

THE SHIPPING LAW  
REVIEW

EIGHTH EDITION

Editors

Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

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# PREFACE

The aim of the eighth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year. This year, we welcome Costa, Albino & Lasalvia Sociedade de Advogados as the new contributors of the chapter focusing on maritime law within Brazil. There are also two new jurisdictions in this edition – Israel (Harris & Co) and Mexico (Adame Gonzalez De Castilla Besil) – and Portugal makes a return, with Andrade Dias & Associados as the new contributors.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US\$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2019, the total value of annual world shipping

trade had reached more than US\$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), swift recovery is anticipated. The pandemic truly brought to the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

Finally, mention should be made of the environmental regulation of the shipping industry, which has been gathering pace this year. At the International Maritime Organization's (IMO) Marine Environment Protection Committee, 72nd session (MEPC 72) in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by 2050. This agreement will now lead to some of the most significant regulatory changes in the industry in recent years, as well as much greater investment in the development of low-carbon and zero-carbon dioxide fuels. The IMO's agreed target is intended to pave the way for phasing out carbon emissions from the sector entirely. The IMO Initial Strategy, and the stricter sulphur limit of 0.5 per cent mass/mass introduced in 2020, has generated significant increased interest in alternative fuels, alternative propulsion and green vessel technologies. Decarbonisation of the shipping industry is, and will remain, the most important and significant environmental challenge facing the industry in the coming years. Unprecedented investment and international cooperation will be required if the industry is to meet the IMO's targets on carbon emissions. The 'Shipping and the Environment' chapter delves further into these developments.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

**Andrew Chamberlain, Holly Colaço and Richard Neylon**

HFW

London

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# CAYMAN ISLANDS

*Sherice Arman and Christian La-Roda Thomas<sup>1</sup>*

## I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The Cayman Islands is a British overseas dependent territory with a population of approximately 65,000 people. The islands are strategically located south of Florida and Cuba, west of Jamaica and north of Panama in the northern Caribbean Sea.

The pillars of the Cayman Islands economy are tourism (both stayover and cruise) and financial services.

The Cayman Islands has a strong maritime heritage. It has a successful shipping registry and a vibrant cruise tourism industry: approximately 1.8 million cruise passengers arrived in the Cayman Islands in 2019. Because more than 97 per cent of everything consumed in the Cayman Islands is imported by sea, it boasts a very successful port operation. Approximately 700,000 tonnes of cargo passed through its main port at George Town, Grand Cayman in 2019, mainly from the United States, Jamaica, Mexico and the Dominican Republic. The Cayman Islands has no significant goods exports.

The Cayman Islands Shipping Registry was established in 1903 and the ports of George Town, Bloody Bay and the Creek, at which ships may be registered in the Cayman Islands, are recognised as British Ports of Registry. Cayman Islands-flagged vessels have full British Consular Services and Royal Naval assistance and protection worldwide. The Cayman Islands Shipping Registry has Category 1 status, which allows it to register vessels of any size and type as long as they meet international standards, and it provides services to commercial ships and private pleasure yachts. As at February 2020, the flag consisted of approximately 2,200 vessels, representing approximately 6 million gross tonnes and comprising approximately 1,800 pleasure yachts and 400 commercial vessels. The Cayman Islands is the registry of choice for superyachts globally.

The Cayman Islands is white-listed in all major international ports (the Port State Control Memoranda of Understanding), which has led to it maintaining its position on the prestigious United States Coast Guard Qualship 21 programme since 2007.<sup>2</sup> The Cayman Islands is a top flag on the white lists of the Paris Memorandum of Understanding on Port State Control 1982 (the Paris MOU) and the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region 1994 (the Tokyo MOU) and a leading flag on the International Chamber of Shipping's annual Flag State Performance Table.

The continued popularity of the Cayman Islands flag can be largely credited to the service provided by the Cayman Islands Shipping Registry and the experience and technical

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1 Sherice Arman and Christian La-Roda Thomas are partners at Maples and Calder, the Maples Group's law firm.

2 See <https://www.cishipping.com/es/node/513> (last accessed 11 May 2021).



excellence that has become synonymous with the Registry. Further, because of the stable political, social and economic environment in the Cayman Islands, coupled with a legal system based on English law, the Cayman Islands flag is extremely popular with banks and financial institutions.

