

CMI International Working Group

Ship Financing Security Practices – Questionnaire

1 MARITIME AND OTHER CONVENTIONS

1.1 Has your jurisdiction ratified the 1952 and/or the 1999 Arrest Convention or neither?

Belgium has ratified the 1952 Arrest Convention on 10 April 1961.

Belgium has not ratified the 1999 Arrest Convention.

1.2 If your jurisdiction has not ratified either of the aforementioned conventions, what categories of claim can be brought by way of arrest¹ of a vessel?

N/A.

1.3 In particular, can arrest be made:

(a) by a mortgagee of a vessel registered under the laws of your jurisdiction?

Yes, arrest can be made by mortgagee of a vessel registered under the laws of Belgium.

(b) by a mortgagee of a vessel registered under the laws of a different jurisdiction?

Yes, arrest can be made by mortgagee of a vessel registered under the laws of a different jurisdiction.

1.4 Has your jurisdiction ratified the 1926 and/or the 1993 Maritime Liens and Mortgages Convention or neither?

Belgium has ratified the 1926 Maritime Liens and Mortgages Convention on 2 June 1930.

Belgium has not ratified the 1993 Maritime Liens and Mortgages Convention.

1.5 If your jurisdiction has not ratified either Maritime Liens and Mortgages Convention does your jurisdiction recognize foreign maritime liens? If so what types of claim are recognised as maritime liens?

N/A.

1.6 Does the law of your jurisdiction incorporate the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents?

Yes. The 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents was incorporated in the Belgian Act of 5 June 1975 regarding approval of the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents.

2 NATURE OF THE SHIPS' REGISTER

2.1 Is the ships' register in your jurisdiction a register of legal title?

Yes, the Belgian ships' register is a register of legal title. Unless being registered into the registry of seagoing vessels, deeds and judgments that give evidence to an agreement creating, conveying,

assigning or declaring void rights in rem on seagoing ships (under construction) are not effective against third parties. (see art. 8 Maritime Act)

2.2 Does the ships' register in your jurisdiction (whether or not a register of legal title) provide for registration of the interest of a demise charterer in circumstances where legal title is registered in another jurisdiction (the 'underlying register').

Yes, registration of the interest of a demise charterer (bareboat charterer) is possible in circumstances where legal title of property is registered in another jurisdiction. (see art. 10 Ship Registration Act 21/12/1990)

2.3 If your jurisdiction does provide for registration of the interest of a demise charterer, does it provide for registration or notation of a mortgagee registered on the underlying register?

Yes, the registration or notation of a mortgagee registered on the underlying register is possible. Further to art. 10 Maritime Act, no mortgages can be registered charging the ship in the bareboat registry. Property and charges on the ship are ruled by the law of the State of the primary registry. The Belgian bareboat registry refers to the primary registry.

2.4 Does your jurisdiction allow a vessel registered in the ships register in the name of the holder of legal title also to be registered in another jurisdiction in the name of a demise charterer? If so is such registrations permitted when the vessel is subject to a mortgage registered in the ships' register in your jurisdiction and is the consent of the mortgagee required?

Yes, the Belgian jurisdiction allows a vessel registered in the ships register in the name of the holder of legal title also to be registered in another jurisdiction in the name of a demise charterer (bareboat charterer). This registration is permitted when the vessel is subject to a mortgage registered in the Belgian Ship Registry. The consent of the mortgagee is required. (see art. 8 and 9 Ship Registration Act)

2.5 Please describe (briefly) the criteria for registration of a vessel on the ships' register in your jurisdiction, with particular reference to eligibility or not for registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.

Further to the Royal decree on the registration of seagoing ships of 04/04/1996 registration for ships under construction in Belgium and for ships owned by private legal persons, except commercial companies is mandatory.

Registration is optional for seagoing ships (also under construction):

that are less than 15 years old or are older than 15 years but have been issued with a certificate of conformity evidencing their compliance with technical provisions of the royal decree of 20 July 1973;

that are operated from Belgium;

the owner or operator is either a national of a Member State of the European Union, an individual with domicile/residence in Belgium, a legal person having its real place of business in one of the Member States of the European Union.

