



21 May 2024

Megan Scott
Assistant Secretary
Department of Infrastructure, Transport,
Regional Development, Communications
and the Arts
GPO Box 594
Canberra ACT 2601

Email:

megan.scott@infrastructure.gov.au

Copy to:

louise.bartholomew@infrastructure.gov.au

Dear Megan,

We write on behalf of the Board of the Maritime Lawyers Association of Australia and New Zealand (**MLAANZ**).

A key objective of MLAANZ, as set out in its Constitution, is to promote uniformity in international maritime law. Consistent with this objective, and as a member of the Comité Maritime International (**CMI**), MLAANZ has resolved to promote the ratification of the United Nations Convention on the International Effects of Judicial Sales of Ships, known as the “Beijing Convention on the Judicial Sale of Ships” (**Convention**) by the Commonwealth Government of Australia. It is for this reason that MLAANZ is writing to you.

Status of the Convention

As you are aware, the Convention was adopted by the General Assembly of the United Nations on 7 December 2022 in New York. Since then, 19 countries have signed the Convention, as set out in the table below:

Country	Signature date
Belgium	14 March 2024
Burkina Faso	5 September 2023
China	5 September 2023
Comoros	5 September 2023
Ecuador	17 November 2023
El Salvador	5 September 2023
European Union	14 March 2024
Grenada	5 September 2023
Honduras	5 September 2023
Kiribati	5 September 2023
Liberia	5 September 2023

Sao Tome and Principe	5 September 2023
Saudi Arabia	5 September 2023
Senegal	5 September 2023
Sierra Leone	5 September 2023
Singapore	5 September 2023
Switzerland	5 September 2023
Syrian Arab Republic	5 September 2023
United Republic of Tanzania	21 September 2023

Notably, the most recent signatory is the European Union, which has also made a declaration.

Purpose of the Convention

It is well understood that the intended effect of a judicial sale *in rem* is to extinguish all claims, liens or encumbrances in respect of the subject vessel and to transfer those claims to the proceeds of the sale of the subject vessel held by the court. An important feature of a judicial sale is that the purchaser obtains a 'clean title' valid against the world. However, due to conflicting international laws and the perceived uncertainty surrounding obtaining 'clean title' in some jurisdictions, the architects of the Convention determined it was necessary to establish a harmonised international regime governing the consequences of judicial sales. The Convention has been the product of much international effort and cooperation, including from Australia, and these concerted efforts have resulted in a suitable text.

The Convention seeks to provide a uniform regime for giving effect to judicial sales of ships around the world to ensure legal certainty as to the title the purchaser acquires. This means that purchasers of vessels sold by judicial sale in a Convention State will be able to operate their vessels without fear of arrest in another Convention State jurisdiction. Logically, there is a direct correlation between the effectiveness of the Convention and the number of States signatory to the Convention.

MLAANZ position

It is the view of MLAANZ that ratifying the Convention would promote the acceptance of Australian judicial sales internationally and would reinforce to the international shipping community that Australia respects the general principle of maritime law that a judicial sale confers clean title.

It is recognised by MLAANZ that legislative changes may be required in order to enable the Commonwealth Government to implement the Convention including amendments to the *Shipping Registration Act 1981* (Cth), *Shipping Registration Regulations 1981* (Cth), the *Admiralty Act 1988* (Cth) and the *Admiralty Rules 1988* (Cth). However, this should not be an impediment to the signing of the Convention by Australia.

Efforts by Australia

We acknowledge that since 2018, the Commonwealth Government has been involved in the development of the Convention. It is noted that the Department of Foreign Affairs and Trade sent a delegate to New York in 2018 to support the CMI in its efforts to have the Convention placed on the UNCITRAL agenda at the 51st session. Further, the Attorney General's Department sought comments from MLAANZ on the Convention on a number of occasions during 2020 – 2022 and actively participated in the UN Working Group's sessions, culminating in the adoption of the Convention in December 2022. We note that the Department is currently considering the ratification of the Convention by Australia.

Recent developments

Recent developments relating to the Convention are that the UN Treaty Section formally accepted the invitation of the Maltese Government to bring the Treaty Book for the Convention to Malta. There is a signing ceremony scheduled for the Convention in Malta on **19 June 2024**.

The Ministry of Foreign Affairs of Malta has sent out Official Notes Verbale to various countries. We understand the Australian Ambassador to Malta has received such Notes Verbale and has been in contact with the Department of Foreign Affairs and Trade.

MLAANZ would like to take this opportunity to urge the Government of Australia to send a delegate to Malta on 19 June 2024 to sign the Convention.

Should the Department require any further information on the Convention or its operation, we would be pleased to respond to any queries you may have.

Alternatively, if you would like to discuss this, please do not hesitate to contact me or Naraya Lamart, the Australian Vice President of MLAANZ, directly.

Yours sincerely,



Michelle Taylor
Immediate Past President
Maritime Law Association of Australia and New Zealand

E: michelle.taylor@sparke.com.au
M: +61 447 405 501

Naraya Lamart
Australian Vice President
Maritime Law Association of Australia and New Zealand