## **II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK**

The Cayman Islands is a British overseas territory and a common law jurisdiction where the legal framework is founded on a mixture of case law and legislation. The Merchant Shipping Act (2021 Revision), consolidating previous statutes, is the key piece of overarching legislation in this field and various regulations have been made under it.<sup>3</sup>

International conventions that are ratified by the United Kingdom are generally extended to the Cayman Islands and subsequently implemented through domestic legislation. The United Kingdom has either ratified on behalf of the Cayman Islands, or extended and given effect to, most of the major international maritime conventions, including the following:

- a* the International Convention for the Safety of Life at Sea 1974 (SOLAS), as amended (including the International Safety Management Code 1998 (the ISM Code) and the International Ship and Port Facility Security Code 2004 (the ISPS Code));
- b* SOLAS Protocols 1978 and 1988;
- c* the International Regulations for Preventing Collisions at Sea 1972 (COLREGs), as amended;
- d* the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention);
- e* the International Convention on Salvage 1989 (the 1989 Salvage Convention);
- f* the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976);
- g* the Maritime Labour Convention 2006 (MLC);
- h* the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)) (including Annexes I, II, III and V);
- i* the International Convention on Load Lines 1966 (the Load Lines Convention), as amended;
- j* the Protocol of 1988 relating to the International Convention on Load Lines 1966;
- k* the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended (the STCW Convention 1978); and
- l* the Nairobi International Convention on the Removal of Wrecks 2007 (the Nairobi WRC 2007).

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<sup>3</sup> Sections of the United Kingdom Merchant Shipping Acts of 1970, 1974, 1979 and 1988 and the Carriage of Goods by Sea Act 1971 have also been extended to the Cayman Islands under statutory instruments and remain in force in the Cayman Islands.

### III FORUM AND JURISDICTION

#### i Courts

##### *Forum and jurisdiction*

Shipping disputes in the Cayman Islands fall within the jurisdiction of the Admiralty Division or Civil Division (and, exceptionally, the Financial Services Division) of the Grand Court, depending on the precise nature of the claim.

Proceedings commenced in the Admiralty Division are governed by the general procedural rules contained in the Cayman Islands Grand Court Rules (GCRs). The GCRs also contain specific rules relating to admiralty claims (GCR O.74 and O.75).

The following claims must be commenced in the Admiralty Division: salvage, collision, limitation and *in rem* proceedings for the arrest of a vessel. Claims that fall within the jurisdiction of the Civil Division include carriage of goods, import or export of goods, and shipbuilding. Claims in respect of insurance in which the claimed amount exceeds CI\$1 million must be commenced in the Financial Services Division.

##### *Limitation periods*

The following limitation periods may apply to maritime claims in the Cayman Islands:

- a one year for cargo actions under the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules) or the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules);
- b two years for passenger claims under the Athens Convention;
- c two years for salvage claims under the 1989 Salvage Convention;
- d two years for collision claims under Section 416 of the Merchant Shipping Act (2021 Revision);
- e three years from the date of the act or omission that caused the death or injury for death or personal injury claims (or, in certain circumstances, from the date of knowledge of a latent injury);<sup>4</sup>
- f six years from the date on which the cause of action occurred for ordinary contractual or tortious actions (except personal injury);<sup>5</sup> and
- g 12 years for claims ‘upon speciality’ (e.g., claims based upon deeds).<sup>6</sup>

It is possible for parties to extend time limits by agreement. Generally, this must be done before the relevant time limit expires. The limitation period for personal injury claims under Section 13 of the Limitation Act (1996 Revision) may be extended at the court’s discretion under Section 39 of the Act. Reference should also be made to any applicable contractual limitation periods.

#### ii Arbitration and ADR

Maritime disputes can be resolved via arbitration in the Cayman Islands. For a dispute to be subject to arbitration under Cayman Islands law, there must be a valid arbitration agreement, which may be either written in the contract under which the dispute arises or agreed between

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4 Limitation Act (1996 Revision), Section 13.

5 *ibid.*, Sections 4 and 7.

6 *ibid.*, Section 10.

the parties after the dispute has arisen. The applicable statutory framework for all arbitration conducted in the Cayman Islands is set out in the Arbitration Act 2012, under which the Cayman Islands courts have powers to grant relief in support of arbitration proceedings. The courts have a supportive role in facilitating arbitration procedures.

Several forms of alternative dispute resolution (ADR) can be used in the Cayman Islands, including expert determination, early neutral evaluation, early intervention and mediation. If a contract governed by Cayman Islands law contains an ADR clause, this clause should be enforceable by the parties to the contract, provided the clause is sufficiently certain.

