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IMO welcomes UN clarity on judicial sale of vessels

Beijing convention will provide new owners with clean title, preventing legal action from aggrieved creditors of former owners

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'It is only by finding answers to these challenges that ships will obtain best prices,' says Comité Maritime president



DELEGATES TO AN IMO LEGAL COMMITTEE SITTING THIS WEEK WERE ASKED TO ENCOURAGE THEIR GOVERNMENTS TO RATIFY THE INSTRUMENT.

Source: Michelle Wiese Bockmann

THE International Maritime Organization has welcomed the United Nations decision to adopt the Convention on the International Effects of Judicial Sales of Ships.

The object of the convention is to achieve international recognition by one country of orders by the courts of another country for the judicial sale of a vessel. The so-called Beijing convention — which will come into force once it has achieved a quorum of ratifications — is designed to eliminate several perceived problems with the current process.

The UN General Assembly adopted the convention in December 2022. It provides that a certificate of judicial sale, once lodged in a repository at the IMO, will provide clean title to a vessel, and will be recognised by all state parties to the convention.

Delegates to an IMO legal committee sitting this week were asked to encourage their governments to ratify the instrument, and to attend a signing ceremony in Beijing later this year.

The wording has largely been drafted by the Comité Maritime International, a non-governmental organisation that has since 1897 worked for the unification of maritime law across jurisdictions.

There have been instances when buyers of what were supposed to be free and unencumbered vessels have faced legal action from creditors of the previous owners.

Pressure builds for greater legal clarity of judicial ship sales

By Stuart Hetherington

27 Mar 2018

The United Nations Commission on International Trade Law will be asked to develop a new legal instrument covering

In addition, flag states have sometimes failed to record the transfer of ownership, or delete previous mortgages.

The CMI took first drafts of the convention to the ILO legal committee in 2015 and 2016, but the committee did not accept the proposal for the inclusion of this work on its agenda.

Some delegations felt the matter was an issue of commercial law that could be more appropriately handled by the Vienna-based United Nations Commission on International Trade Law, which accepted a Swiss proposal to take the idea forward in 2018 and adopted an agreed wording by consensus in June 2022. This was ultimately presented and agreed at the UN general assembly in December 2022.

“These scenarios are not figments of the imagination of maritime lawyers,” Ann Fenech, a partner in Valletta-based maritime law firm Fenech & Fenech and CMI president, said. “It is only by finding answers to these challenges that ships will obtain best prices... ending months of despair for crew languishing on these ships.”

She cited one example of a bona fide new owner losing a charter and having to lodge 75 legal proceedings, with the support of insurer Steamship Mutual, after a creditor of the previous owner continued to press claims.

“The interfered with owner’s right to enjoy a ship purchased in a judicial sale. This was wrong and it was unnecessary,” said Ms Fenech, who presented a paper on the convention to the legal committee.

A number of delegations expressed clear support for the CMI paper.

The US said it supported adoption of the convention, adding that it is considering domestic adoption. Shipowners, creditors and other interested parties will all benefit.

“We encourage all states to consider signing the convention when it opens for signature this fall,” the US delegation said.

Spain said that clean title will mean sale prices are correct and appropriate, creditors will recover more of what is owed to them, and financiers will be able to offer better terms.

Japan said that the convention’s “adequate protection” would have “positive impact on the price” of vessels subject to judicial sale.

Australia’s delegation said clarity and certainty “is important for defending the rights of parties to such transactions”.

Croatia, Singapore, Georgia, New Zealand, shipowner trade associations BIMCO and the International Chamber of Shipping, Greece and Thailand all made supportive contributions.

judicial ship sales that are ordered by a court

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