



**CHAMBERS**  
Global Practice Guides

# Shipping

India – Law and Practice

Contributed by  
Mulla & Mulla & Craigie Blunt & Caroe

2018

# INDIA

---

## **LAW AND PRACTICE:**

**p.3**

*Contributed by Mulla & Mulla & Craigie Blunt & Caroe*

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

*Contributed by Mulla & Mulla & Craigie Blunt & Caroe*

## CONTENTS

<b>1. Overview</b>	<b>p.4</b>	<b>4. Maritime Labour</b>	<b>p.7</b>
1.1 The Top Ten Flag States	p.4	4.1 Labour Laws and Conventions	p.7
1.2 Maritime Conventions	p.4	4.2 Percentage of Local Seafarers Required to Be Onboard	p.7
1.3 Classification Societies	p.4	4.3 Minimum Wage	p.7
1.4 Radio Accounting Authorities	p.4	4.4 Daily Working Hours	p.7
1.5 Types of Registration	p.5	4.5 Justified Dismissal	p.7
1.6 Discounts on Registration and Taxes	p.5	4.6 Compensation Scale for Occupational Injuries	p.7
<b>2. Ship Finance and Securities</b>	<b>p.5</b>	4.7 Social Security	p.8
2.1 Registration of Documents	p.5	4.8 Maritime Labour Disputes	p.8
2.2 Requirements for Translation	p.5	<b>5. Maritime Courts</b>	<b>p.8</b>
2.3 Modes of Ship Finance Registrations	p.5	5.1 Number of Courts	p.8
2.4 Collateral Guarantees	p.5	5.2 Court of Maritime Appeals	p.8
2.5 Information Available at the Public Registry	p.5	5.3 Maritime Disputes	p.8
2.6 Issuance of Certificates to be Used Abroad	p.6	5.4 Types of Procedures	p.8
2.7 Information Certified Public Registry	p.6	5.5 Arbitration and Mediation	p.9
2.8 Length of Time for Certificate to be Rendered	p.6	5.6 Proceedings in Rem and in Personam	p.9
2.9 Costs for Registration of a Ship Mortgage	p.6	5.7 Common Exceptions	p.9
2.10 Containers and Encumbrances	p.6	5.8 Types of Bonds	p.9
2.11 Number of Mortgages to Which a Vessel Can Be Subject	p.6	5.9 Execution of Foreign Resolutions	p.9
2.12 Consent From Higher Recorded Mortgagees	p.6	5.10 The Law of the Flag	p.10
2.13 Pledge Agreements	p.6	5.11 Priority Status of Ship Mortgages	p.10
2.14 Sale of a Vessel Subject to a Duly Recorded Mortgage	p.6	5.12 Limitations of Liability	p.10
2.15 Expiry of a Duly Registered Mortgage	p.6	5.13 Exemptions from Limitation	p.10
<b>3. Capital Markets</b>	<b>p.7</b>	5.14 Calculation of Limits of Liability	p.10
3.1 Means of Raising Capital Ship Finance	p.7	5.15 Exceptional Actions for Ending a Maritime Claim	p.10
3.2 Fleet Mortgages and Syndicated Loans	p.7	<b>6. Legislation on Corporations and Tax System</b>	<b>p.10</b>
3.3 The Flag of the Vessel	p.7	6.1 New Corporate or Tax Legislation	p.10
3.4 Securitisation in Ship Finance	p.7	6.2 Universal or Territorial Tax System	p.11
3.5 Ship Finance Centres	p.7	6.3 Procedure Once Shipping Company Ceases to Exist	p.11

Mulla & Mulla & Craigie Blunt & Caroe was originally founded in 1895 and has a broad-based practice with a diversified client base across all industries, advising multinational companies

and large Indian corporates. The firm's main practice areas are: arbitration, banking, corporate, infrastructure, IP, litigation, maritime, oil and gas, real estate, trade and transport.

## Author



**Shardul J. Thacker** is a partner and heads the firm's banking and maritime practice group. He handles structured ship finance, acting for overseas lenders in mostly India-related ship finance transactions. Shardul has acted for lenders for LNG

vessels flying foreign flags and chartered by Indian companies. He currently acts for a multinational in India's first FSRU/FSU-based LNG port. Additionally, he advises on regulatory issues, Indian flagging, cabotage, tonnage tax, and applicable taxes.

