

Welcome to our February 2013 Issue XIII of the GA Shipping & Maritime Law Bulletin

1. **In Brief**

Malta ratifies the Maritime Labour Convention (MLC, 2006)

The Republic of Malta on 18th January 2013 became the 34th ILO Member State to deposit the instrument of ratification of the Maritime Labour Convention, 2006. Ratification of the MLC, 2006 bears further witness to Malta's commitment to quality shipping and enhanced protection of seafarers.

Case Report: In *Unitor AS vs M.V. Norbel Bulk*, the Maltese Civil Court ruled on a case involving the right of a creditor to proceed in rem against a vessel following its transfer and registration onto Maltese flag.

Legislative Developments: A brief outline of the Merchant Shipping Directorate Notices 101 to 103 and Technical Notice issued by the Malta Flag Authority.

Name Change Announcement – Ganado Advocates: With effect from Monday 4th February, 2013 Ganado & Associates, Advocates changed its practice name to **GANADO Advocates**. Our new name reflects the name by which the firm has come to be known among clients and colleagues, and we have taken the opportunity of a rebranding exercise and a website re-launch to reflect this reality.

We continue to deepen legal advisory resources and focus on our international practice which is dominated by shipping and aviation, financial services (banking, insurance and investments) and corporate law together with taxation, trusts, employment law and litigation, which support all practice areas.

Our email addresses will change from @jmganado.com to @ganadoadvocates.com but emails sent to the current addresses will still be received for some time.

Our website at www.jmganado.com will re-direct you to the new site www.ganadoadvocates.com. If you have any queries regarding this change please feel free to contact us.

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2. Articles

Malta ratifies the Maritime Labour Convention (MLC, 2006)

On 18th January 2013, the Government of Malta, deposited with the International Labour Office (the "ILO") the instrument of ratification of the Maritime Labour Convention, 2006 (the "MLC").

Malta became the 34th ILO Member State and the 12th EU Member State to ratify this landmark convention, which aims to achieve standard working and living conditions for seafarers while creating conditions of fair competition for ship-owners.

In transmitting the instrument of ratification, the Permanent Representative of Malta to the United Nations in Geneva, H.E. John Paul Grech, stated that Malta stands confidently ready to implement its provisions in the interest of the Maltese flag, responsible operators and above all the seafarers working on board Malta registered vessels.

In receiving the instrument, the Director General of ILO, Mr. Guy Ryder welcomed Malta among the State parties to the MLC and express his satisfaction that with Malta's ratification, two-thirds of the worlds merchant fleet will be formally bound by the MLC upon its entry into force in August of this year.

Malta's ratification and its implementation of the MLC into Maltese law marks the end of a long process of preparation, including the amendment of the Merchant Shipping Act in 2010 in full consultation with the local stakeholders.

The MLC will enter into force on 20 August 2013, that is 12 months after the date on which it was ratified by 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.

3. Case Report

Unitor AS vs M.V. Norbel Bulk

The Court of Appeal in the case "Dr. Kris Borg on behalf of Unitor AS vs M.V. Norbel Bulk" held, among other things, that after the sale of the vessel, (including its deletion from the Norwegian International Register and registration under

Malta flag) and after the registration of the transfer of the vessel in Norway, it was clear that at the time Unitor AS filed this lawsuit in Malta, it did not have a special privilege under article 50 of the Merchant Shipping Act (Malta), nor any *droit de suite* to proceed *in rem* against the vessel according to law. As its claim was not privileged under article 50, Unitor AS's claims did not follow the vessel, after its transfer to new owners.

Facts of the Case

The foreign company Unitor AS filed an action *in rem* in Malta against the vessel Norbel Bulk to recover the outstanding amount equivalent to NOK 231,028 (approximately EUR 31,650) representing the balance of a larger sum due for supplies, necessary provisions and spare parts, with legal interests from the date of consignment, 21st July, 1995. The order for the provisions was made by the vessel's previous owners.

The foreign company Unitor AS maintained that its claim was privileged under article 50(M) of the Merchant Shipping Act (Malta).

In reply, the defendant vessel contested that the legal action was unfounded. Responsibility for the claim (which according to the defendant vessel was not privileged under article 50 of the Merchant Shipping Act) was disputed.

