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Shipping

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what's in store for the
shipping industry?

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MFB Solicitors leads
the global interview panel*

2018

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market intelligence

Welcome to GTDT: *Market Intelligence*.

This is the 2018 edition of Shipping.

Getting the Deal Through invites leading practitioners to reflect on evolving legal and regulatory landscapes. Through engaging and analytical interviews, featuring a uniform set of questions to aid in jurisdictional comparison, *Market Intelligence* offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most interesting cases and deals.

Market Intelligence is available in print and online at www.gettingthedealthrough.com/intelligence.

Getting the Deal Through
London
August 2018

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Cover: iStock.com/wissanu01

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Published by
Law Business Research Ltd
87 Lancaster Road

**Law
Business
Research**

London, W11 1QQ, UK
Tel: +44 20 3780 4104
Fax: +44 20 7229 6910
© 2018 Law Business Research Ltd
ISBN: 978-1-78915-090-2

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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SHIPPING IN MALTA

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regularly writes and contributes articles on maritime law in various local and international journals.

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“Owing to its strategically placed geographical position and its natural harbours, Malta has always been at the heart of the Mediterranean’s commercial and mercantile activity.”



GTDT: What is the current state of the shipping industry in your country?

Jotham Scerri-Diacono, Jan Rossi and Julian Caruana: The current state of the shipping industry in Malta is good and has been consistently so for a number of years. According to a recent government paper titled ‘Integrated Maritime Policy – Making Malta a Centre for Maritime Excellence’, it is estimated that Malta’s maritime cluster contributes to the employment of more than 20,000 people, with a value added benefit to the national GDP of Malta of approximately 11 per cent. The growth projections for this sector are very positive and it is expected that the maritime sector will soon make up in excess of 14 per cent of Malta’s total GDP. The traditional sectors, namely tourism, fishing and ship-register activities, will continue to flourish; however, it is also expected that new areas, such as research and development, and biotechnology, will persist in rapid growth over the coming years. Clearly, the maritime and shipping industries play a key role in Malta’s economy.

The shipping industry is not new to the Maltese archipelago. Owing to its strategically placed geographical position and its natural harbours, Malta has always been at the heart of the Mediterranean’s commercial and mercantile activity. Providing a point of convergence between the European and African continents, Malta has developed a strong maritime tradition that has evolved into an international centre for the maritime and shipping industries.

Malta’s shipping and maritime industry is spread across various sectors that vary in size, competitiveness and growth potential. Malta Marittima, a government agency created in 2016, has divided Malta’s maritime industry into the following principal ‘clusters’:

- maritime commercial cluster – legal, financial, insurance, broking, chartering, shipowners, surveyors, adjusters, crew management;

- logistics cluster – freight forwarders, terminal operators, ship agents, warehouse operators, bunkering;
- marine engineering cluster – marine engineering, IT, ship repair, technical services mechanical and electrical, sailing and motorboat clubs, marinas, boat sales and chartering;
- fisheries and aquaculture cluster – fishing boat owners, fishing coops, fish farming, aquaculture, fish processing, fisheries management and biotechnology; and
- energy cluster – oil and gas exploitation and servicing, offshore renewable and emissions.

The above categorisations give a broad outline of the diverse sectors of the industry, and illustrate Malta’s attempts to offer a diverse range of maritime services.

While the current state of the aforementioned sectors can only be described as healthy, success is particularly evident in the flag-related services that are offered by Malta. In a world where there is an increasing number of available flags for ship registration, Malta has sought to become one of the world’s largest ship registries. According to recent statistics, Malta is now Europe’s largest merchant flag and the sixth-largest in the world. There is no doubt that the growth of Malta’s maritime industry, specifically the growth of the Maltese merchant shipping register, has resulted in a host of legal professionals capitalising on the boom. The need for legal expertise in this sector has led to the proliferation of legal professionals specialising in the maritime and shipping law fields. The maritime legal industry is now mature and highly competitive. The reality today is that Malta boasts a number of highly specialised law firms and other professionals whose practice has grown around international shipping and the maritime industry in general.

Other specialised sectors forming part of the Maltese shipping industry that are currently doing particularly well are the yachting (marinas), offshore bunkering and container transshipment



(freeport) sectors that have all seen tremendous steady growth in the past few years, encouraging the government to continue focusing both its attention and resources on these areas.