## 1. Overview

### 1.1 The Top Ten Flag States

India is not within the top ten Flag States. Panama, Liberia, Marshall Islands, Hong Kong, Singapore, Malta, Bahamas, Greece, China, Cyprus, etc are the top flag states.

### 1.2 Maritime Conventions

Conventions relating to maritime or admiralty law which have been ratified by India are as follows:

- International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS (amended) 1974);
- Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974;
- Convention on International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG (amended) 1972);
- The Protocol relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL (amended) 73/78);
- Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL (amended) 1965);
- International Convention on Load Lines, 1966 (LL 1966);
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969);
- International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969);
- Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976);
- Special Trade Passenger Ships Agreement, 1971 (STP 1971)
- Protocol on Space Requirement for Special Trade Passenger Ships, 1973 (SPACE STP 1973);
- International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1971 (FUND 1971);
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1976);

- International Convention for Safe Containers, 1972, as amended (CSC (amended) 1972);
- Convention Agreement on the International Maritime Satellite Organization (INMARSAT), as amended (INMARSAT (amended));
- Operating Agreement on the International Maritime Satellite Organization INMARSAT (INMARSAT OA) (amended);
- International Convention on Salvage, 1989 (SALVAGE 1989); and
- International Convention on the Control of Harmful Anti-fouling Systems on Ships.

Further, India has ratified the following Conventions of the International Labour Organization:

- Minimum Age (Trimmers and Stockers) Convention, 1921;
- Medical Examination of Young Persons (Sea) Convention, 1921;
- Seamen's Articles of Agreement Convention, 1926;
- Merchant Shipping (Minimum Standards) Convention, 1976;
- Seafarers' Identity Documents Convention (revised), 2003; and
- Maritime Labour Convention, 2006.

### 1.3 Classification Societies

India recognises classification by all duly registered classification societies. However, the registry insists on a load line marking by the Indian Register of Shipping (IRS).

### 1.4 Radio Accounting Authorities

India recognises IRS, Surveyor to Det Norske Veritas AS and Lloyd's Register as Radio Accounting Authorities.

### 1.5 Types of Registration

The Merchant Shipping Act, 1958 (MSA) is the key legislation in India which inter alia deals with the registration of ships. The Indian registration system under the MSA provides for provisional and permanent registration of ships. If the owner of the ship is unable to procure all the required documents needed for permanent registry of a ship in India, or if the vessel is purchased outside Indian territorial waters or, due to any other reason, permanent registration of the ship cannot be effected, the ship may initially be provisionally registered with the Mercantile Marine Department (MMD). A Provisional Registration Certificate (PRC) allows a ship to sail and is valid for the earlier of six months or the date the vessel arrives at the Indian ports designated for registration by the MMD. On such arrival, the ship-owner needs to exchange the PRC for a permanent Certificate of Registry, after submitting all original certificates and documents as set out in the checklist for registration of ships.

### 1.6 Discounts on Registration and Taxes

There are no discounts offered on the registration of ships. Certain taxation benefits such as tonnage tax are provided to an Indian shipping company though.

## 2. Ship Finance and Securities

### 2.1 Registration of Documents

Ship finance documentation basically includes the finance/loan agreement and the various security documents as agreed between a lender and borrower. The following security is usually created by the borrower in favour of the lender to secure the loan:

- mortgage over the ship;
- Deed of Covenant (collateral to the mortgage);
- insurance and requisition compensation assignment;
- earnings assignment;
- charge over account; and
- share pledge.