A definition of a ship that is eligible for registration can be found in Art. 1, 1° of the Ship Registration Act of 21/12/1990:

“Every floating craft, with or without own propulsion, with or without water displacement, used or fit to be used as a mean of traffic, in, over or under water, included installations not permanently connected on the shore or ground.”

A definition of a seagoing ship can be found in art. 1, 4° “every ship used or fit to be used or appropriate to be used on sea”

3 FORMALITIES FOR MORTGAGE REGISTRATION

3.1 *Does a mortgage in respect of a vessel registered in your jurisdiction need to:*

(a) attach documents, such as a loan agreement, evidencing the obligations secured?

No, a mortgage does not need to attach documents, such as a loan agreement, evidencing the obligations secured in respect of a vessel registered in Belgium.

(b) set out in detail the circumstances giving rise to a right of enforcement?

No, a mortgage does not need to set out in detail the circumstances giving rise to a right of enforcement in respect of a vessel registered in Belgium.

3.2 *Does a mortgage in respect of a vessel registered in your jurisdiction need to be notarised and/or legalised?*

No, a mortgage does not need to be notarised and/or legalized in respect of a vessel registered in Belgium.

3.3 *What are the registry fees in order to have a mortgage registered against a vessel registered in your jurisdiction?*

According to the Royal decree of 13/02/2017 on the determination of the retributions from the Belgian Ship Registry a retribution is requested amounting to € 0.70 per € 1,000 of the amounts for which the mortgage is taken. This fee for the registration of the Mortgage Deed has been paid. The cost for a the registration of the deletion of the mortgage is amounting to 0.15 EUR per 1.000 EUR

3.4 *Is registration indefinite or is there any requirement for re-registration after a certain period?*

In Belgium, re-registration of a mortgage in respect of a vessel is required after a period of 15 years (Article 32 Belgian Maritime Act).

3.5 *In your jurisdiction is a mortgage of a vessel required to be registered only in the ships register or, in addition, in another register? If so, please give brief details.*

The Mortgage Deed must be registered at the Registration Office (which is a tax-authority) before they can be registered in the Belgian Ship Registry (see art. 10 Maritime Act). In accordance with article 115-127 of the Belgian Program Act (State Newspaper of 29 August 2002) declared to enter into force by Royal Decree of 7 May 2003 (State Newspaper of 9 May 2003) the obligation to pay a tax for establishing a mortgage was abolished, except for a small registration fee (of € 50,00 per mortgage). No other registration, stamp or other taxes are imposed by the Belgian administrative or other governmental authorities in connection with the execution and registration of the Mortgage Deed.

4 INFORMATION CONCERNING SECURITY INTERESTS IN SHIPS

4.1 *Please advise if information concerning security interests in ships registered in your jurisdiction is publicly available, and if so, how it may be obtained, including the following issues, as applicable.*

(a) Does a person seeking such information need the authorization of the vessel owner to get such information?

No, a person seeking such information does not need the authorization of the vessel owner to get such information.

(b) Does your jurisdiction certify the accuracy of the information?

No, Belgium does not certify the accuracy of the information.

(c) How much time is generally required to obtain such information?

The information is generally obtained within 6 days.

4.2 *May a vessel subject to a security interest be sold by the owner prior to the release of the security interest, and if so, under what conditions or circumstances.*

Yes. In Belgium, a vessel subject to a security interest may be sold by the owner prior to the release of the security interest via public sale.

5 ARREST OF A CHARTERED VESSEL

5.1 *Does your jurisdiction allow a mortgagee to arrest vessels on bareboat charter or time charter?*

Yes. In Belgium, a mortgagee is allowed to arrest vessels on bareboat charter or time charter.

5.2 *Under the laws of your jurisdiction, could the mortgagee incur any liability in tort, delict (or similar) to charterers or cargo interests if the mortgagee arrests the vessel when it is subject to charter and/or carrying cargo (on the grounds of interfering with the contractual relationship between owner and charterer or bill of lading holder)?*

Yes. In Belgium, in principle, the mortgagee could incur such liability if there is no maritime claim within the meaning of the 1952 Brussels Arrest Convention, however provided that the mortgage deed is valid and that a debt has arisen under the contracts secured by the mortgage deed.