### **iii Enforcement of foreign judgments and arbitral awards**

#### ***Foreign judgments***

Foreign judgments may be enforced in the Cayman Islands by action at common law or, in the case of certain Australian judgments, by registration under the Foreign Judgments Reciprocal Enforcement Act (1996 Revision) (FJREA), which codifies the common law rules relating to enforcement. However, as the statutory provisions currently apply only to judgments of certain Australian courts, they are of little practical relevance. The procedure for registration of Australian judgments is briefly summarised below.

#### *Common law enforcement of foreign judgment*

The enforcement of foreign money judgments at common law is based on the principle that the judgment of a foreign court of competent jurisdiction imposes on the judgment debtor (i.e., the unsuccessful litigant) an obligation to pay the sum for which judgment has been given. Consequently, the Cayman Islands courts will enforce a foreign judgment even though the relevant foreign court would not enforce a Cayman Islands judgment in similar circumstances. Importantly, the Cayman Islands courts will not enquire into the merits of the original action, nor will they conduct an enquiry aimed at establishing that the legal system of the foreign country meets basic standards of justice. Furthermore, the Cayman Islands courts will not review the measure of damages or compensation and seek to substitute their own judgment for that of the foreign court.

A foreign money judgment may be enforced by action at common law provided that it meets certain criteria:

- a* it must be made by a court of competent jurisdiction;
- b* it must be for a debt or definite sum of money;
- c* it must not be a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty;
- d* it must be final and conclusive;
- e* it must not be impeachable on the grounds of fraud;
- f* it must not offend natural justice; and
- g* it must not be contrary to public policy.

A common law enforcement action is commenced by the issue of a writ endorsed with a statement of claim setting out (1) the basic facts relating to the nature of the original cause of action, (2) the basis on which the foreign court had jurisdiction over the debtor, (3) particulars of the judgment, and (4) the fact that the judgment remains unsatisfied in whole or in part. The judgment creditor has available to him or her all the usual interlocutory remedies and rights of appeal available to any plaintiff, including pretrial freezing (or *Mareva*) injunctions, pretrial discovery orders and interim receivers.

### *Statutory enforcement of foreign judgment*

The FJREA provides a scheme for registering and enforcing the judgments of the superior courts (both federal and state) of Australia and its external territories. The FJREA allows a judgment creditor under a judgment rendered by such an Australian court to apply to the Cayman Islands courts at any time within six years of the date of judgment to have the judgment registered in the Cayman Islands courts. The Cayman Islands courts will register the judgment, provided the judgment has not been wholly satisfied and is enforceable by execution in Australia. The FJREA sets out the circumstances in which registration may or must be set aside, which coincide with the requirements for enforcement at common law.

Application for registration is made by *ex parte* originating summons. The application must be supported by an affidavit exhibiting a copy of the foreign judgment and verifying the amount due. The order for registration will provide that the debtor may apply to set aside the order. If the debtor fails to apply within the specified time limit (which will not be less than seven days and may be as long as 28 days), the creditor can proceed to execution. Judgments registered under this law have the same force and effect as judgments originally given by the Cayman Islands courts. In principle, registration is a simpler and quicker remedy than an enforcement action at common law. In practice, the procedural differences are of no real importance.

### ***Foreign arbitral awards***

The UK is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) and has extended its application to the Cayman Islands. Accordingly, most awards from other contracting states (Convention awards) are enforceable in the Cayman Islands under the statutory procedure set out under the Foreign Arbitral Awards Enforcement Act (1997 Revision) (FAAEA). It is also possible to enforce a foreign arbitral award (foreign award) issued by a non-contracting state or a convention award by common law. Each of these methods is summarised below.

### *Statutory enforcement of Convention awards*

A Convention award will be enforced in the Cayman Islands unless the party against whom enforcement or recognition is sought (the respondent) establishes certain specified defences under the FAAEA. These reflect the grounds for refusal of recognition and enforcement under Article V of the New York Convention.

Section 5 of the FAAEA provides for the enforcement of Convention awards, the procedure for which is set out in GCR O.73. An application for enforcement is made *ex parte* for 'leave to enforce the award in the same manner as a judgment or order to the same effect'. The application must be supported by an affidavit that exhibits (1) the duly authenticated original award or a duly certified copy of it, (2) the original arbitration agreement or a duly certified copy of it, and (3) when the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent. Unless the respondent makes an application to set aside any order made within a specified period, the applicant is permitted to enforce it. The specified period under GCR O.73 is 14 days in the case of respondents within the jurisdiction, and is likely to be 28 days or more in the case of respondents resident abroad.