Article 50(M) of the Merchant Shipping Act (the "MSA") provides that:

"The debts hereunder specified are secured by a special privilege upon the vessel, as well as any proceeds from any indemnity arising from collisions and other mishaps as well as any insurance proceeds:

(M) moneys due to creditors for provisions, victuals, outfit and apparel, previously to the departure of the ship on her last voyage: Provided that such privilege shall not be competent where the debt has not been contracted directly by the owner of the ship, or by the master, or by an authorised agent of the owner";

Under Article 37 (D)(3) of the MSA:

"(3) Without prejudice to any other cause which may at law extinguish an obligation the special privileges specified in article 50 are not extinguished by the sale of the vessel, except in case of a sale made pursuant to an order or with the approval of a competent court made

according to the forms prescribed by law, or where, subsequent to a voluntary sale a period of one year has elapsed from the date of the registration, recording or annotation of that voluntary sale in the registry to which the ship belongs or where no such registration, recording or annotation are entered in that registry from the date of closure of the register of the ship in such registry subsequent to such voluntary sale, unless within such period of one year an action for the recovery of the claim secured by such privilege has been brought before a competent court.”

Proceedings before the Court of First Instance

The Court of First Instance (the “First Court”) considered that on 11th July 1995, the vessel was transferred to new owners. Subsequent to the transfer the name of the vessel was changed from Eli Marie to Norbel Bulk. On the date of sale, the vessel was deleted from the Norwegian International Register and provisionally registered in Malta under the name Norbel Bulk.

It was established that the foreign company Unitor AS had supplied necessary provisions to the vessel *before* the transfer of ownership but payment for the provisions was never effected. Subsequent to the supply of provisions, the vessel sailed from Latvia to Taiwan and en route, she had to stop in Malta for repairs. The vessel was arrested while she was in Maltese territorial waters.

The First Court first noted that the debt pre-existed the sale of the vessel since it arose before the vessel was acquired by the new owners. Furthermore, the First Court noted that the one year time limit under article 37D (3) of the MSA commenced from the date of registration of the sale. According to the First Court, the fact that the vessel was deleted from the Norwegian Ship Register did not necessarily mean that on the date of its deletion the vessel was transferred to new owners. The sale of a vessel could not be presumed since the date of deletion only indicated when the vessel was deleted from Norwegian Ship Register and not the date of transfer of ownership of the vessel.

Referring to article 50 of the MSA, the First Court maintained that the law did not require that the *debt* was incurred in the last port before departure. What was important was that the *claim* arose before departure of its last voyage.

Thus the claim had to exist before the vessel commences her last voyage.

The First Court held that new owners benefitted from the supplies and services rendered to the vessel. As the voyage from Latvia to Taiwan was not completed, it considered the last voyage to be the one before that, namely from Santos, Brazil to Tallinn, Estonia.

On 23rd March, 2009 the First Court accepted Unitor AS’s requests and condemned the vessel to pay the equivalent of NOK 231, 028 (circa €31,066), for the provisions.

Aggrieved by the decision of the First Court, the defendant vessel entered an appeal, calling for its revocation.

The Court of Appeal noted that the First Court had found that the vessel remained responsible for the debt once it was arrested before the transfer of the vessel was registered and once the provisions were granted before the departure of the vessel on her last voyage. The First Court felt that Unitor AS should not be prejudiced by the sale of the vessel, occurring after its arrest.

The Court of Appeal disagreed with the First Court.

In the circumstances the bill of sale was executed in June 1995 and on 11th July 1995 the vessel was cancelled from the Norwegian Register. After the sale of the vessel, the new owners were not responsible for debts incurred prior to the transfer. The persons responsible were the persons who made the order. The vessel was liable *in rem* only if the claim was a special privilege.

The transfer of a vessel was effected by the execution of a bill of sale (article 32 of the Merchant Shipping Act), and although the sale should be registered, even if not registered, it did not mean that the transfer was not effected upon the signing of the bill of sale.

Under article 37(D)(3), post transfer of the vessel, the vessel remained liable *in rem*, only insofar as Unitor AS claims enjoyed a special privilege under article 50 of the Merchant Shipping Act.

