

The Legal Issues

The need to develop a competitive environment in Indonesia

- Why is it important that Indonesia aim for a sizable merchant fleet?
 - control of own exports/imports
 - balance of payments impact – the “freight deficit”

How do legal issues affect this?

- Owning ships is a capital intensive business
- Finance options include bonds, sale of shares and leasing and its variations, but **a key finance option for owners over the last few decades has been bank financing**
- Owners are best served by specialist bank and bankers who understand the industry

How do legal issues affect this?

- In order to develop the fleet,
 - the shipping industry
 - in partnership with government
 - needs to look at:

what conditions an international ship finance bank requires in order to lend to a ship flagged in the jurisdiction

What does an international ship finance bank require?

- Legal certainty
 - Mortgage
 - freedom to use a mortgage to secure all forms of liability
 - contractual freedom about its content
 - Registration – a Bank wants prompt, same day registration

What does an international ship finance bank require?

- Choice of law
 - choice of a governing law without interference
- Government approvals/registrations
 - Certainty about what the regime requires

What does an international ship finance bank require?

- Arrest
 - Ability to **arrest** a mortgaged vessel **wherever** she is in Indonesia and have it **held** while there is an application for sale
 - **Clear** priorities and a **swift** adjudication process

What does an international ship finance bank require?

- Judicial process
 - Swift and certain
 - A borrower has made its bargain
 - a ship is a wasting asset
 - Enforcement **without** interference from or second guessing by the judiciary and in a timely manner

What does an international ship finance bank require?

- De-registration of a Vessel following enforcement elsewhere
 - Only when the 1993 Convention on Maritime Liens and Mortgages is in force

What are the consequences of getting this right?

- 2 jurisdictions in Asia that score highly
 - Hong Kong and Singapore
- Large merchant fleets
- the industry is a major contributor to economic success
- attracts other collateral businesses to set up and contribute still further

What are the consequences of getting this wrong?

- Balance of payments
- Underpowered merchant fleet
- Loss of control
- Jurisdictions with no exports but better legal infrastructure take the tonnage that **should be flying Indonesian flag**

- Legal infrastructure is not a luxury, it is a necessity
- Respect for tradition is nice, but the markets are competitive

There is no mystery about what works, it is a question merely of implementation.