An application under Section 5 of the FAAEA is a summary form of procedure. It does not affect any question as to substance; it merely provides for a procedure that is potentially

quicker and cheaper than an action on the award by dispensing with the full formalities of a trial, such as pleadings, discovery and oral evidence. Accordingly, it is not suitable if an objection is taken to the award that cannot properly be disposed of without a full trial.

*Common law enforcement of foreign awards*

Enforcement of a foreign award at common law is, in principle, available for any award, including a Convention award. It is an implied term of an agreement to submit to arbitration that a valid award will be honoured. A breach of that implied promise gives rise to an independent cause of action to enforce the award distinct from the original cause of action for the breach of contract that gave rise to, and was the subject matter of, the submission. That cause of action is the underlying basis on which a foreign arbitral award is enforced in the Cayman Islands at common law. Therefore, if the award is not performed, a party seeking to enforce the award (the applicant) can proceed by action in the ordinary way for breach of the implied promise and obtain a judgment giving effect to the award. The action is commonly described as an 'action on the award'. To enforce or seek recognition of a foreign award, the applicant must establish that it was (1) made in accordance with an agreement to arbitrate, which is valid by the proper law of the arbitration agreement, and (2) is valid and final according to the law of the arbitration.

## **IV SHIPPING CONTRACTS**

### **i Shipbuilding**

The Cayman Islands does not have an active shipbuilding industry for merchant ships.

### **ii Contracts of carriage**

Pursuant to the Carriage of Goods By Sea (Overseas Territories) Order 1982 (the COGSA Order), certain provisions of the Carriage of Goods by Sea Act 1971 and the Merchant Shipping Act 1981 were extended to the Cayman Islands. The Carriage of Goods by Sea Act 1971 gave effect to the Hague Rules, signed in Brussels on 25 August 1924 (Cmd 3806), as amended by the Hague-Visby Rules, signed in Brussels on 23 February 1968 (Cmnd 6944).

The COGSA Order also extends to the Cayman Islands the provisions of the Merchant Shipping Act 1981, which amend the Carriage of Goods by Sea Act 1971 and those other provisions of the 1981 Act that give effect to the Protocol amending the Hague-Visby Rules, signed at Brussels on 21 December 1979 (Cmnd 7969).

The following maritime liens are recognised by the Merchant Shipping Act (2021 Revision):

- a* seafarer liens: remedies for the recovery of wages;
- b* master of ship liens: for his or her remuneration, and all disbursements or liabilities properly made or incurred by him or her on account of the ship, as a seafarer has for his or her wages; and
- c* salvor liens, provided that the salvor may not enforce his or her maritime lien when reasonable security for his or her claim, including interest and costs, has been tendered or provided.

### **iii Cargo claims**

A carrier is obliged to make the ship on which the goods are to be carried seaworthy, to properly staff, equip and supply the same and to make the holds fit and safe for the reception, carriage and preservation of cargo. Cayman Islands law will generally recognise the choice of law and forum by the parties to a contract, which would not typically be the Cayman Islands.

In addition, in accordance with the Merchant Shipping Law, all Cayman Islands vessels, wherever they may be, and all other vessels while in Cayman Islands waters, regardless of size, type and mode of operation, require third-party insurance to cover their liabilities under the Merchant Shipping Act and it is an offence not to have such insurance in place.

Section 54 of the Merchant Shipping Act provides that:

- a* every Cayman Islands ship shall carry insurance cover against risks of loss or damage to third parties, and in particular:
  - in respect of the shipowner's liabilities to a crew member under Part V; and
  - without prejudice to the relevant provisions of Part XIV, claims in respect of loss or damage caused by any cargo carried on board the ship; and
- b* every ship anchoring in or trading in or from Cayman Islands waters or entering a port in the Cayman Islands shall carry insurance cover against risks of loss or damage to third parties, and against wreck removal expenses in an amount satisfactory to the receiver of the wreck.

### **iv Limitation of liability**

The limitation of liability for maritime claims is regulated in the Cayman Islands by the Merchant Shipping Act (2021 Revision),<sup>7</sup> which implements the Protocol to amend the LLMC Convention 1976 (the 1996 LLMC Protocol).

All vessels of 1,000 gross tonnes and above, flagged with the Cayman Islands Shipping Registry, are additionally required to carry third-party protection and indemnity (P&I) insurance to meet their liabilities under the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunker Convention), evidenced by a certificate issued by the Cayman Islands Shipping Registry to verify maintenance of this insurance as implemented by the Merchant Shipping Act (2021 Revision).