In addition, there was a time limit of one year within which a claimant *in rem* could file an action against a vessel, after the registration of its voluntary sale in the registry to which the ship

belongs or where there was no such registration from the date of its closure of its previous register, where an annotation was made.

Under article 50(M), only those debts which were incurred in the port before her departure on her last voyage were privileged. Article 50(M) did not capture all preceding debts contracted before her last voyage.

The phrase “before her last voyage” was limited the provisions and supplies furnished in the port before departure on her last voyage. The law distinguished between “last voyage” and “preceding voyages”. Reference was made to “William Tetley: in his book Maritime Transportation Chapter 4; “*Where claims in these categories (eg necessities) relate to different voyages, however, those attaching to the last voyage prime those attaching to previous voyages, except that wage claims arising out of same contract of engagement and covering several voyages, rank with claims of the last voyage.*”

It was not important whether the last voyage was completed or whether the voyage was interrupted. What was important was that the claim arose before the vessel effectively departed on her last voyage. In this case the vessel departed from Latvia on her last voyage, to its destination, Taiwan. The fact that the vessel stopped in Malta for repairs did not neutralize the fact that this was its last voyage. The Court pointed out that only those supplies provided in Latvia were covered by a special privilege. Debts incurred not immediately before her departure but before or during preceding voyages did not enjoy a special privilege.

In this respect the Court held that Unitor AS' claim was not privileged under our law.

For these reasons the Court of Appeal on November 9, 2012, gave judgement by accepting the appeal and by revoking the decision of the First Court. It held that the vessel was transferred by the previous owners in June 1995, which sale was registered in the Norwegian Register. On 11, July 1995 the vessel was deleted from Norway owing to its sale. It noted that Unitor AS proceeded to arrest the vessel in Malta and filed these legal proceedings on 18th August 1995.

The Court said that after the sale of the vessel and after the registration of the transfer of the vessel in Norway, it was clear that at the time Unitor AS filed this lawsuit in Malta, it did not

have a *droit de suite* to proceed *in rem* against the vessel according to law. As its claim was not privileged under Article 50 of the MSA, Unitor AS's claims did not follow the vessel, after its transfer to new owners.

4. Legislative Developments: Recent Legal Notices, Merchant Shipping Directorate Notices and Technical Notices.

MSD Notice 99 – Malta Flag Administration New Website and Contact Details.

The Merchant Shipping Directorate (the “MSD”) has revamped its website, making it more user-friendly and attractive. Visit it on www.transport.gov.mt/ship-registration.

Other useful contact details –

Technical Matters

Email: mership@transport.gov.mt

AOH: +356 7943 4316

+356 7943 4317

+356 9949 4318

ISPS Alerts

Email: alert.isps@transport.gov.mt

General

Email: comms.isps@transport.gov.mt

AOH: +356 7943 4318

Merchant Shipping Notice 101 (“MSN101”) – Rights of Passengers

MSN101 deals with the coming into force of [EU Regulation 1177/2010](#) of the European Parliament and Council which covers the rights of passengers when travelling by sea and inland waterways.

Date of Entry into Force

18th December 2012

Scope of Regulation

Essentially, the intention behind the Regulation is to improve the rights of sea passengers travelling within EU ports or to EU ports. The Regulation seeks to provide passengers with fair compensation for unjustified delays or cancellations and ensuring that they are provided with adequate information about their itinerary.

The Regulation provides for minimum rights for passengers travelling:

1. On passenger services where the port of embarkation is situated in an EU Member State; or
2. On passenger services operated by "Union carriers" from a port situated in a third country to a port situated in an EU Member State. The term "Union carriers" is defined in the said Regulation as a carrier established within the territory of an EU Member state or offering transport by passenger services operated to or from the territory of an EU Member State; or
3. On a cruise where the port of embarkation is situated in an EU Member State.

Passengers will also be ensured rights to care and assistance in cases where they are made to wait for more than 90 minutes due to an unjustified delay by the operator. Such rights include free of charge snacks, meals or refreshments which will be provided in reasonable relation to the waiting time.

The MSD has advised that in order to ensure the continuous, uninterrupted operation of Malta flag ships after the 18th December 2012, ships which are covered by the Regulation are requested to put in place the necessary procedures in order to implement EU Regulation 1177/2010 as soon as possible.

