

# SHIP FINANCE

## Turkey



# Ship Finance

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Quick reference guide enabling side-by-side comparison of local insights into ship finance issues, including in each jurisdiction due diligence; repayment; registration of vessels; ship mortgages and other liens over vessels; collateral; tax considerations for vessel owners; insolvency and restructuring considerations; and recent trends.

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## DUE DILIGENCE

### Demonstrating title or legal ownership

How does one demonstrate title to or legal ownership of a vessel registered under the laws of your jurisdiction?

Title to or legal ownership of a vessel registered to National Ship Registry (NSR) or Turkish International Ship Registry (TISR) is demonstrated by a ship's registry certificate obtained from the relevant ship registry.

*Law stated - 25 April 2022*

### Liens

How can one determine whether there are any liens recorded over a vessel?

Any mortgages recorded over the vessel or other encumbrance are shown on the ship's registry certificate. Maritime liens are not subject to registry; thus, they could not be determined from the look of the registry certificate, but they can still exist.

If the ship's registry certificate at hand is not a recently dated document, the ship registry can be examined by physical attendance to the relevant ship registry where the vessel is registered. The Turkish Commercial Law No. 6102 (TCL) regulates a special ship mortgage that can be established for vessels registered to ship registry.

*Law stated - 25 April 2022*

How does one determine whether there are any security agreements, liens, charges or other encumbrances granted by a vessel owner or affiliated party who might be a borrower, guarantor or other credit party in connection with a vessel finance transaction?

Any mortgages or encumbrances recorded over the vessel are shown on the ship's registry certificate and at the records before the registry. Maritime liens are not subject to registry; thus, they could not be determined from the look of the registry certificate, but they can still exist.

*Law stated - 25 April 2022*

### Public registry searches

Can one determine whether an obligor registered in your jurisdiction is duly organised and in good standing from a search of a public registry?

A search at the Trade Registry Gazette can be made to obtain basic information such as when the company is incorporated, articles of association, directors, authorised signatories, whether an announcement of bankruptcy or concordat is made or any other information that is registered with the trade registry. Also, upon payment a fee to the trade registry, a good standing certificate indicating the field of activity of the company, its address and capital can be obtained.

*Law stated - 25 April 2022*

Can the shareholders or other equity interest holders, directors and officers or other authorised signatories of an obligor organised in your jurisdiction be determined from a search of a public registry? If not, how are these parties customarily identified?

Yes, from the search of every announced resolution published at the Trade Registry Gazette. However, for the joint stock companies, since the transfer of shares is not required to be registered, the latest shareholding structure cannot be traced unless the company has a sole shareholder structure. In such a case, the shareholders cannot be identified formally. From the review of the latest general assembly's attendees list, the shareholders may be identified at the time of that relevant general assembly meeting. Accordingly, it may not be reflecting the current shareholders' structure. A further search may be made before the relevant trade registry to clarify whether there was any information on bankruptcy, postponement of bankruptcy or concordat proceedings notified by Turkish courts.

*Law stated - 25 April 2022*

### **Debt obligation**

What corporate or other entity action is necessary for an obligor to enter into or guarantee a debt obligation? When is action by the board of directors or other governing body required? Must shareholders approve a guarantee?

The answer will depend by examination of the articles of association of the relevant company. Upon adoption of the TCL, which entered into force on 1 July 2012, ultra vires principle is abolished, and the companies are considered to have the capacity to be indebted for daily matters of business and matters not falling under their field of activity and purpose. For valid conclusion of surety agreements by proxy, or to the guarantee agreements by analogy, special authorisation is sought under Turkish Obligations Law numbered 6098 (TOL) article 504/3. Although its applications to corporations is controversial, it is advisable to review the articles of association. If there is a particular clause under the articles of association requiring the company to obtain a general assembly resolution or board of directors' resolution to become indebted or enter into a guarantee agreement under a loan agreement, then the relevant agreement may not be valid unless it is approved by the relevant authority of the company.

*Law stated - 25 April 2022*

### **Obligations of foreign lenders**

Must foreign lenders qualify to do business in your jurisdiction to extend credit to a borrower organised in your jurisdiction? Will foreign creditors be deemed resident as a consequence of making a loan or other extension of credit to an obligor within your jurisdiction?

Turkish residents lending money from Turkey or abroad are regulated under the Protection of the Value of the Turkish Currency Law numbered 1567, Decree No. 32 regarding the Protection of the Value of the Turkish Currency (Decree No. 32) and Capital Movements Circular. Lending foreign currency from foreign lenders to Turkish residents are subject to restrictions under Decree No. 32. A Turkish resident may lend Turkish lira from a foreign bank via an intermediary Turkish bank. A Turkish resident earning foreign currency may lend money from a foreign bank via an intermediary Turkish bank. In principle, Turkish residents not earning foreign currency cannot borrow foreign currency from a foreign bank unless they fulfil the requirements under Decree No. 32 (article 17).

It must be noted that under the Communiqué numbered 2008-32/34 that has been adopted in accordance with Decree No. 32, the loans that are borrowed for ship finance of the vessels imported from abroad by the Turkish residents are

exempted from these restrictions and can lend foreign currency directly from the foreign bank (article 11/1/ç).

Foreign banks will not be deemed as resident for providing a loan or other extension of credit to an obligor within Turkey.

*Law stated - 25 April 2022*

## REPAYMENT

### Central bank and regulatory approval

Is central bank or other regulatory approval required for repayment of a loan in foreign currency?

