voyage, the indemnity shall not be less than his or her wages for the entire voyage and the expenses of his or her repatriation. Recent judgements of the Maltese employment Tribunal

and confirmed on appeal have suggested that the termination of employment of Masters of a vessel may also be covered by the rules on termination contemplated by Chapter 452 of the Laws of Malta – whereby an employer cannot dismiss the employee except for a good and sufficient cause.

As regards the remainder of seafarers, there is no express provision in the law which requires that seafarers must necessarily be dismissed for "good cause" and that failing to prove such a cause will give rise to a right for indemnity. However, one cannot exclude that a seafarer can claim compensation/damages arising out of tort or breach of contract giving rise to are arising by virtue of the termination – and the Merchant Shipping Act and the Rules provide that:-

- if a seaman or woman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage or before one month's wages are earned, without fault on his or her part justifying that discharge, and without his or her consent, he or she shall be entitled to receive from the Master or owner, in addition to any wages he or she may have earned, due compensation for any damage caused to him or her by the discharge not exceeding one month's wages, and that compensation shall be treated as if it were wages duly earned; and
- all wages to which a seaman or woman may be entitled, subject to deductions made in accordance with this Act, shall be paid before or at the time the seaman or woman lawfully leaves the ship at the end of his or her engagement; and in the event of a seaman or woman's wages or any part thereof not being so paid or settled, then, unless the delay is due to the act or default of the seaman or woman or to any reasonable dispute as to liability or to any other cause not being the wrongful act or default of the owner or Master, the seaman or woman's wages shall continue to run and be payable until the time of the final settlement thereof.

The applicability of a foreign law might also arise in the event that special regional legislation and/or industry-specific rules apply to the operation of a vessel. Each case is to be assessed on an individual basis.

5.5 Occupational Injuries and Insurance

All owners of Malta-flagged vessels are obliged by law to take out a private insurance for all members of the crew (including the Master and any person serving on board a vessel) to cover the following liabilities:

- liability to pay hospital, medical, maintenance, funeral and other expenses incurred in relation to the injury to, or illness or death of, a member of the crew;
- liability to repatriate and to compensate a member of the crew for the loss of his employment caused in consequence of the actual or constructive total loss of the ship or of a major casualty rendering the ship unseaworthy and necessitating the signing-off of the crew;
- liability to pay compensation or damages in accordance with Maltese Law and practice in relation to the injury to, or illness or death of, a member of the crew;
- liability for wages payable to an injured or sick member of the crew or on death to his or her estate;
- liability in respect of loss of or damage to the personal effects of a crew member.

If a seafarer is registered for social security purposes, the employee may be entitled to state benefits granted in terms of the applicable social security system applicable to that seafarer.

In the case of an injury or death, where Maltese law is deemed to regulate the tortious activity, reference will be made to a long-established formula which guides the courts to quantify the damages suffered by the seafarer. Real damages suffered would be calculated, taking into account actual losses – damnum emergens (meaning, loss of earnings and expenses incurred) as well as loss of future earnings (lucrum cessans) in the case of a finding of a permanent injury (percentage disability) or death. Such compensation applies the restitutio in integrum model, which is not to be viewed in a punitive light but as compensation for any harm suffered and which will place the victim back in the position he or she was in before such tort was committed.

In summary, the courts would look at the percentage disability suffered by the victim (such to be determined by court-expert), multiplied by the victim's last known salary (usually an average over the last three years preceding the tortious incident, taking into account also cost of living increases), multiplied by the expected working life expectancy of the victim (in terms of years) after taking into account the victim's age on the day of the tortious incident and often taking into account the likely chances and changes to the life of the victim.

The formula is not expressly stipulated in the law. Rather, it has been established over decades of jurisprudence by the courts in cases of injury and death and, since Maltese Law does not uphold the doctrine of judicial precedent, one will find variances in the weight given to certain factors from time to time by the courts.

Traditionally, the Maltese courts would grant a reduction of around 20% from the damages awarded as lucrum cessans to compensate for the fact that the victim (or the victim's heirs) would have been awarded one whole sum. In time, some courts varied this reduction to one which would be reflective of the

duration of the case whereby, for every year following the third year from the institution of the law suit, a 2% reduction would be made from the original 20%. However, on occasion the courts chose to do away with such a reduction.