Under the MSA, a mortgage over a ship has to be created in prescribed Form No 11 along with its annexure thereto. For registration of a mortgage, a ship-owner has to submit a letter to the MMD requesting for registration of a mortgage over its ship in favour of the mortgagee, enclosing the following documents:

- Form 11 (in the prescribed form);
- Annexure to Form 11 (containing details of the borrower, mortgagee, ship, amount secured by the mortgage, existing mortgages etc);
- certified true copy of the resolution passed by the board of directors of the ship-owner permitting creation of the

mortgage and authorising its officers to execute Form 11 and Annexure to Form 11;

- letter of the mortgagee bank requesting the MMD to:
  - (a) register the mortgage; and
  - (b) inform the mortgagee and/or the mortgagee's solicitors of any attempts by the ship-owner to create a subsequent mortgage on the ship;
- a photocopy of Form 11 and Annexure to Form 11; and
- in the case of existing mortgages on the ship, no objection certificates from each of the existing mortgagees (collectively referred to as Mortgage Creation Documents).

In addition to registering the mortgage with MMD, all documents creating charge over any of the assets of the borrower company (mentioned in section **1 Overview** above) are also required to be filed electronically with the Registrar of Companies (ROC) in the prescribed e-Form CHG-1 within 30 days from the creation of a charge.

### 2.2 Requirements for Translation

All documents required to be filed with the MMD and the ROC have to be in English or India's national language, Hindi. Hence, if any documents required to be submitted to the MMD or the ROC, are in a language other than English or Hindi, they have to be translated to English or Hindi.

### 2.3 Modes of Ship Finance Registrations

In order to register a mortgage on a ship, all the Mortgage Creation Documents have to be physically submitted to the MMD by a borrower or their representatives/solicitors.

For registering a charge with ROC, Form CHG-1, as mentioned in **2.1 Registration of Documents**, has to be digitally executed and filed electronically by a borrower, attaching scanned copies of all the charge creation documents.

### 2.4 Collateral Guarantees

In addition to the ship mortgage which is to be prepared in Form No 11, the loan borrowed for acquisition of a ship can be secured by a ship-owner by a collateral deed of covenant, setting out the terms of the mortgage including enforcement thereof. Also, insurances, requisition compensation and earnings of the ship can be assigned in favour of a lender under the Insurance and Requisition Compensation Assignment and the Earnings Assignment. At times, a Charge over Accounts is also created by a ship-owner in favour of the lender creating a charge over its bank account in which the charter hire monies are received. In addition to the above, a promoter may pledge the shares of the ship-owning company in favour of the lender by executing a share pledge agreement.

### 2.5 Information Available at the Public Registry

The ship registry is open to the public and is available to users outside India.

In respect of the ships registered with the MMD Mumbai, basic particulars of the ship, such as its official number, call sign, MMSI number, IMO number type of ship, port of registry and also the particulars of the certificates issued to that ship can be accessed online on MMD Mumbai's website. Also, on a physical application being made to the registrar, all particulars and transactions including all mortgages registered, subsisting as well as discharged, maintained in the register book can be inspected by any member of the general public including foreign users.

As far as ships registered with the MMD at Calcutta, Madras (now Chennai), Cochin and Mormugao (Goa) are concerned, their particulars and also the certificates cannot be accessed online. However, on a physical application being made to the registrar, all particulars and transactions including all mortgages registered, subsisting as well as discharged maintained in the register book can be inspected by any member of the general public.

## 2.6 Issuance of Certificates to be Used Abroad

MMD, as well as ROC issues registration certificates are issued only in English and Hindi.

## 2.7 Information Certified Public Registry

The following information is certified by MMD:

- registration of a ship, whether provisional or permanent;
- registration of a mortgage on the ship;
- discharge of mortgage;
- change or transfer of ownership; and
- de-registration of a ship.

ROC certifies the creation, modification as well as satisfaction of a charge registered with them.

## 2.8 Length of Time for Certificate to be Rendered

The MMD usually takes somewhere between five to seven working days from the date of application for rendering the certificates, provided everything is in order.

The ROC issues the certificate of registration/modification/satisfaction of charge, as the case may be, on the same day of filing the relevant e-form electronically.

## 2.9 Costs for Registration of a Ship Mortgage

### MMD Fees

The fees for registering every mortgage is ten paise for every INR1000/- of the value of the mortgage with the minimum charge of INR500/-.