We do not see how any such liability could be incurred as such an arrest would be valid and lawful as provided for in Article 1.(1)(q) of the 1952 Brussels Arrest Convention.

5.3 *What are the procedures or requirements, if any, applied to the cargo on board a vessel that has become subject to judicial sale in your jurisdiction? Must the cargo be discharged before sale, and if so, who bears the costs and risks of such discharge?*

No. In Belgium, the cargo must not be discharged before sale. In practice, the charterer will usually start proceedings to reclaim the cargo and advance the cost to be recovered in the distribution proceedings that will follow the sale.

6 PRIORITY ISSUES BETWEEN MORTGAGES REGISTERED IN THE SHIPS' REGISTER IN YOUR JURISDICTION

6.1 *Does your jurisdiction have a system of "priority notice" to enable priority to be reserved for a period before actual registration of the mortgage?*

No. In Belgium, there is no system of "priority notice" to enable priority to be reserved for a period before actual registration of the mortgage.

6.2 Once a mortgage is registered in your jurisdiction is it possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee?

Yes. Once a mortgage is registered in Belgium, it is possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee.

6.3 When there are two or more registered mortgages what determines their priority?

Under Belgian law, when there are two or more registered mortgages, their priority is determined by the date of effective registration.

6.4 Is there any doctrine of notice such that the priority of a registered mortgage is deferred to that of an earlier but unregistered mortgage of which the registered mortgagee has notice?

No. In Belgium, there is no doctrine of notice such that the priority of a registered mortgage is deferred to that of an earlier but unregistered mortgage of which the registered mortgagee has notice

6.5 Can a second registered mortgagee exercise enforcement remedies without the consent of the first registered mortgagee?

Yes. In Belgium, a second registered mortgagee is able to exercise enforcement remedies without the consent of the first registered mortgagee.

6.6 Does your jurisdiction have a system for registration of security or liens other than mortgages, whether consensual or non-consensual? If so, please describe.

N/A.

7 GENERAL ENFORCEMENT ISSUES

7.1 Does your jurisdiction make a distinction between the enforcement of mortgages registered under the flag of your jurisdiction and the enforcement of any other foreign mortgages?

Yes, whereas the Act of 4 September 1908 regarding the arrest and sale by auction of voluntary cession of sea-going and inland shipping vessels and regarding the jurisdiction in ocean shipping cases and inland shipping cases enables the mortgagee to take possession of the ship. This right to take possession, subject to court authorisation, only applies to ships with home port in Belgium. Otherwise there is no distinction between the enforcement of mortgages registered under Belgian flag or not, provided always, the enforcing party has a title enforceable in Belgium.

7.2 Is it necessary for the mortgagee to obtain a judgment in your jurisdiction on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage?

Yes, it is necessary for the mortgagee to obtain a judgment in Belgium on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage

7.3 If so, how long is it likely to take to obtain a judgment if the claim is contested? Will the local court expedite the proceedings having regard to the ongoing costs of maintaining the vessel?

In Belgium, it is likely to obtain a judgement after 1 or 2 months if the claim is contested.

7.4 Will the court in your jurisdiction accept jurisdiction for the mortgage claim under Article 7 1952 Arrest Convention, or equivalent domestic legislation in your jurisdiction?

Yes. A Belgian court will accept jurisdiction to authorise a ship arrest to secure a mortgage claim under Article 7 of the 1952 Arrest Convention. Further, a Belgian court, hearing the distribution of the proceeds of a judicial sale, shall inevitably hear and judge upon the merits of the mortgage for the purpose of determining the distribution of the proceeds.

8 JUDICIAL DECISIONS AND APPEALS

8.1 Do all courts in your jurisdiction have authority to sell vessels free of maritime liens and prior claims, or is such authority limited to special courts, such as admiralty courts?

Yes. Belgian Courts have authority to sell vessels free of maritime liens and prior claims.

8.2 What formalities, including evidence of claim, or evidence of notice, are required to affect the sale of a vessel free of liens and prior claims?

In Belgium, in order to affect the sale of a vessel free of liens and prior claims, the vessel must be publicly sold free of all encumbrances.