5.6 Maritime Disputes

Maritime labour disputes may be resolved by various means.

All ships must have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the Rules. Whereas such procedures must seek to resolve complaints at the lowest level possible, seafarers still enjoy the right to complain directly to the Master and, where they consider it necessary, to appropriate external authorities. An on-board complaint procedure must include the right of the seafarer to be accompanied or represented during the complaint procedure and it must also safeguard against the possibility of victimisation of seafarers for filing complaints which are neither manifestly vexatious nor maliciously made.

Whilst still on board a vessel, a seafarer has a right to raise complaints in confidence to the Registrar-General, or to an inspector, or to a Maltese consular officer, against any member of the crew, including the Master, as well as to go ashore if required to make his or her complaint. The Registrar-General is empowered to take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found in terms of law.

Where the parties fail to resolve a matter impacting the seafarer and/or to reach a compromise over a dispute, recourse may be had to the courts/tribunals and/or to the Shipping Directorate or to private arbitration, subject to each of their limitations as to competence in terms of law or collective agreement. Relevant laws on the governing law of a contract and the appropriate forum to determine a dispute will have to be assessed. Seafarers may also seek the assistance of unions.

5.7 Repatriation

At the outset, the seafarer's employment agreement must contain reference to the seafarer's right to repatriation.

A seafarer shall be entitled to repatriation at the cost of the vessel-owner if he or she has served the maximum duration of service periods on board, which are of less than twelve months. The right will also apply at the expense of any third party exercising an executive title against the ship or its ship-owner, should that ship-owner default in his or her obligations toward the seafarer with regard to repatriation and other expenses owed to the seafarer following the exercise of the executive title.

Where the service of a seafarer terminates otherwise than by his or her consent to be discharged during the currency of the agreement, the Master of the ship shall, besides giving the certificate of discharge required in terms of law and besides paying the wages to which the seafarer is entitled, make adequate provision for his or her maintenance and for his or her return to a proper return port.

The failure to repatriate in terms of law gives rise to potential penalties – and the seafarer is deemed to have been abandoned. Subject to certain exceptions, ship-owners are to have a certificate or other documentary evidence of financial security issued to provide cover in case of abandonment.

When a seafarer has a right to repatriation, this must cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

Where a seafarer is repatriated as a member of a crew, he or she shall be entitled to the appropriate remuneration for work done during the voyage.

5.8 International Bargaining Forum (ITF) Agreements

International Bargaining Forum (ITF) Agreements and other collective bargaining agreements are often used to regulate the conditions of employment on board Malta-flagged vessels. This is most common (but not only) in the case of engagement of crew on board Malta-flagged cruise liners.

A seafarer's employment agreement must contain reference to any applicable collective bargaining agreement. If a Collective Agreement regulates working time and rest periods, a copy thereof must be kept on board the vessel and must be made easily accessible to the seafarers.

6. Maritime Courts

6.1 Courts of First Instance and Appeal

Malta does not have specialised maritime courts, at either first instance or on appeal. That said, the bulk of maritime-related actions or proceedings, at first instance, are heard before the same pool of judges, who have developed a good expertise in the subject.

6.2 Determining a Maritime Dispute

Maltese law permits proceedings to be instituted both in personam and in rem. However, for a claimant to commence an action in rem, its claim must fall within one of the listed headings of claims found in Article 742B of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta. Whilst the list found under Article 742B is exhaustive, it encompasses most maritime claims. Generally speaking, the same judicial procedures are adopted with respect to proceedings instituted in rem and in personam.

The Maltese courts are extremely proactive when the proceedings in rem involve a sense of urgency, such as the arrest of a vessel or the issuances of a flag injunction pursuant to Section 37 of the Merchant Shipping Act, Chapter 234 of the Laws of Malta. Both may be obtained by a creditor in less than a day. Likewise, when dealing with judicial sales by auction or court-approved private sales, the courts tend to appreciate the need for an expedient conclusion to the proceedings.