Additionally, Malta also hosts a number of international maritime institutions including the International Maritime Organization's International Maritime Law Institute located within the grounds of the University of Malta, the International Ocean Institute and the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea.

GTDT: What are the prevailing shipping market trends affecting your country?

JS-D, JR & JC: Prevailing shipping trends undoubtedly have an impact on Malta. Considering international shipping trends, it is fair to state that the increase in volume of the container trade routes to Europe (buoyed in part by cheap oil and petroleum products) has had a positive impact on the activity at the Malta Freeport, the container hub that operates in the southern part of the main island. The prevailing reluctance of international banks to provide traditional finance to shipowners, on the other hand, has had a negative impact on ship mortgage activity.

Domestic shipping trends have likewise left their mark on Malta. Indeed, the past few years have seen a general willingness by local maritime industry stakeholders and the government to strengthen Malta's existing maritime industry and to advance it further. The intention is for this industry to grow into one of the major pillars of Malta's economy.

Malta's maritime industry has faced tough competition from other sectors within the Maltese economy. It may be argued that while in previous generations a career path in one of the maritime sectors was considered to be one of the more natural, accessible and advantageous career paths to follow, this has now changed with the advent of

many IT and 'desk-based' jobs in other economic areas.

Fortunately, this is not the case for all of the maritime sectors comprising Malta's maritime industry. The service-oriented sectors have grown considerably in recent years. As previously mentioned, Malta is now Europe's largest merchant flag and is the sixth-largest in the world. In December 2017, Malta's shipping register announced that the registered gross tonnage stood at 73.1 million. Moreover, the number of yachts registering in Malta keeps increasing year-on-year, with more than 500 yachts over 24 metres in length now registered in the Maltese ship registry.

Malta's comprehensive legislation on shipping and maritime matters has greatly contributed to the expansion and success of Malta's merchant flag. The legal industry has now developed into a mature sector of the economy assisting shipowners, ship operators, financiers, port operators, yacht owners, insurers, carriers and many other players within the maritime industry.

GTDT: Are there any recent domestic or international political or legislative developments that may have an impact on your country's shipping market?

JS-D, JR & JC: Following lengthy discussions, spanning back to 2011–2012, the European Commission (the Commission) has conditionally endorsed the Maltese tonnage tax scheme under EU State Aid rules for a period of 10 years.

In observance of the Commission's decision, Malta has by virtue of Legal Notices 127 and 128 of 2018 (effective 1 May 2018) revisited and amended its tonnage tax law. The new law published on the 13 April 2018 is being regarded as a positive development by the European Union, Malta and the industry. The said legal notices strive to ensure compatibility between the Maltese tonnage tax scheme and EU State Aid rules, which will in turn serve to create certainty in the market and ensure the attractiveness of the Maltese flag to the shipping industry.

“The Maltese flag administration has largely succeeded in striking a balance between the requirements of the international maritime law conventions and the demands of the market.”

As one of the leading maritime nations in Europe and as Europe’s largest maritime flag, Malta is acutely aware of the essential role the maritime industry plays in its own domestic economy as well as in the economy of the EU as a whole. Maintaining competitiveness in the industry, including through the offering of beneficial fiscal legislation to shipowners and operators, is key for the European Union’s maritime industry.

GTDT: What are the key regulatory and compliance issues for your country’s shipping market?

JS-D, JR & JC: Malta’s legal and regulatory framework for all maritime-related activities is now well established. Perhaps even more important are the constant initiatives to amend and update Malta’s existing maritime legislation as well as to create new legislative and regulatory instruments that reflect and accommodate the industry’s developments. It is essential that Maltese law does not remain stagnant and is amended where necessary, in line with the needs and requirements of the international shipping community, and the maritime industry at large.

Indeed, the enactment of the proper legislative instruments has been fundamental for Malta to establish itself as a hub of maritime services, including for ship registration activities. In this area of law, Malta has looked towards the common law legislative legacy and towards the various regional and international conventions, in order to be able to draft into its statute book the proper tools for its success. The policy decision taken to adhere to all major international maritime conventions ensures that Malta remains an attractive flag to shipowners, managers and other operators.

Additionally, the presence of provisions in Maltese domestic legislation that enable financiers to register their security interests (namely mortgages) and to enforce such security rights, has greatly contributed to the popularity of the Maltese flag. Financiers are comfortable when the undertakings they finance own or operate vessels that are registered in Malta. The Maltese

statutory mortgage has repeatedly proven to be a very effective tool in the hands of banks and other financiers. Moreover, Maltese courts have not hesitated in applying the full brunt of the law against defaulting mortgagors.

