
THE TRANSPORT FINANCE LAW REVIEW

EDITOR
HARRY THEOCHARI

LAW BUSINESS RESEARCH

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The Transport Finance Law Review
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This article was first published in The Transport Finance Law Review - Edition 1
(published in May 2015 – editor Harry Theochari).

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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www.TheLawReviews.co.uk

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Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-909830-56-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRIQUEZ SC

DE LUCA, DERENUSSON, SCHUTTOFF E AZEVEDO ADVOGADOS

GORRISSEN FEDERSPIEL

INAL LAW OFFICE

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PAGBAM (PEREZ ALATI, GRONDONA, BENITES,
ARNTSEN & MARTÍNEZ DE HOZ)

SETTERWALLS ADVOKATBYRÅ AB

YOSHIDA & PARTNERS

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EDITOR'S PREFACE

This inaugural edition of *The Transport Finance Law Review* is intended to provide the industry with a guide to transport finance today, in each of the key jurisdictions globally in which aircraft, rolling stock and ships are financed.

Traditional asset finance, in the form of bank debt, has long been the mainstay of the transport sector. It is apparent, however, that debt finance alone is no longer sufficient to meet the needs of the global aviation, rail and shipping sectors. As a result, the transport finance sector is undergoing a revolution, requiring its legal advisers to respond by providing clients with a far broader set of legal skills and market knowledge.

The global financial crisis has had far-reaching consequences for the transport sector, not limited to the immediate impact of a worldwide economic downturn. Following the crisis, new regulation intended to prevent future crises has been introduced, notably Basel III, which is designed to strengthen banks' balance sheets by requiring them to hold additional capital against their loan books. The impact on an industry as capital-intensive as the transport sector is that long-term lending is now less attractive. This has led certain banks to exit the asset finance market altogether, with a number of banks taking the decision to sell all or part of their loan books to help them meet the new capital requirements.

The result of this is that asset finance in its traditional form is now available from relatively few banks, who in turn are prepared to lend to relatively few names. Despite this, the majority of capital available to the transport sector continues to take the form of bank debt. Tenors are shorter, however, and borrowing is more expensive. For an industry that requires billions of dollars to fund itself annually, a shortfall in funding is inevitable.

In response to the financial crisis, many companies operating in the transport sector reduced their debt, in preparation for more difficult trading conditions. Now, however, the transport sector faces an upsurge in demand as passenger numbers and freight volumes rise, particularly in fast-growing economies such as China. This is coupled with the introduction of increasingly sophisticated and more costly technology, including fuel-efficient jets, high-speed rail and high-specification liquified natural gas carriers.

As a result, new participants see significant opportunities in the transport sector and are entering the market using innovative new structures.

Capital markets and private equity structures now account for a substantial proportion of the transport finance market. In the shipping industry, which continues to feel the effects of the most severe and prolonged recession ever seen in the maritime sector, well-known private equity players are investing their own cash, confident that the cyclical nature of shipping will result in attractive returns in the medium to long term. In the aviation industry the popularity of operating leases is growing, and the players entering this market are frequently supported by private equity players drawn by the ever-increasing demand for air travel. In the case of rail, privatisation remains a major theme in numerous markets and new investors are being attracted to the industry by the commitments made by governments worldwide to improve existing infrastructure and invest in new, sophisticated rail links.

The aviation, rail and shipping industries each have their own unique characteristics and need lawyers with a deep understanding of how each of these complex industries operates. A detailed knowledge of the principles of asset finance is now also required, combined with the ability to advise on new capital markets and corporate structures. In addition, while the majority of asset financings in the transport sector tend to be governed by New York or English law, an understanding of the principles of local law in the key jurisdictions in which transport assets are registered is also of great importance.

We have sought contributions from jurisdictions that play a leading role in the financing of transport assets. Each chapter provides an overview of the transport finance industry in these jurisdictions, with an analysis of how key lenders have changed over the past five years and how the financing of assets has developed as a result. Contributors have provided an overview of the legislative framework for transport finance and financial regulation affecting lenders to the transport sector. Authors have also been asked to review any significant innovations and notable recent and pending financings and cases, and to provide assessments of how the transport sector is likely to continue to develop in their markets.

