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GANADO
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SHIPPING AND MARITIME LAW NEWSLETTER

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Malta has, throughout the ages, consistently benefitted from its geographical location in the middle of the Mediterranean Sea. Conveniently situated at the cross roads of major trading routes, its history is characterised by the close relationship which it forged with sea faring peoples, spanning from the Phoenician traders in their gallois, to the might of the massive British maritime trading fleets.

It is no small wonder then, that vessels played such a crucial role in Malta's development into a top class hub for trade. The truth is that Malta's relationship with the vessel continues even today, with Malta boasting the European Union's biggest maritime registry, providing a centre for all sorts of commercial shipping services and commanding international respect in the field.

It is with this in mind that Ganado Advocates is pleased to note that Bank of Valletta Plc, in collaboration with organisers Circle Events as well as other partners, has organised this year's BOV Valletta Boat Show, "the boat show at the heart of the Mediterranean". Held between the 26th and 29th of September at Boiler's Wharf, in the historical port-town of Senglea, the show has established itself as a mecca for all those who are interested in the maritime and nautical way of life.

The Valletta Boat Show 2013 hosted a myriad array of vessels; from sailboats, powerboats and private charter vessels to nautical related gadgets, accessories, apparel and services. A number of large vessels owned by the Armed Forces of Malta also participated in the Show. This is quite apart from the number of attractions and activities which converged in order to, in the words of the organisers, "celebrate the boating lifestyle and offer entertainment for everyone".

It is notable that the event was also supported by one of GANADO's own esteemed clients, the Stereden Ann Esperanz, a classic luxury schooner with exclusive chartering capabilities.

The Valletta Boat Show 2013 was, as always, a tour de force in presenting what is the best of Malta's craft, history and modern approach to its relationship with the vessel.

Further information may be found at [here](#).

THE EU MRV PROPOSAL: REDUCING EMISSIONS FROM THE SHIPPING SECTOR

With global warming presenting an ever constant threat the stability of the Earth's eco-system, the reduction of activity contributing to the warming of the Earth's climate is increasingly being given priority on the international agenda.

It is for this reason that the European Commission has launched a Proposal for a Regulation on the monitoring, reporting and verification (MRV) of carbon dioxide emissions from maritime transport and amending Regulation (EU) No 525/2013.

The main objective of the proposed Regulation is to establish an EU MRV system for CO₂ emissions from ships whereby CO₂ emissions are monitored as a prerequisite for setting an efficiency standard.

The operational features of the proposed EU MRV system, as found in the Proposal itself, would include;

1. A focus on CO₂ emissions, as the predominant greenhouse gas emitted by ships in such a way as to address market barriers for the uptake of cost-efficient mitigation measures.
2. The alignment of the EU MRV with the International Maritime Organisation's discussions on efficiency standards for existing ships.
3. The calculation of annual CO₂ emissions based on fuel consumption and fuel type and the calculation of energy efficiency using available data from log books, noon reports and bunker delivery notes.
4. The use existing structures and bodies of the maritime sector, in particular recognised organisations, to verify emission reports and to issue documents for compliance.
5. The exclusion of small emitters (ships below 5000 GT) which represent about 40% of the fleet, but only 10% of the total emissions.

The Proposal sets a geographical scope for monitoring, including intra-EU voyages, as well as all voyages to and from EU ports, in the list of routes which will be covered by the system. The EU MRV system will be applicable in relation to all ships entertaining such voyages, regardless of their flag.

This being said, the argument is being made that the International Maritime Organisation is the more appropriate body to spearhead such an initiative. Taking such measures on an international, as opposed to merely regional, level would ensure greater uniformity and would provide a more equitable way forward. It is being argued that the IMO boasts the necessary respect and track-record to be in a better position to move the globe forward when it comes to monitoring and reducing the pollution generated by the relevant industries. Indeed, the IMO is currently in the process of moving towards an international convention which will, amongst other things, address MRV.

Further information may be found [here](#).

THE BLUE BELT BRINGING THE SINGLE MARKET TO THE SEAS

Free movement of goods is one of the basic freedoms which find themselves at the heart of the European integration project. Unfortunately, however, whilst 75% of the European external trade and 37% of the EU's internal trade is carried by shipping, this freedom is not yet a reality for the maritime industry.

The reason behind this anomaly is due to the fact that a ship which travels between Member States, but leaves territorial waters in the process, is considered to have passed the EU's external borders - equating it with any other vessel hailing from a third state. The result of this status quo means that such vessels are subjected to a cumbersome regime of customs formalities.

In light of this the European Commission has issued a Communication, entitled "Blue Belt: A Single Transport Area for Shipping" COM (2013) 510, which aims to ease customs formalities, reduce red tape, cut delays in ports and make the sector competitive.

The Communication sets out two primary proposals seeking to amend the existing Customs Code (CCIP, Customs Code Implementing Provisions).