In seeking to enact the appropriate legislation, the legislature has always understood that any legislation enacted must consider the realistic needs of the industry. In an extremely competitive trade, where large sums of money are transacted across the globe on a daily basis and where multiple factors continuously come into play to create a dynamic and complex environment, it is essential that legislation is user-friendly and addresses the commercial needs of the industry operators it seeks to regulate. It must act as a tool, and not an obstacle, to industry operators.

The aim was, and still is, for Malta to offer comprehensive but not necessarily complex legislation and regulations that permit the carrying out of swift and practical solutions on the ground.

This being said, the intent to provide a comfortable legislative environment should not be mistaken for a lack of scrutiny. The legislation in force today has resulted in the Maltese flag being recognised and respected as a serious flag that encompasses a wide variety of regulations ranging from technical management and seafarers’ rights, to matters concerning the environment and maritime pollution, and matters dealing with the financing of vessels and their operators.

Malta’s flag administration provides the technical, organisational and administrative support required for the running of Malta’s ship registry. The Maltese flag administration has largely succeeded in striking a balance between the requirements of the international maritime law conventions and the demands of the market. The attainment of such balance is considered essential for maintaining the amount of tonnage registered under the Maltese flag.

Other administrative and governmental authorities, such as the local Registry of Companies, have also played a significant part in the growth of the international shipping services industry in Malta. The Registry of Companies handles the incorporation of Maltese corporate vehicles that are often used to own and operate

THE INSIDE TRACK

What are the particular skills that clients are looking for in an effective shipping lawyer?

Clients require and expect shipping lawyers to have good working knowledge of the industry itself. Often, this will mean that lawyers will be required to be familiar, in the case where advice is being rendered in respect of ship registration for instance, with technical aspects (and this will include knowledge of the main international conventions such as the International Convention for the Safety of Life at Sea). Likewise, in the case where advice is being rendered in respect to cargo claims, the client will expect lawyers to have insight into the logistics of international sale of goods by sea including payment mechanisms.

The ability to react swiftly and effectively to requests from clients, while being committed to all practice areas, is heightened in the shipping practice given the nature of the industry, with high costs (of the ship) being incurred for delays and typically tight deadlines.

Finally, given that the shipping industry operates on a 24-hour basis, seven days a week, it is important that a shipping lawyer is, likewise, always available to his or her shipping clients.

What are the key considerations for clients and their lawyers when arranging finance for a shipping transaction?

In the current climate, where ship finance is very hard to come by, the key consideration for ship-owning clients is ensuring that projects are presented in a manner that guarantees the availability of finance without an overly cumbersome burden being imposed upon the owner. We are seeing financiers

requiring additional cash or real estate collateral from owners before advancing finance, which in most cases is a non-starter to shipowners, as a result of which, traditional means of finance have invariably remained available to the bigger players.

The key consideration for lawyers working in this sector is keeping the related finance documentation effective (ie, concise and free of complications), ensuring that it is devoid of unnecessary complications that do not have value for, and in no way benefit, the parties.

What are the most interesting and challenging cases you have dealt with in the past year?

We have had a number of interesting cases during the past months, including, numerous legal issues concerning the international status of Crimea, and its impact on Maltese flagged vessels visiting ports in that region; cases concerning the recovery of a wreck in international waters, and its transportation and importation into Malta; various queries on the legal issues concerning the marine environment; various employment law issues relating to claims concerning crew's wages surviving after a judicial sale by auction of a ship; fractional ownership, co-management and time-sharing of a luxury yacht; assisting banks' takeover of whole fleets from their defunct clients; and attempting to injunct a vessel as security for non-payment of fees for professional services.

Jotham Scerri Diacono, Jan Rossi and Julian Caruana
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ships. The local courts provide an efficient forum in which players within the maritime industry, notably enforcing financiers and owners, find recourse.

GTDT: What are the shipping industry's current sources of finance? How do you predict they will develop, and what are the advantages and challenges to financing a vessel in your country?