I would like to thank the contributors to this first volume. Their efforts are deeply appreciated and represent a substantial contribution to the transport law library during a period of transformation for the sector.

Each contribution reflects the significance of the transport sector today, and the need for readily available funding for industries that underpin the global economy by transporting people and commodities around the world every day.

While we are now beginning to see new banks entering the asset finance market, traditional asset finance is likely to remain in short supply in the coming years, and innovation will remain at the centre of our industry. The days of one asset financed by one bank have passed and, in response, lawyers have had to become increasingly nimble as clients require advice on developing intricate joint-venture agreements and complex capital markets products. It is an incredibly exciting time to be a lawyer in this field, as our contributors demonstrate in the following chapters.

Harry Theochari

Norton Rose Fulbright

London

May 2015

Chapter 6

JAPAN

*Norio Nakamura and Taichi Hironaka*¹

I INTRODUCTION

i The transport finance industry

Aviation is one of the few growing fields for financiers given the recent opening up of the market to low-cost carriers. The demand for air transportation is expanding, with an expected annual growth rate of around 5 per cent.² Japanese financiers (including banks, leasing companies and trading companies) have ambitiously started to participate in aviation finance or investment focusing on the profits brought by the aeroplanes themselves rather than the credit capabilities of the airlines. For example, in Japan, the Development Bank of Japan (DBJ), a government financial institution, set up a team dealing specifically with aircraft finance in 2011, and arranged syndicated loans in 2013 with BNP Paribas Tokyo involving 14 financiers, including five regional banks.³ In terms of tax reduction, investment in a scheme of silent partnership or voluntary partnership is also attractive to general investors.

There has been fierce competition in the shipbuilding field in south-east Asia, especially in Japan, China and Korea,⁴ there being many ship types,⁵ sizes⁶ and numbers, a situation quite different to that of aircraft, where the majority are manufactured by Boeing and Airbus. Since the financial crisis triggered by the bankruptcy of Lehman Brothers, order numbers for new vessels have improved following the inflow of surplus

1 Norio Nakamura is a partner and Taichi Hironaka is an associate at Yoshida & Partners.

2 Kazuki Sugiura, *Kinyu Houmu Jijo*, 10 October 2013, pp. 25–26.

3 Miyazaki, Oita, Miyazaki-Taiyo, Kagoshima and Higo; *DBJ news*, 30 June 2014).

4 For example, CSSC, Daewoo, Hyundai, Imabari, Samsung and SCIC.

5 For example, bulk carriers, container ships, oil tankers, chemical tankers or reefer ships.

6 For example, Handysize, Panamax or Capesize.

funds to combat the strength of the Japanese yen, and the increase in demand for liquefied natural gas (LNG) carriers.

In the rail business, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) is planning in 2015 to set up joint venture companies (special purpose vehicles, or SPVs) for the lease of new types of vehicle to local governments, with the SPVs being invested in by local governments, the Japan Railway Construction, Transport and Technology Agency (JRJT),⁷ and a variety of other financial resources. It is also investigating another scheme in which the JRJT directly finances local transport business without the need for an SPV.⁸

In the general area of transport finance, financial institutions have had to be careful in examining finance upon requirement of the Basel Capital Accords. Liquidation of credit receivable, such as securitisation of aviation finance or loan participation in ship finance, has gradually increased. Basel III, which deals with liquidity coverage ratios and net stable funding ratios (NSFRs), may also have a certain influence on the field of transport finance.

ii Recent changes

Aviation

As a result of amendments to the tax regime in fiscal year 2005, any benefits gained from leveraged leases in aviation were removed and the operating lease has become the most frequently used structure for aviation finance; one version of this entails a silent partnership scheme and the other is the direct ownership scheme. The JOLCO⁹ is now the most used vehicle in Japan, in which the total amount of the lease charge is set at less than the purchase price of the aircraft and the lessor bears the risk of shortfall in the residual value at the maturity date, but may benefit from depreciation under the tax laws.¹⁰ As yet, no services have been arranged through the Enhanced Equipment Trust Certificate by Japanese finance institutions.

