

Maritime Liens and Ship Mortgages in the Philippines

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● Introduction

- Shipping Industry
- International Maritime Organization
- Lack of financing leads to old and outdated which affects seaworthiness
 - a factor in the pursuit of the implementation of UNCLOS and IMO instruments as they relate to navigational safety and protection of the environment

Maritime Liens

- Analysis of the 1993 Convention on Maritime Liens and Mortgages and Comparative Study between the Philippines and Australia on subject matter



1993 Convention on Maritime Liens and Ship Mortgages

- Introduction

- 1926 Convention

- Brussels, April 10, 1926,
successful but became obsolete

- 1967 Convention

- Brussels, May 27, 1967,
not in force

- 1993 Convention

- adopted in Geneva and went into force Sept 5 2005
11 signatories, with 12 parties



Provisions relating to Mortgages

- Recognition and Enforcement of Mortgage
- Ranking and Effects
- Registration and Change of Ownership



Maritime Liens

- Convention

1. Wages
2. Loss of life or personal injury
3. Reward of Salvage of Vessel
4. Port, waterway and pilot dues
5. Tort

- Philippines

1. Wages
2. General Average
3. Salvage, contract salvage
4. Necessaries and supplies
5. Pilot, tonnage dues, and port dues
6. Loans on Bottomry and Respondentia
7. Use of Drydocks, marine railway, and other necessaries furnished to the vessel



Priorities of Liens

- 1993 Convention
 - In the order enumerated above
 - Salvage shall take priority over all prior liens
 - 2 or more salvage, the inverse priority rule will apply

- Philippines
 - Crew's Wages
 - Gen. average
 - Salvage, including contract salvage
 - Maritime liens arising prior in time to the recording of mortgage
 - Tort
 - Preferred mortgage prior in time
 - Pro rata as between same grade



1993 Convention

Maritime Liens Excluded

- General Average
- Oil, nuclear and other noxious substance
 - To avoid conflict of conventions particularly:
 - International Convention on Civil liability for Bunker Oil Pollution Damages
 - International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substance
- Lien for necessaries
- Lien for wreck removal



1993 Convention

- Extinction of maritime liens by lapse of time
 - 1 year from attachment
 - Social claims by seamen commence from time of discharge from vessel.



1993 Convention Other Maritime liens

- Allows State Parties to create domestic maritime liens or at national level
- Expiration period of 6 mos.
- Compromise provision
- Subordinate to mortgage in priority
- Favorable to the Philippines as it may allow lien on domestic lien for necessaries should it be removed from the international liens



Assignment/ Subrogation of Maritime Liens

- Convention generally allows subrogation and assignment of liens
- Exception is where the lien holder is subrogated to insurance monies payable to the owner



Conflict of Conventions

- The 1993 Convention provides that nothing in the Convention will affect the other Conventions or national laws on the limitation of liability
 - Among them are International Convention on Civil Liability for Bunker Oil Pollution Damages, adopted 23 March 2001, International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996. and Convention on Limitation of Liability for Maritime Claims (LLMC), 1976.^[1]
 - ^[1] Convention on Limitation of Liability for Maritime Claims was amended by Protocol 1996.



Rights of Retention

- Also termed as “possessory lien”
- Shall be surrendered in exchange for the priority in payment over mortgage
- Subordinate to maritime holders but has priority over ship mortgage creditor
- Detrimental to mortgagee in practice in some cases where shipowner and repairer employ fraudulent scheme by raising the repair cost
- The more fair rule is priority between possessory liens and mortgagee should be the date of attachment, the earlier prevails



Temporary Change of Flag

- Purpose is to ensure that vessels will be flying under one flag only
 - Measures
 - The law of the State of Registration shall be the governing law. State of registration refers to the state prior to change of flag
 - Cross reference entry of the state which allows flying of flag temporarily is required by the State of Registration
 - Compliance with notice requirements is required



Effect of Forced Sale

- Under Convention, the *maritime liens will cease to attach upon sale* forced sale ;but no constitution of new mortgage
- The Convention allows State to provide laws making the cost of removal of wrecks as a preductible charge
- Cost of the arrest shall be satisfied first before payment of maritime liens
- The right of retention shall be surrendered in exchange for the payment of its claim after satisfation of maritime liens
- In the Philippines, same with the convention on the termination of the maritime lien; but a new mortgage may be required to be constituted with respect to the remaining balance of the loan



Lack of Protection to innocent purchaser

- Maritime liens will be enforced against purchaser who has nothing to do with the transaction between the original vendor and the lien holder
- Although, purchaser has recourse against vendor, he will come empty handed where the vendor is insolvent. Moreover, recovery may lead to costly litigation
- Solution? International registry of liens
- Pending implementation of the above, national registration of liens
- Maritime liens should not be enforced against purchaser unless it is registered



Conclusion:

- Promotes uniformity
- Promotes universal recognition and enforcement of mortgages, hypothèques and other charges
- Careful regulation in the registration and more better protection to security holders
- Add more protection to seamen
- Long standing maritime liens which are no longer justifiable are removed except for port, waterway claims which is still included
- Logical order of priority in ranking liens especially on salvage
- Resolve the problem relating to oil, nuclear and other hazardous substances
- Overall the Convention is a very good development and therefore should be ratified or at least national law should be enacted similar to it and do away with the less desirable provisions



Participant	Signature	Definitive signature (s), Ratification, Acceptance (A), Approval (AA), Accession (a)
Brazil	28 Mar 1994	
China	18 Aug 1994	
Denmark	9 Aug 1994	
Ecuador		16 Mar 2004 a
Estonia		7 Feb 2003 a
Finland	29 Aug 1994	
Germany	11 Jul 1994	
Guinea	18 Nov 1993	
Monaco		28 Mar 1995 a
Morocco	23 Aug 1994	
Nigeria		5 Mar 2004 a
Norway	31 Aug 1994	
Paraguay	24 May 1994	
Peru		23 Mar 2007 a
Russian Federation		4 Mar 1999 a
Saint Vincent and the Grenadines		11 Mar 1997 a
Spain		7 Jun 2002 a
Sweden	2 Jun 1994	
Syrian Arab Republic		8 Oct 2003 a
Tunisia	24 Nov 1993	2 Feb 1995
Ukraine		27 Feb 2003 a
Vanuatu		10 Aug 1999 a



Comparison

- Philippines
 - list of maritime liens more extensive
 - Application of priority Straight forward
 - wages does not include emoluments, repatriation and social contribution
 - Recognize Foreign maritime liens
- Australia
 - only 4 maritime liens
 - Prima facie ranking guiding principles maybe displaced by equity
 - Wages includes emoluments, repatriation and social contribution
 - Does not recognize



Recommendations



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