Regulatory approval is generally not required for repayments of a loan in foreign currencies. Subject to the type of the transaction, there may be a requirement of notification by the relevant bank to the Turkish Republic Central Bank just to keep records, and not for approval.

*Law stated - 25 April 2022*

### Usury laws

Do usury laws limit the interest payable to a lender in respect of a vessel financing?

Under Turkish law, for the transactions between merchants, the interest rate may be freely agreed under the scope of the freedom of contract. In principle, agreement on a compound interest is prohibited unless the period between the account terms shall be at least three months and that the case at hand meets the requirements of one of the two exceptions foreseen under the Turkish Commercial Law; (1) the parties conclude a running account agreement or (2) a loan agreement having a commercial affair nature.

*Law stated - 25 April 2022*

### Withholding taxes

Are withholding taxes payable on principal or interest payments to non-resident lenders?

The examination shall be made on case-by-case basis. In principle, the withholding tax for the income received abroad shall be subject to tax law of that relevant lender's country. However, if the relevant lender has a branch in Turkey and the loan is provided from this branch, then withholding tax may arise in Turkey. Also, the double taxation treaties must be examined for eliminating or reducing the rate of the tax.

*Law stated - 25 April 2022*

## REGISTRATION OF VESSELS

### Eligibility for registration

What vessels are eligible for registration under the flag of your country? Are offshore drilling rigs or mobile offshore drilling units considered vessels under the laws of your jurisdiction? What is the effect of registration?

'Any vehicle that is not too small, and its purpose requires movement on the water, able to float is considered as a vessel even if it does not have the ability to inherently move.' (Article 931/1 of the the Turkish Commercial Law (TCL)).



Seismic research vessels are registered with the Turkish International Ship Registry (TISR) in Turkey. Offshore drilling rigs or mobile offshore drilling units would be classified as ships if they comply this vessel definition under the law. In accordance with this definition a ship does not necessarily be in a ship form but can be a vehicle. Also, they should not be allocated to public service.

'Any vessels the purpose of which is an economic benefit or actually used upon such purpose is considered as a merchant vessel regardless of who uses, and it is used on whoever's name or account.' (Article 931/2 of the TCL.) The following types of vessels may be registered to the National Ship Registry (NSR):

- Turkish merchant vessels;
- Vessels allocated for the purpose of pleasure, sport, education, training, and science such as yachts, mariner training vessels; and
- Vessels that are built in Turkey in the name or on behalf of a foreign government or its nationals.

Merchant vessels of 18 gross tons or bigger are mandatory to be registered.

The vessels that are not allowed to be registered under the ship registry are foreign vessels, Turkish vessels registered under a foreign registry, warships of navy, tenders and vessels allocated for the public service of the government.

Merchant vessels smaller than of 18 gross tons, sea and inland waters vessels and private vessels are registered to a special registry named mooring registry.

*Law stated - 25 April 2022*

## Who may register a vessel in your jurisdiction?

Turkish real persons and legal entities may register a vessel. Vessels that are owned by:

- a Turkish citizen;
- joint owners with the majority of shares owned by Turkish citizens;
- a majority of Turkish citizen co-owners;
- a Turkish entity, association or foundation the management board of which consists of Turkish citizens in majority;
- a Turkish company that is managed by Turkish citizens in majority and the majority votes are with the Turkish shareholders as per the articles of association of the company (if a joint stock company or a limited partnership, the capital of which is divided in shares, are concerned, the majority of the shares shall be nominative and the transfer of the company shall be subject to approval of the company's board of directors); or
- an association of shipowners registered to Turkish trade registry, the shareholders of which consist Turkish citizens in majority and authorised shipowners to manage the company consist of Turkish citizens in majority;

are considered as Turkish vessels and may be registered to the NSR and enjoy the cabotage rights to sail and trade in Turkish waters under the Cabotage Law numbered 815.

A Turkish entity or company should be established under the laws of Turkey with principal place of business in Turkey.

*Law stated - 25 April 2022*

## Registry for international shipping operations

## Is there an alternate registry for international shipping operations?

Yes. The following may be registered to the TISR:

- any vessels and yachts registered to the NSR;
- regardless of its tonnage, ships, yachts and all private purpose vessels built within Turkey;
- any kinds of cargo and fishing vessels allocated for commercial purposes and over 3,000 Deadweight tonnage; and
- passenger and private purpose vessels over 300 gross tons.

*Law stated - 25 April 2022*

## SHIP MORTGAGES AND OTHER LIENS OVER VESSELS

### Types of ship mortgage

What types of ship mortgages exist and what obligations may a ship mortgage secure? Can contingent obligations, including swap obligations, be secured? Are there standardised forms?

A special ship mortgage is foreseen under the Turkish Commercial Law (TCL) for the vessels registered to the ship registry. Two types of mortgages can be established to secure (1) principal amount and interest only, and (2) upper limit mortgage to secure an uncertain amount of debt. Ship mortgage secures the principal debt, interest, enforcement proceeding expenses (such as charges), notice expenses, announcement fees, legal fees, compulsory expenses to secure the ship against any hazardous circumstances, insurance premiums, secondary obligations foreseen under the mortgage agreement such as penalties, and expert fees for valuation of the vessel.

Contingent obligations, including swap obligations can be secured via upper limit mortgage which is mostly used in ship finance transactions.