In recent times, financiers and trading companies have started to enter the leasing business for aircraft engines looking for higher rates of earning, setting up joint ventures¹¹ as well as financing aircraft.

7 An independent Japanese administrative institution.

8 *Nikkei News*, 21 September 2014.

9 Japanese operating lease with call option.

10 Hidehiko Suzuki and Keisuke Imon, 'Theory and Practice of Aviation Finance', *Kinyu Houmu Jijo*, No.1994-1996.

11 For example, Mitsui & Co participated in GE9X engine development with Willis Lease Finance in 2011; Sumitomo Corporation set up a joint venture with MTU Aero Engines in 2013; Mitsubishi UFJ Lease & Finance purchased all the shares of Engine Lease Finance in 2014; and NTT Finance collaborated with the DBJ in 2015.

Shipping

The financial condition of domestic shipowners has improved in recent trading resulting from the weakness of the Japanese yen against foreign currencies, and so the attention of financiers has focused on ships as objects of money supply.

Under Annex VI of MARPOL, vessels operating in emission control areas may only burn bunker oil with a maximum 0.1 per cent sulphur content from 1 January 2015, and so demand for LNG as a fuel is being seen in these waters. The Japanese government and shipping industry are trying to put LNG-fuelled vessels into practical use, which will also lead to more demand for LNG tankers and LNG-bunkering vessels. In 2014 Nippon Yusen Kaisha placed an order with Hanjin Heavy Industries and Construction for the world's first LNG-bunkering vessel. It is likely that finance for LNG vessels or projects will become progressively more attractive.

II LEGISLATIVE FRAMEWORK

i Domestic and international law and regulation

Aviation

Aviation law broadly covers the relevant issues on safety of aircraft and air navigation and also proper and rational management of the transport business by air.¹²

Ownership of aircraft can be perfected upon registration in Japan,¹³ but aircraft owned by (1) non-Japanese nationals, (2) foreign governments or authorities, (3) legal entities incorporated under foreign law or (4) corporations of which the representative director or more than one-third of the executive officers are those who stipulated in (1) to (3) above, and those under a foreign state flags, may not be registered.¹⁴ A party that intends to participate in the air transportation business must also have permission by the MLIT.¹⁵

The 2006 Cape Town Convention on International Interests in Mobile Equipment has not been ratified in respect of mortgages or liens on aircraft, so the domestic Aviation Mortgage Law is applicable.

Shipping

There are statutory requirements for owners of Japanese-flagged vessels, which limits ownership to (1) the Japanese government or public authorities, (2) Japanese nationals or (3) legal entities incorporated under Japanese law of which the representative director and two-thirds of the executive officers must be Japanese nationals. There are, however, no particular regulations applicable to owners of foreign-flagged vessels, who are always subject to the law governing the registration of the vessels.

12 Section 4 of the Aviation Act.

13 Section 3-3 of the Aviation Act.

14 Section 4 of the Aviation Act.

15 Section 100 of the Railway Business Act.

Registration of ownership or mortgages on Japanese vessels takes place according to the Ship Act,¹⁶ the Ship Registration Rules or the relevant regulations. In terms of maritime liens and ship mortgages, which concern financiers, Japan has ratified neither the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages in 1967 nor the International Convention on Maritime Liens and Mortgages in 1993. Enforcement of liens and mortgages on ships is dealt with under the Civil or the Commercial Codes. Chapter 3 of Commercial Code (maritime law) broadly covers commercial transactions or issues concerning shipping, maritime and admiralty.

Railway

According to the Railway Business Act,¹⁷ parties who enter into railway business must have permission from the Minister of Land, Infrastructure, Transport and Tourism. Before 1999, railway business was licensed by the government taking into consideration supply and demand, but competition was subsequently introduced into the field.