1. EASING CUSTOMS FORMALITIES FOR INTRA-EU SHIPPING

These aim to complement and further streamline the Regular Shipping Services (RSS) procedures in the interest of obtaining greater efficiency and flexibility.

2. EASING CUSTOMS FORMALITIES FOR SHIPS THAT CALL IN THIRD COUNTRY PORTS

One of the proposals sees the setting up of a system which distinguishes between EU and non-EU goods on board vessels. Whilst EU goods would be swiftly discharged, non-EU goods would nonetheless have to undergo all customs procedures.

The Blue Belt Communication proposals are meant to complement the Ports Policy Review adopted on May 2, 2013 which in turn aims to promote the competitiveness of Europe's sea ports (MEMO 13/448). Moreover, the Communication follows the launch of the Single Market Act II and is an extension of the Blue Belt pilot project managed by the European Maritime Safety Agency in 2011.

Whilst a lot more work needs to be done it is being projected that the Blue Belt Communication will become a reality by 2015.

For additional information click [here](#).

OIL SPILL LEADS TO THE ARREST OF MV SILVER KING

The First Hall of the Civil Court has dismissed requests for a warrant of prohibitory injunction, instituted by the owners of the MV Silver King, in order to halt the transfer of gasoil cargo from the vessel to Enemalta Corporation following the vessel's arrest.

The proceedings relate to a spillage of gasoil that occurred outside of Maltese territorial waters on the 1st July 2013. On investigation by the Armed Forces of Malta, four vessels, including the MV Silver King, were arrested and escorted to the Grand Harbour at La Valletta.

Following a Magisterial Inquiry the MV Silver King was found to be carrying a cargo of gasoil originating from Misurata in Libya but was not found to have been involved in the spillage. Furthermore, the vessel was only found to qualify as a supply vessel under the rules and regulations in force and was hence unable to provide bunkering services. This led the Inquiring Magistrate, on request of the Commissioner of Police, to order that the gasoil cargo be transferred to Enemalta Corporation for its use, on condition that the vessel owners would be remunerated in the event that no criminal proceedings are instituted or that the cargo is not subject to confiscation. The request was acceded to. The request was also upheld out of consideration for the safety of the crew, which crew were not authorised to disembark onto Maltese territory.

The alleged owners of the MV Silver King, however, attempted to halt this court order by the lodging of an injunction. In a judgement delivered on the 2nd August 2013 the First Hall of the Civil Court found that the plaintiff instituting the injunction was not the legal owner of the vessel and hence lacked the necessary juridical interest in the matter. The court held that

although the plaintiff was a shareholder and a director in the limited liability company which owned the vessel, this did not mean that the plaintiff owned the vessel. As a result the plaintiff lacked the necessary juridical interest and the request for the injunction was dismissed.

A subsequent prohibitory injunction, this time filed by Silver King Limited, was also dismissed by a judgement of the First Hall Civil Court on the 22nd August 2013 due to the fact that the owners failed to submit sufficient prima facie evidence of the rights that they were seeking to “protect” in virtue of the requested prohibitory injunction or of the “disproportionate prejudice” that they were to suffer if the cargo was transferred to Enemalta under the conditions set out by the court.

GANADO ADVOCATES ASSISTS BANK IN A SUCCESSFUL PRIVATE SALE OF VESSEL IN MALTA

Ganado Advocates has once more managed to play a vital role in assisting their client, RIETUMU BANKA, by successfully exploiting a relatively novel procedure under Maltese law.

In fact, the procedure is one whereby creditors having an executive title are able to enforce their claim over a ship in what is a very direct and

cost-efficient procedure. The procedure may largely be described as a private judicial sale. It primarily consists in a creditor, having an executive title, finding a potential buyer who is ready and willing to acquire a vessel at a price just above market price and with a clean title.

Once a creditor finds a potential buyer for the purchase of the vessel, the creditor may proceed to arrest the said vessel. This arrest is then followed by a request for the relevant court to approve the private sale.

In order to ensure that other creditors are not prejudiced, the court's approval is dependant on the sale meeting certain stringent criteria. The price to be paid for the ship must, for instance, exceed the ship's market value. This enables the creditor to sell the vessel at a commercially attractive rate which, in turn, serves to satisfy the credit which such same creditor is owed.

This is precisely the procedure which was used in relation to the MV BLANKANESE. The latter vessel was arrested in Malta and, thanks to the special procedure outlined above, was sold within the period of one month. During the course of proceedings for the court to authorise the sale, other creditors objected, pointing out that the sale is not in their interest and that they would be prejudiced thereby. The main reason for the objections centred around the fact that the buyer of the vessel was a shareholder in the defaulting company, with a new company being set up for the sole purpose of purchasing the vessel by private judicial sale.

