

# Malta keen to ratify convention on judicial sale of ships

International convention will give legal clarity when vessels are sold by judicial auctions

National Maritime

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Practitioners got together on Wednesday at a symposium on a convention that will give legal certainty to judicial sale of vessels. Photo: Jonathan Borg

Malta is keen to implement a new convention on judicial sales of ships as this gives owners and creditors legal certainty on the sale, government ministers said on Wednesday.

A judicial sale of a ship typically occurs when a shipowner fails to pay its creditors, causing them to initiate proceedings to recover their dues through the forced sale of a vessel.

Addressing a symposium on the convention, which received United Nations backing in December last year, Justice Minister Jonathan Attard called on the European Commission to speed up the process of ratification by all EU states.

“I appeal to the European Commission to take the necessary steps that would allow us to sign and eventually ratify the convention,” Attard said.

This prompted the announcement by Angele Sears-Debono from the European Commission who said that the proposal was in the process of being adopted by the College of Commissioners, possibly by the end of June, before it goes to the Council, where it will be discussed by member states.

“The Commission is cautiously optimistic that it will be adopted at the end of June, paving the way for its signing and ratification,” she said, adding that the commission felt this was an important convention that helps fill a gap by providing legal certainty.

The European Commission has been actively participating in the negotiations on the convention and was approached by several member states, especially those which, like Malta, are heavily involved in the maritime sector.

The Transport Minister also expressed Malta's support for the convention.

"When ships are sold in judicial sales, it is crucial for both the creditors and the owners to ensure that vessels get the best price, and this can only be achieved if all parties involved, especially the buyers in a judicial sale, obtain the comfort of international recognition of the judicial sale which can only come about through the adoption and implementation of an international standard," he said.

"It is for these reasons that Malta wholeheartedly supports the adoption of the convention," he added.

The need for an international instrument to ensure that proper effect is given to a properly held judicial sale of a ship which transfers a free and unencumbered title to the purchaser has long been felt, said Ann Fenech, the Maltese president of the Comité Maritime International (CMI).

She explained that if a ship acquired through a judicial sale may be subjected to further arrests, it discourages bidding amongst buyers and eliminates the possibility of such purchasers sourcing financing for such purchases. This in turn extinguishes the possibility of obtaining the high prices necessary to satisfy creditors to the largest extent possible.

The convention was drafted and approved by the CMI general assembly in Germany in 2014 and taken on board by the United Nations Commission on International Trade Law. Last June, UNCITRAL adopted a recommendation to the United Nations General Assembly which approved it in December.



Maritime lawyer Ann Fenech is president of the Comité Maritime International (CMI). Photo: Jonathan Borg

Fenech explained the “serious challenges” that arise when free and unencumbered title achieved through the judicial sale of vessels is not honoured, exposing the new owner and vessel to a host of unwarranted complications including the actions of creditors of the previous owners.

There have been other cases when purchasers of ships in judicial sales were unable to seek the deletion of the ship from its previous register or seek the deletion of old mortgages. This led to severe interruption in international trade.

Such a situation was recently faced by the new owners of Bright Star, a vessel purchased free and unencumbered through a judicial sale in Jamaica in 2018. It was re-arrested in Maltese territorial waters just six months later while on its way from Kavkaz in Russia to Venezuela with 30,000 tonnes of grain, upon the request of the same creditor who, a year later, made the same claim in Belgium.

Owner Jason Korbetis told the symposium that “none of this would have happened had the convention been in place”.



“There was a lot of frustration, costs and waste of time. All very unnecessary. Common sense and shipping logic prevailed in all jurisdictions, but it took four to 4.5 years to sort it out. My experience is negative with a happy ending. There is no uniform process on judicial sales and this convention will introduce legal clarity,” he said.

Shipping registrar Ivan Sammut said he was looking forward to the ratification of the convention which he said would give peace of mind to ship registrars.

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