The Railway Mortgage Act makes provision for mortgages secured on complete railway facilities, incorporated as 'foundations'.

ii Specific practices

Aviation

Aircraft to be operated by domestic airlines are in fact limited to those registered in Japan who have perfected ownership, but to register aircraft in Japan, owners are required to be Japanese nationals or corporation (see Section II.i, *supra*), and reservation of ownership to foreign financiers or their affiliates (SPVs), regardless of whether incorporated in Japan, is not possible. In such a situation, the aircraft may be sold to the affiliate of a Japanese company and then sold back to the affiliate of the foreign financiers holding ownership at the Japanese affiliate.

Shipping

Japanese maritime law was originally intended to cover Japanese-flagged vessels owned by Japanese owners, and there have been many disputes on the issues of whether mortgages on foreign-flagged vessels are recognised, or whether liens on foreign vessels are created for credit or claims brought under contract governed by foreign law. This is a matter of international conflict law as no clear answer has yet been supported by Japanese statute law.

16 Senpaku Hou (in Japanese), which regulates qualification, registration and national certification for Japanese vessels.

17 Section 3 of the Railway Business Act.

Railway

In Japan, in the established system, the JRJT gives direct finance to each railway operator upon obtaining funds from a variety of financial resources.¹⁸ Railway operators will obviously prefer to undertake railway construction or provide service in a stable investment environment so that the balance of the account is exceeded in the long term. Railway facilities are leased or assigned to railway operators by the JRJT, which retains ownership. Finance for train construction is usually obtained by debt finance, vehicle trust, lease or leveraged lease.

III FINANCIAL REGULATION

i Regulatory capital and liquidity

According to the Banking Act, the prime minister may set the levels for the capital adequacy of financial institutions; under this Act, the minimum capital adequacy ratios were set at 8 per cent for financial institutions subject to international standards and at 4 per cent for financial institution subject to domestic standards by the Notification of the Financial Services Agency of 27 March 2006, in accordance with Basel I and II.

The Financial Services Agency published the revised notification following Basel III (1) of the international standards for financial institutions on 30 March 2012, effective from 31 March 2013, and (2) of the domestic standards for financial institutions on 8 March 2013, effective from 31 March 2014.

The liquidity coverage ratio (LCR) under Basel III was implemented on 31 March 2015 with a required level of at least 60 per cent; it will be fully phased in by 1 January 2019, by which time the required level will reach 100 per cent. The NSFR, which requires financial institutions' medium to long-term funding to be covered by their medium to long-term financial resources, will be introduced on 1 January 2018. Financial institutions are required to increase the stock volume of high-quality liquid assets to improve their LCRs and should pay attention to any low returns on assets or the increasing cost of liability.¹⁹

In the meantime, the Deposit Insurance Act, which secures funds of depositors in the event of a bank's failure under the management of the Deposit Insurance Corporation, was revised on 12 June 2013.

ii Supervisory regime

Under Article 27 of the Foreign Exchange and Foreign Trade Act, foreign investors are required to notify the Minister of Finance and the competent minister in advance should

18 The JRJT obtains certain funds from commercial banks, such as by way of syndicated loan schemes. According to recent information from JRJT, it obtained finance by way of syndicated loan, for example, in February 2015, ¥28.5 billion for one year arranged by Mituis Sumitomo Bank and, in March 2015, ¥27 billion for four years arranged by Aozora Bank.

19 For Basel III, Yasuhiro Nakayama 'Response to Basel III Liquidity Control', Mizuho Information and Research Institute Report in March 2013; Yoji Hamada 'Risk Management affected by Basel III Liquidity Control', Kinzai Institute for Financial Affairs Inc, 2014.

they make inward direct investment to such business so that (1) national security is impaired, public order is disturbed or public safety is compromised, or (2) significant adverse effects are obvious on the management of the Japanese economy. The railway transportation business is also a matter of significant public interest and as so would follow the above regulation.

IV SECURITY AND ENFORCEMENT

i Financing of contracts

Ships

In most cases newly built ocean-going vessels are registered in Panama or other tax-haven countries and owned by SPVs established in these countries. The finance schemes for such vessels depend on the laws of the countries in which they are to be registered, as the enforceability and effect of the security might be governed by such laws. There are two major schemes that are used to finance these vessels: loan schemes and lease schemes. Under a loan scheme, the vessel is owned by an SPV established and controlled by the shipowner, and the following agreements are prepared:

- a* the loan agreement between the financier and the SPV (guaranteed by the shipowner);
- b* a mortgage agreement;
- c* a charter hire assignment; and
- d* an insurance assignment.