6.3 Arbitration and Mediation

Yes, Maltese law recognises and regulates both arbitration and mediation as possible forms of alternative dispute resolution. Disputes referred to Arbitration in Malta are handled by the Malta Arbitration Centre, established through the Arbitration Act, Chapter 387 of the Laws of Malta. Arbitration proceedings are regulated by the Arbitration Act, which incorporates the UNCITRAL Model Law on International Commercial Arbitration, as well as the Arbitration Rules, Subsidiary legislation 387.01. Malta is also a State party to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Mediation is another recognised form of alternative conflict resolution and is regulated by the Mediation Act, Chapter 474 of the Laws of Malta. The aforementioned Act establishes the Malta Mediation Centre, which seeks to encourage and facilitate the settlement of disputes through mediation.

6.4 Judicial Sale of Vessels

Maltese law permits creditors to enforce their claims against a vessel either by applying for the judicial sale of a vessel by auction, or alternatively by a court-approved private sale. In the case of the former, the creditor must apply to the court to appoint an auctioneer from the court roster as well as to schedule the auction date. The auction is then generally carried out within the premises of the courts and all bids are made in public. The auctioneer, as duly authorised by the courts, oversees and presides over the auction proceeding. The ship is sold to the highest bidder, who then has seven days to deposit the sale price in court. That said, any filing made by a creditor, the ship-owner or an interested third party (such as where a party has property on board the vessel being auctioned) will be decided upon by the judge. Likewise, any scrutiny of any of the related proceedings will be heard by the presiding judge.

With respect to the court-appointed private sale, this procedure is driven primarily by the creditor seeking to sell the vessel. That creditor must engage two surveyors to appraise the vessel and must source the market (usually through the use of reputed international ship-brokers) to find a buyer for the vessel. The creditors will then enter into a ship sale-and-purchase agreement with the prospective buyer, which would always be subject to the court's approval. Subsequently, the creditor must file an application before the courts requesting that the judge approve the sale. Together with the application, the creditor would need to submit the two appraisals of the vessel and the memorandum of agreement entered into with the prospective buyer. This application is served on all known interested parties, including the vessel and other creditors, and the presiding judge will then schedule a hearing. At the hearing, the judge must be satisfied that the private sale is in the interest of all known creditors and that the price offered by the proposed buyer is reasonable in the circumstances of the case.

Types of bonds required to/for:

- Act ex officio ex parte: a creditor is not required to put up any form of bond or security when filing for any ex parte order or act. That said, in the case of precautionary warrants, such as a garnishee order (which is akin to a freezing order), the debtor may subsequently file an application in court to demand the lifting of that warrant or to demand that the creditor be ordered to put up counter-security. Should the court accede to a request for counter-security, the creditor will be given a timeframe to deposit the relevant amount in the court registry. Should the creditor fail to comply with the court order, the court will lift the warrant or order.
- Vessel arrest: under Maltese law, a ship arrest is made pursuant to the issuance of a warrant of arrest. No bond or security needs to be paid up by the creditor. The same rules as above would also apply should the ship-owner wish to file for counter-security to be put up by the arresting party.
- Lift arrest: in order to lift an arrest, a ship-owner must put up adequate security. The ship-owner would need to deposit an amount to cover the sum indicated in the warrant of arrest as well as the associated court costs for the same warrant. The law prescribes that adequate security should be made in cash or by a bank draft drawn up by a local bank. That said, it is also possible to give a letter of undertaking as security to lift an arrest, provided that the arresting party agrees.
- Judicial sales: generally speaking, prospective buyers are not required to put up any bond or guarantee to participate in a

judicial sale by auction. They are merely required to obtain evidence from their bankers that they have enough funds to bid in the auction (very often the bidding cap is specified in this instrument). That said, the matter remains in the judge's discretion. To the best of our knowledge, a bond has only been required once so far – in the case of the sale of the MY Indian Empress. After the first auction fell through, since the highest bidder failed to deposit the sale price into court within the stipulated timeframe, the judge scheduled a second auction date and demanded that all prospective bidders deposit the sum of EUR1 million to be able to participate.

6.5 Execution of Foreign Resolutions

Any judgment delivered by a court within another EU Member State would be recognised and enforced before the Maltese courts, pursuant to the provisions found under Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I Recast Regulation") The Regulation facilitates the speedy recognition and enforcement of judgments across the European Union.