8.3 If the owner presents an appeal against judgment, will the court make an order for sale of the vessel before that appeal has been heard and decided?

In Belgium, it depends whether the court will make an order for sale of the vessel before that appeal has been heard and decided. In theory this is possible but in practice it is risky, given the distribution in pre-existing condition.

9 SALE PROCEDURE

9.1 Can a mortgagee enforce his mortgage in your jurisdiction by applying for a judicial sale by auction?

Yes. A mortgagee enforces his mortgage in Belgium by applying for a judicial sale by auction.

9.2 What are the criteria for an application for a judicial sale by auction and what is the procedure and timetable for such an application and sale?

Criteria for an application for a judicial sale by auction in Belgium

A judicial sale implies an executorial title (Article 1494 Judicial Code), for example a judgement or arbitral award declared enforceable, a notarial deed, etc.

Moreover a judicial sale by auction implies a claim which is “fixed”, “certain” and “due” (Article 1494 Judicial Code and Article 1186 Civil Code). Therefore, the executorial title must clearly mention the extent of the claimed amount.

Furthermore, the claim must still exist at the time of the sale (i.e. the claim must not have been transferred, paid, no subrogation, etc.).

Procedure and Timetable for an application for a judicial sale by auction in Belgium and the judicial sale itself

1. The bailiff notifies an “order to pay” (mentioning the amount due and the name, nature and tonnage of the ship) to the debtor or, in specific circumstances, to the captain/officers of the ship (Article 1547 Judicial Code). If the debtor does not own the ship, the order to pay will also be notified to the (agent of the) owner (Article 1548 Judicial Code).
2. The actual attachment of the vessel can be made immediately after correctly notifying the order to pay, but if it is made more than 1 year after notification of the order to pay, the order must be renewed (Article 1549 Judicial Code).
3. The attachment must immediately be notified to the captain or, if the captain is not present on board the ship, to the person having possession of the ship at the moment of attachment. Within 3 days, the attachment must also be notified to the debtor and, if the debtor is not the owner of the ship, to the owner of the ship (Article 1550 Judicial Code). The arrest writ must contain – among others – a description of the arrested vessel (Article 1551 Judicial Code).
4. Third parties who claim to be the owner of the ship itself or goods on board the ship, are able to contest the judicial sale of these goods by means of a writ of summons (Article 1514 Judicial Code).
5. In principal, the arrest writ will be registered in the ship’s register held at the Belgian Ship’s Registry Office (Article 1552 Judicial Code).
6. Within 8 days after registration of the arrest writ, an application must be filed with the arrest judge in order to appoint a civil servant (for example a bailiff) who will organize the judicial sale of the vessel. In its decision, the arrest judge will mention the place of sale and will arrange the publication thereof (Article 1553 Judicial Code).
7. The civil servant appointed by the arrest judge will determine the conditions of sale, mentioning the place, date and hour of the judicial sale (Article 1554 Judicial Code).
8. 15 days before the judicial sale, the appointed civil servant will remind the debtor, the owner (if the debtor is not the owner of the ship), and the registered and contesting creditors of the sale by means of a bailiff’s writ. Also, the civil servant will notify every third party creditor of the conditions of sale by means of registered mail (Article 1555 Judicial Code).
9. Everyone has the right to submit a higher bid until 15 days after the sale (Article 1556 Judicial Code).
10. An extract of the deed of allocation will be notified to the debtor, the owner (if the debtor is not the owner of the ship), the registered creditors and everyone who has signed up for the judicial sale. This extract mentions the name, surname, profession and place of residence of the creditor on whose behalf the arrest was made, the debtor and the purchaser, the date of allocation, the purchase price and the name of the civil servant having organized the judicial sale (Article 1557 Judicial Code).
11. The proceeds of the judicial sale will be proportionally divided amongst the creditors of the vessel, depending on the nature of their claim (Article 8 Mortgage Act).

9.3 Will the court in your jurisdiction order a sale of the vessel pending judgment (pendent lite), recognising that the vessel is a wasting asset?

N/A.

9.4 Will the court in your jurisdiction fix a minimum bid price (reserve price) for the vessel and will the amount of that minimum bid price be disclosed to interested parties? What happens if the maximum amount bid for the vessel is lower than the reserve price?