Merchant Shipping Notice 102 ("MSN102") – Malta Flag Authority Launches New System of Classification and Publication of Notices

MSN102 introduces a new system of classification and publication of Notices issued by the Malta Flag Authority.

The aforementioned Notice provides that as of 6 December 2012 the system of communicating any matter that the MSD wishes to address to the shipping community will be as follows:

1. **Merchant Shipping Notices** numbers will remain unaffected; however, notices that need to be updated will be superseded by a revision (Rev.) number following the original Merchant Shipping Notice number.

2. In these Revisions a series of revision notes will be included in the left hand margin of the amended notice indicating where amendments have been made.

3. A series of **Technical Notices**, denoted by the relevant international convention will be introduced, to communicate technical ship requirements and information. These Technical Notices will replace the Administration Requirements as from 6th December, 2012.

4. **Information Notices** communicating useful information to the shipping industry will be introduced. These Notices are for information purposes only.

The Directorate declared that every reasonable effort will be made to ensure a wide distribution of these Notices. The Notices will be circulated, amongst others, to Maltese Embassies and Consulates, the Malta International Shipping Council and Recognised Organisations. It is the responsibility of every shipowner to bring the Notices to the timely attention of all masters and officers engaged on Maltese flag ships and to the managers and operators of these vessels and to ensure compliance therewith.

All valid Merchant Shipping Notices and Technical Notices are to be retained on board all Maltese ships and made readily available to masters and officers. A list of the valid Notices required to be maintained on board can be downloaded from:

<http://www.transport.gov.mt/ship-registration/notices>.

Merchant Shipping Notice 103 ("MSN103") – Liability of carriers of passengers by sea in the event of accidents

MSN103 brings to the attention of the shipping community that [Regulation \(EC\) No 392/2009](#) of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents entered into force on 31 December, 2012.

The Regulation lays down a harmonised regime of liability and insurance for the carriage of passengers by sea, based on the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, as

amended but the Protocol of 2002 on the carriage of passengers, and the International Maritime Organization (IMO) guidelines for the implementation of the Athens Convention, adopted in 2006.

According to the new liability regime for damages related to navigation accidents established by the Regulation, shall be covered by an *ipso jure* liability regime. However, victims must prove fault on the part of the carrier in order to be compensated for damages falling under the category of 'inkeeper' liability.

Carriers must also maintain insurance. Victims will be entitled to make claims directly against the insurer.

In view of the obligations arising from the Regulation, owners operating ships under the Maltese flag and/or local representatives are to submit war risk and non war risk blue cards issued by an approved P&I Club. Ship owners must also indicate the name and full address of the principal place of business of the carrier which actually performs the carriage. We, as a firm, are in a position to assist in this respect.

In order to ensure the continuous uninterrupted operation of Malta flag ships, to which the Regulation applies, after 31 December 2012, those affected by the Regulations are requested to submit the relevant documents to the MSD as soon as possible.

Ships not furnished with the relevant insurance certificate may experience delays after 31 December, 2012.

**Merchant Shipping Notice 104 ("MSN104") –
Minimum Safe Manning Certificates for
Maltese Ships**

MSN103 changes the system outlined Merchant Shipping Notice 13 ("MSD13") for the issuing of Minimum Safe Manning Certificates for Maltese flagged vessels. Such certificates are a requirement under the 1974/78 International Convention for the Safety of Life at Sea (SOLAS 74/78). SOLAS 74/78 makes it mandatory for trading vessels of 500GT and over to carry, at all times, a valid Minimum Safe Manning (MSM) Certificate issued by the vessel's Flag State.

In order to ensure and at the same time facilitate compliance by Maltese trading vessels with the relevant SOLAS 74/78 provisions, the MSD has reviewed the system outlined in MSD13 for the issuing of MSM certificates.

The Notice provides that as from 1st January, 2013 the format of the MSM certificate will be changed in order to reflect recent developments. All current MSM certificates held on board Malta flagged vessels will remain valid and a new certificate will be issued following:

1. Entry of a vessel in the Malta register; or
2. Renewal of the MSM certificate; or
3. Change of the ISM company, equipment, construction or use of the vessel; or
4. Any other changes that may affect the manning requirements of the vessel.

