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# 10 THINGS YOU NEED TO KNOW ABOUT TAKING SECURITY OVER A CAYMAN ISLANDS FLAGGED VESSEL

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**T**he Cayman Islands are an attractive choice for shipowners seeking financing for their vessels, and for financiers looking for security in relation to their investment due to the well-established, highly experienced and client-focused shipping registry, as well as a legal and political system which creates a strong, stable and creditor friendly jurisdiction. Here are 10 things you need to know about taking and enforcing security over a Cayman Islands flagged vessel.

## 1. THE CAYMAN ISLANDS IS A LEADING OFFSHORE JURISDICTION

The Cayman Islands are recognised as a leading international financial centre, combining a stable and trusted legal and political framework with a flexible yet robust corporate regime and creditor-friendly laws.

Laws are passed by a Legislative Assembly that follows the British parliamentary model, and the legal system is based on English common law, with the Privy Council being the ultimate Court of Appeal.

The Cayman Islands has a solid regulatory and compliance regime with measures in place to ensure it meets the highest international standards, particularly in relation to anti-money laundering and anti-corruption requirements.

Cayman's established financial services industry provides shipowners and financiers with access to highly experienced local service providers, professionals and financial institutions with a wealth and depth of specialist shipping knowledge and experience.

Being a tax neutral jurisdiction, there are no direct taxes such as

income tax, capital gains or withholding tax imposed by the Cayman Islands Government on the owners or financiers of any Cayman Islands flagged vessel. Additionally, the recently created Cayman Maritime & Aviation City provides bespoke solutions for shipowners wishing to establish a physical presence within the Cayman Islands.

## 2. THE CAYMAN ISLANDS ARE HOME TO A REPUTABLE AND HIGHLY EXPERIENCED CATEGORY 1 BRITISH SHIP REGISTRY

The Cayman Islands Shipping Registry (CISR) has a long history of vessel and mortgage registration, and a reputation as a leading international ship registry for all vessel types, including both commercial and pleasure vessels.

The Cayman Islands is not a flag of convenience and, as a result of the stringent standards and procedures which CISR has in place, Cayman Islands flagged vessels are internationally recognized as complying with all major standards. The Cayman Islands flag is white listed for both the Paris and Tokyo Memoranda of Understanding, and has also consistently maintained a Qualship 21 status with the United States Coast Guard. In addition, Cayman Islands flagged vessels are entitled to fly the British red ensign flag, giving them access to British consular services and the assistance and protection of the Royal Navy around the world.

For a financier, this affords a high degree of comfort that the vessel will be operated to the highest international standards and that their security interest will be protected accordingly.

### 3. THE CAYMAN ISLANDS IS A CREDITOR FRIENDLY JURISDICTION

The Cayman Islands has a reputation as a creditor-friendly jurisdiction, with commercially focused legislation in place that helps to ensure the creditors' position will be protected in the event of a default. Cayman Islands courts will generally respect and uphold the interests of a secured creditor, and recognise and enforce foreign law contractual and security arrangements, provided such matters are validly created under the applicable governing law.

Where a vessel is owned by a Cayman Islands company, as a matter of Cayman Islands law, the financier's position and priority as a secured creditor would be respected and preserved. In the event of Cayman Islands liquidation proceedings, the financier would be entitled to enforce their security without requiring the leave of the court or the liquidator.

Additionally, a financier will not be deemed to be resident, domiciled or carrying on business in the Cayman Islands solely as a result of the entry into/performance and/or enforcement of any security documents; nor is it the case that a financier must be licenced, qualified or otherwise entitled to carry on business in the Cayman Islands in order to enforce its rights under such

transaction documents.

A Cayman Islands court would generally recognize and enforce any monetary judgement (and, in certain circumstances, a judgment for non-monetary relief) obtained in a foreign court arising in respect of a Cayman Islands owner or Cayman Islands flagged vessel arising under the security documents.

### 4. THE CAYMAN ISLANDS OFFER FINANCIERS A GREAT DEAL OF FLEXIBILITY IN THEIR SECURITY ARRANGEMENTS

As security for their loan, financiers will typically take a ship mortgage in connection with the vessel, together with a security package that includes a deed of covenants (setting out how the owner is to deal with the vessel), as well as assignments of insurance, earnings and requisition compensation, and a charge over the vessel's earnings account. Where the shares in the vessel are held in a corporate structure (for instance, by a Cayman Islands company) the financier will often require that a charge over the shares in the vessel owning company be put in place. The financier may also require that the owner's parent provides a guarantee, or enters into other security documents in connection with the loan.

Other than the ship mortgage, which (as noted below) must be

in statutory form and governed by Cayman Islands law, there is no requirement as a matter of Cayman Islands law that any of the other security documents be governed by Cayman Islands law and, typically, these would follow the governing law of the loan and the other transaction documents.

There is also no requirement as a matter of Cayman Islands law that the security documents be registered in any register kept by, or filed with, any governmental authority or regulatory body in the Cayman Islands to perfect the security interests granted thereunder or ensure their enforceability or priority. To the extent that the vessel is owned by a Cayman Islands company, then where such company has created a mortgage or charge over its assets, it is required to enter details of the relevant security interest in its register of mortgages and charges in accordance with the Companies Law (as revised) of the Cayman Islands.