### ROC Fees

In case of Indian companies having share capital:

Nominal Share Capital Fee applicable

Less than 1,00,000 Rupees 200

1,00,000 to 4,99,999 Rupees 300

5,00,000 to 24,99,999 Rupees 400

25,00,000 to 99,99,999 Rupees 500

1,00,00,000 or more Rupees 600

In the case of Indian companies not having share capital – Rupees 200.

## 2.10 Containers and Encumbrances

The provisions of the MSA apply only to a vessel. The term vessel has been defined under the MSA to include any ship, boat, sailing vessel or other description of a vessel used in navigation. Further, the term ship has been defined to exclude sailing vessels. For the purpose of independent navigation, vessels must be self-propelled. Under the MSA, a ship is eligible for registration only if it is self-propelled.

In view of the above, neither containers nor any encumbrance thereon can be registered in India.

## 2.11 Number of Mortgages to Which a Vessel Can Be Subject

Under MSA, multiple mortgages may be registered over the ship.

## 2.12 Consent From Higher Recorded Mortgagees

Consent from higher recorded mortgagees is needed for subsequent mortgages to be registered. No objection certificates from each of the existing mortgagees is required if subsequent mortgages are to be registered.

## 2.13 Pledge Agreements

Any agreement of pledge which creates a charge on the assets of an Indian company has to be registered with the ROC electronically by filing e-Form CHG-1 and payment of filing fees (as mentioned in 2.9 Costs for Registration of a Ship Mortgage above) within 30 days of creation of the charge.

## 2.14 Sale of a Vessel Subject to a Duly Recorded Mortgage

A vessel subject to a duly recorded mortgage cannot be sold without the consent of the recorded mortgagee.

## 2.15 Expiry of a Duly Registered Mortgage

The MSA requires cancellation or discharge of a mortgage. It states that where a registered mortgage is to be discharged, the registrar shall, on the production of the mortgage deed with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged, and

upon that entry being made, the estate, if any, which passed to the mortgagee shall vest in the person in whom it would have vested, if the mortgage had not been made.

### **3. Capital Markets**

#### **3.1 Means of Raising Capital Ship Finance**

The most frequent means of raising capital for financing a ship in India is borrowing funds from domestic as well as foreign banks. Indian shipping companies can borrow money from a foreign lender in foreign currency only for the purpose of acquiring a ship. Such foreign currency loans have to be in compliance with the Foreign Exchange Management Act, 1999, and the rules, regulations, guidelines, notifications and circulars passed thereunder, including without limitation the Foreign Exchange Management (Borrowing or Lending in Foreign Currency) Regulations, 2000 and the external commercial borrowing guidelines for the time being in force.

Apart from this, the shipping companies also enter into various chartering arrangements to finance the acquisition of a ship.

#### **3.2 Fleet Mortgages and Syndicated Loans**

Fleet mortgages, ie combined mortgages, and syndicated loans are very frequent in our jurisdiction.

#### **3.3 The Flag of the Vessel**

The banks consider the flag of a vessel at the time of giving finance from an enforcement perspective.

#### **3.4 Securitisation in Ship Finance**

Securitisation is not really common in India.

#### **3.5 Ship Finance Centres**

India is not a ship finance centre.

### **4. Maritime Labour**

#### **4.1 Labour Laws and Conventions**

The MSA and the rules made thereunder are the key legislations in India which inter alia makes provisions in relation to maritime labor. Every person employed or engaged as a member of the crew of a ship (except master, pilot or apprentice) is defined as a seaman under the MSA. Part VII of the MSA makes various provisions in relation to a seaman, namely engagement and discharge of a seaman, payment of wages, disputes between seamen and employers, provisions for their health, accommodation and their protection.

The Directorate General of Shipping, India (DG) deals with the implementation of shipping policy and legislation so as

to ensure the safety of life and ships at sea, regulation of employment and welfare of seamen, certification of Merchant Navy Officers, and supervision and control of the allied offices under its administrative jurisdiction. It stipulates guidelines and clarifications with regard to seamen from time to time.

India has also ratified various ILO conventions as mentioned in **1.2 Maritime Conventions** above.