There are no standardised forms of agreement.

*Law stated - 25 April 2022*

### Required form

Give details of any required form for ship mortgages in your jurisdiction.

A mortgage agreement prepared by the parties must be signed in writing between the mortgagor and the mortgagee, followed by authentication of their signatures before the notary public. The agreement may also be signed before the registry. The mortgage must be registered before the ship registry.

*Law stated - 25 April 2022*

### Registration of mortgages

Who maintains the register of mortgages? What information does it contain and where are such filings to be made? What is the effect of registration?

There are regional ship registries in the areas where the Maritime General Directorate established harbour masters. Filings are made online on a platform named 'Umurbey' followed by attendance to the relevant ship registry where the

vessel is registered to. The registration is constituent for the mortgage is validly established. The request of registry may be made by either party. However, the acknowledgment of the mortgagor is necessary. Filings contain information on the title of the mortgagee and the mortgagor, the mortgage amount, the amount of the mortgage in Turkish lira (for foreign currencies, the exchange rate is the selling price announced by the Turkish Republic Central Bank at the day of the calculation), subject of the mortgage, subject of the mortgage, and rank of the mortgage. Only mortgage in one currency can be assigned to the same rank.

*Law stated - 25 April 2022*

**Must the total amount of the mortgage be stated therein? Must the mortgage contain a maturity date? Must the underlying debt instrument be filed with or attached to the recorded mortgage?**

The total amount of the mortgage must be stated. The mortgage does not have to contain a maturity date. The underlying documents must not be filed.

*Law stated - 25 April 2022*

**Can a mortgage be registered in the name of an agent or trustee for the benefit of multiple lenders?**

In a syndicated financing, a security agent bank can be appointed, and the entire amount may be mortgaged under the name of this bank or other financial institution. The terms will be agreed between the lenders. In practice, usually all parties to the financing establish a pro-rata mortgage over the property.

*Law stated - 25 April 2022*

### **Filings on transfer**

**If the mortgagee is an agent or trustee for a lending syndicate, must any filings be made upon transfer of a portion of the underlying debt among existing lenders or to a new lender?**

No. The agent will be registered as the mortgagee before the ship registry and the terms of the security will be determined between the lenders themselves.

*Law stated - 25 April 2022*

**If the mortgagee transfers its interest to a new lender, agent or trustee what filings are required? Is the mortgagor's consent required?**

It will be considered as assignment of the receivables, which in principle does not require the consent of the mortgagor. Subject to the terms of the loan documents, the consent may be required by agreement. A written agreement between the new and ex lenders be signed for assignment of receivables followed by filing the same to the ship registry.

*Law stated - 25 April 2022*

### **Maritime liens**

**What other maritime liens over vessels are recognised in your jurisdiction? Do these claims give rise to a right to arrest a vessel? In what circumstances may associated ships be arrested?**

The following claims arising against the owner, demise charterer, manager or operator of the vessel grants maritime lien right and an action in rem on the vessel to their creditors (article 1320 of the TCL):

- seamen's wages, costs of repatriation and social insurance contributions;
- loss of life or physical injury;
- salvage;
- port, canal, other waterway, quarantine and pilotage dues;
- tort arising out of physical loss or damage; or
- general average.

Maritime liens give rise to a right to arrest a vessel.

Under the article 1352 of the TCL, a vessel can be arrested for a maritime claim which consists of claims arising out of:

- loss or damage caused by the operation of the vessel;
- loss of life or other personal injury;
- salvage;
- damage or threat of damage caused by the vessel to the environment, coastline or related interests;
- costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, grounded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and to seamen's subsistence;
- any agreement concluded for the purpose of using or leasing the vessel, whether a charter party is issued or not;
- any agreement concluded for the purpose of carrying goods or passengers in the vessel, whether a charter party is issued or not;
- loss of or damage to or in connection with goods, including luggage, carried in the vessel;
- general average;
- towage;
- pilotage;
- goods, materials, provisions, bunkers, equipment including containers supplied or services rendered to the vessel for its operation, management, safeguard or maintenance;
- construction, reconstruction, repair, equipping or conversion of the vessel;
- port, canal, dock, pier and harbour and other waterway dues and other charges, and those payable for quarantine;
- wages and other sums due to the seamen in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf, along with claims for other amounts due to them;
- disbursements incurred on behalf of the vessel or its owners, including loans taken out for the vessel;
- insurance premiums, including mutual insurance calls, payable by or for the account of the vessel owner;
- any and all commission, brokerage or agency fee payable in respect of the vessel by or for the account of the vessel owner;
- any dispute as to ownership or possession of the vessel;
- any dispute between co-owners of the vessel as to the management or earnings of the vessel;
- a vessel lien, vessel mortgage or a charge of the same nature on the vessel; or
- any dispute arising out of a contract with respect to the sale of the vessel.

The arrest of a ship for a maritime claim can only be possible if (article 1369/1 of the TCL):

- the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the ship when the arrest is enforced;
- the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the vessel when the arrest is enforced;
- the claim is based upon a ship lien, ship mortgage or any in rem encumbrance of the same nature on the ship;
- the claim relates to the ownership or possession of the ship; or
- the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien that is granted or arises under the law of the state where the arrest is applied for.

Associated ship arrest is only possible if the owner of the ship requested to be arrested is liable for that maritime claim and when the cause of action arose this owner was either the owner or demise charterer, time charterer or voyage charterer of the vessel on which the maritime claim arose (article 1369/2 of the TCL).