### 5. THERE IS A TYPE OF CAYMAN ISLANDS STATUTORY SHIP MORTGAGE TO SUIT YOUR NEEDS

There are two main types of ship mortgage available in the Cayman Islands.

An "account current" mortgage secures all amounts payable to the mortgagee by the mortgagor under the loan and any other associated security docu-

ments, together with enforcement costs of the mortgage itself; and

A "principal sum and interest" mortgage covers just the principal sum secured under the mortgage plus any interest as agreed between the parties. It is also possible to register a mortgage over any vessel under construction registered with the CISR.

There are prescribed statutory forms for each of these types of ship mortgage, each of which is governed by Cayman Islands law, and the mortgage must be completed and submitted in statutory form in order to be accepted by the CISR.

### 6. CISR OFFERS A STRAIGHTFORWARD AND STREAMLINED MORTGAGE REGISTRATION PROCESS

A financier wishing to take security in respect of a Cayman Islands flagged vessel can register a mortgage over the vessel with the CISR, and details of the security interest will be noted on the register in respect of that vessel. The mortgage instrument will be governed by Cayman Islands law and follow the appropriate statutory form.

In order to register the mortgage, a signed copy of the mortgage will need to be submitted to the CISR, together with appropriate supporting docu-

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mentation. Upon receipt of the mortgage registration documents and payment of the appropriate fee, the CISR will proceed to register the mortgage over the vessel.

Registration of the mortgage is evidenced by a notation of the mortgage on the certificate of registry of the vessel, and a prospective mortgagee may order a Transcript of British Registry from the CISR to determine whether any mortgages are already registered over a vessel.

## 7. MORTGAGE REGISTRATION SECURES PRIORITY

Mortgages over a Cayman Islands flagged vessel will be registered in the order presented to the registrar of shipping (the **Registrar**). Registration of a mortgage will secure priority against subsequent mortgages registered against the vessel. A registered mortgagee will also have priority over the other unsecured creditors and/or bankruptcy trustees in the event of a bankruptcy or liquidation of the mortgagor, and the vessel will sit outside the pool of assets available to the unsecured creditors in any such proceedings.

Once registered, the mortgage over the vessel will remain valid for the duration of the term of the mortgage, without the need for the mortgagee to take any action to renew the mortgage registration.

## 8. IT IS POSSIBLE FOR A FINANCIER TO REGISTER A PRIORITY NOTICE BEFORE FILING A MORTGAGE

Where a mortgagee is considering taking security over a Cayman Islands flagged vessel, they can record a priority notice over the vessel notifying the Registrar of their intention to register a mortgage over that vessel. A priority notice gives the prospective mortgagee a 30-day period within which to complete the filing of the mortgage over the vessel. During that 30-day priority period, no other mortgage or priority notice that may be registered in respect of the vessel will take priority over the prospective mortgagee's interest set out in the priority notice.

## 9. THE FINANCIER WILL HAVE STATUTORY POWER OF ENFORCEMENT OF A CAYMAN ISLANDS SHIP MORTGAGE

On enforcement of a Cayman Islands mortgage, the mortgagee will have a statutory power of sale in respect of the vessel arising under the **Merchant Shipping Law** (as revised) of the Cayman Islands (the Merchant Shipping Law) as well as a right of sale arising at common law. As a matter of Cayman Islands law, the statutory right of sale may be exercised without recourse to the courts of the Cayman Islands. Depending on the circumstances and the location of the vessel, the mortgagee

may, however, still need to take possession of the vessel in order to effect the sale. This could still require a court order as a matter of the laws where the vessel is located and, consequently, the options available to the mortgagee in relation to the enforcement of the mortgage security will depend largely upon the location of the vessel at the time of enforcement.

It is worth noting that, when exercising the power of sale, the mortgagee will have a number of duties, including:

- taking reasonable care to obtain the best price reasonably obtainable at the time;
- acting fairly towards the mortgagor; and
- not acting in a way that may unfairly prejudice the mortgagor.

The mortgagee will not generally be entitled to sell the vessel directly to themselves, and any sale to a connected person will be subject to additional scrutiny. From a practical perspective, any purchaser of the vessel will also need to be within the categories of person permitted to be the registered owner of a Cayman Islands vessel under the Merchant Shipping Law.

## 10. THERE ARE ADDITIONAL STATUTORY PROTECTIONS FOR FINANCIERS UNDER THE MERCHANT SHIPPING LAW

The Merchant Shipping Law

provides for a number of additional statutory protections for financiers in addition to the power of sale on enforcement.

For example:

- the Registrar cannot validly register any further mortgages over the vessel where the mortgage includes a negative pledge without the prior written consent of the existing mortgagee;
- the Registrar may not validly transfer ownership or terminate registration of the vessel where this is prohibited by the mortgage instrument without the mortgagee's prior written consent; and
- in the event that two or more mortgages are registered over the vessel, a subsequent mortgagee may not exercise the power of sale without the consent of any prior mortgagee unless the sale has been ordered by court order.



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