After hearing submissions made by Ganado Advocates, however, the court reached the conclusion that there is nothing at law to prohibit a shareholder from purchasing an asset held by the relevant company and that the purchasing company was, in point of fact, a separate entity entirely. The court also took note of the vital fact that the price of sale exceeded the valuations presented by the relevant experts. The Court thus authorised the sale.

This was not only advantageous to the buyer, who acquired the vessel with a clean title, but was also advantageous to the creditor, RIETUMU BANKA, who managed to take a vital step in the recovery of its credit.

The proceeds of the private sale have been deposited in court and will be distributed amongst the creditors. Indeed, unless other creditors manage to demonstrate to the said court that their claims rank before that of RIETUMU BANKA, the proceeds of the private sale will be released to the latter.

MSD INFORMATION NOTICE ON THE POTENTIAL HAZARDS ASSOCIATED WITH DRILLING MUD

The Malta Shipping Directorate has issued an Information Notice on the 1st July 2013 on the potential hazards associated with the carriage of drilling mud.

The Notice is directed at Shipowners, Ship Operators, Managers, Masters, Owners' Representatives and Recognised Organisations. It seeks to bring to their attention the conclusions of the Marine Safety Investigation Report No. 13/2012.

The investigation related to an explosion and subsequent structural damage on board the oil/chemical tanker Mar Cristina in the inland port of Sandefjord, Norway on the 30th August 2011. The vessel was carrying a cargo of drilling mud at the time.

The findings of the investigation highlight the potential dangers associated with the carriage and handling of this substance. The recommendations found in the Report are intended to disseminate the lessons learnt and bring to the industry more awareness of the hazards associated with the carriage of drilling mud.

The Notice strongly urges all concerned to communicate the findings of the safety investigation to their ships.

MSD TECHNICAL NOTICE ON DEVICES TO MEASURE AND INDICATE SPEED AND DISTANCE

The Malta Shipping Directorate has issued a technical notice on the 20th August 2013 on devices for the measuring and indication of speed and distance.

The notice makes reference to SOLAS Regulation V/19.2.9.2, Resolution A.824 (19) as amended by Resolution MSC.96 (72) amended by Resolution MSC.334 (90), and MSC.1/Circ.1429.

Via the notice the MSD has reminded all interested parties that the requirement for the measure of speed through water and speed over the ground in respect of ships of 50,000 gross tonnage and above, constructed on or after the 1st July 2014, must be satisfied through two separate devices.

MSD TECHNICAL NOTICE ON EMERGENCY TOWING PROCEDURES ON SHIPS

The Malta Shipping Directorate has issued a technical notice on the 20th August 2013 with regard to emergency towing procedures on ships.

The notice refers to SOLAS 74 Chapter II-1 Regulation 3-4 as amended by Resolution MSC.256 (84), and MSC.1/Circ.1255 Regulation 3-4.2.

These regulations require that ship-specific emergency towing procedures be available on:

- All passenger ships not later than 1 January 2010;
- Cargo ships constructed on or after 1 January 2010; and
- Cargo ships constructed before 1 January 2010 by not later than 1 January 2012.

The emergency towing procedures complement the “emergency preparedness” element required by Paragraph 8 of Part A of the International Safety Management (ISM) Code.

The emergency towing procedures should be developed by the Company in accordance with the guidelines contained in the aforementioned regulations. Moreover, the procedures may be incorporated within the Safety Management System or else may take the form of a stand-alone booklet with explicit reference to such booklet being found in the relevant section of the Safety Management System.

MSD TECHNICAL NOTICE ON THE RATE OF DISCHARGE OF UNTREATED SEWAGE

The Merchants Shipping Directorate has issued a technical notice on the 20th August 2013 in relation to Regulation 11.1.1 of Annex IV to MARPOL.

The regulation requires that discharge of untreated sewage be carried out at specific distances from shore, with the ship enroute proceeding at a minimum velocity of four knots and at the rates of discharge approved by the Administration.

The rates of discharged should be based on the guidelines found in Resolution MEPC.157 (55), with such rates being subject to review and approval by the vessel's respective Recognised Organisation on behalf of the Administration.

MSD TECHNICAL NOTICE ON ATTENDANCE DURING SURVEYS, AUDITS, VERIFICATIONS AND INSPECTIONS HELD IN MALTA

The Malta Shipping Directorate has issued a technical notice on the 20th August 2013 on the attendance during surveys, audits, verifications and inspections held in Malta.

In virtue of this notice the MSD has informed all Recognised Organisations that officials from this Administration will be attending statutory surveys, ISM audits, ISPS verifications and MLC inspections that are carried out on board Maltese registered ships whilst within Maltese ports or territorial waters. The notice extends to any ISM audits carried out at Companies based in Malta and operating Maltese registered ships.

For such purpose the Notice specifies that the Recognised Organisation must notify the MSD, in writing, of any such occurrence at least two working days in advance and in such way as enables the Administration to make the necessary arrangements for attendance.

We trust that this issue of our **Shipping & Maritime Law** 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.

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