*Law stated - 25 April 2022*

### What maritime liens rank higher than a mortgage lien?

Maritime liens that are referred to under articles 1390 – 1392 of the TCL rank higher than a registered mortgage regardless of whether registry date of the mortgage is earlier than the claim date of the maritime lien.

Higher-ranking maritime liens than a mortgage lien and their ranks are as follows:

#### **First rank<br><br>**

- All expenses arising out of the attachment of the vessel, maintenance, guard and alimentary for the seamen, liquidation of ship, division of sale amounts throughout the attachment period and sale of vessel.
- The expenses occurred by the time passing during attachment of the receivables for loss or damage caused by the operation of the vessel.

#### **Second Rank<br><br>**

- Expenses arising from salvage of the sold ship that has been salvaged by public authorities for the security of navigation or protection of marine environment when it was stranded or submerged shall be registered in second rank of creditors ranking list.

#### **Third Rank<br>**

- Claims for loss of life or physical injury;
- claims for salvage;
- claims for port, canal, other waterway, quarantine and pilotage dues; and
- claims based on tort arising out of physical loss or damage.

Mortgage lien comes in the fourth rank. Although constituting a maritime lien general average claim comes after any

legal or contractual liens either registered or not (article 1323 and 1324 of the TCL).

*Law stated - 25 April 2022*

## **Non-mortgage liens**

**May non-mortgage liens be recorded over a vessel?**

Yes, right of usufruct and precautionary attachments or definitive attachments may be recorded by the courts or enforcement offices.

*Law stated - 25 April 2022*

## **'Foreign' flag vessels**

**Will mortgages on 'foreign' flag vessels be recognised in your jurisdiction? If so, do they share the same priority as those on vessels registered under the laws of your jurisdiction?**

Yes. Turkish Republic codified the terms of International Convention on Maritime Liens and Mortgages 1993 into the TCL and the former was later ratified on 25 March 2017. Therefore, mortgages over the foreign vessels are recognised and enforceable in Turkey.

*Law stated - 25 April 2022*

## **Enforcement of mortgages**

**What is the procedure for enforcing a mortgage in your jurisdiction by way of foreclosure? Are interlocutory sales permitted? How long does a judicial sale take? What are the associated court costs and how are they calculated?**

Under article 1381 of the TCL, creditors of a contractual or by law ship mortgage may commence an enforcement proceeding for foreclosure of the mortgage. Under the Enforcement and Bankruptcy Law (EBL), in principle there are two types of enforcement proceedings that can be followed: (1) ordinary proceedings without judgment (2) proceedings with judgment.

From the mortgage agreement, if presence of an unconditional pecuniary debt can be determined or the right of receivable also constitutes a judgment, or it is accepted under the documents considered as judgment (article 38 of the EBL), then proceedings with judgment for foreclosure of the mortgage may be followed. It provides a procedure facilitating the foreclosure of the mortgage as it is considered as having a court judgment. In addition, pursuant to article 1378 of the TCL, a mortgagee can also commence bankruptcy proceedings directly.

Before commencing enforcement proceedings, the mortgagee can arrest the vessel. Upon obtaining the arrest order, the enforcement proceedings must be commenced within three business days of the date of the arrest order. (article 1364 of the TCL).

For ordinary proceedings, the debtor has the right to object to the payment order sent by the enforcement office within seven days of receipt of it. If the debtor objects, the proceedings will stay, and the mortgagee must commence the cancellation of objections proceedings before the courts. If the debtor neither objects nor makes the due payment in 30 days, the mortgagee may proceed with request of sale of the vessel.

For proceedings with judgment, there are three alternate methods to follow:

1. Upon submission of a judgment or one of the documents pursuant to article 38 of the EBL, the enforcement office will send an enforcement order to the debtor; if the debtor does not make a payment within seven days following the receipt of the order or obtains a set aside decision of enforcement, the creditor may proceed with the sale of the vessel (article 150/h of the EBL).
2. If the debt amount was ascertained unconditionally under the mortgage agreement, upon filing the enforcement request and the underlying document constituting an unconditional debt, the enforcement office will send an enforcement order to the debtor; if the debtor does not make a payment within 30 days of following the receipt of the order or obtains a set aside decision of enforcement, the creditor may proceed with the sale of the vessel (article 149, 149/a of the EBL).
3. Pursuant to article 150/i, the special regulation for financial institutions, it is mandatory to send notice of closure to the debtor and mortgagors, which shall include an account statement indicating the outstanding amount and interests accrues periodically in respect of the loan documents (68/b of EBL). The opposing party may send an objection notice within eight calendar days of the date of service of the notice and request the enforcement court to set aside the enforcement. If the financial institution proves its receivable with other loan documents, this objection is dismissed by the enforcement court and the vessel can be sold upon continuing the enforcement proceedings.

For ordinary proceedings (without judgment) an application charge of 0.5 per cent of the enforcement amount shall be deposited. An additional 1.5 per cent must be deposited if a case will be commenced to lift any objections.

For proceedings with judgment only fixed charges are applicable. Together with the initial expenses (ie, notice to the debtors) approximately €70 will be requested.

