

# CONVENTION ON JUDICIAL SALE OF SHIPS

BEYOND THE TEXT



## 1. The Bright Star case

Convention as solution

How the convention works?

Conditions for issuance of the certificate

Who has the right to apply for a certificate?

Conditions attached to issuance of the certificate

Definition of judicial sale

Notification

Sanctions

Functions of the Repository

Consequences for the consequences of avoidance of sale

## 12. The Bright Star

Convention solve the problem

# Talking Points

# THE PROBLEM

## The Bright Star Case

✓ **Trading Fabrizia** arrested (2016) and sold in Jamaica (January 2018) for \$10.3 million

✓ Claims for unpaid bunker, crew wages .. and **for a debt secured by registered mortgage**


✓ Mortgagee not paid, just \$3 million **reserved**



- ✓ Renamed **Bright Star** – arrested in Malta (June 2018)
- ✓ Arrest lifted against security of €779,346.61




... it is not sufficient for the courts in Jamaica to have considered the Maltese registered mortgage solely as proof of [the mortgagees'] credit, [and to reserve] the sum of 3 million dollars for [the mortgagee] to submit its claim. ...



Rikors numru 351/2019 fl-atti tal-mandat esekuttiv  
ta' sekwestru numru 398/2019 fl-ismijiet:

*Jebmed S.r.l.*

... the Jamaican courts had to apply Maltese law relative to the mortgage in its entirety and thereby [the mortgagee] should have been the first creditor to have been paid from the proceeds of the vessel's sale.



intlaqghet talba tal-bastiment *M.V. Bright Star* [il-bastiment] biex  
jifhassar mandat ta' sekwestru mahruġ kontra l-istess bastiment għax  
"irritwali proċeduralment u sostanzjalment".

Malta cannot acknowledge the sale in Jamaica as having been made as "free and unencumbered" ... this in line with the principle of reciprocity.

Lex bandi



tm



Transport Malta



Land



Aviation



Maritime

Maltese mortgages offer adequate protection to ship financiers:

- They enjoy **a high priority** in ... ranking of claims against a Maltese ship
- Mortgages constitute **executive titles** and may be enforced immediately without the need to institute lengthy court proceedings



11 February 2019,  
3:22pm  
by **Matthew Agius**

## **World first as court says ship's Malta mortgage overrides foreign auction**

In what is believed to be the first case of its kind anywhere in the world, a ship has been arrested in Malta after a judicial sale in Jamaica ignored the rights of a mortgage holder





That's a chaotic situation leading to huge uncertainty in international trade which we need to avoid.

# THE CONVENTION

## TIME LINE

- 2007** Dubrovnik Exco - suggestion
- 2008** Athens - CMI Conference IWG established
- 2011** IWG - The First Draft
- 2017** UNCITRAL - in principle accepted the work
- 2018** CMI colloquium in Malta
- 2018** UNCITRAL decided to add the judicial sale of ships to its work program. Working Group IV was assigned the task of preparing a draft instrument.

# HOW CONVENTION WORKS?

# A) State of sale



Judgement

# B) State of recognition



Certificate



- Deregistration
- Registration
- No arrest

*Article 6. International effects of a judicial sale*

A **judicial sale** for which a certificate ... has been issued shall have **the effect in every other State Party** of conferring clean title ... on the purchaser.



**A judicial sale shall have the effect in every other State Party**

## Draft summary

### Addendum

*[Amendments to A/CN.9/WG.VI/XL/CRP.1/Add.1]*

Insert the following before the final sentence of paragraph 7:

“It was also observed that the law of a State Party might provide for the registrar to take action pursuant to an order of a competent court, although a query was raised as to whether a convention dealing with the international ~~recognition~~ effects of judicial sales should be concerned with action by the registrar in the State of judicial sale.”

**Commented [UNCITRAL1]:** Secretariat response to comment by France: “[W]e would prefer if the words “reconnaissance de la vente judiciaire” were not used in the summaries”.

Who has mandate to negotiate?

EU v Member states?



# “REGULATION (EU) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

(No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 (recast)”.  


Certificate shall be issued **after** enforcement has been already completed.

Judgement ---enforcement by sale ---/---Convention effect of sale

Regulation does not cover jurisdiction for action **in rem** against a **movable object**, such as ship.