#### **4.2 Percentage of Local Seafarers Required to Be Onboard**

As per the MSA, no person shall engage or carry to the sea any seaman in any ship unless the seaman is in possession of a certificate of discharge/certificate of continuous discharge (CDC) issued under the MSA. An application for a CDC can only be made by an eligible Indian national. Hence, Indian-flagged vessels are required to have 100% local seafarers onboard.

#### **4.3 Minimum Wage**

Since India has ratified the Maritime Labor Convention (MLC), the wages of seamen included in their Collective Bargaining Agreement or the Seafarer's Employment Agreement shall be in accordance with the guidelines laid down in the MLC. As per MLC guidelines, a seafarer is entitled to a minimum basic monthly wage of USD614 approximately.

#### **4.4 Daily Working Hours**

For Indian seafarers, normal working hours are based on an eight-hour day with one day of rest per week and rest on public holidays. The ordinary working hours for all seamen should not exceed 48 hours in a week.

Anything beyond the above-mentioned hours is considered as overtime and a seafarer is entitled to receive wages at the overtime rate.

#### **4.5 Justified Dismissal**

A seafarer's employment may be terminated if he or she is in serious default of his or her employment obligations or is guilty of misconduct. He or she may also be dismissed if he or she becomes incapable of performing his or her duties and responsibilities of the position in which he or she is employed. In any case, prior to dismissal, a statement of reason must be provided to the seafarer.

#### **4.6 Compensation Scale for Occupational Injuries**

The Employees Compensation Act, 1923 is a social security law in India which provides for payment of compensation to an employee (which includes a Master, seaman and any other member of a crew) for injuries caused to them by accident while in employment. The amount of compensation payable to them depends on the severity of disablement caused. See below for the approved scale of compensation.

## Permanent Total Disablement

When the injury of a seaman or woman results in their permanent total disablement, the amount of compensation they are entitled to receive is an amount equal to 60% of the monthly wages of the injured employee multiplied by a figure ranging from 228.54 to 99.37 (depending upon the age of the injured person) or an amount of Rs.1,40,000 which is more.

## Permanent Partial Disablement

When the injury of a seaman or woman result in their permanent partial disablement, the amount of compensation they are entitled to receive is a percentage of the compensation payable in the case of permanent total disablement (as above). The percentage is determined with reference to the extent of loss of earning capacity caused by the injury and is a lump-sum payment.

## Temporary Disablement

When the injury of a seaman results in their temporary total disablement or temporary partial disablement he is entitled to receive compensation in the form of a half-monthly payment. The amount of a half-monthly payment is determined with reference to the monthly wages the employee was drawing at the time of the injury and is equal to 25% of the monthly wages of the employee. The maximum period during which the employee can receive compensation for temporary total disablement or temporary partial disablement is five years.

## 4.7 Social Security

The person with whom the seaman/seafarer has entered into a contract of service (Employer) is primarily responsible to make good on the losses of a seaman. The Employers may in turn obtain appropriate insurance cover to cover themselves fully against the possible contingencies that may arise during the employment of a seaman or woman.

## 4.8 Maritime Labour Disputes

The high courts in India having admiralty jurisdiction (namely Bombay, Gujarat, Madras, Calcutta and Andhra Pradesh) are vested with powers to decide all maritime disputes. The high courts prescribe their own procedures in their rule book for the same.

In addition to this, a seaman or woman or apprentice, as soon as any wage becomes due to them, may apply to any judicial magistrate of the first class or any metropolitan magistrate having jurisdiction, as the case may be, and that magistrate shall try the case in a summary way and the order passed by the magistrate is final.

## 5. Maritime Courts

### 5.1 Number of Courts

The only courts statutorily empowered to exercise admiralty jurisdiction in India are certain designated high courts who derive their power pursuant to the Letters Patent. These are principally the high courts of Bombay, Madras and Calcutta and pursuant to the States Reorganisation Act, the High Court of Ahmedabad, Andhra Pradesh are also included as admiralty courts. Under a recent Admiralty Bill, the jurisdiction with respect to maritime claims will vest with the respective high courts and extend up to the territorial waters of their respective jurisdictions. The Bill further extends this to the High Courts of Karnataka, Gujarat, Orissa, Kerala, Hyderabad and any other high court notified by the central government.