The following costs will incur for both the ordinary and with judgment proceedings:

- the expenses that will arise during the enforcement period such as valuation, notices (internal and international), publish of auction announcement (in both national and international gazettes), trustee fees and maintenance of the vessel, among others;
  - upon the sale of the vessel via auction, the below mentioned taxes shall be deducted from the collected amount:
- In practice, it is seen that the enforcement offices request advance payment (around €1,000) for the expenses that may arise due to implementation of the arrest order.

Interlocutory sales are not permitted. However, there are two other possibilities for sale of the vessel if all of the interested parties consent to this type of sales and further conditions are met under the article 1386 of the TCL: (1) the sale of the vessel before completing all the procedures of auction or (2) a private auction sale of the vessel (article 1387 of the TCL). Depending to the objections of the mortgagor' or the principal debtor' (if any) objections completion of a judicial sale may take from one to six years.

*Law stated - 25 April 2022*

## **Sale by mortgagee**

**May a vessel be sold privately by a mortgagee? Will the sale discharge liens over the vessel?**

The matter remains controversial. Many of the scholars opine that it does not fall within the prohibition of the lex commissoria, provided that the mortgagee is not the purchaser if the debt has not become due and payable. However, implementation in practice would create an issue since a mere clause under the mortgage agreement cannot be

considered as a duly proxy for the sale of a vessel. Private sale will not discharge liens over the vessel.

*Law stated - 25 April 2022*

### **Default under mortgage**

Will the courts of your jurisdiction enforce mortgage provisions stipulating the appointment of a receiver on default under the mortgage?

If the receiver is not the mortgagee itself, then the majority of the scholars opine that these kinds of provisions are enforceable. The *lex commissoria* prohibition shall be cared.

*Law stated - 25 April 2022*

### **Limitations on rights of self-help**

What are the limitations on rights of self-help by a mortgagee?

Upon the debt becomes due and payable, the parties may agree on the sale of the vessel to the mortgagee or a third party. If the vessel is transferred to the mortgagee, right of redemption for repurchase of the vessel in the future may be foreseen. If the debt is not due and payable, the sale of the mortgaged vessel to the mortgagee is not possible under the *lex commissoria* prohibition. Also, a provision ensuring the mortgagor that the exceeding amount of the debt from the sale price of the vessel will be returned to the mortgagor. Otherwise, the provision will be void.

*Law stated - 25 April 2022*

### **Duties to owner or third-party creditors**

What duties does a mortgagee owe to an owner or third-party creditors?

The mortgagee as other parties under Turkish law have the duty to act in good faith.

*Law stated - 25 April 2022*

## **COLLATERAL**

### **Finance leases**

May finance leases or other charters be recorded over vessels flagged under the laws of your jurisdiction?

Finance leases and bareboat charters may be recorded to the registry.

*Law stated - 25 April 2022*

May finance leases be recharacterised by a court as a financing contract? If so, is there any procedure for protecting the lessor's interest against third-party creditors?

Turkish courts have the discretion to characterise a contract between the parties regardless of its title if the content of the document evidence another commercial motivation than the title of that contract. The financial lease agreements shall be registered to the ship registry pursuant to the Financial Lease, Factoring, Finance and Savings Finance



Company's Law numbered 6361. Under article 28 of this law, if the third-party creditors commence an enforcement proceeding against the lessee, the enforcement officer shall order keeping the leased assets out of the enforcement proceedings. This order can be challenged in seven days and the enforcement court shall decide on the matter within a month.

*Law stated - 25 April 2022*

### **Security interests**

How is a security interest created over earnings of a vessel, charter contracts, insurances, etc?  
How are these security interests perfected?

Security interest created over earnings of a vessel, charter contracts, insurances can be created by means of an assignment. Assignment of the receivables is subject to written form under Turkish law to be valid and enforceable. An agreement between the mortgagor and mortgagee for assignment of the security interest to the mortgagee is signed in practice. Notification of assignments to be signed or endorsed by the relevant third party (ie, insurer, charterer, bank etc) are usually annexed to this agreement.

*Law stated - 25 April 2022*

Must security interests against non-vessel collateral be registered to be enforceable? If so, where are such filings made?

Most common security interests against non-vessel collateral are pledge of the borrower's shares, surety agreements, and security over a bank account. They do not have to be registered.

*Law stated - 25 April 2022*

How is a security interest over a deposit account established? How is a security interest perfected?

Assignment of the receivables is subject to written form under Turkish law to be valid and enforceable. The relevant bank is notified of the security interest over a deposit account by the notification of assignment signed by the mortgagor or borrower. Endorsement of the notification of assignment by the bank is usually requested by the mortgagee in practice.

*Law stated - 25 April 2022*

How are security interests in non-vessel collateral enforced?

The security documents and loan agreements usually determine the conditions of enforcing non-vessel collaterals. If the relevant party does not abide by these provisions, enforcement proceedings or actions before the courts may be commenced by the mortgagee.

*Law stated - 25 April 2022*

## Share pledges

How are share pledges for vessel financings established? Are share pledges or share charges common in your jurisdiction?

Share pledges are common in Turkey. If the vessel owner's company is registered in one of the trade registries located within Turkey, the company records (ie, articles of association, directors or authorised signatories) may be searched online from the Turkish Trade Registry Gazette. The distinction between a joint stock company and limited liability company shall be made. Establishing a lien or transfer of a joint stock company's shares are not subject to registry unless the company has a sole shareholder structure. If the shares are nominative, the lien can be established by delivery and endorsement of the share certificates. If the shares are bearer, the lien can be established by delivery of the share certificates. If the shares are not bound to a share certificate, then a lien agreement is sufficient. However, this agreement is not required to be registered.