Under a lease scheme, the vessel is owned by an SPV established and controlled by the financier, and the following agreements are prepared:

- a* a bareboat charterparty between the SPV and the shipowner (or its subsidiary);
- b* a charter hire assignment from the shipowner (or its subsidiary) to the SPV; and
- c* an insurance assignment.

New domestic vessels should be registered in Japan because foreign vessels are prohibited from engaging in domestic transportation under Japanese law.²⁰ They may be financed by loan schemes, each of which needs a loan agreement and a mortgage agreement. For the new building of domestic cargo vessels and passenger vessels, another option is to apply to the Joint Ownership Shipbuilding Scheme, a low interest-rate finance scheme offered by the JRJT. Under the project, the JRJT pays up to 70 or 80 per cent of the building costs with corresponding co-ownership on the vessel and then receives repayment (as a lease payment towards the co-ownership of the JRJT) from the shipowner. When paid off, the shipowner owns 100 per cent of the vessel. This project needs the following agreements:

- a* a shipbuilding contract; and
- b* a co-ownership and lease agreement between the JRJT and the shipowner.

20 Section 3 of the Ship Act.

Rolling stock

Railway construction is characterised as public infrastructure development, even if it is operated by a private railway company. Railways are constructed by the JRJT and sold to each railway company on an instalment basis, and there is a railway mortgage system in place to secure such loans. Under this system, the railway, rolling stock and any other facilities necessary for railway operations are treated as a monolithic property known as a 'railway foundation' to prevent railway facilities being sold off in pieces by public sale.

In most cases rolling stock is self-financed, but is sometimes bought using a lease scheme; for example, the new Keisei Skyliners – the airport express trains between Narita International Airport and northern Tokyo – were financed by a lease scheme.²¹

Aircraft

Loan schemes and lease schemes are available to finance aircraft. Under a loan scheme, the airline owns the aircraft, and the financiers hold the mortgage on the craft; this type of scheme needs a loan agreement and a mortgage agreement. Under a lease scheme, the financiers set up an SPV, and the SPV owns the aircraft and leases it to the airlines in accordance with a lease agreement between the SPV and the airline.

Since aircraft operated by Japanese airlines should be registered in Japan,²² a special arrangement is necessary when such aircraft is financed by foreign financiers under a lease scheme – this is called a 'sale and conditional sale structure'. In this scheme, the foreign financier sets up an SPV in a foreign country ('the foreign SPV') and a Japanese partner sets up another SPV in Japan ('the domestic SPV'). The foreign SPV buys the aircraft from the manufacturer and sells it to the domestic SPV, buys it back without the ownership of the aircraft, and then the foreign SPV leases it to the Japanese airline. The foreign SPV holds the mortgage on the aircraft and a pledge on the shares of the domestic SPV.²³ This scheme needs a lease agreement, an aircraft sales agreement, a conditional sales agreement, a participation agreement, a mortgage agreement and a share pledge agreement.

ii Enforcement

Ships

Ship mortgages may be registered in Japan but may not be enforced against third parties unless they are registered under Japanese law. Maritime liens on vessels arise with respect to claims for pilotage, towage, bunker expenses, crew wages and salvage,²⁴ and also claims in connection with marine casualties such as collisions or oil pollution,²⁵ and these have priority over the ship mortgage.²⁶ Under the Bankruptcy Act, loan claims under a ship's mortgage are treated as a right of separate satisfaction, and claimants may enforce their

21 See Nissay Leasing Co Ltd, www.nissay-lease.co.jp/service/index.html.

22 Section 5 of the Civil Aeronautics Act.

23 Hidehiko Suzuki and Keisuke Imon, 'Theory and Practice of Aircraft Finance (v2)', 1995, *Kinyu Houmu Jijo*, 64, 65–6 (2014).