### 5.2 Court of Maritime Appeals

India does not have a specific Court of Maritime Appeal. However, Littoral high courts exercise admiralty jurisdiction and are courts of first instance for the institution of admiralty suits. Orders are usually challenged from a single judge of a high court by filing an appeal to the Division Bench of a high court (Appeal Court). The Supreme Court of India is the Apex Court/Court of last resort and the decision of the Supreme Court is final and binding.

### 5.3 Maritime Disputes

Usually, an admiralty suit is filed under the Commercial Courts Act. The Act came into force on 23 October 2015. Under Section 2(1)(iii), issues relating to admiralty and maritime law fall within the scope and ambit of the Commercial Courts Act.

In the case of urgent relief namely, ship arrest or release, a plaintiff can file interim applications in an admiralty suit and seek urgent relief pending the final hearing and determination of the suit.

### 5.4 Types of Procedures

Types of procedures include:

- Once an admiralty suit is filed, as per Rule 448 of the High Court. O.S. Rules, 1980, a plaintiff is required to lodge a writ of summons with the courts for service upon the defendant within 45 days of filing the suit.
- Generally, a written statement is required to be filed within 12 weeks of the service of a writ of summons. If the written statement has not been filed within the above period, the plaintiff may, under Order VIII, Rule 5 (2) of the Code of Civil Procedure 1908, apply to the courts for a judgment in default for want of a written statement.
- Once the written statement is filed, the procedure of disclosure, discovery and inspection is required to be complied within the timelines.

- Issues are framed once the procedure in the third point above is complied with.
- The courts would, on framing issues, also issue directions to the plaintiff to file its list of witnesses and its affidavit in lieu of an Examination in Chief.
- Once recording of the evidence is complete, the plaintiff can request a date for a final hearing of the suit.

### **5.5 Arbitration and Mediation**

In India, two of the most common alternative dispute resolution methods are arbitration and mediation. Parliament has amended the Civil Procedure Code, 1908 (CPC) by inserting Section 89 as well as the Order 10 Rule 1-A to 1-C. Section 89 of the Civil Procedure Code provides for the settlement of disputes outside the courts. Arbitration is less formal than litigation, while mediation is even less formal than arbitration. Unlike that of an arbitrator, the decision of a mediator is not binding on the parties to a dispute. A mediator does not hold evidentiary hearings as an arbitrator would but instead may conduct informal joint and separate meetings with the parties to understand the issues, facts and positions of the parties.

### **5.6 Proceedings in Rem and in Personam**

Both in rem and in personam proceedings are valid in India. An action in rem is one in which a plaintiff seeks to make good a claim to or against a certain property – ie a ship or cargo in respect of which or in respect of damage done by which, he or she alleges that they have an actionable demand. Action in personam in an admiralty jurisdiction is of the same nature as ordinary common-law actions commenced by a writ of summons served on a defendant who is a person – natural or juridical – and not a thing (res).

### **5.7 Common Exceptions**

A suit cannot be brought in rem against a vessel for a supply of necessaries of bunkers if ordered by the charterer on a ship-owner's vessel. (*Peninsula Petroleum Ltd v Bunkers on Board the Vessel, MV Geowave Commander 2015(3) Bom CR 693*).

Unlike in England, the Division Bench of the Bombay High Court has taken a view that the courts in exercise of its admiralty jurisdiction has no power to arrest bunkers onboard a ship (*Mansel Limited v The bunkers on board the Ship m.v. Giovanna Iuliano & Ors - Appeal No 319 of 2015*). While there is an appeal pending in the Supreme Court of India, the Division Bench Order stands as of today and is binding.

### **5.8 Types of Bonds**

#### **Ex officio**

There is no concept of furnishing bonds to act ex officio.

#### **Vessel Arrest**

An undertaking is furnished by the party arresting a vessel to pay damages in the event the arrest is later held to be wrongful by the courts. An arrest is considered wrongful if the action is mala fide or brought in gross negligence.

#### **Lift Arrest**

The party applying for lifting an arrest is bound to deposit in court an amount equivalent to the claim amount of the arrestor by way of security in order to lift the arrest pending adjudication of the claim by the courts.