Under the Turkish Commercial Law (TCL), a distinction is foreseen for establishing a lien right depending on whether the articles of association of the company requires approval of the general assembly or not. If a general assembly resolution is required, then establishing a lien right is subject to transfer of the shares and is established validly upon signature of a lien agreement and acknowledgement of the signatures before a notary public followed by approval of general assembly. If a general assembly resolution is not required, then establishing a lien right will be subject to Turkish Civil Law numbered 4721. By reference of the relevant article to the TCL, the procedure is again subject to the procedure of transfer of the rights of the share. Accordingly, a lien right is established validly upon signature of a lien agreement and acknowledgement of the signatures before a notary public. However, there is a controversial between the scholars whether a subsequent general assembly resolution will be required or not. Also, the shares are recorded for both types of companies in a share book by the board.

*Law stated - 25 April 2022*

Is there a risk that a pledgee, before or after exercise of the share pledge, may be exposed to debts or other liabilities of the pledged company?

Yes. Under Turkish corporate law, the shareholders cannot be held liable for the companies' (with capital) debts. As to limited liability companies, the shareholders are only liable with their personal assets for the public receivables. The board of directors of a joint stock company may be held liable for the company's debts arising out of a transaction where the directors are found liable faulty in their management. These latter cases are exceptional, and the court seeks solid evidence for holding the directors liable of their actions, which has resulted in a burden of debt for the company.

*Law stated - 25 April 2022*

## TAX CONSIDERATIONS FOR VESSEL OWNERS

### Domestic taxation

Is the income earned by the owners of vessels registered in your jurisdiction subject to domestic taxation? At what rate?

If the owner is an entity, corporate tax is payable over the profit of the owner of a vessel registered under the National Ship Registry (NSR). Corporate tax rate applicable is 23 per cent for the year of 2022. If the owner of a vessel registered under NSR is a real person, income tax is payable. The rate depends on the tax band they are subject to; a case-by-case analysis shall be made.

**Tonnage tax**

Is there an optional tonnage tax exempting vessel owners from tax on income?

Tonnage tax is not applicable for the vessels registered to NSR. The vessels registered to the Turkish International Ship Registry (TISR) are only subject to tonnage tax. Registry charge of US\$10,000 shall be paid at the registry of the ship. For yachts the registry charge is US\$5,000 USD. Tonnage tax is charged annually and Turkish lira equivalent of US\$1 per net ton of the ship or yacht is collected. If the ships are classed directly or dually from Turkish Lloyd, annual tonnage tax is reduced 50 per cent. The exchange rate is the selling price announced by the Turkish Republic Central Bank at the day of the calculation.

Law stated - 25 April 2022

**Tax incentives**

What special tax incentives are available to shipowners registering vessels in your jurisdiction?

Earning from management and transfer of the ships and yachts registered to TISR are exempted from income and corporate tax.

Purchase, sale mortgage, registry, loan, charter parties related to ships and yachts to be registered to TISR are exempted from stamp duty, charges, banking and insurance tax. They will, however, be subject to motor vehicles tax, if applicable to the relevant vessel.

Wages of crew working in ships or yachts registered to TISR are exempted of income tax.

Cargo and passenger ships having cabotage right, merchant yachts and fishing vessels are exempted of excise duty by fulfilling the requirements of the decree number 2003/5868.

Law stated - 25 April 2022

**Other tax provisions**

Are there any other noteworthy tax provisions specifically applicable to shipping, shipping income or ship finance?

Under the Value Added Tax (VAT) law, transport ships are exempted from VAT applicable for services obtained at the ports. The ships which make international transport are also exempted from VAT for services of ship operation, seamen's administration and services of marine information and marine technique.

The banks, financial institutions, foreign loan institutions and international institutions are exempted of the fees (except court or enforcement office fees) applicable to the transactions regarding loans, securities of the loans and repayment of the loans pursuant to article 123 of the Fees' Law numbered 492 where court fees, notary fees, title deed fees, consulate fees, ship and port dues, stamp tax, traffic fees, passport fees, work permit fees and foreign affairs ministry attestation fees are regulated.

Law stated - 25 April 2022

## INSOLVENCY AND RESTRUCTURING

### General scheme of reorganisation or insolvency administration

Is there a general scheme of reorganisation or insolvency administration in your jurisdiction?

Yes, concordat proceedings are regulated under article 285 et seq. of the Enforcement and Bankruptcy Law (EBL). The purpose of the concordat institution is to relieve the debtors, who cannot or in danger not to pay their mature debts, from the bankruptcy by allowing them to pay their debts with extra maturity and/or reduction (article 285 of the EBL) and aims to prevent the company from bankruptcy. Concordat can be demanded by the debtor as well as by any creditor that can claim bankruptcy.

Concordat process consists of five fundamental stages: (1) application to concordat, (2) temporary moratorium, (3) definitive moratorium, (4) creditors' meeting (if applicable) and (5) the court's examination and approval of the concordat.

Once the temporary moratorium order is rendered, the court assigns temporary concordat commissaire(s) to examine whether concordat can succeed or not. The temporary moratorium can be ordered for three months and may be extended for two months (article 287/4 of the EBL). Based on the opinion and reports of the commissaires, if the court deems that the concordat project would succeed, it orders definitive moratorium for one year (article 289 of the EBL). This term can be extended for six months. If the court deems that the project submitted will not succeed, it rejects the application of the definitive moratorium.