However, the recognition and enforcement of judgments delivered by courts in a non-EU Member State are regulated by Articles 825A to 828 of the Code of Organization and Civil Procedure. It should be noted that this procedure is lengthier than in the case of enforcing EU judgments and, moreover, the defendant has more grounds upon which to challenge the recognition and enforcement.

It is also pertinent to note that under domestic legislation, and specifically the British Judgments (Reciprocal Enforcement) Act, Chapter 52 of the Laws of Malta, there is a specific procedure which a creditor in possession of a favourable judgment from a superior court of the United Kingdom may apply to have its judgment enforced in Malta. This procedure is seldom used, since the enforcement of such judgments can be carried under pursuant to the provisions of the aforementioned Brussels I Recast Regulation. Nonetheless, it is worth mentioning in light of the United Kingdom's imminent withdrawal from the European Union.

6.6 Order of Priority of Maritime Claims

The priority of maritime claims is determined by Maltese domestic law, and specifically Articles 50 to 54A of the Merchant Shipping Act, Chapter 234 of the laws of Malta. Under Maltese law, a ship mortgage, whether registered over a Maltese vessel or a foreign-registered vessel (provided it satisfies the requirements of Article 49 of the Merchant Shipping Act), enjoys a very high priority ranking. There are a very limited number of claims which would pre-rank a mortgage. These include, for example, claims relating to salvage, pilotage and crew wages.

6.7 Sister Ships or Vessels Owned by Affiliates

Under Maltese law, it is permissible under certain circumstances to affect a "sister-ship" arrest. Article 742D of the Code of Organisation and Civil Procedure, Chapter 12 of the Law of Malta provides that a creditor who has a claim in rem (which falls under one of the headings of Article 742B of the same Code) against a particular vessel, may arrest any other ship provided it is owned or beneficially owned by that person, who would be the party deemed liable in personam for the creditor's claim.

6.8 Limitations of Liability

Malta is a signatory to the LLMC 76. The provisions found under the LLMC 76, as amended by the 1996 protocol, have been transposed into Maltese domestic legislation by means of the 2003 Limitation of Liability for Maritime Claims Regulations, subsidiary legislation 234.16 of the Laws of Malta (the Maltese Regulations).

The Maltese position is more restrictive than that found under the LLMC. The Maltese Regulations expressly provide that a ship-owner cannot avail him or herself of the right to limit his or her liability in respect to those claims mentioned in paragraphs (d) and (e) of Article No 2(1) of the LLMC. Accordingly, the claims subject to limitation of liability under Maltese Law are the following:

- claims in respect of loss of life or personal injury, or loss of or damage to property (including damage to harbour works, basins and waterways, and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations; and
- claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss, for which the person liable may limit his or her liability in accordance with this convention, and further loss caused by such measures.

The Maltese Regulations apply the following limits of liability on claims arising on any distinct occasion:

- With respect to claims for loss of life or personal injury:

(a) 3.02 million Special Drawing Rights (SDR) for a ship with a tonnage not exceeding 2,000 tons; and

(b) for a ship with a tonnage in excess thereof, the following additional amounts would apply:
(i) for each ton from 2,001 to 30,000 tons, SDR1,208;
(ii) for each ton from 30,001 to 70,000 tons, SDR906; and
(c) for each ton in excess of 70,000 tons, SDR604.

- With respect to any other claims:
(a) SDR1.51 million for a ship with a tonnage not exceeding 2,000 tons; and
(b) for a ship with a tonnage in excess thereof, the following additional amounts would apply:
(i) for each ton from 2,001 to 30,000 tons, SDR604;
(ii) for each ton from 30,001 to 70,000 tons, SDR453; and
(c) for each ton in excess of 70,000 tons, SDR302.

6.9 Exceptional Actions for Ending a Maritime Claim

Generally speaking, under Maltese law, creditors may no longer bring a claim in rem against a vessel after it has been sold voluntarily to a new ship-owner.

However, this does not apply where a creditor's claim is deemed to be a special privilege in terms of Article 50 of the Merchant Shipping Act, Chapter 234 of the Laws of Malta. In these cases, the special privileged claim will survive the voluntary sale of the vessel up to the period of one year following that sale.