New certificates will be valid for a period of five years or for the remaining period of the five years, as the case may be, with their expiry/renewal to coincide with the date of the renewal of registry.

The MSM certificate will cease to be valid upon its expiry date, or in the event of any change in the ISM Company, equipment, construction, use or particulars of the vessel affecting the stipulated manning or on closure of registry.

MSN104 makes it clear that it is important that all the information required for the issuance of a MSM certificate is made available to the MSD concurrently with the application for provisional registration. The Malta Flag Administration will release a vessel's MSM with the vessel's Provisional Certificate of Malta Registry.

In evaluating manning requirements the Directorate will consider the relevant information relating to the ship and the guidelines contained in IMO Resolution A.1047(27), in its up-to-date version. In the event of any differences the MSD will consider any substantiated views. In such cases it may be necessary to arrange for some form of practical demonstration of the ability of the crew to carry out the necessary tasks in accordance with the principles of safe manning.

Fees shall be charged for these services accordingly.

MSN104 also points out that:

1. All officers serving on board Maltese trading vessels must be in possession of a recognized valid certificate of competency and an Endorsement issued by the Malta Administration in accordance with the 1978 STCW Convention; the originals should be kept on board; and
2. All officers are required to be in possession of an endorsement issued under Regulation I/10 of the STCW Convention by the MSD, to serve in the respective capacity on board the Maltese trading vessel.

Technical Notice SLS.22 – Bridge Navigation Watch Alarm System (BNWAS) On Commercial Yachts

By virtue of SLS 22, the MSD informs that all yachts of 150GT and upwards but less than 500GT that are certified under the provisions of the Commercial Yacht Code, 2010 are required to be fitted with a Bridge Navigational Watch Alarm System (BNWAS) in accordance with Regulation 19 of Chapter V of the SOLAS Convention 174, as amended by Resolution [MSC.282\(86\)](#).

Performance Standards for BNWAS

BNWAS installed prior to 1st July 2011 should comply with the operational requirements laid down in Technical Notice SLS.19.

BNWAS installed on or after 1 July 2011 should be certified as compliant with the performance standards laid down in IMO's 'Performance Standards for a Bridge Navigation Watch Alarm System (BNWAS)' adopted by Resolution [MSC128\(75\)](#).

Full details of any deviation(s) from either of the above-mentioned operational standards must be referred to Malta Flag Administration for consideration.

Information Notice - Renumbering of Administration Requirements

The MSD has informed all concerned parties that the Administration Requirements that are issued from time to time by the MSD will be renumbered as Technical Notices in line with MSN102. The content of the Administration Requirements remain unchanged.

4. Miscellaneous

The Shipping & Registration Department of the Firm would like to welcome on board Dr. David Galea, who will form part of the shipping law team within the law firm.



Dr. David Galea is a senior associate within Ganado Advocates' Shipping Practice with particular focus on commercial shipping, offshore oil and gas and large luxury yachts. He has advised a number of banks, private equity funds, shipowners, charterers, commodity traders and high net worth individuals in relation to, inter alia, shipbuilding contracts and refund guarantees, the financing of newbuild projects and second hand vessels, the sale and purchase of vessels (whether in the second hand market or for scrap), yacht construction agreements, the chartering of commercial ships and large luxury yachts, commercial and technical management agreements, and ship repair contracts in respect of a variety of vessels including tankers, bulk carriers, offshore support vessels, LNG vessels (including FSRUs), FPSOs and drilling rigs. Dr. David Galea also regularly assists in commercial aircraft, corporate jet and helicopter leasing and other aviation related matters.

Dr David Galea returned to Ganado Advocates in 2013 after 7 years in London law firms. He is qualified to practice law in Malta and in England and Wales.

5. Queries And Suggestions

We trust that this issue of our *Shipping & Maritime Law Update* was of interest to our readers, however, should you have any queries or suggestions to make, please feel free to contact

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We will be pleased to hear from you.

Further, should you wish to unsubscribe from the Ganado Advocates *Shipping & Maritime Law Update* please let us know by contacting Dr. Jotham Scerri-Diacono at jsdiacono@ganoadvocates.com.

6. Contributors

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IMPORTANT NOTICE

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