Article 288 of the EBL regulates that the temporary moratorium generates the same legal consequences as the definitive moratorium. These legal consequences are:

- No proceedings can be carried out against the debtor within the term, including the proceedings that are done in accordance with the Law on the Collection of Public Receivables numbered 6183 and the proceedings that have previously started stay. No precautionary injunctions and precautionary attachment decisions apply. The limitation periods and period of prescriptions that is cut with an enforcement proceeding cease to run.
- Attachment proceedings can be made for the privileged receivables.
- Unless the approved concordat project contains a provision otherwise, interest will cease to accrue on any receivables not secured by pledge as of the definitive moratorium date.

Foreclosure of lien or mortgage proceedings may be commenced during the moratorium and already commenced proceedings may continue. However, sale of the vessel will not be possible unless (1) the use of the vessel is not foreseen within the scope of the concordat project, or (2) its value will decrease, (3) or the safeguard of the vessel will be costly.

*Law stated - 25 April 2022*

### Foreign court rulings

Will the courts of your jurisdiction respect the rulings of a foreign court presiding over reorganisation or liquidation proceedings?

The bankruptcy and enforcement offices at the place of the registry address of the debtor has the jurisdiction for bankruptcy proceedings and the commercial courts at the place of the registry address of the debtor for the bankruptcy action (article 154 of the EBL). This is an exclusive jurisdiction rule for the enforcement actions. As to the entities which have a place of business located abroad, the bankruptcy and enforcement offices at the place of the Turkish

branch's registry address has the jurisdiction.

A foreign court's ruling on bankruptcy may be subject to recognition and enforcement of the foreign judgement procedure in Turkey. Pursuant to article 54 of International Private and Procedural Law No. 5718 (IPPL) foreign court's decisions can be recognised and enforced in Turkey if:

- the foreign court's decision is finalised, and all legal remedies are exhausted;
- there is reciprocity between Turkey and the relevant the decision is rendered;
- the decision is not given on a subject falling under exclusive jurisdiction of Turkish courts;
- the decision is not against the Turkish public policy; and
- the decision did not jeopardise the due process rights of the defendant (the defendant should be duly informed of the dispute, given the right to be represented and present its case and that the decision should not be given in its absence.

*Law stated - 25 April 2022*

### **Model Law on Cross-Border Insolvency**

Has your jurisdiction adopted the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law?

No.

*Law stated - 25 April 2022*

### **Order of priority**

What is the order of priority among creditors? In what circumstances will creditors be required to disgorge payments from an insolvent company?

The priority between the ordinary and lien right holders' creditors are as follows:

- the lien right holders have the priority after payment of the sale expenses of the property;
- workers' wages, severance and notice pay;
- alimony compensation in relation to family law;
- all receivables left to the debtor's management due to guardianship and curatorship;
- receivables having priority under special laws; and
- all remaining receivables.

It should be noted that the time of the action of cause arose matters. So, case-by-case analysis should be made. The creditors of each rank have equal rights among themselves. Unless the creditors in the previous rank are satisfied in full, the later ranks do not receive any payments.

Foreclosure of the vessels are subject to special regulations under the Turkish Commercial Law (TCL).

*Law stated - 25 April 2022*

## Security provision by vessel owner

May a vessel owner provide security on behalf of other related or unrelated companies? What are the requirements for it to be enforceable?

Yes, unless it is prohibited under the articles of association of the relevant company. In general security agreements are defined as undertaking a third party's obligation. Although there is not a clear reference as to how the form of this agreement should be under article 128 of Turkish Obligations Law (TOL), these types of agreements appear as surety agreement in practice. Pursuant to article 603 of the TOL, the formal requirements of surety agreements are also applicable to any agreements of this kind providing with a personal security under whatsoever name (ie, guarantee agreements). So, the validity and enforceability requirements aligned hereunder shall also be applicable to guarantee agreements or agreements of this kind. Execution or any amendment to surety shall be in written form and pursuant to article 583 of the TOL, the maximum amount of the surety's liability, the commencement date of the surety and any statement indicating the solidarity nature of the surety when it is a joint surety, shall be written by hand by the surety themselves and signed by the real person surety. In addition to these, pursuant to the article 584 of TOL, if a real person surety is married, he or she can enter into the surety agreement with the written consent of the other spouse, unless a split or separation order has been issued by a court. Such consent shall be granted prior to or at the time of signature of the agreement. Any failure in obtaining the consent of the other spouse will result with the invalidity of the surety agreement and if the other spouse grants the consent to the surety after the moment of signature of the contract, the given consent shall not regenerate the contract.

However, there is an exception regulated under article 584/3 of TOL. If the surety is given for the debts of a company to which the surety is either director, shareholder, or member of the board of directors, spouse consent is not required.

*Law stated - 25 April 2022*

## Law of fraudulent transfer

Is there a law of fraudulent transfer that permits a third-party creditor to challenge, for example, the grant of a mortgage because of insolvency of the mortgagor or insufficient consideration received by the mortgagor in exchange for the grant of the mortgage?

Yes, cancellation of transaction procedure is foreseen under article 277 of the EBL.