Moreover, Article 37D(1) of the same Act dictates that a creditor may no longer bring a claim in rem against a vessel after it has been sold pursuant to a court order or with the approval of a competent court within whose jurisdiction the vessel was at the time of sale. In such cases, the creditor's interests shall pass on to the proceeds of the judicial sale.

7. Legislation on Corporations and Tax System

7.1 New Corporate or Tax Legislation

A shipping organisation which is duly organised and existing under the laws of a European Union State is exempt from tax on:

- any income derived from shipping activities;
- any income, profits or gains derived from the sale or other transfer of a tonnage tax ship which had been acquired and sold whilst under the tonnage tax system or from the disposal of any rights to acquire a ship which, when delivered or completed, would qualify as a tonnage tax ship; and
- the distribution of profits derived from shipping activities or from other transactions referred to above. "Shipping activities" comprise the international carriage of goods or passengers by sea or the provision of other services to or by a ship as may be ancillary thereto or associated therewith, including the ownership, chartering or any other operation of a ship and includes also the ship-management activities of a ship manager.

Reporting and accounting requirements vary, depending on the type of company involved. By way of general principle, a shipping organisation taking the form of a private company incorporated under the Maltese Merchant Shipping Act, is required to keep audited accounting records with respect to:

- all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- the assets and liabilities of the company; and
- all sales and purchases of goods and services by the company.

While nominee shares are allowed, a Malta private company is not permitted to issue bearer shares, notwithstanding anything contained in its memorandum and articles of association.

Liquidation of assets outside Malta is dependent on the jurisdiction involved and has to be analysed on a case-by-case basis.

7.2 Tax System

Persons who are ordinarily resident and domiciled in Malta are subject to tax in Malta on their worldwide income and certain chargeable capital gains. Persons who are resident but not domiciled in Malta are chargeable to tax in Malta on income and certain capital gains arising in Malta and on income arising outside Malta which is brought into Malta. Capital gains arising outside Malta to persons who are either resident or domiciled in Malta but not ordinarily resident and domiciled in Malta will not be subject to tax in Malta, even where such gains are remitted to Malta. A company (including certain partnerships) incorporated in or re-domiciled to Malta is considered to be resident and domiciled in Malta and therefore subject to tax in Malta on a worldwide basis. A company incorporated outside Malta is considered to be resident in Malta only if its business is managed and controlled in Malta. Companies resident but not domiciled in Malta are subject to tax on income and certain chargeable gains arising in Malta and all income (not capital gains) arising outside Malta and remitted to Malta. A company which is neither incorporated nor tax-resident in Malta shall only be subject to tax in Malta on income and capital gains arising there.

7.3 Settling Matters Once a Company Ceases to Exist

Once a company is put into liquidation, it cannot carry on any further business. Once liquidation proceedings are concluded, the registrar of companies publishes a notice and upon the expiry of three months from the publication of that notice, he or she will proceed to strike the name of the company off the register, unless that date is deferred following the filing of an application by the liquidator or any other person who appears to the court to have an interest. Therefore, up until the name of the company is struck off the registrar there is still the possibility to file an application requesting the court to order that the company is not actually struck off the register.

7.4 International Tax Treaties

Malta has a large and growing network of double tax treaties in force. Malta's tax treaties are largely inspired by the provisions of the OECD Model Tax Convention on Income and Capital, as updated at the time of negotiation.

With regard to the treatment of taxation of shipping income, the standard wording which is found in most treaties is that of the OECD Model Tax Convention, which provides as follows:

- profits of an enterprise of a Contracting State from the operation of ships (…) in international traffic shall be taxable only in that State;
- the provisions of paragraph 1 of this Article shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

Having said that, one would have to analyse the provisions of the relevant treaty on a case-by-case basis, as in some instances there may be variations to the articles in question and/or different provisions may be applicable.

Fenech & Fenech Advocates was established in 1891 and has diverse areas of expertise, including corporate and commercial law, ICT law, M&A transactions, financial services, tax, banking, trusts and foundations, aviation, intellectual property, employment law and environmental law. It is particularly well known for its extensive maritime practice, with four distinct departments dedicated to the maritime sector: marine litigation, ship registration, ship finance and yachting. The firm represents major industry players ranging from the largest ship-owners, tug and salvage operators and port facilities to bunker operators, charterers and financiers. It has worked on the drafting of numerous maritime laws.

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