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3 April 2019

MLC(19)06

TO: MARITIME LAW COMMITTEE

Copy: All Full and Associate Members (for information)

JUDICIAL SALE OF SHIPS - UNCITRAL

Action required: *Members' views on the upcoming UNCITRAL work on Judicial Sale of Ships (13 - 17 May 2019) and the CMI draft convention would be welcomed in order to assist in the development of an ICS position for the UNCITRAL discussions. Please send any comments to legal@ics-shipping.org by 12 April.*

As reported at the Maritime Law Committee meeting in February 2019, the UNCITRAL Secretariat has advised that Working Group VI will commence work on the preparation of a draft instrument on the judicial sale of ships at its next meeting (13 - 17 May 2019, at UN HQ New York). The working papers for the meeting are expected to be published soon on the UNCITRAL website: <https://uncitral.un.org/>

The working papers will include the original proposal that CMI submitted to UNCITRAL in 2017, and the CMI draft convention on the recognition of foreign judicial sales of ships (attached at **Annex A** and **Annex B**, respectively). The outcomes and conclusions of the CMI Colloquium held in Malta last year will also be taken into account - these are summarised in the document attached at **Annex C** (Swiss Government submission to UNCITRAL last year, A/CN.9/944/Rev.1).

Members will recall that it was agreed at the MLC meeting in September 2018 that ICS should participate in the UNCITRAL work. It was noted that ICS had not engaged in the CMI preparatory work that resulted in the adoption of the CMI draft convention. Members had shown little interest in the topic over the years, and limited secretariat resources had been directed to participation in other CMI discussions that were being conducted at the same time and had the potential to impact on shipowners' liabilities. However, the MLC agreed that ICS involvement on behalf of the shipping industry was necessary now that the topic had been taken up by UNCITRAL. BIMCO's request for ICS to take the lead in the UNCITRAL work and to participate also on behalf of BIMCO was accepted.

In addition, the MLC recognised that technical legal expertise on the topic would be needed in order for ICS to participate in the UNCITRAL work in a meaningful way. In this respect, the secretariat is pleased to report that in response to the requests made at recent MLC meetings for assistance, the Belgian Shipowners' Association (BRV) has provided a shipowner member of its Legal Working Group to participate in the first meeting in May on behalf of ICS. Mr Peter Laurijssen, CMB Group Legal Manager, has

considerable experience in ship sale and purchase, ship finance, arrest, and related matters, both from a technical legal perspective and a shipping company's perspective. Mr Laurijssen participated in the CMI preparatory work on the draft convention, and also in the Malta Colloquium, on behalf of BRV. Following consultation with the MLC Chairman, BRV's kind offer has been accepted. With Mr Laurijssen's assistance, the secretariat is presently reviewing the CMI draft convention and members' views would be welcomed to assist in the development of an ICS position for the UNCITRAL discussions. An initial overview follows.

According to the CMI proposal (at Annex A), the draft convention is intended to address the problems arising around the world from the failure to give recognition to foreign judgments ordering the sale of ships. In this respect, according to the document at Annex C, the Malta Colloquium agreed that the lack of legal certainty in relation to the clean title which a judicial sale is intended to confer on a purchaser led to problems in the de-registration process in the country of the former flag. It was also agreed that the lack of legal certainty created obstacles in respect of the clearance of all former encumbrances and liens, which in turn created a risk of costly and lengthy proceedings, thereby interrupting trade and shipping. Finally, there was broad agreement at the Malta Colloquium that the gap could be filled from a legal perspective by providing an instrument on the recognition of judicial sales of ships.

According to the CMI draft convention (at Annex B), "Judicial sale of a ship" means any sale of a ship by a Competent Authority by way of public auction or private treaty or any other appropriate ways provided for by the law of the State of Judicial Sale by which Clean Title to the ship is acquired by the Purchaser and the proceeds of sale are made available to the creditors.

The draft convention contains provisions concerning the notice procedure for, and the effect of, judicial sales. When a ship has been sold by a judicial sale, the draft convention provides that the Purchaser shall be issued a certificate recording that the ship has been sold to them free of all mortgages and charges, except those assumed by the Purchaser, and that any title to and all rights and interests in the ship that may have existed prior to the sale are extinguished. The ship's registry shall be bound to delete any registered mortgages and registered charges upon production by the Purchaser of the certificate, and to either register the ship in the name of the Purchaser or provide a certificate of deregistration.

The draft convention includes provisions whereby the Owner of the ship immediately prior to the judicial sale, or the holder of a registered mortgage or registered charge attached to the ship immediately prior to the sale, can challenge the sale.

Finally, the draft convention contains provisions on the recognition by the Courts of States Parties of judicial sales that have taken place in other States, and where a certificate has been issued, as giving to the Purchaser clean title. Circumstances where recognition may be suspended or refused at the request of the Owner of the ship immediately prior to the judicial sale, or the holder of a registered mortgage or registered charge attached to the ship immediately prior to the sale, are also included.

In light of the outcomes and conclusions of the Malta Colloquium, which was well-attended by governments, lawyers and various industry stakeholders, the secretariat is inclined to suggest that the general ICS position should be supportive of the UNCITRAL

work and the CMI draft convention. CMI has compiled a list of examples (attached at **Annex D**), which illustrate that the problem is not confined to particular jurisdictions or regions and that shipowners have been affected by the present lack of legal certainty, particularly shipowner purchasers and their mortgagees.

Since the secretariat proposes that ICS should take a generally positive position, it would be especially helpful to know if members have any concerns about the upcoming UNCITRAL work on the preparation of a draft instrument on the judicial sale of ships and the text of the CMI draft convention. Members' views would be welcomed by Friday, 12 April and should be sent to legal@ics-shipping.org

Linda Howlett
Director Legal Affairs