In Belgium, the bailiff can set a minimum price in the conditions of sale. However, the bailiff has the power to withdraw the price at all times.

9.5 Can the owner or other creditors influence the amount of the reserve price?

No, it is a prerogative of the bailiff and the Belgian Courts.

9.6 What arrangements will be made for public advertisement of the sale?

In Belgium, the sale will be published in two newspapers. Also, brokers can be appointed to assist.

9.7 To what extent is it possible for the owner or other creditors to influence the timetable or procedure for sale?

N/A.

9.8 Can a mortgagee enforce its mortgage in your jurisdiction by applying for a court approved private sale?

In Belgium, there are two ways in which a public judicial sale of a vessel could be avoided.

1. The debtor could make a proposal to sell the vessel privately, at least if he notifies the bailiff thereof within 10 days after notification of the arrest writ. However, if the arrest judge decides that this proposal is insufficient or if the creditor on whose behalf the ship is arrested proves that this proposal is insufficient, the ship will be subject to a public sale. The title of ownership of the ship will only be transferred if the purchase price is paid to the bailiff within 8 days after acceptance of the purchase offer; if not, the ship could immediately be sold publicly. After payment of the purchase price to the bailiff, he will draft an official sales report incorporating the identity of seller and buyer, the purchase price paid and a description of the ship (Article 1526bis Judicial Code).
2. In certain circumstances, the arrest judge could approve a private sale in order to obtain the highest possible proceeds (approved in Belgian case law, for example Enterprise Court Antwerp, 15 October 1997, *RW* 1997-98, 540, note E. Dirix)

9.9 Can a mortgagee bid its debt (animo compensandi) so as to allow a set off of the debt against the purchase price (and provide security for the claims of potential prior lien holders)? Or does a mortgagee (or its preferred bidder or buyer) have to pay the full price in cash?

No, the mortgagee needs to pay the full sales price and afterwards will have to present its claim (and grounds for priority) in the distribution of the proceeds of sale

10 SALE PROCEEDS

10.1 Will the sale proceeds be held in an interest bearing account?

Yes. In Belgium, the sale proceeds be held in an interest bearing account.

(a) Will they be held in the currency of the sale or will they be converted into local currency?

In Belgium, it can be chosen. The sale proceeds will either be held in the currency of the sale or will be converted into local currency.

(b) Will the proceeds of sale ultimately be subject to any exchange control or similar restrictions (and/or court fees) when they are paid out? If so, what is the procedure

N/A.

11 PRIORITIES GENERALLY

11.1 Are priorities determined under local law (lex fori), or the law of the jurisdiction in which the claim arose (lex causae), or the law of the flag of the vessel?

In Belgium, priorities are determined under the law of the flag of the vessel (art. 89 and 94 WIPR). However, when the dispute has a very weak connection with the law of the flag of the vessel and a very close connection with the law of another State, the latter is applicable to the dispute (cfr. Enterprise Court Antwerp 18 November 2015, A/14/06109, C LADYBUG).

11.2 If local law, where does the mortgagee rank amongst other maritime claims in the order of priority and which are those claims which rank prior to the mortgagee. Do the claims which rank ahead of a mortgage in your jurisdiction vary depending on whether the mortgage is:

(a) a mortgage of a vessel registered under the laws of your jurisdiction?

No. The claims which rank ahead of a mortgage in Belgium do not vary depending on whether the mortgage is a mortgage of a vessel registered under Belgian law.

(b) a mortgage of a vessel registered under the laws of a different jurisdiction?

No. The claims which rank ahead of a mortgage in Belgium do not vary depending on whether the mortgage is a mortgage of a vessel registered under the laws of a different jurisdiction.

11.3 Are there any special rules on priority for local creditors?

No, there are no special rules on priority for Belgian creditors.

11.4 Is it necessary for claimants to introduce their claims prior to the date of sale or within some specified period thereafter?

In Belgium, claimants must introduce their claims within 3 months after publication of the liquidator appointed by the Belgian Court.