The limit of liability, and therefore the minimum level of insurance to be maintained, under the Bunker Convention is governed by the 1996 LLMC Protocol, which is implemented in Sections 394 to 418 of the Merchant Shipping Act (2021 Revision).

All oil tankers carrying 2,000 tonnes or more of persistent oil as cargo are required to carry third-party (P&I) insurance to meet their liabilities under the Bunker Convention, evidenced by a certificate issued by the Cayman Islands Shipping Registry to verify maintenance of this insurance as implemented by Sections 348 and 349 of the Merchant Shipping Act (2021 Revision).

The Bunker Convention was extended to the Cayman Islands by the UK government and notified to the International Maritime Organization on 12 January 2011, and the Convention entered into force for all Cayman Islands ships and yachts of 1,000 gross tonnes and above at that time.

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<sup>7</sup> Sections 394 to 418.

## V REMEDIES

The remedies available under Cayman Islands law are based on English law, and the relevant provisions of the GCRs are substantively the same as those of Civil Procedure Rules of the Supreme Court 1999, on which the GCRs are based.

### i Ship arrest

Warrants for arrest may be issued only pursuant to an admiralty claim *in rem*. Such claims are subject to the jurisdiction of the Admiralty Division. Grounds for admiralty actions are prescribed in GCR O.75, r.1 and include damage received or done by a ship, personal injury or loss of life and limitation actions. The procedure for applying for an arrest pursuant to a claim *in rem* is set out in GCR O.75, r.5.

#### *Procedure*

Under GCR O.75, r.5, a plaintiff may make an application for a vessel arrest in respect of a claim *in rem* issued by the Admiralty Division. The warrant must be issued in the prescribed form. The plaintiff must also request a search of the admiralty register for any caveats against arrest in respect of the vessel. Additionally, the plaintiff must file an undertaking to pay the fees and expenses of the bailiff in the court office before the warrant will be executed. Subject to compliance with the prescribed procedure, the bailiff will proceed with issuing a warrant for the vessel's arrest. The arrest itself is effected by service of the warrant by the bailiff on the target vessel.

#### *Security and counter security*

Security may be provided by the defendant to secure the release of the vessel by a payment into court. In practice, this is often effected and provided for under arrangements with interested parties such as P&I insurers. The Admiralty Division may, on the application of an interested party, order that any security (provided to procure the release of an arrested vessel or to prevent an arrest) be reduced, or that the plaintiff may arrest or rearrest the property to obtain further security. A plaintiff is not required to provide security for an arrest, although they are required to provide an undertaking as to the arrest expenses of the bailiff.

#### *Wrongful arrest claims*

It is open for a party adversely affected to claim damages for wrongful arrest. The applicant must prove that the basis for the application for arrest was made in bad faith or through gross negligence. In practice, satisfying these criteria is very difficult.

### ii Court orders for sale of a vessel

The Admiralty Division has the jurisdiction to order the sale of a vessel that is under arrest. The judicial sale of a vessel is made free from encumbrances and liens and with good title. The procedure for obtaining a commission for the appraisal and sale of a vessel under an order of the court is set out in GCR O.75, r.23. Upon application by the plaintiff, the value of the vessel is appraised and the vessel is sold by the bailiff for the highest price that can be obtained above the appraisal value. The plaintiff can apply to the court to permit the vessel to be sold at a lower value. Following the successful sale of the vessel, the sale proceeds are paid by the bailiff into court.

A party that has obtained judgment against the ship, or proceeds of the ship, may apply to court for a determination of the priority of the claims against the proceeds of sale.

## **VI REGULATION**

### **i Safety**

As a dependent territory of the United Kingdom, the Cayman Islands relies on the United Kingdom for the entry into and extension of all international conventions.

The UK Secretary of State retains oversight to ensure that appropriate standards are applied and maintained with respect to the implementation of international conventions, treaties and related instruments. This oversight is largely exercised through the UK's Maritime and Coastguard Agency on behalf of the Secretary of State. These conventions are extended to the Cayman Islands by the United Kingdom and take effect through Cayman Islands legislation or the adaptation of relevant UK legislation.

### **ii Port state control**

The Cayman Islands is a party to the Memorandum of Understanding on Port State Control in the Caribbean Region (CMOU), which was signed on 9 February 1996, and at the time of writing, has 20 Member States. It aims to verify whether foreign-flagged merchant vessels within the waters of the Cayman Islands comply with applicable international conventions on safety, pollution prevention, and living and working conditions for crew.