#### **Judicial Sales**

The party declared the highest bidder in a judicial auction sale is required to deposit an amount usually equivalent to 10% of the reserve price fixed by the courts which is termed as Earnest Money Deposit and which is forfeited in the party defaults in depositing the balance purchase price of a vessel within a time stipulated by the courts.

### **5.9 Execution of Foreign Resolutions**

Under Indian law there are two ways of getting a foreign judgment enforced. Firstly, by filing an Execution Petition under Section 44A of the CPC (in case the conditions specified therein are fulfilled). Secondly, by filing a suit upon the foreign judgment/decree.

A foreign judgment which is conclusive under Section 13 of the Code of Civil Procedure, 1908, can be enforced in India by:

- Instituting a suit on such judgment; or
- By instituting execution proceedings.

A foreign judgment may be enforced by instituting a suit on such a foreign judgment. The general principle of law is that any decision by a foreign court, tribunal or quasi-judicial authority is not enforceable by a country, unless such a decision is embodied in a decree of a court of that country. A suit on a foreign judgment must be filed within a period of three years from the date of the judgment.

Under Section 44A of the CPC, a decree of any of the Superior courts of any reciprocating territory are executable as a decree passed by the domestic courts. Therefore, where the decree does not pertain to a reciprocating territory or a superior court of a reciprocating territory, as notified by the Central Government in the Official Gazette, the decree is not directly executable in India. Where the decree pertains to a country which is not a reciprocating territory, fresh suit will have to be filed in India on the basis of such a decree or judgment, which may be construed as a cause of action for the said suit. In the fresh suit, the said decree will be treated as another piece of evidence against a defendant.

However, in both cases the decree has to pass the test of Section 13 of the CPC which specifies certain exceptions under which the foreign judgment becomes inconclusive and is therefore not executable or enforceable in India.

## 5.10 The Law of the Flag

Indian courts determine the question of priorities of claim exclusively on the basis of *lex fori* (law of the forum). The courts decide the questions of priority on the same principles of law as those prevailing in England.

## 5.11 Priority Status of Ship Mortgages

In India, the order of priorities are as follows for payment out of admiralty proceedings:

- Admiralty Marshall Sheriff's costs;
- statutory and port dues;
- maritime liens under Indian law, namely
  - (a) salvage;
  - (b) damage done by a ship;
  - (c) master's wages and disbursements;
  - (d) crew wages; and
  - (e) bottomry and respondentia:
    - (i) mortgages (in order of priority);
    - (ii) statutory claims; and
    - (iii) unsecured creditors - bunker suppliers etc.

## 5.12 Limitations of Liability

In India, limitation of liability is governed by the Merchant Shipping Act, 1958.

The substantive law concerning limitation of liability of ship-owners and certain other persons are contained in Part XA (Personal or Property Damage Claims), Sections 352 to 352FA of the Merchant Shipping Act, 1958, as amended by the Merchant Shipping (Amendment) Act 2002, pursuant to the Convention on Limitation of Liability for Maritime Claims, 1976. But only those maritime claims which have been set in Section 352A of the Merchant Shipping Act, 1958 are subject to limitation claims by a ship-owner and other persons specified in the said provision and in Section 352F.

Under Section 352J (under Part XB Civil Liability For Oil Pollution Damage), the owner can limit their liability in respect of any one or more incidents, as may be prescribed. However, the owner is not entitled to limit their liability if it is proven that the incident causing pollution damage occurred as a result of their personal act or omission committed or made with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The limitation of liability is a concept which entitles ship-owners to limit their liability for maritime claims up to a limited sum, regardless of the actual amount of a claim.

A ship-owner is entitled to limit liability arising from various casualties including the following:

- collision;
- oil pollution;
- cargo damage; and
- death and personal injury.

## 5.13 Exemptions from Limitation

Section 352A (3) (falling under Part XA which deals with property and personal claims) *inter alia* exempts claims for salvage or claims for contribution in general from limitation of liability.

## 5.14 Calculation of Limits of Liability

Part XA of the Merchant Shipping Act, 1958 (MSA) deals with personal or property damage claims. Part XB deals with civil liability for oil-pollution damage.

