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Singapore reinforces its position as a friendly jurisdiction for mortgagee arrest by becoming a signatory to the Beijing Convention on the Judicial Sale of Ships

Introduction

Singapore has traditionally been a favourable jurisdiction for financiers to enforce their mortgage over vessels. By becoming one of the first signatories to the Beijing Convention on the Judicial Sale of Ships, Singapore has reinforced its position on this front. Other signatories include Saudi Arabia, China, Honduras, Comoros, Burkina Faso, Syria, Sierra Leone, El Salvador, Kiribati, Sao Tome and Principe, Switzerland, Grenada, Liberia, and Senegal.

This update aims to examine how the Singapore High Court deals with the arrest and enforcement of mortgages and why it is a preferable jurisdiction for mortgagee arrest.

How can a mortgagee apply for arrest and judicial sale of a vessel in Singapore?

Section 30(2) of Singapore's Merchant Shipping Act entitles every registered mortgagee to enforce its mortgage by an action in rem in admiralty whenever any sum secured by the mortgage is unpaid when due, or otherwise in accordance with the terms of any deed or instrument collateral to the mortgage.

To arrest and enforce a mortgage in Singapore, the mortgagee will need to successfully apply for and obtain a warrant of arrest issued by the Singapore High Court, pursuant to a permitted claim as per the High Court (Admiralty Jurisdiction) Act. Assuming that Owners do not enter an appearance and contest the claim, the mortgagee can proceed to file an application for default judgement, which will typically be heard within 4 to 6 weeks from the filing date.

Thereafter, the mortgagee can apply for

appraisal and sale of the vessel pursuant to default judgement. From our experience, the entire process of appraisal and sale will usually take 2 to 3 months. This is on the assumption that the vessel is sold on the first attempt. After the vessel is sold, the mortgagee can proceed to file an application for determination of priorities and payment out of court. From our experience, the entire process will take about 2 months assuming that there is no substantial dispute as to priorities.

Why is Singapore a friendly jurisdiction for mortgagee banks?

The Singapore High Court has upheld the established priorities order which favours mortgagee banks over other statutory claimants and will only be inclined to depart from the same in very exceptional circumstances.

In the case of the *The Posidon* ([2017] SGHC 138), a Greek mortgagee bank was seeking to obtain payment out of the balance of sale proceeds to satisfy the in-rem judgments that they had obtained. However, three bunker suppliers intervened in the suit seeking priority ahead of the bank on the basis that the bank had allegedly authorised and approved the bunker purchases by the borrower, despite knowing that the borrower was insolvent. The court declined to move away from the established order and held that the bunker suppliers had not shown the existence of special circumstances to justify a departure from the established order of priorities so as to enable their claims to rank ahead of the bank's mortgage claims. The court further emphasized that a departure from the established order of priorities is only warranted in truly exceptional or special circumstances to prevent an obvious injustice. Such instances would include: (a) mortgagee who puts forward his claim only after the priorities of competing claimants have been determined by the court, or (b) a mortgagee, knowing

the mortgagor to be insolvent, stands by and allows the supply of necessities that directly accrue to the benefit of the mortgagee and/or the mortgagee's security interest in the ship.

Background of the Beijing Convention on Judicial Sale of Ships

September 5th, 2023 marked the signing of the United Nations Convention on the International Effects of Judicial Sale of Ships. Originally adopted by the United Nations General Assembly on December 7th, 2022, the convention is focused on resolving the discrepancies in the judicial sale of ships and giving it a cross border identification. Having been signed in the Chinese capital, it is also called the "Beijing Convention on the Judicial Sale of Ships".

As per Mr. Eng Dih Teo, Chief Executive of the MPA (Maritime and Port Authority of Singapore), the signing of the convention reflects multilateralism and is much beyond the commercial benefits, as nations have come to collectively establish a common framework to address a shared challenge.

For the Convention to apply, two criteria must be satisfied. Firstly, the judicial sale should be conducted in a state party to the convention, and secondly, at the time of the sale, the vessel should be physically within the territory of the state of judicial sale.

Further, the Convention does not apply to warships or naval auxiliaries, or other vessels owned or operated by a State and used, immediately prior to the time of judicial sale, only on government non-commercial service.

What does the convention seek to achieve?

This Convention seeks to provide an increased amount of cross-border certainty to ship buyers. It guarantees that the buyer will get a clean title to the vessel, free of any kind of mortgage or hypothec.

Article 8 of the Convention guarantees that the vessel will not be arrested after such a judicial sale for a claim that arose before such a sale, unless there are exceptional circumstances. Exceptional circumstances would include instances wherein dismissing an application for arrest of the vessel or ordering its release, would be evidently perverse to the public policy of that

state.

Article 4 of the Convention provides for a Notice of Judicial Sale, to be issued prior to the sale of the vessel, to be served on the Registry where the vessel is currently registered, all holders of any mortgage, hypothec and registered charges, holders of any maritime liens, and the owner of the ship for the time being. If the vessel is on bareboat charter, then the notice must also be served on the bareboat charter registry and the person registered as the bareboat charterer. Further, the Notice lays out the methods of challenging the judicial sale.

Article 11 of the Convention seeks to establish a central repository wherein all the notices and certificates of judicial sale of ships under the convention need to be transmitted and published. This would lead to simplifying the process involved in registration and deletion of vessels in the registries of the contracting parties, on account of a judicial sale certificate that is issued analogous to the Article 5 of the Convention, by the court or authority which conducted the judicial sale of the vessel.

This would particularly be beneficial in instances where the execution of the judicial sale is in one jurisdiction and the purchaser seeks to register the vessel in another jurisdiction, particularly a nation which has a flag of convenience. For example, if the vessel is sold by way of a judicial sale in the form of a court auction in China and buyers from Singapore have submitted a successful bid, they can then register the vessel in Singapore without the need to worry about any kind of encumbrances attached to the vessel and can be assured of a clean title.

Key takeaways

Various parties and stakeholders involved in the shipping industry are likely to benefit from this convention. Banks financing the vessel purchase transactions, the shipowners, lienholders, creditors, and potential parties interested in buying the vessel are likely to have more clarity and certainty.

As a premier maritime hub, Singapore will continue to be a forward-thinking jurisdiction with efficient and effective vital shipping & trade-related legal activities. The signing would further enhance its position as a preferable jurisdiction for mortgagee arrest.

While most jurisdictions do acknowledge the concept of a "free from all encumbrances – clean title" that is given by way of a vessel's judicial sale, there are still a few nations which tend to overlook the same. This convention is likely to influence purchasers to register

their vessels only in the nations that are signatories to the convention, to ensure trade conclusiveness.

This update was authored by our Partner and Head of Shipping, Prakaash Silvam, Senior Associate, Ng Guang Yi, and Foreign Lawyer, Vedanta Vishwakarma.

Oon & Bazul LLP have substantial experience assisting mortgagees to obtain full recovery when vessels are sold in the Singapore Courts by way of judicial sale. We have also been involved in some landmark cases involving attempts to prioritise sale proceeds.

Please do not hesitate to get in touch with the author directly should you have any queries.




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