Legislation has been enacted that governs port state control in the Cayman Islands, namely the Merchant Shipping (Port State Control) Regulations 2003.

Under the CMOU, port state control officers carry out inspections in the port of George Town, Grand Cayman. The target annual inspection rate under the CMOU is 15 per cent and for the Cayman Islands this translates to approximately 30 inspections per annum.

There were no detentions in 2019 or 2020 in the Cayman Islands.

### **iii Registration and classification**

The Cayman Islands Shipping Registry is the entity responsible for vessel and mortgage registration of merchant vessels, private and commercial yachts, passenger yachts and yachts under construction. The ports of registration are George Town, the Creek and Bloody Bay.

Prior to registering a vessel, the Cayman Islands Shipping Registry will go through a process to determine whether a vessel is qualified to be registered under the Cayman Islands flag; this is determined based on its age and safety record (a less onerous regime is used for pleasure yachts in private use but a declaration that the yacht is not to be engaged in trade is also required) and, additionally, establishing whether the vessel name is available for use.

To register a Cayman Islands-flagged vessel, an owner must be a qualified owner based on the ownership structure and the list of countries in which a vessel owner may be incorporated or reside that qualify to own Cayman Islands-flagged vessels. A vessel owner must have a registered office or a representative person in the Cayman Islands.

Requirements for registration will vary depending on whether the vessel is a pleasure yacht for private use only or engaged in trade, or a merchant ship.



The Cayman Islands Shipping Registry maintains a dynamic survey and inspection programme for merchant ships to ensure the quality of their fleet is maintained. This includes delegation of statutory surveys to the following six recognised classification societies through a formal agreement between the Cayman Islands and each of the respective societies as listed:

- a* American Bureau of Shipping;
- b* Bureau Veritas;
- c* DNV;
- d* Lloyd's Register;
- e* Nippon Kaiji Kyokai; and
- f* Registro Italiano Navale.

**iv Environmental regulation**

Annexes I, II, III, V and VI of MARPOL (73/78) have been extended by the United Kingdom to the Cayman Islands. MARPOL (73/78) applies to all Cayman Islands-registered ships regardless of their size, tonnage, age or service, including 'pleasure yachts not engaged in trade' and ships of less than 500 gross tonnes.

**v Collisions, salvage and wrecks**

The Nairobi WRC 2007, which provides the legal basis for states to remove, or have removed, shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment, was extended to the Cayman Islands on 7 February 2017 by the United Kingdom. The Convention was implemented into local legislation through the Merchant Shipping (Wreck Removal Convention) Regulations 2017 and applies to all Cayman Islands-flagged ships, ships visiting Cayman Islands waters and ships involved in an accident as a result of which either or both of them, or anything from them, has become a wreck in Cayman Islands waters.

If a wreck occurs in Cayman Islands waters, the owner of the vessel will be liable for the removal of the wreck, and must remove the wreck if directed to do so by the Cayman Islands government. This direction will be given by serving on the owner a 'removal notice' and under the regulations it is an offence for an owner not to comply with the conditions set out in any removal notice. If the owner does not remove a wreck in accordance with the conditions of a removal notice, the wreck may be removed by the Cayman Islands government and the owner will be liable for all costs incurred.

**vi Passengers' rights**

The provisions of the Athens Convention have been extended to the Cayman Islands and are included in the Merchant Shipping Act (2021 Revision).

**vii Seafarers' rights**

The MLC was ratified by the United Kingdom on 7 August 2013 and extended to the Cayman Islands with effect from 7 August 2014.

The MLC is important because it creates a level playing field for shipowners and seafarers. It addresses a number of issues, including minimum age, shipowners' obligations in relation to seafarers' contractual arrangements, oversight of manning agencies, working hours and hours of rest, health and safety, repatriation, crew accommodation, catering standards and the welfare of seafarers generally.

The MLC applies only to commercially registered vessels operating under the Cayman Islands flag.

## **VII OUTLOOK**

As a jurisdiction, the Cayman Islands continues to lead the way in global compliance and transparency with the introduction of the International Tax Co-operation (Economic Substance) Act (2021 Revision) and related guidance, together with the Anti-Money Laundering Regulations (2020 Revision).

From a Cayman Islands flag perspective, it is anticipated that the upward trajectory of the flag will continue as the Cayman Islands maintains its leading position in the superyacht market.

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