11.5 What is the timetable leading up to the distribution of the proceeds of sale?

1. Maximum 15 days after the sale, the bailiff requests the creditors to report and prove their claim within 15 days at his office, with mention of – if applicable – any priority (Article 1627 Judicial Code);
2. The sale proceeds can only be distributed amongst creditors of claims which are not contested (Article 1628 Judicial Code);
3. Maximum 15 days after the request of the creditor who has the greatest interest in the distribution in the sale proceeds, the bailiff will make a draft of distribution mentioning (i) the name, surname and place of residence of the creditors, (ii) the claimed amounts, the titles on which these amounts are based and the priorities and (iii) the total amount of the sale proceeds to be distributed and how much every creditor is entitled to receive (Article 1629 Judicial Code);
4. The bailiff will then send this draft of distribution to the creditors, who are entitled to contest this draft within 15 days after receiving it (Article 1629 Judicial Code).
5. If the draft is not contested within 15 days, the bailiff must distribute the sale proceeds in accordance with his draft of distribution (Article 1630 Judicial Code);
6. If the draft is contested and no settlement is reached, then the bailiff deposits the sale proceeds in the Deposit and Consignment Office (Article 1631 Judicial Code). The arrest judge will then determine the day and hour for investigating the objections (Article 1632 Judicial Code), after which he will render his decision (Article 1634 Judicial Code). Within 15 days after the decision of the arrest judge, this decision will be notified to all parties (Article 1635 Judicial Code). If this decision is not appealed, the Deposit and Consignment Office will pay out to each creditor the amount that the arrest judge has assigned to each creditor (Article 1636 Judicial Code).

11.6 Is the distribution order decided by the court?

The distribution order will initially be decided by the bailiff (Article 1629 Judicial Code) but it will be decided by the arrest judge if the bailiff's draft order of distribution is contested (Article 1631-1634 Judicial Code).

11.7 Is that order subject to a right of appeal?

Yes. The distribution order is subject to a right of appeal (Article 1636 Judicial Code).

12 MORTGAGEE'S SELF-HELP REMEDIES

12.1 Under the laws of your jurisdiction does a vessel mortgage governed by and registered in accordance with such laws give the right to take the following enforcement steps without a court order in your jurisdiction?

(a) to take possession of the vessel;

Yes. In Belgium the mortgagee is entitled to take possession of the vessel in accordance with the provisions of the Act of 4 September 1908 regarding the arrest and sale by auction of voluntary cession of sea-going and inland shipping vessels and regarding the jurisdiction in ocean shipping cases and inland shipping cases. Taking possession requires a court authorisation and as a result of the provision of competent court, only ships with home port in Belgium are subject to this mortgagee's possession.

(b) to appoint a receiver, manager or other party to operate the vessel;

One can apply for a court appointed sequestrator (custodian) to be appointed to safeguard the vessel but not to operate it.

(c) to sell the vessel as mortgagee;

No. A vessel mortgage governed by and registered in accordance with Belgian law does not give the right to sell the vessel as mortgagee.

(d) to sell the vessel as attorney in fact of the owner.

No. A vessel mortgage governed by and registered in accordance with Belgian law does not give the right to sell the vessel as attorney in fact of the owner.

12.2 If, under the law of the ships' register (where that is a different law from the law of your jurisdiction) a mortgagee is given the right to take the enforcement steps referred to at (a) – (d) of 11.1 without a court order would its right to do so be recognised or prohibited in each case in respect of a vessel physically located in your jurisdiction?

No. The right of the mortgagee would not be recognized in each case in respect of a vessel physically located in Belgium. A court order is still necessary.

12.3 Where answers to the questions in 11.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ships' register?

The foreign court order would still have to be declared enforceable in Belgian proceedings.

13 INSOLVENCY PROCESSES

13.1 Has your jurisdiction adopted the UNCITRAL Model Law on Cross-Border Insolvency?

No.

13.2 Do the laws of your jurisdiction provide for recognition of foreign insolvency proceedings? (if the UNCITRAL Model Law has been adopted, in addition to its provisions)

Yes.

If opened by a court of a EU Member State: article 19.1 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

If the insolvency proceedings is opened by a court not sitting in a EU Member State: article 121 Belgian Code of International Private Law

13.3 Do the laws of your jurisdiction provide that the enforcement of rights of secured creditors (such as the mortgagee of a vessel) can be stayed or suspended during applicable insolvency proceedings?

