

Shipping & International Trade

United Nations Convention on the International Effects of Judicial Sales of Ships and What It Means for Singapore

Introduction

An owner who has purchased a ship through commercial channels at arm's length does not typically face challenges to its title when calling at different ports. However, the same cannot be said about a purchaser who obtains clean title to a ship through a judicial sale process. Much will depend on where the ship was judicially sold, and which jurisdictions are called upon to recognise the sale.

A clean title conferred by a foreign judicial sale will generally be given recognition in Singapore. What about a clean title obtained through a Singapore judicial sale – will such title be recognised internationally?

At present, there is no unified practice or global regime governing the recognition of clean titles derived from judicial sales. Instead, such recognition relies on the comity between nations.

Fortunately for Singapore, clean titles conferred by its judicial sales are recognised in most states, save for a select few jurisdictions which have refused to recognise the legal effects of judicial sales from foreign states.

In this Update, we take a look at the issues that arise from the failure to recognise clean titles conferred by foreign judicial sales and their effect on purchasers and the maritime industry as a whole. We also examine the United Nations Convention on the International Effects of Judicial Sales of Ships (the "**Convention**"), which Singapore signed on 5 September 2023, and how far it may go in addressing these issues.

The Issue of Double Jeopardy

The refusal of certain jurisdictions to recognise the legal effects of foreign judicial sales exposes purchasers of judicially sold ships to arrests of their ships for claims arising under their previous ownership, notwithstanding that the ships were sold free and unencumbered from their previous debts.

Further, purchasers may also face issues with deletion of records pertaining to the ships' previous owners and/or mortgagees as well as with new registrations. This potentially leads to the problem of dual ownership in the same ship – for example, *State A*'s registry reflects the title of the owner prior to the foreign judicial sale while *State B*'s registry reflects the title of the purchaser.



Shipping & International Trade

The precarious nature of the clean title of a foreign judicially sold ship affects not only purchasers but also presents far reaching practical implications for the maritime industry.

Owners whose ships are sold through the judicial sale process may be subject to various claims from creditors. Often times, the quantum of those claims dwarfs the value of the ship. Creditors in that situation would naturally be concerned that the ship they are proceeding against is sold at the highest price possible. Distressed ships in judicial sales, particularly those ships which are the subject of multiple claims, present risks of subsequent arrests and consequent substantive claims from creditors who have yet to receive satisfaction of their claims. Therefore, purchasers would not be willing to spend good money on such ships unless they could obtain a clean title to those ships.

Purchases of judicially sold ships are very often backed by secured financing, with the main security under such financing being the financed ship itself. The existence of pre-existing mortgages and other prior encumbrances on the ships affects the value of those ships and undermines the financiers' security in the said ships. In particular, the financiers' priority as first mortgagee is central to their decision to extend financing. A clean title assures that.

Bad faith creditors may leverage on the lack of harmonisation regarding the legal effects of foreign judicial sales to arrest ships, despite being aware of their clean titles conferred by judicial sales. Anxious owners faced with back-to-back commercial arrangements for their newly acquired ships may succumb to the pressure of such arrests and settle the creditors' claims, rather than incur significant time and expense to establish their ownership before the foreign courts.

Even in the absence of bad faith, creditors may arrest judicially sold ships with clean titles owing to uncertainties as to the legal effect of their sales or, as alluded to above, owing to conflicting records in different registries. Disruptions caused by such subsequent arrests extend to the ships' charterers, cargo owners and crew as well. This interferes with the flow of international trade and results in unnecessary claims.

Is the Convention the Solution?

The Convention creates a framework to regulate the international effects of judicial sales that confer clean titles on purchasers. The Convention also provides uniform rules governing the publication of information regarding ships that are subject to such judicial sales. Importantly, the Convention only seeks to regulate the *legal effects* of those judicial sales, as opposed to the *domestic rules* governing the conduct of such sales: Article 1.

A key aspect of how the Convention seeks to remove barriers to the recognition of clean titles is through the **certificate of judicial sale** ("**Certificate**"), which would be issued upon completion of a judicial sale conferring clean title and compliance with the relevant domestic law and requirements of the

Client Update: Singapore

2023 OCTOBER

Shipping & International Trade

Convention: Article 5. This Certificate, subject to a limited public policy exception in Article 10, has the effect in every other state party of conferring clean title to the ship on the purchaser: Article 6.

The issuance of the Certificate is conditional upon compliance of certain safeguards in the Convention, notably the notification requirements at Article 4 – these requirements ensure that key interested parties and the relevant ship registry would be notified prior to the judicial sale. Apart from specific parties set out in Article 4(3), the Convention requires that the **notice of judicial sale** be published by announcement in the press (or other publication available in the state conducting the judicial sale) and transmitted to a centralised repository referred to in Article 11. The centralised repository is not limited to the storage of such notices – Article 5(3) also requires that the Certificate be transmitted to that repository "*promptly*" for publication.

The establishment of a centralised repository is much welcomed as it enables parties who are interested in a particular ship to find out if the ship is the subject of contemplated judicial sale proceedings or has been judicially sold.

The Convention also standardises the actions to be taken by ship registries of state parties upon being presented with a Certificate (Article 7) and compels a state party to release a ship that has been arrested for a prior existing claim upon production of the Certificate (Article 8). A state party's ability to regulate its own judicial sales is further enhanced by Article 9, which confers exclusive jurisdiction on the courts of the state which conducted the judicial sale to hear a challenge to that sale.

