

Celebratory Event

on the

United Nations Convention on the International Effects of Judicial Sales of Ships

19 June 2024

Valletta

CONCEPT NOTE

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. Serious challenges arise when this free and unencumbered title is not honoured exposing the new owner and vessel to a host of unwarranted complications including the actions of creditors of the previous owners. 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. 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 leads to severe interruption in international trade.

This led the *Comité Maritime International* (CMI) to draft a Convention on the International Recognition of Judicial Sales of Ships, known as the Beijing Draft, due to it being first adopted by the General Assembly of the CMI in Beijing in 2012. The draft was then finally approved by the General Assembly of the CMI in Hamburg in 2014. From then, the CMI sought to find the Convention a home. The CMI first approached the International Maritime Organisation (IMO). While recognising the importance of the subject, the IMO considered it to be a matter of private and commercial law and which, it was felt, did not fall within the remit of IMO's Legal Committee.

Furthering its efforts, the CMI thereafter approached the Hague Conference on Private International Law (HCCH), which was working on what eventually became, in 2019, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. Opinions were expressed by some delegations at that time to the effect that judicial sales of ships was a topic that may be better suited for the UN Commission on International Trade (UNCITRAL).

The CMI hence submitted to UNCITRAL a proposal for possible future work on cross-border issues related to the judicial sale of ships, requesting UNCITRAL to add this topic to its work programme. UNCITRAL considered that proposal at its 50th session in 2017, when it noted its importance in drawing attention to problems arising around the world from the failure to give the proper effect to judicial sales of vessels sold free and unencumbered. It was agreed that further information would be useful and suggested that the CMI might seek to advance the proposal by holding a Colloquium to provide additional information to UNCITRAL and allow it to take an informed decision on the subject.

To this effect, in February 2018 the Government of Malta, through its Ministry for Transport, Infrastructure and Capital Projects, in collaboration with the CMI and the Malta Maritime Law Association, co-hosted a Colloquium during which panellists and attendees representing a cross-section of maritime services examined the problems associated with the failure to give full effect to the free and unencumbered title in vessels sold in judicial sales as well as possible solutions.

The results of the Colloquium as well as the CMI Beijing Draft were presented by Switzerland as a “Proposal of the Government of Switzerland for possible future work on cross-border issues related to the judicial sale of ships” at the 51st session of UNCITRAL in 2018. UNCITRAL noted that the issue addressed in the proposal “had the potential to affect many areas of international trade and commerce not only the shipping industry”. Chaired by Prof. Beate Czerwenka of Germany, UNCITRAL’s Working Group VI took charge of the topic and considered the draft convention over six sessions from its 35th session in May 2019 through to its 40th session in February 2022.

At its 55th session in 2022, UNCITRAL adopted by consensus a decision and recommendation to the United Nations General Assembly by virtue of which it submitted the draft Convention on the International Effects of Judicial Sales of Ships, recommending its adoption by the General Assembly at its 77th session and seeking authorization to convene a signing ceremony as soon as practicable in 2023, and further recommending that the Convention be known as the “Beijing Convention on Judicial Sales of Ships”. In December 2022, the United Nations Information Service in fact announced that “The United Nations General Assembly adopted the United Nations Convention on the International Effects of Judicial Sales of Ships on 7 December 2022.

In order to keep up the positive momentum towards the formalisation and eventual adoption and coming into force of the Convention, and as follow-up to the colloquium organised in Malta by the *Comité Maritime International* (CMI) in 2018, which was instrumental in leading the United Nations Commission on International Trade Law (UNCITRAL) to work on the project, the Ministry for Foreign and European Affairs and Trade of Malta, in collaboration with the CMI and UNCITRAL, organised the Malta Symposium in 2023, providing participants with a unique opportunity to discuss with the main international legislators and stakeholders, the various ramifications related to judicial sales of ships as well as the implications and repercussions of the UN Convention on the International Effects of Judicial Sales of Ships. It comprised presentations by representatives of UNCITRAL, the *Comité Maritime International*, the European Commission, and the International Maritime Organisation, among others, as well as panel discussions with the main stakeholders in the field.

The UN General Assembly authorized a signing ceremony for the Convention which was to be held as soon as practicable in 2023 in Beijing and recommended the Convention be known as the “Beijing Convention on the Judicial Sale of Ships.” It went on to say that *“In most States courts have the authority to order the sale of a ship to satisfy a claim that is brought against the ship or shipowner. Such a claim is typically brought to foreclose a ship mortgage (in the event of default in repayment) or to enforce a maritime lien against the ship. The judicial sale procedure is typically preceded by the arrest of the ship. While the international community has achieved significant progress in harmonizing rule on the arrest of ships, much less progress has been achieved in harmonizing rules on the judicial sale of ships, which remain subject to widely varying domestic laws. The Beijing Convention will enhance legal certainty by creating a uniform regime for the international effects of judicial sales of ships.”*

A signing ceremony convened by the People’s Republic of China was held on 5 September 2023 in Beijing, at which occasion 15 States signed the Convention. The Convention is being hailed by maritime practitioners worldwide as one of the most important maritime conventions in recent years aimed at providing certainty and stability in an area of international trade responsible for the carriage of 90% of world trade.

EU Member States were not able to sign the Convention in Beijing as the pertinent EU process had not yet been completed by that time. The EU signed the Convention on the 14th of March 2024. The process is now complete, and so EU Member States are now able to sign the Convention.

The Celebratory Event

In view of the importance that Malta attaches to this Convention, the Ministry for Foreign and European Affairs and Trade of Malta, in collaboration with the CMI and UNCITRAL, is organising a high-level celebratory event on 19 June 2024, aimed at key institutional and Governmental representatives, with the objective of actively contributing to the entry into force of the *Beijing Convention*, by providing further insight into the benefits and ramifications of the Convention.

Exceptionally, the UN Treaty Book will be available at this event, in the presence of Mr Miguel de Serpa Soares, Under Secretary General for Legal Affairs and UN Legal Counsel, with a view to offer an additional opportunity to sign the Convention at this occasion. States interested in availing themselves of this opportunity to sign the Convention are most welcome to participate. This event is of particular relevance to EU Member States who, as indicated above, were not able to sign the said Convention in Beijing as the pertinent EU process had not yet been completed. The EU signed the Convention on the 14th of March 2024. This opens the way for individual EU Member States to also sign, along with other States who wish to do so.

For further information on the event, to register your participation, and/or to confirm your intention to sign the Convention at this event, you are kindly invited to contact:

Mr Patrick Mifsud
First Counsellor
Ministry for Foreign and European Affairs and Trade
patrick.r.mifsud@gov.mt