No. But the exercise of the secured right may be delegated to the judicial administrator, for the benefit of the secured creditor who shall not have to await the full liquidation and distribution process.

13.4 Is the answer to 12.3 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

A foreign insolvency shall not hinder a secured creditor to exercise his individual secured rights. (article 8.1. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings and, if not applicable: art. 119 § 2, 1° Belgian Code of International Private Law)

13.5 If the mortgage over a vessel located in your jurisdiction is being enforced through a maritime court sale in circumstances where the owner of the vessel is subject to insolvency proceedings in your jurisdiction, do the maritime court sale proceedings take precedence over the insolvency proceedings, or vice versa?

Unsecured creditors shall not be able to initiate a judicial sale. Secured creditors shall be able to proceed as set out here above at 13.3 and 13.4.

13.6 Is the answer to 12.5 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

No, because the foreign insolvency procedure shall be recognised (see 13.2 hereabove).

13.7 If a vessel is sold in your jurisdiction through a maritime court sale is the mortgagee's claim to the sale proceeds subject to the risk of the mortgage being challenged or set-aside by applicable insolvency claw-back rules for transactions prior to insolvency?

If facts support the application of a claw back rule, the answer is yes, but this would be unprecedented in the maritime trade.

13.8 Is the answer to 12.7 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

No.

13.9 Do the insolvency courts of your jurisdiction have, or claim, extraterritorial jurisdiction, such as over vessels located in a different jurisdiction? If so, how?

Yes. This will only be effective if the Belgian insolvency judgement is recognised in the extraterritorial jurisdiction. This will be case in other EU Member States by virtue of article 19.1 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

14 LEASING

14.1 In your jurisdiction is leasing of vessels common as a method of financing?

Yes. In Belgium, leasing of vessels is a common method of financing however in accordance with English law.

Note: Leasing of vessels most often takes the form of sale and bareboat back transactions including a purchase option for the benefit of the bareboat charterer. Title of ownership to the vessel is thereby transferred by the owner to its financier, who therefore owns the asset, and 'lease payments' take the form of bareboat charter hire payments. Such bareboat charters contain a degressive (pro rata temporis) table of purchase prices to be paid by the bareboat charterer in the event he would lift his purchase option. Depending on the parties' preferences and mutual agreement, the vessel can be registered in the flag state of the bareboat charterers' choice or that of owners'/financiers' choice. There are also cases of dual registration, where the vessel is entered in the owners'/financiers' registry of choice (underlying register) with further registration in the bareboat registry of the bareboat charterers' choice. Vessels subject to such leasing agreements can therefore appear either in the Belgian ship register or, in the event of dual registration, in the Belgian bareboat registry. The bareboat charters are invariably subject to English law and the statute of the vessel and any securities registered against it follow the lex registrationis.

14.2 Do the laws of your jurisdiction give effect to a lease in accordance with the form of the document (formal approach) or is there a risk they will re-characterise certain leases as security interests (functional approach)?

In Belgium, there should not be a risk of re-characterisation of certain leases as security interests, at least if English law is clear.

14.3 If the laws of your jurisdiction adopt a functional approach (13.2) please describe briefly how this is applied; also, please say whether your courts would adopt a functional approach even where the governing law of the lease follows the formal approach.

N/A.

14.4 Do the laws of your jurisdiction permit the parties to the lease of a vessel governed by that law to expand by contract the rights and remedies of the lessor on default by the lessee? Or are such rights and remedies provided for exclusively by law?

It depends on what English law provides, as it is the law that is usually applicable to leased vessels in Belgium.

14.5 Do the rights and remedies of the lessor of a vessel include steps to terminate the leasing and re-take possession of the vessel through self-help or is this only possible in your jurisdiction with the assistance of the court?

N/A.

14.6 Under the laws of your jurisdiction is a leased vessel considered to be an asset of the lessor or the lessee, or both?

Under Belgian law, a leased vessel is considered to be an asset of the lessor. The lessor remains the owner of the vessel during the lease.

