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Maritime Cook Islands Ltd
1st Floor, Brownes Building
PO Box 882
Avarua
Rarotonga
Cook Islands

Attention: Glenn Armstrong, CEO

Norton Rose Fulbright LLP
3 More London Riverside
London SE1 2AQ
United Kingdom

Tel +44 20 7283 6000
Fax +44 20 7283 6500
DX 85 London
nortonrosefulbright.com

Direct line
+44 20 7444 2568

Email
roger.heward@nortonrosefulbright.com

Your reference

Our reference
101/1001072093

Dear Sirs

Cook Islands Ships Registry

Introduction

1. At your request, we have reviewed the laws and procedures applicable to the registration of ships and mortgages on the Cook Islands Ships Register. It is an "open" register and the purpose of our review has been to establish whether it provides an efficient and legally secure registration service, comparable to that provided by other open registries. Because we are concerned with the Cook Islands as an open register, we assume for the purposes of this letter that ships, mortgagees and other parties involved (such as ship managers and crews), will have no other connection with the Cook Islands and that the ships are not likely to trade to the Cook Islands. This opinion letter is for the benefit of Maritime Cook Islands only: individual ship owners, financiers and other parties should make their own enquiries in relation to specific transactions.
2. This opinion is based on English law, but Cook Islands law is based on English law, and local statutory law is derived from English statutes to a material extent. We have discussed certain aspects with you, and we have reviewed the following: -
 - (a) Ship Registration Act 2007
 - (b) Maritime Transport Act 2008
 - (c) International Companies Act 1981 – 1982
 - (d) Maritime Cook Islands website
 - (e) Registration forms published by the Registry.

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Overview of Cook Islands registration

3. The Register is based in Avarua, Rarotonga, and is open for inspection during business hours, but it is also operated electronically. All Registry transactions are conducted exclusively in the English language. Registration services are always available via the internet so, for example, it is possible to register a new mortgage at any time and within a short period thereafter to receive electronically, and print, a transcript of register evidencing the registration of the mortgage.
4. When an application is made for registration of a ship, that ship must be inspected and approved, in order to establish that it meets the required international standards. The managers must also satisfy ISM requirements, but there are no restrictions as to the age or type of ship which may be accepted for registration.
5. There are also no restrictions as to the nationality of the shipowning entity, but the shipowner must become a "qualified person" under the Ship Registration Act in order to be entitled to own and register a ship flagged in the Cook Islands. There are three options, in that regard. First, a foreign owner may establish a Cook Islands international company, registered in the Cook Islands; secondly an existing foreign company may simply register an additional office in the Cook Islands; or, thirdly, a shipowner may become a member of the Cook Islands Ship Owners Association. In all three cases, the shipowning company will largely be, in effect, an offshore entity and will not be liable for income tax in the Cook Islands. In relation to Cook Islands international companies, and foreign companies with an additional registered office in the Cook Islands, there are no restrictions as to the nationality of the directors and shareholders. There are licensed trustee companies operating in the Cook Islands which will deal with all on-shore corporate administration, on behalf of foreign interests.

Provisional registration

6. It is possible for a shipowner to obtain provisional registration of a ship, in the first instance, by providing limited information, with outstanding registration requirements being fulfilled thereafter. A mortgage is registerable against a provisionally-registered ship. The maximum permitted length of a provisional registration is six months, following which (if permanent registration has not been effected) the ship, and any mortgage registered against the ship, would be liable to de-registration. The mortgagee, and any other registered party, would be notified in advance and would be entitled to apply to the court for a review of the proposed de-registration.

Demise charter registration

7. Any foreign-flag ship which is demise-chartered to a Cook Islands "qualified person" is capable of obtaining demise charter registration in the Cook Islands for the term of the charter, subject to the consent of the registered owner of the ship. In cases where a ship flagged in the Cook Islands is demise-chartered, the charterer may register its interest as demise charterer on the Register, subject to the consent of all other parties having a registered interest in the ship.