There is no limitation on disposition of the property and the rights of the debtor prior to the attachment or upon opening of bankruptcy. To prevent the debtor from fraudulent transfer of its property, creditors can apply for provisional attachment. The challenge for a transaction can be made before the courts within five years from the date of the relevant transfer and automatic cancellations are not available. The following circumstances provide with a ground for challenge of a transfer:

1. The assets granted within two years prior of insolvency or bankruptcy and even if not granted the following transactions are considered as gratuitous:

- transactions between spouses, ascendants and descendants, relatives (from at least third degree), adopted and adoptive;
- undervalue transactions; and
- contracts for lifelong support or providing a usufruct right for life.

1. The assets sold or pledged within one year prior of insolvency, bankruptcy or the date of the transcript of

attachment if the debtor was deeply indebted, and their assets are not sufficient to their debts:

- payments made for an undue debt;
- annotations given before the title deed;
- pledging an asset whereas there was no prior commitment for a pledge; and
- payments made via methods other than money or ordinary payment methods.

The assets sold or pledged within five years prior the commencement of the enforcement or bankruptcy proceedings in case the transfer was intentionally made to harm the creditor and within the knowledge (or reasonably can be assumed) of the party the property was sold or pledged to.

*Law stated - 25 April 2022*

## **Petitions by creditors**

How may a creditor petition the courts of your jurisdiction to declare a debtor bankrupt or compel liquidation of an insolvent obligor?

In Turkey, there is a general rule to first apply against the pledged property (enforcement proceedings for foreclosure of a pledged property) unless the receivable is also secured by a bill of exchange. A creditor may either commence (1) bankruptcy enforcement proceeding or (2) apply to courts for bankruptcy:

1. The creditor must first apply to the enforcement office and request the bankruptcy payment order sent to the debtor. The bankruptcy proceeding can be initiated in two different ways, namely, general bankruptcy proceeding and proceeding specific to bills of exchange, depending on the documents on which the creditor bases its receivable. The creditor must file a bankruptcy lawsuit before the commercial court of first instance at the place of the debtor's registered address. If the debtor had objected to the payment order, the lawsuit would have the nature of an annulment of the objection and the court must consider whether the receivable exists. If the debtor had not objected to the payment order and the proceeding is finalised, then the court will make a brief procedural review.
2. If the following reasons for bankruptcy exist, the creditor may directly apply to the commercial court of first instance and request the bankruptcy of the debtor followed by a direct bankruptcy proceeding:
  - debtor's place of residence is unknown;
  - debtor abandoned its place of residence with the aim of escaping its undertakings;
  - debtor commits or attempts fraudulent acts that violate the rights of its creditor;
  - debtor retains of his or her goods during the attachment proceedings;
  - debtor has suspended his payments;
  - proposed concordat project is not approved, or the concordat moratorium is lifted, or the concordat process is terminated completely;
  - termination of restructuring by compromise and breach of restructuring project; or
  - receivable based on a judgment has not been paid despite being requested by the enforcement order.

*Law stated - 25 April 2022*

## **Model Netting Act**

Has your jurisdiction adopted the Model Netting Act of the International Swaps and Derivatives Association (ISDA)? If not, may a swap provider exercise its close-out netting rights under an ISDA master agreement despite an obligor's insolvency?

No. But, Turkish banks may sign ISDA agreements when it is necessary for the relevant transaction. Specific agreements may be made between the parties, however, there has not been a regulation either for exercising of the rights or control of the banks for swap transactions adopted by the government in this regard. There is, however, a draft regulation introduced by Banking Regulation and Supervision Agency that has not been codified yet regarding the Relationships of Banks with Customers in Derivative Transactions.

*Law stated - 25 April 2022*

## UPDATE AND TRENDS

### Current developments

Are there any emerging trends or hot topics that may affect shipping finance law and regulation in your jurisdiction in the foreseeable future?

Recent developments over the past years in relation to the protection of the value of the Turkish lira has been a hot topic for the finance sector. As to the shipping finance there are notable exceptions from the general restrictions of the use of foreign currency which allows the shipping finance to be affected minimum from the restrictions on the use of foreign currency and foreign currency loans.

As to the registry of the vessels, mortgages and other encumbrances, a new online platform 'Umurbey' has been introduced by the Maritime Affairs Directorate of the Transport and Infrastructure Ministry. Applications for any transaction that needs to be perfected at the ship registries and harbour master shall be first submitted online with the documents followed by attendance to the registry. Payments also can be made online. With this development, the aim is to conclude all transactions related to the vessels online without attendance to the registries in the future.

Turkish law legislation is available online at <https://www.mevzuat.gov.tr/> in Turkish language.

*Law stated - 25 April 2022*

## LAW STATED DATE

### Correct on

Give the date on which the information above is accurate.

25 April 2022

*Law stated - 25 April 2022*



## Jurisdictions

	<b>Brazil</b>	Basch & Rameh Advogados Associados
	<b>China</b>	KaiRong Law Firm
	<b>Cyprus</b>	Chrysses Demetriades & Co LLC
	<b>Japan</b>	Yoshida & Partners
	<b>Malta</b>	Dingli & Dingli Law Firm
	<b>Marshall Islands</b>	Vedder Price PC
	<b>Nigeria</b>	Dentons ACAS-LAW
	<b>Panama</b>	Arias, Fábrega & Fábrega
	<b>Russia</b>	Jurinflot International Law Office
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	<b>United Arab Emirates</b>	HFW
	<b>United Kingdom</b>	HFW
	<b>USA</b>	Seward & Kissel LLP