## Article 24

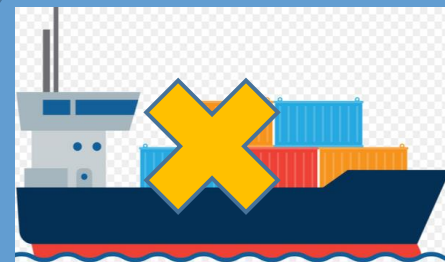
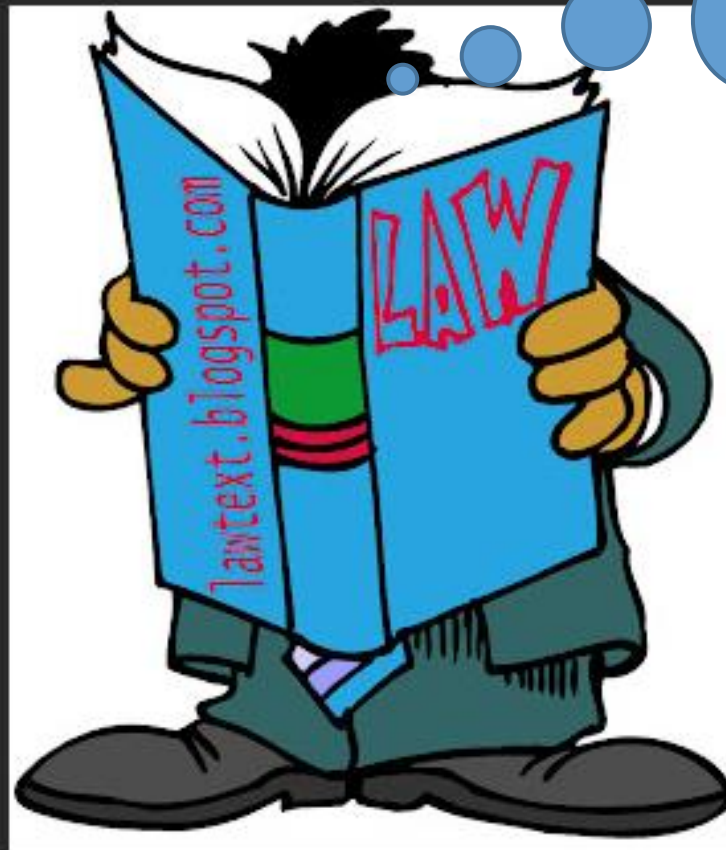
The following courts ... shall have exclusive jurisdiction ... :

(1) in proceedings which have as their object rights **in rem** in **immovable property** ... the courts of the Member State in which the property is situated.

Jurisdiction “in actions relating to liability  
operation of a ship  
such liability”

Special jurisdiction

Disputes concerning  
respect of the  
the cargo or freight



jurisdiction claimed in  
(place of arrest of

lacuna in law – lex specialis should apply

# EU Commission seeking authorization from EU

Council



Council of the  
European Union

Brussels (OR. en) 22 April 2022

8221/22

LIMITE

..., a mandate “to negotiate” has become irrelevant. .... such a decision would be contrary to Article 218, (2) to (4) TFEU which contemplates the granting of a mandate to negotiate only during the negotiations.

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Subject: Recommendation for a Council Decision authorising the European Commission to negotiate a convention on the judicial sale of ships in the framework of the United Nations Commission on International Trade Law (UNCITRAL)  
- Presidency revised text

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Following the meeting of the Working Party on Civil Law Matters held on 13 April 2022, delegations will find attached the draft Council Decision mentioned above as amended by the Presidency.

Changes to the Commission proposal are indicated in **bold**. Deletions made, compared to the Commission proposal, are marked with ~~strike through~~ where relevant.

## Article 18: Disconnection clause

“This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention:

- (a) if, under article 4, the transmission of notice of a judicial is made between member States of such an organization; or
- (b) as concerns jurisdictional rules applicable between member States of such an organization.”

CONDITIONS  
ATTACHED TO  
ISSUANCE OF  
CERTIFICATE

# TERMS & CONDITIONS

## Model certificate of judicial sale

*Issued in accordance with the provisions of article 5 of the [Convention on the International Effects of Judicial Sales of Ships]*

This is to certify that:

### *Article 5. Certificate of judicial sale*

1. Upon completion of a judicial sale that conferred clean title to the ship under the law of the State of judicial sale and was conducted in accordance with the requirements of that law and the requirements of this Convention, the court or public authority that ordered, approved or confirmed the judicial sale or other competent authority of the State of judicial sale shall, in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser.

2.1 Name .....

2.2 Address .....

2.3 Telephone/fax/email, if available .....

3. **Judicial sale**

# JUDICIAL SALE

*Article 2. Definitions*

(c) “Judicial sale” ... means any sale of a ship:

(i) ...by a court ...;

(ii) For which the proceeds of sale are made available to the creditors;

*Article 3. Scope of application*

2. This Convention shall not apply to:

~~[(a) The judicial sale of a ship following a seizure or confiscation of the ship by tax, customs or other law enforcement authorities;]~~



# PUBLIC CLAIMS

By ranking  
of **private**  
maritime law



## *Article 2. Definitions*

(c) “Judicial sale” ... means any sale of a ship for the purpose of enforcing recovery of **private** or **commercial** claims:

(i) ...