24 Section 842 of the Commercial Code.

25 Section 95 of the Act on Limitation of Liability of Shipowners.

26 Section 849 of the Commercial Code.

rights during bankruptcy proceedings. Under the Corporate Reorganisation Act, they are treated as secured reorganisation claims. Claimants may not enforce their rights outside proceedings, and will be paid in accordance with the reorganisation plan, in such amount reflecting their priority and claim.

A finance lease (full-payout lease) claim is also treated as a secured reorganisation claim in corporate reorganisation proceedings since it is similar to a loan agreement; thus, the financier will be paid in accordance with the reorganisation plan in the same way as the mortgagee. The operating lease is treated as a pending contract and the trustee has the option of continuing or terminating the lease, but the lessor may not terminate the lease even should there be a clause giving the lessor such right in the event of the lessee's application for such proceedings. Such clause is considered invalid in the context of corporate reorganisation proceedings as it undermines the purpose of the Act.²⁷

Rolling stock

The Railway Mortgage Act provides the railway mortgage system. Under this system railway mortgages should be placed on the railway foundation, which is the collateral railway facility, and may be registered.²⁸ In bankruptcy proceedings and corporate reorganisation proceedings, a railway foundation is treated as a single mortgaged item.

A lease on rolling stock is treated in the same way as that of a ship in corporate reorganisation proceedings.

Aircraft

The Aircraft Mortgage Act and Civil Execution Act and Rules²⁹ provide the aircraft mortgage system. Under this system, aircraft mortgages may not be asserted against third parties unless they are registered.³⁰ Formal mortgage registration is not, however, usually applied due to the high charges incurred in the process, so only provisional registration is used. Provisional registration reserves the priority order as a security right of the mortgage subject to the condition that the provisional registration is transformed into a formal one.

A lease on aircraft is treated in the same way as a ship in corporate reorganisation proceedings.

iii Arrest and judicial sale

Ships

Even if a vessel and mortgage are registered in a foreign country, the mortgagee may apply for arrest and judicial sale of the vessel by submitting documentation proving the existence of the mortgage on the vessel³¹ to the court, as long as it is in Japan. Usually, the mortgagee will obtain a court order to obtain the certificate of the vessel's nationality

27 If such termination were allowed, almost all pending contracts would be terminated, and purported corporate reorganisations would probably fail.

28 Section 2 of the Railway Mortgage Act.

29 Section 84 of the Civil Execution Act.

30 Section 5 of the Aircraft Mortgage Act.

31 It is usually a certificate of registered matters.

and any other documents necessary for its sailing before its arrival at a Japanese port; upon arrival an enforcement officer then confiscates the foregoing documents from the vessel so that it cannot sail from the port.³² Within five days of the documents being apprehended, the mortgagee must formally apply for commencement of the judicial sale of the vessel to the court that has jurisdiction where the vessel arrested.³³ The court may decide to commence the judicial sale proceeding and appoint a trustee to manage the vessel until completion of such sale.³⁴ By this stage, the mortgagee will have had to pay anticipated costs and expenses for the proceedings in advance, an amount that will be returned out of the proceeds of the sale. For example, a mortgagee paid about ¥13 million in a case of judicial sale under a ship mortgage before the Hakodate District Court.³⁵ It usually takes about six months from the commencement of the judicial sale to distribution of dividends.

In such proceedings, other security holders such as other mortgagees and maritime lien holders may also demand distributions from the proceeds of the judicial sale. In a same way, in a judicial sale concerning a maritime lien, mortgagees may also demand distribution. Under Japanese law, a variety of claims may be secured by maritime liens, and all maritime liens have priority over the mortgages;³⁶ thus, the existence of maritime liens and the priority order between mortgages and maritime liens are often disputed.

With respect to the governing law in terms of maritime liens, there are conflicting precedents:

- a* Applying only Japanese law as the forum law.³⁷
- b* Applying both the flag law and the governing law of the claim to be secured by the maritime lien.³⁸ The maritime lien would be admitted only if it exists both under the flag law and the governing law for the claim.
- c* Applying both the law of the vessel's place when the maritime lien arises and the governing law for the claim.³⁹ The maritime lien will be admitted only if it exists under both the law of the vessel's location when the maritime lien arises and the governing law for the claim.