On the face of the Articles, the framework created by the Convention is easy to follow and promulgates a system based on mutual respect between state parties and transparency of information to all.

Obstacles to the Convention

In harmonising the legal effect of judicial sales, the resulting legal certainty in ownership should theoretically enhance the protection of judicially sold ships against subsequent arrests and consequent substantive claims.

Nevertheless, the Convention's reach is undermined by two obstacles: *first*, the Convention's effects are restricted to state parties (Article 3); and *second*, the state parties would have to implement the Convention into their laws.

The *first* obstacle is the greater limiting factor and undermines the effect of the Convention as a whole – the Convention is only as effective as the number of signatory state parties. It may be that states which are receptive to becoming signatories are already giving recognition to the legal effects of foreign judicial sales, even before the Convention; the Convention merely reflects the pre-existing comity attitudes of its signatories.

Shipping & International Trade

Whether those jurisdictions that have long refused to recognise the legal effects of foreign judicial sales would be persuaded to sign the Convention remains to be seen. The possibility that those jurisdictions may choose to recognise the legal effect conferred by the Certificates rather than be signatories to the Convention, cannot be discounted. Indeed, it may be that the concerns and/or skepticisms that those jurisdictions have towards judicial sales conducted by foreign states may be dispelled with the production of an internationally recognised and regulated Certificate.

Concluding Remarks

Popular arrest jurisdictions (such as Singapore, Australia, Hong Kong, South Africa, just to name a few) should adopt the Convention and enact laws to bring it to effect. At the very least, this would give purchasers greater assurance in the clean title conferred by judicial sales which may translate to more stable prices. Such endorsement by popular arrest jurisdictions could potentially encourage more states to sign the Convention and bring us closer to achieving a global regime.

As the Convention is still in its infancy, it is uncertain as to whether and to what extent the Convention would have any effects on the general market. That said, the Convention is definitely a step in the right direction and Singapore has rightly signed it in support.

For the Convention's text and list of signatories to the Convention, please refer to <https://uncitral.un.org/en/judicialsaleofships>.

For the press release by the Ministry of Law on Singapore's signing of the Convention, please refer to <https://www.mlaw.gov.sg/news/announcements/singapore-signs-un-convention-international-effects-of-judicial-sales-of-ships/>.

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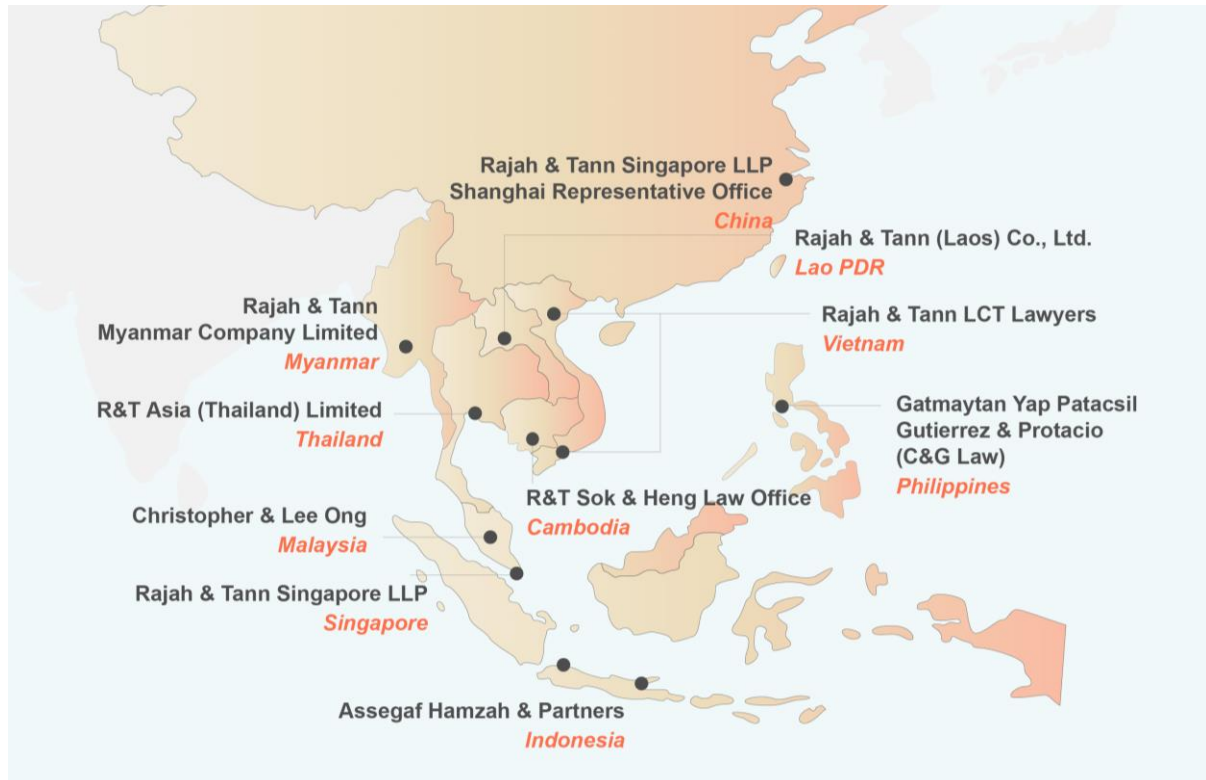
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Client Update: Singapore

2023 OCTOBER

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