(ii) For which the proceeds of sale are made available to the creditors

# NO PUBLIC CLAIMS

International Convention on Maritime Liens and Mortgages,  
1993

## Article 4 **Maritime liens:**

- a) claims for wages and other sums due to the master, ....:
- (b) claims in respect of loss of life or personal injury occurring, ...;
- (c) claims for reward for the salvage of the vessel;
- (d) claims for port, canal, and other waterway dues and pilotage dues;
- (e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel ...
- (f) ~~claims in respect of tax, custom and other state dues~~

# "Maritime Claim," 1952 Arrest Convention

- (a) damage to or loss of any ship either in collision or otherwise;
- (b) loss of or damage to cargo or other property carried by any ship ...;
- (c) salvage;
- (d) agreement relating to the charterparty of any ship ...;
- (e) agreement relating to the employment of any crew member ...;
- (f) loss of or damage to cargo or other property carried in any ship;
- (g) general average;
- (h) bottomry;
- (i) towage;
- (j) pilotage;
- (k) goods or materials wherever supplied to any ship;
- (l) construction, repair or equipment of any ship;
- (m) wages of Masters, Officers, or crew;
- (n) Master's disbursements, including disbursements made on behalf of the ship;
- (o) disputes as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession, or control, ...;
- (q) the mortgage or hypothecation of any ship.

**claims for tax, custom**



to the creditors

# NOTIFICATION

## *Draft prescribes*

- Notifying parties
- Minimum content
- Condition for issuance of certificate
- Law (of the State of judicial sale)
- Jurisdiction (Court of the State of judicial sale)



Article 4. Procedure and notice of judicial sale



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tion.

What if the notice is not transmitted to the repository or other breach has occurred?

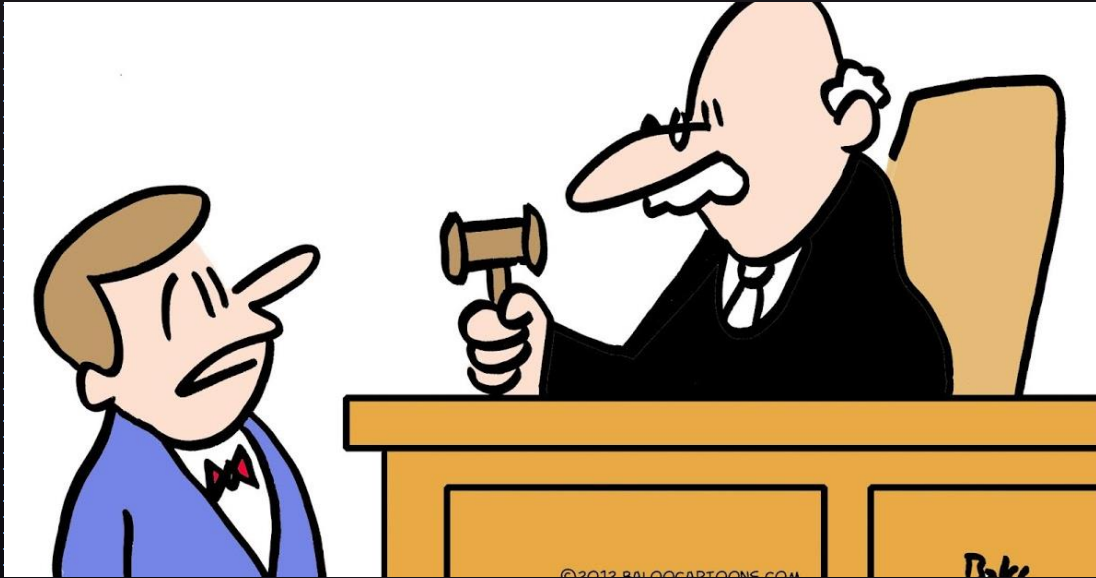
repository shall ... P y

# SANCTIONS





99sportz.com



## Jurisdiction State of Sale

### *Article 9. Jurisdiction to avoid and suspend judicial sale*

1. The courts of the State of ... sale shall have **exclusive jurisdiction** to hear any claim or application **to avoid** a judicial sale of a ship ... or to suspend its effects, ...[or] to challenge the issuance of the certificate of judicial sale ...
2. The courts of a State Party shall **decline jurisdiction** ...



## Jurisdiction State of Recognition

*Article 10. Circumstances in which judicial sale has no international effect*

A judicial sale ... shall not have the effect ... in a State Party ... if a **court in the other State Party** determines that the effect would be **manifestly contrary to [its] the public policy** ...

