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Printed By Ann Fenech

International deal on judicial sale of ship gets industry backing

Deal will offer protection for buyers of vessels sold by court order and could kick in as early as next year, Malta conference hears

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New owners will be able to secure deletion of previous mortgages



THE shipping industry is overwhelming agreed on the need for international uniformity over issues surrounding the judicial sale of ships.

That was the view of Ann Fenech, president of Comité Maritime International, during a debate on the United Nations Convention on the International Effects of Judicial Sales of Ships at a conference in Malta.

The Beijing Convention will come into force 180 days after it has been ratified by three states.

Malta is already publicly committed to signing up, and as many as eight or nine other countries are believed to have given private reassurances that they will also do so soon..

Ms Fenech, a partner in local shipping law firm Fenech & Fenech, highlighted the advantages of the agreement, which aims to protect owners of the hundreds of vessels bought at court-ordered sales worldwide from liens attached under previous owners.

The new owners will also be able to obtain deletion of old mortgages from the ships' existing registries. Banks will feel more comfortable extending finance to ships unencumbered by previous liens.

As a result, vessels will attract the best prices, which is more likely to satisfy creditors such as bunker suppliers, and raise more money to fund the repatriation of stranded seafarers.

Rapid ratification likely for judicial sales convention

By David Osler

26 Apr 2023

Effectiveness hinges on big open registries signing up, but hope is that self-interest and pressure from lenders will get them on board sooner rather than later

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José Angelo Estrella-Faria, senior legal officer at the secretariat of the Vienna-based United Nations Commission on International Trade Law, said the convention was not an attempt to make new rules for the sake of making new rules but dictated by practically necessary.

Existing domestic legal regimes differ widely, offering widely differing procedures and levels of security. What is needed instead is a simple, larger, procedural international instrument.

“This will be a minimalistic convention. Not that many heads would not have been incapable of coming up with brilliant solutions, but it was immediately clear that ambition would have been anathema to success,” he told the one-day event, hosted by the Maltese Ministry of Foreign Affairs in Valletta.

For instance, the convention does not determine the relative priority of maritime liens, or the distribution of proceeds and any grounds for avoidance, he specified.

Richard Sonnenschein, director justice policies at the European Commission’s directorate general for justice and consumers, addressed the conference by video message.

The EC welcomed the convention, which promotes legal certainty and consistency, and believes that this kind of multilateral instrument acts to promote trade.

The convention will provide legal certainty for buyers, and protection for financiers and creditors.

“We are confident the convention will meet the commercial needs both of the shipping industry and financial industry,” said Mr Sonnenschein.

Beate Czerwenka, chair of Uncitral working group VI on judicial sales, outlined the broad participation of Uncitral members in discussions, and commended the convention’s spirit of compromise.

While it will enter into force 180 days after ratification from just three states, it will only be considered a success if many states ratify, said Prof Czerwenka.

Angele Sears-Debono, legal and policy officer in the civil justice union at the EC’s directorate general for justice and consumers, said that the EC saw the deal as a “very important and much-needed convention” that will “fill a gap in the international judicial framework”.

The Beijing convention has direct relevance to policies boosting trade and foreign direct investment, and will be of interest to all states with an interest in the maritime industry.

Petar Kragic, Croatian delegate to Uncitral’s working group VI, compared the convention to a tug of war between the principles of international comity and sovereign control.

It does not apply to warships or state-owned vessels. Ships sold by judicial sale must be arrested in the territorial waters of state of sale, which will usually proceed by public auction.

At present the sale only has legal effect within the state of sale, not the state of registration, giving the previous owner some degree of legal protection. But the convention will remove that, with courts issuing a certificate of clean sale upholding the rights of the purchaser.

Peter Laurijssen, legal director of CMB and vice president of the Belgian maritime law association, pointed out that the convention would oblige registries to delete prior mortgages, or even delete a ship itself and issue certificate of deletion, registering ship in name of purchaser if requested.

Eduardo Albors, partner in Spanish shipping law firm Albors Galiano Portales, said that certificates of clean sale would amount to formal statements that a vessel has been sold in line with the requirements of applicable state laws.

Ms Fenech pointed to article 10, which provides that a judicial sale shall not take effect outside the state of judicial sale if a court in another state party determines that this would be “manifestly contrary to public policy”.

While this was a result of necessary diplomatic compromise, the threshold is high, given the interpretation of such wording in international law, and would require compelling reasoning.

Frederick Kenney, director of the legal affairs division at the International Maritime Organization - which will act as repository for clean sale certificates – gave full IMO support, even though IMO itself declined to develop the convention, arguing that that was a job for Uncitral instead.

Jason Korbetis is a director of Bluefin Marine, which bought Bright Star at judicial auction in Jamaica in 2018 and subsequently found the ship twice arrested by previous creditors. It took four and half years to get matters sorted out, with support of freight, demurrage and defence cover from Steamship Mutual.

“We were frustrated by this action, but we were hopeful thinking logically. We thought, this is easy, we will show the paperwork we have. Unfortunately, this wasn’t the case.”

Under Beijing convention, other companies would be spared such a headache, he said.

Tilman Stein, former head of legal at Deutsche Bank’s ship finance department, said that existing rule may look good on paper, but can take years to get nowhere.