Mortgages and registration

8. A mortgage may be registered against a Cook Islands ship, as security for the repayment of a loan, or for the discharge of any other obligation. Such "other obligation" may, for example, include a contingent liability under a guarantee, or a potential liability for damages or costs, whether quantified, or not. There is no prescribed form of Cook Islands ship mortgage, so the parties are at liberty to use whatever form of mortgage they may wish, whether it is long-form or short-form, and whether it is subject to Cook Islands law, or to some other system of law. If the mortgage is associated with a collateral deed (such as a deed of covenants), there is no requirement to supply a copy of the deed to the Registrar.

9. In order to obtain prompt registration of a mortgage, the parties may, in the first instance, simply present two forms to the Registry via the internet, namely an application to register the mortgage and a notice of mortgage particulars. The notice will set out the names and addresses of the parties and will identify the charged property and describe the obligations secured by the mortgage. On that basis, the mortgage will obtain a date and time of registration, and will take priority over any subsequent mortgage or other interest which may thereafter be registered. When this procedure is employed, the original notice of mortgage, and the mortgage document itself, must be lodged with the Registrar within 14 days.

Status and rights of a registered mortgagee

10. The provisions of the Ship Registration Act, coupled with the common law of the Cook Islands (which largely follows English law), give a high degree of protection to a registered mortgagee. Among other matters:
- (a) Mortgages rank strictly in accordance with the date and time of registration, as evidenced by the Register.
 - (b) A mortgage and the priority of the mortgagee's claim shall not be affected by an act of insolvency or bankruptcy on the part of the mortgagor, occurring after the date of registration.
 - (c) A mortgagee shall not be deemed to be the owner of the mortgaged ship (and, as mortgagee, is therefore not subject to the liabilities of the shipowner).
 - (d) Once a mortgage has been registered, no subsequent mortgage or other registerable interest shall be registered, except with the consent of the registered mortgagee.
 - (e) A registered first mortgagee has a power of private sale of the mortgaged ship (following the occurrence of a default).
 - (f) Once a mortgage has been registered, it may be discharged only by a discharge document executed by the mortgagee, or by an order of the High Court of the Cook Islands. (Of course, as is invariably the case in other jurisdictions, the rights of the mortgagee may be transferred to the sale proceeds of the ship, following a judicial sale procedure.)

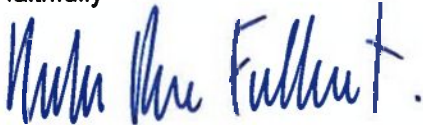
Priority of claims

11. The system of priority of claims under Cook Islands law, is the same as that which applies in English law. We are not aware of any jurisdiction which gives mortgage claims a higher priority than that existing under English law. It is unlikely that any Cook Islands ship would be arrested and sold by the High Court in the Cook Islands. But some foreign jurisdictions will, as a matter of conflict of laws, apply the Cook Islands order of priorities when distributing the proceeds of sale of any Cook Islands flag ship which has been sold by the court in that foreign jurisdiction.
12. In all jurisdictions, the costs and expenses associated with the judicial sale procedure are deducted, before any distribution is made to creditors. Under Cook Islands law, in the vast majority of cases the only creditors whose claims will rank prior to a mortgage claim are these creditors who either (a) were enforcing a possessory lien over the ship at the time of arrest, or (b) held a maritime lien (as defined in Cook Islands law) over the ship. These maritime liens are restricted to the "damage" lien (principally, collision claims); the salvage lien; and crew wages and entitlements. It is frequently the case that collision and salvage claims are covered by the shipowner's marine insurance. Often, therefore, a mortgagee ranks second only to claims for unpaid crew wages.

Conclusion

13. In our view, the laws of the Cook Islands and the procedures of the Cook Islands Ships Registry provide a basis of registration of ships and mortgages which is clear, is similar in many respects to English ship and mortgage registration; and which offers acceptable levels of legal certainty to shipowners and mortgagees.

Yours faithfully



Norton Rose Fulbright LLP