# ROLE OF REPOSITORY

## Welcome to the Public Area

Find module by keyword



### Ship and Company Particulars

Search the world fleet of ships by IMO Number and look up company particulars by IMO Company Number.



### Contact Points

Contact lists of competent authorities and authorized organizations relating to IMO matters.



### Marine Casualties and Incidents

Data on marine casualties and incidents, as defined by circulars MSC-MEPC.3/Circ.3.



### Pollution Prevention Equipment and Anti-fouling Systems

Equipment required by MARPOL 73/78 and the BWM Convention, and anti-fouling systems compliant with the AFS Convention.



### Piracy and Armed Robbery

Reported incidents of piracy and armed robbery.



### Judicial sale of Ships

0 instruments.



### Maritime Security

Information communicated under the provisions of SOLAS regulation XI-2/13 (SOLAS chapter X1-2 and the ISPS Code).



### Recognized Organizations

Information submitted by Member States under MSC/Circ.1010-MEPC/Circ.382.



### Port Reception Facilities

Data on the available port reception facilities for the reception of ship-generated waste.



### Status of Treaties

Status of ratification of IMO conventions.



### Facilitation of International Maritime Traffic

Information on stowaway incidents, E-Addresses of Governmental Authorities and notifications pursuant to article VIII of the FAL Convention.



### Simulators

Information on simulators available for use in maritime training.

# IMO

RUNNING the REPOSITORY,

but content managed by states

*Article 10. Circumstances in which judicial sale has no international effect*

A judicial sale ...shall not have the effect ... if a court in the other State Party determines that:

- (a) **a notice** or certificate **has not been made available to the public** according to **article 11**. [i.e. though GISIS]
- (b) the effect would be otherwise manifestly contrary to the public policy of that other State Party



# NOTIFICATION



State of sale



State of recognition

# CONSEQUENCES OF AVOIDANCE OF SALE



*Article 9. Jurisdiction to avoid and suspend judicial sale*

1. The courts of the State of judicial sale shall have exclusive jurisdiction ... ..

2. The courts of a State Party shall decline jurisdiction ...  
....

[5. The effects of avoidance of a judicial sale shall be determined by applicable law].



But by which court?



## Article 9.

[5. The effects of avoidance or suspension of a judicial sale shall be determined by a court **in the State of judicial sale or any other State Party**, provided such court according to *lex fori* has jurisdiction to hear the case. ]

~~[5. The effects of avoidance of a judicial sale shall be determined by applicable law].~~



[5. The effects of avoidance ... shall be determined by applicable law ***in the state of judicial sale***].

*Article 15. Matters not governed by this Convention*

1. Nothing in this Convention shall affect:

(a) The procedure for or priority in the distribution of proceeds of a judicial sale; or

(b) Any personal claim against a person who owned or had proprietary rights in the ship prior to the judicial sale.

2. Moreover, this Convention **shall not govern the effects**, under ~~applicable law~~, of a decision by a court exercising jurisdiction under article 9, paragraph 1.

# Bright Star

*Under the Convention*

# QORTI TAL-APPELL

IMHALLFIN

S.T.O. PRIM IMHALLEF JOSEPH AZZOPARDI  
ONOR. IMHALLEF GIANNINO CARUANA DEMAJO  
ONOR. IMHALLEF NOEL CUSCHIERI

Seduta ta' nhar il-Ġimgħa 12 ta' Lulju 2019

Numru 14

Rikors numru 351/2019 fl-atti tal-mandat esekuttiv  
ta' sekwestru numru 398/2019 fl-ismijiet:

Jebmed S.r.l.

v.

Il-bastiment M.V. Bright Star

1. Dan huwa appell tas-soċjetà Jebmed s.r.l. [Jebmed] minn provvediment mogħti mill-Prim'Awla tal-Qorti Ċivili fis-7 ta' Mejju 2019 li bih intlaqgħet talba tal-bastiment M.V. Bright Star [il-bastiment] biex jiġihassar mandat ta' sekwestru maħrug kontra l-istess bastiment għax "irritwali proċeduralment u sostanzjalment".
2. Il-fatti rilevanti għal dan l-appell huma dawn: fuq talba ta' Jebmed magħmula b'rikors tas-16 ta' Marzu 2019 infareg dakinhar stess mandat esekuttiv ta' sekwestru kontra l-bastiment. B'rikors tal-5 ta' April 2019 il-bastiment talab li jiġihassar il-mandat, u l-ewwel qorti bid-



*Article 10. Circumstances in which judicial sale has no international effect*

...if ... the effect would be **manifestly contrary** to the public policy ...

Because

- a. the *Jamaican courts* did not recognize the mortgage governed by the Maltese law (*lex bandi*),
- b. proceeds of the sale have not been made available to the creditor,
- c. the principle of international reciprocity and comity has been breached.



THANK YOU  
ZADAR