

# FINANCE CHARTER RECORDATION IN THE REPUBLIC OF THE MARSHALL ISLANDS

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# INTRODUCTION

- In March 2013, the Republic of the Marshall Islands (RMI) Nitijela passed the Maritime (Amendment) Act (No. I) 2013 amending the RMI Maritime Act 1990
- Amended law gives the opportunity and permission for a “finance charter” to be recorded in the RMI
- The financing charter will be treated the same way and have the benefits and advantages of a preferred ship mortgage
- Lessor/ship owner has the status of a secured party under RMI law (similar to mortgagee)
- **NB**: Many issues to be analyzed before recordation, such as the jurisdictions in which the parties operate, charter party choice of law, tax or accounting issues



# LEASE FINANCING

- Ship finance today: traditional loan finance, publicly listed companies, private equity funds, etc.
- In a lease finance, the owner/lessor functions as lender, while the lessee can be considered as the borrower
- The lessor remains the legal owner of the vessel
- Lease payments will be paid by the lessee to the lessor during the lease charter period
- Owner/lessor passes all the risks and benefits of an ownership to the lessee



# LEASE FINANCING (continued)

- Very favorable to various transportation and logistics industries (aircraft, railcar, etc.)
- Lessee will pay for all or most of the capital cost of the vessel and may have the right to acquire the vessel at the end of the lease term
- Owner/lessor remains the owner during the charter period, however, “economic ownership” is with the lessee/charterer (including the benefit of any residual value left in the vessel once the financing has been repaid)
- Lessee/charterer bears the risks of ownership, e.g. insurance, operating responsibility, and maintenance costs



# RECHARACTERIZATION OF A CHARTER

- As risks and rewards are primarily with the charterer, some jurisdictions may recharacterize a charter from an operating lease to a financing lease
- Under United States (US) and Canadian laws: true lease does not necessarily mean that a court will determine that the ship/asset is owned by the lessor
- Lessor/owner at risk if the lessee/charterer files for Chapter 11 Bankruptcy in US
- Charter recharacterized as finance lease/security agreement → charterer as actual owner of the asset → owner's legal title as a title retention security interest (like mortgage or other charge)
- If this security not registered/recorded, not significant protection for the lessor/owner and potential for owner to be treated as unsecured creditor
- **NB**: the above analysis depends on the legal framework and law of each jurisdiction



# “PERFECTION” OF OWNER/LESSOR’S SECURITY INTEREST

- The RMI Maritime Act allows a finance charter to be recorded with the RMI Maritime Administrator (since the adoption of the amendments on March 22, 2013)
- A recorded financing charter has the same status as a preferred mortgage, providing the owner/lessor with additional protection (mitigate the risks)
- In the event of the charterer’s bankruptcy (especially in the US) → if the lease is recharacterized as a security agreement and the lessee as owner → the lessor may have a legal fixed charge equivalent to a first preferred mortgage and the equivalent status of a first preferred mortgagee (secured creditor)
- **NB**: not yet tested by the courts



# DEFINITION OF A FINANCING CHARTER UNDER RMI LAW

The RMI Maritime Act, section 112, defines the financing charter as:

***“...a contract in the form of a demise or bareboat charter, regardless of duration, between the documented owner and the finance charterer of the entire vessel, which contract is agreed by the parties to be or is determined in judicial or arbitral proceedings to create in favor of the documented owner a security interest in the vessel granted by the finance charterer”***



# RECORDATION PROCESS

- A true copy of the financing charter is required
- Dated, signed, and acknowledged by the documented owner and charterer
- Some general data and details to be included:
  - Name and Official Number of the vessel
  - Names and addresses of the parties
  - Aggregate nominal amount of all charter hire payments and purchase option amounts
- A Memorandum of Particulars (MOP) is to be submitted together with the instrument



# RECORDATION PROCESS (CONTINUED)

- Cost of recordation is \$600
- The recordation of a lease finance charter does not preclude the recordation of a mortgage (for the financing of the acquisition of the vessel itself)
- Both recording instruments will appear in the Certificate of Ownership and Encumbrances (CoE) issued by the RMI
- **NB**: security interest must be created through the instrument itself, otherwise cannot be “perfected” by recordation



# THANK YOU



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