JS-D, JR & JC: Bank loans are still considered to be the primary source of finance. Nevertheless, the shipping finance landscape has changed over the past decade or so. Two such changes are concerned with the geographical location of the sources of ship finance and the increase in popularity of alternative means of raising finance. It is now common knowledge that many traditional European banks have either exited the shipping finance market or have downsized their shipping finance operations. Asian banks and export credit agencies in Asian shipbuilding nations have stepped in to fill in the financing gap with many shipping enterprises consequently

looking east for financing. Some players within the industry have and still are resorting to the capital markets, notably through the issue of bonds, while others have sought financing from private equity interests.

From a local perspective, Maltese banks do not finance large merchant vessel acquisitions or operations. However, some foreign financial institutions and financiers of the international shipping industry are present in Malta.

The enthusiasm for alternative means of ship finance has led to an increased interest in the set up and use of Maltese collective investment vehicles (funds) in the shipping finance arena. Fund structures provide a vehicle for investing in equity and debt instruments issued by shipping enterprises. For the smaller operators, such fund structures may be used to gather the required amount of private equity that is now being sought as an alternative means of financing shipping activities.

There are advantages to financing a vessel registered in Malta and its creditor-friendly shipping legislation has proved to be popular with financiers.

GTDT: Have there been any recent significant domestic or foreign court decisions or arbitration awards that impact on your country's shipping market?

JS-D, JR & JC: We cannot recall any one specific judgment delivered recently that has had a significant impact on Malta's shipping market. However, decisions on court-approved private sales of vessels are turning Malta into a major international venue for the carrying out of such sales of distressed vessels.

Briefly, this is a mechanism that combines the best elements of the private sale and the traditional judicial sale by auction. The court is directly involved in approving a privately prearranged sale between the enforcing creditor having an executive title (mortgage) and the prospective buyer while the vessel is within Malta's jurisdiction.

The creditor retains full control of the court proceedings and can see them concluded within a short time frame. The buyer is also protected as the vessel is acquired free and unencumbered. Any unsatisfied claims against the secured asset after the conclusion of the sale can only be enforced against the proceeds. Proceedings are swift and expedient, since the application is appointed for hearing within 10 days of its filing. Court intervention is minimal.

The enforcing creditor may request court authorisation enabling the creditor to acquire the secured asset itself in set-off of its debt over the asset.

Moreover, mortgages burdening vessels that are not registered in Malta may be enforced, as long as the foreign mortgage is recognised under Maltese law.

GTDT: What is the outlook for your country's shipping market?

JS-D, JR & JC: According to a policy paper, recently published by the government of Malta, the maritime sector is set to grow in excess of 14 per cent of Malta's total GDP. Moreover, there seems to be political consensus on maintaining, expanding and developing Malta's maritime industry.

As previously mentioned, Malta's shipping and maritime industry is composed of a number of various sectors including a legal sector that is largely concerned with the provision of legal products by local service providers to local and

international operators within the maritime industry, including shipowners, ship managers, ship agents, freight forwarders, ship and yacht repairers, port operators, and operators in the fisheries and aquaculture industry. All of these sectors contribute to Malta's aspirations to become a leading regional and international maritime hub.

Malta Marittima plays a key role in Malta's implementation of the EU's Integrated Maritime Policy. One of the agency's main objectives is to bring industry and government stakeholders together to focus on and promote the continued development of the marine and maritime industries in Malta.

The creation of Malta Marittima in 2016 was preceded by the setting up of the Malta Maritime Forum in 2015. The main objective of the latter is to provide a common platform for the local maritime industry to promote existing maritime services and to assist in the development of new maritime activities. The forum also aims to promote research, education, standards and training within the Maltese maritime industry, acting as a constituted body to consult and be consulted by government in the development of public policies that can have a bearing on the Maltese maritime industry.

These objectives have been broadly established to ensure that the forum is as inclusive as possible. Even though this initiative is largely industry-based, the governments, as well as the other public authorities involved in the maritime sector, have supported this initiative, which bodes well for the future.

The industry players and the government are now looking to adopt a holistic policy and coordinated efforts to maintain and continue developing Malta's maritime industry, in and through official forums.

From the perspective of a firm within the maritime legal sector of the industry, the outlook for this sector seems positive with certain segments of the international shipping market, as well as that of yachting, steadily growing and prospering. Nonetheless, as service providers to the international shipping industry, we are exposed to the same inherent risks, volatility and market trends of the industry we serve. It is therefore essential for us to keep a close eye on developments in the industry and the direction towards which it is heading. This will allow us to serve traditional sectors that are presently doing well, and tap into the innovative areas of the industry.

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