14.7 Under the laws of your jurisdiction what impact would an insolvency process (or different processes) in respect of the lessee have on the rights and remedies of the lessor of a vessel? Is this affected by the type and terms of the lease?

Under the Belgian Bankruptcy Act, the owner of goods which are in the possession of the debtor could always be recovered (Article 26 and 101 Bankruptcy Act). As under Belgian law, a leased vessel is considered to be an asset of the lessor, the lessor is therefore able to reclaim his ship during bankruptcy proceedings.

In the context of bankruptcy of the lessee, the rights and remedies of the lessor of a vessel could be affected by the terms of the leasing agreement. For example, most leasing agreements contain a provision stating that the agreement will be immediately terminated if the lessee goes bankrupt.

Under the Belgian Act regarding Continuity of Companies, which concerns the rehabilitation (“*gerechtelijke reorganisatie*”) of companies, the lessor will not be able to recover his ship during the judicial reorganization proceedings (Article 30 Belgian Act regarding Continuity of Companies).

In the context of judicial reorganization proceedings in respect of the lessee, the rights and remedies of the lessor of a vessel could also be affected by the terms of the leasing agreement. However, any provision in the leasing agreement stating that the agreement will be immediately terminated if the lessee enters judicial reorganization proceedings, will not have any effect, as in principal, ongoing agreements continue to be exercised during those proceedings (Article 35 Belgian Act regarding Continuity of Companies).

14.8 Under the laws of your jurisdiction can a lessor arrest a vessel which it leases? Can it join in arrest proceedings initiated by a third party?

Following Article 1514 Judicial Code, the owner of (a part of) the goods could contest the sale of the vessel by issuing a writ of summons to the debtor (i.e. lessee), the bailiff and the creditor on whose behalf the arrest was made (procedure of “*revindicatie*”). This writ of summons needs to contain evidence of the ownership of the vessel and the identity of the creditors on whose behalf the arrest was made. This writ of summons will suspend the sale of the vessel until the arrest judge has made a decision.

14.9 Under the laws of your jurisdiction what priority is given to the rights of a lessor of a leased vessel as against third parties with maritime liens/claims?

Under Belgian law, a leased vessel is considered to be an asset of the lessor. The lessor remains the owner of the vessel during the lease.

Under the Belgian Bankruptcy Act, the owner of goods which are in the possession of the debtor could always be recovered (Article 26 and 101 Bankruptcy Act). As under Belgian law, a leased vessel is considered to be an asset of the lessor, the lessor is therefore able to reclaim his ship during bankruptcy proceedings.

Under the Belgian Act regarding Continuity of Companies, which concerns the judicial reorganization (“*gerechtelijke reorganisatie*”) of companies, the lessor will not be able to recover his ship during the judicial reorganization proceedings (Article 30 Belgian Act regarding Continuity of Companies).

14.10 Do the laws of your jurisdiction recognise registered leases in respect of vessels registered in a different jurisdiction? If so, please give brief details.

Yes Belgian law recognizes registered leases in respect of vessels registered in a different jurisdiction.

Details?

14.11 In your jurisdiction is there generally a wish to promote leasing of vessels, including by reforming the law? If so please provide a brief explanation.

N/A.

15 RESERVATION OF TITLE

15.1 Do the laws of your jurisdiction treat the holder of title under reservation of title as the holder of a security interest?

Yes. Belgian law treats the holder of title under reservation of title as the holder of a security interest, however there is no privilege in case of concurrence of creditors.

15.2 Do the laws of your jurisdiction provide for reservation of title arrangements to be registered in the ships' register in any way different from a standard registration of the holder of title as registered owner? If so, please give brief details.

No. Belgian law does not provide for reservation of title arrangements to be registered in the ships' register in any way different from a standard registration of the holder of title as registered owner.

15.3 If the laws of your jurisdiction do provide for reservation of title arrangements to be registered as referred to in 15.2, what rights and remedies are given to the holder of title?

No. Under Belgian law, no rights and remedies are given to the holder of title.

15.4 Do the laws of your jurisdiction recognise foreign reservation of title arrangements of a type referred to in 15.2? If so, please give brief details of how these arrangements would be recognised.

No. Belgian law does not recognise foreign reservation of title arrangements of a type referred to in 15.2.