32 Sections 115(1), 189 of the Civil Enforcement Act.

33 Id., Sections 115(4), 189.

34 Id., Sections 116, 189.

35 Yasumori Takase, 'Introduction of the judicial sale case based on the mortgage before the Hakodate District Court, 1941', *Kinyu Houmu Jijo* 116 (2012).

36 Sections 842, 849, 704(2), 849 of the Commercial Code; Section 95 of the Act on Limitation of Liability of Shipowners; Section 19(1) of the Carriage of Goods by Sea Act.

37 Tokyo District Court, Decision 15 December 1992.

38 Takamatsu High Court, Decision 18 July 2008.

39 Mito District Court, Decision 20 March 2014.

As to the priority order, there are also conflicting precedents:

- a* Applying only Japanese law as the forum law.⁴⁰ Maritime liens have priority over ship mortgages.
- b* Applying only the flag law.⁴¹ The court applies Panamanian law, and admits the priority of ship mortgages over some maritime liens.

Since Japanese law might apply to the existence of maritime liens and the priority order between mortgages and maritime liens, Japan may not prove to be an attractive forum for arresting vessels for the mortgagee financiers.

Rolling stock

The mortgage on a railway foundation is enforceable by auction or compulsory administration, at the mortgagee's choice.⁴² If the mortgagee selects auction proceedings, the railway foundation will be sold to a winning bidder as a single property. In 1934, the mortgage on the railway foundation owned by Musashino Railway Company was enforced by way of compulsory administration.⁴³ There have been no further reported cases of enforcement of railway mortgages since then.

Aircraft

Section 84 of the Civil Execution Act provides *mutatis mutandis* for application of the provisions for ship arrest proceedings to aircraft arrest proceedings. Therefore, aircraft arrest proceedings are very similar to ship arrest proceedings.

V CURRENT DEVELOPMENTS

In Japan, an amendment to the Commercial Code has been discussed in the Legislative Council of the Ministry of Justice, and a tentative proposal issued. At the time of writing, public comments are being heard (until 22 May 2015). It proposed that ship mortgages take priority over some maritime liens, such as tort claims for property damages (including damages resulting from a collision) or claims arising from the necessity of continuing a voyage (e.g., bunker payment claims). Although this proposal would be of benefit to mortgagee financiers, it is uncertain whether it will ultimately be adopted.

40 Takase, 'Introduction of the judicial sale case based on the mortgage before the Hakodate District Court', 120.

41 Hiroshima High Court, Decision 9 March 1987.

42 Section 40 of the Railway Mortgage Act.

43 Takatoshi Tamekuni and Yoshio Hanzawa, 'A Historical Study on Relationship between the Management of the Tobu Railways and the Area along its Railway Lines before the World War II,' 16 *Study on Civil Engineering History* 547, 555.

Appendix 1

ABOUT THE AUTHORS

NORIO NAKAMURA

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Since joining Yoshida & Partners in 1995, Norio Nakamura has dealt with all aspects of maritime law, including charterparties, ship finance, ship sale, ship building, collision, salvage, cargo recovery or defence, marine insurance, personal injury, ship arrest, bankruptcy and marine pollution. He was made a partner in 2002.

Mr Nakamura gained his LLB in 1986 from Keio University, and was called to the Bar in 1992. From 2000 to 2001 he undertook practical training in the United Kingdom and United States.

TAICHI HIRONAKA

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Since joining Yoshida & Partners in 2002, Taichi Hironaka has handled a number of maritime cases, involving collision, grounding, engine-trouble, charterparty disputes, and cargo defenses. He has also dealt with many disputes involving engineering matters relating to engine and hull structure, with his knowledge, understanding and keen interest on technical issues. He is also well-versed in IP matters (especially patents and trademarks) and architectural disputes.

Mr Hironaka graduated from Kyoto University in 2001 with a bachelor of engineering degree, majoring in architecture. He was called to the Bar in 2002, and in 2013, received his LLM from the University of Southern California School of Law.

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