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From: Gregory J. Timagenis [gjt@timagenislaw.com]
Sent: 27 September 2013 14:00
To: info@conferenceorganisers.ie
Cc: gjt@timagenislaw.com
Subject: Hellenic MLA
Attachments: Judicial Sale (Comments of Greece)-Dublin 2013.docx; Cover Letter to IWG -Judicial Sale.PDF

Importance: High

ΕΛΛΗΝΙΚΗ ΕΝΩΣΗ ΝΑΥΤΙΚΟΥ ΔΙΚΑΙΟΥ

ASSOCIATION HELLENIQUE
DE DROIT MARITIME



HELLENIC
MARITIME LAW ASSOCIATION

Ακτή Ποσειδώνος 10, 185 31 Πειραιεύς

10, Akti Poseidonos, 185 31 Piraeus

27th September 2013

To the
Dublin Symposium 2016
Conference Secretariat

In the broader context of the Dublin Symposium 2013 the International Working Group on Judicial Sale of Ship will meet in Dublin on 28 and 29 September 2013.

In this connection, on behalf of the Hellenic MLA, I attach the comments of Greece on the (Beijing) Draft on the Judicial Sale Convention and I would be grateful if you could forward it to the IWG on Judicial Sales (Henry Li, as Chairman and/or Jonathan Lux and/or Andrew Robinson as Rapporteurs) to be taken into account at their work over the weekend.

Kindly confirm that this can be done.

Thanking you in advance,

Gr.J. Timagenis
President

Επικοινωνία/ Contact Details

-Πρόεδρος: Νοταρά 57, 185 35 Πειραιεύς, Τηλ.: +30 210 42 20 001- Fax: +30 210 42 21 388- E-mail: gjt@timagenislaw.com, Διοικητικός Γραμματέας: Ακτή Ποσειδώνος 10, 185 31, Πειραιεύς, Τηλ.: +30 210 42 25 181- Fax: +30 210 42 23 449- E-mail: antalblaw@ath.forthnet.gr
-President: 57, Notara Street, 185 35, Piraeus, Tel.: +30 210 42 20 001- Fax: +30 210 42 21 388- E-mail: gjt@timagenislaw.com, Administrative Secretary: 10, Akti Poseidonos, 185 31, Piraeus, Tel.: +30 210 42 25 181- Fax: +30 210 42 23 449- E-mail: antalblaw@ath.forthnet.gr

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To

The International Working Group

on the Judicial Sale of Ships

Attn: The Chairman

The Rapporteurs

Dear Chairman,

Dear Henri,

Re : Judicial Sale of Ships

First, the Hellenic Maritime Law Association would like to congratulate you, the Rapporteurs and the whole IWG on Judicial Sale of Ships for the excellent work you have done.

In this connection (even the last moment) I attach the Comments of the HMLA on the Beijing "Draft International Convention on Recognition of Foreign Judicial Sales of Ships".

Yiannis Timagenis will attend on behalf of the HMLA the work of the IWG at Dublin.

We wish you all success,

Kind Regards,

Gregory Timagenis

President

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September 2013

Judicial Sale of Ships

Greece

Comments on the Beijing Draft

The Hellenic Maritime Law Association (HMLA) finds the draft generally acceptable and it has only very few comments as follows:

(a) In some Jurisdictions (including Greece), although generally clean title passes to the Purchaser following a Judicial Sale and the Judicial Sale of ships complies with the definition and other requirements set in the draft Convention in all other respects, some (few) claims (like seamen's social security contributions in respect of Greek flag vessels) survive (and this is in someway reflected in Article 4 of the Draft which provides for the transfer of title "*in accordance with the law applicable*", which may mean and/or be interpreted as meaning "*Clean to the extent recognized by the law applicable*").

(b) However, this aspect is not reflected in the definitions of "*Competent Authority*" and "*Judicial Sale*" (both of which seem to be slightly incompatible with Article 4).

(c) For this reason it is proposed the sentence "*in accordance with the law applicable*" to be included in these two definitions.

(d) If it is not included, the Judicial Sales of certain countries will not fall under the definitions and under the new Convention (although they comply in all other respects with the proposed draft) and this will make these Countries reluctant to adopt and ratify the Convention.

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-Πρόεδρος: Νοταρά 57, 185 35 Πειραιεύς, Τηλ.: +30 210 42 20 001- Fax: +30 210 42 21 388- E-mail: git@timagenislaw.com, Διοικητικός Γραμματέας: Ακτή Ποσειδώνος 10, 185 31, Πειραιεύς, Τηλ.: +30 210 42 25 181- Fax: +30 210 42 23 449- E-mail: antalblaw@ath.forthnet.gr

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(e) If this idea is accepted, then the two definitions should be amended as follows (additional words are underlined):

“ Article 1

.....
4. “Competent Authority” means any Person, Court or authority which is empowered under the laws of the State in which the Judicial Sale takes place to sell in a Judicial Sale or transfer or order to be sold or transferred a Ship free and clear of any and all Mortgages or Charges, all Maritime Liens and other liens, and other encumbrances or whatsoever nature and howsoever arising, in accordance with the law applicable.
.....

9. “Judicial Sale” means any sale of a Ship accomplished by a Competent Authority or under the control of a Court in a State by way of public auction or private treaty or any other appropriate ways provided for by the law of the State where the Judicial Sale takes place by which Clean Title to the Ship is given to the Purchaser in accordance with the law applicable and the proceeds of sale are made available to the creditors.”

(f) Alternatively if we decide to require in the Convention completely clean title for the recognition of the Judicial Sale, in order to encourage Countries to provide a completely clean title following a Judicial Sale, we should make clear in article 4 that the words “*in accordance with the law applicable*” refer to the method of transfer rather than to any limitation of the “*clean title*”.

(g) If the latter solution is adopted, this will make the concept of Judicial Sale more clear, but it may reduce the acceptability of the new Convention.

(h) The HMLA submits these comments to the International Working Group on Judicial Sale of Ships for consideration at its Dublin meeting on 28/29 September 2013 and it also believes that the Draft should be circulated in its final form to all NMLAs before final voting.

For the Hellenic Maritime Association

Gregory Timagenis
President

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