Claims under Part XA are calculated as per the limits provided under the Convention on Limitation of Liability of Maritime Claims 1976 (LLMC 1976) read with the Protocol of 1996 to amend the 1976 convention (the 1996 Protocol) and further amended on 8 June 2015.

Claims under Part X-B are calculated as per the limits provided under the International Convention on Civil Liability for Oil Pollution Damage 1992.

## 5.15 Exceptional Actions for Ending a Maritime Claim

A maritime claim is extinguished if a ship-owner sells the vessel privately prior to the vessel being arrested to enforce a maritime claim. However, this will not apply to a maritime lien, which survives change of ownership even in the hands of a bona fide purchaser for value without notice.

Even in a scenario where the vessel is sold through a judicial auction, a maritime claim would stand extinguished.

A party may not be allowed to enforce its maritime claim if it is barred by the law of limitation.

# 6. Legislation on Corporations and Tax System

## 6.1 New Corporate or Tax Legislation

Internationally registered vessels operating in Indian waters are subject to income tax depending on their duration as specified in the Indian Income Tax Act, 1961 or the Double

Taxation Avoidance Agreement of the country of domicile of the international registered vessel and India, the assessee is entitled to the benefits of either of the two, whichever is better.

After the advent of The Goods and Services Tax Act, 2017 (GST) on 1 July 2017, most of the indirect taxes have been merged into a single tax, ie GST. There are four types of GST:

- Central Goods and Services Tax Act, 2017 (CGST);
- Integrated Goods and Services Tax Act, 2017 (IGST);
- The Union Territory Goods and Services Tax Act, 2017 (UGST); and
- The State Goods and Services Tax Act, 2017 (SGST).

The Ministry of Corporate Affairs on 16 February 2015 issued Indian Accounting Standards (Ind AS) comprising 40 accounting standards that are largely in line with the International Financial Reporting Standards (IFRS).

Ind AS introduces significant differences from the requirements of existing Indian Generally Accepted Principles (GAAP) in areas such as revenue recognition, property, plant and equipment, financial instruments, business combinations, consolidations etc. In addition to changes in the requirements of the standards themselves, there are several areas where Ind AS requires application of judgments and financial reporting is based on the estimates made by management. Further, there have been certain significant deviations from IFRS which have been made optional to facilitate a smooth transition from AS to Ind AS.

Bearer shares are not permitted under Indian legislation. However, the Companies Act, 2013 allows a shareholder to make a nomination with regard to shares held by him or her in a company.

Under the new Insolvency and Bankruptcy Code, 2016 (the Code) an insolvency resolution professional who is appointed for resolving an insolvency situation is given power under Section 18 of the Code to take control and custody of the assets over which a corporate debtor has ownership rights which may be located in a foreign country. If the insolvency resolution process, then a company goes into liquidation. The liquidation estate as provided under Section 36 of the Code includes assets of any Indian or foreign subsidiary of the corporate debtor and any assets over which the corporate debtor has ownership rights. Therefore, the legal framework provides for the liquidator to take control over the foreign assets of the company under liquidation.

The time-limit for a corporate insolvency resolution process is 180 days, and can be extended for a further 90 days. The Code also provides for a fast-track insolvency resolution process which is to be completed within 90 days from the insolvency commencement date and can be extended for a further 45 days.

## 6.2 Universal or Territorial Tax System

India follows a residence-based tax system. A resident company is taxed on its worldwide income. A non-resident company is taxed only on income that is received in India, or that accrues or arises or is deemed to accrue or arise in India.

## 6.3 Procedure Once Shipping Company Ceases to Exist

While a ship-owning company is in the process of liquidation, the liquidator is entitled to file/defend suits, settle any pending business, transfer assets or divide capital stocks on its behalf.

### **Mulla & Mulla & Craigie Blunt & Caroe**

Mulla House  
51, Mahatma Gandhi Road  
Fort  
Mumbai 400 001  
India

**Mulla & Mulla  
& Craigie Blunt & Caroe**  
Advocates, Solicitors and Notaries

Tel: +9122 22623191  
Fax: +9122 22040246  
Email: info@mullaandmulla.com