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# SHIPPING AND MARITIME LAW

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## Malta Flag is now sixth largest in the world

The Malta Flag continued to strengthen itself throughout 2014. Industry sources indicate that Malta's registered gross tonnage increased during the course of 2014 to approximately 58 million.

The Malta Flag, whilst remaining the largest European Flag in terms of tonnage, has grown to become the sixth largest Flag in the world. Malta has maintained a good reputation in the maritime sector by promoting high standards both in terms of safety at sea and pollution prevention, whilst offering sterling service provided by the Maltese administration in this sector.

We augur that the Malta Flag continues to strengthen during 2015 while at the same time exploring new possibilities on how it could diversify its services to ship owners and managers.

Unpublished figures for commercial yacht registration during 2014 also indicate that Malta has now become one of the world leaders in this sector. Malta has throughout 2014 carried out an exercise to upgrade its Commercial Yacht Code and we can expect the next Code to be promulgated during the first half of 2015.

Meanwhile, insofar as Port State Control is concerned, the number of Malta Flagged vessels that have been detained by the Port State Control Authority has continued to decrease substantially during 2014, securing Malta's place within the White list of the Paris MOU and building its reputation as a serious reputable Flag.

**Dr JOTHAM SCERRI DIACONO**

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## Arms on board – the problem solver?

In 2011, after flag state pressure, the IMO's Maritime Safety Committee approved interim guidance on the use of privately contracted armed security personnel on board ships travelling in high risk areas. This led to a number of countries regulating the boarding of armed personnel upon their vessels. In Malta, this was done by means of Legal Notice 19 of 2013 and Legal Notice 110 of 2013 and has resulted in a drop in attempted attacks on ships.

This drop has reflected positive statistics worldwide and the demand for such services has led to a thriving security industry. However, there is still need to fine-tune current legislation to ensure that good practice in this field is maintained since increased interest by service providers means increased competition and thus, price wars or deterioration of quality personnel engaged could ensue.

The EU strives to set universally approved standards which impact both EU waters as well as EU flagged vessels operating globally. Ensuring safety at sea and addressing threats is paramount, but as important is having a mechanism in place which ensures that a good balance is obtained between the needs of the industry and the need to have quality control.

One hopes that, The Council of the European Union complements the Maritime Security Strategy adopted this June, with an action plan addressing these security challenges while promoting good governance on the high seas.

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## Back to the future?

In July, at IMLI, Malta, a presentation for the Launch of the Integrated Maritime Policy was held, where one of the more compelling discussions was whether there was need to establish a specialised maritime court in Malta.

This is not an alien concept to Malta as we once had two courts, the Commercial Court and the Vice Admiralty Court functioning concurrently. The latter of which was mirrored in other British Colonies and took on a specialised role on maritime and in rem actions. The jurisdiction of this court was then transferred to the Commercial Court until such time as the Malta Merchant Shipping Act of 1973 did away with most of the remnants of the British Ordinances and established the Civil Courts as having jurisdiction over all maritime matters.

The Maltese courts are already well versed in addressing various maritime matters efficiently and so is a specialised court really necessary? The answer would be in the affirmative, since having a specialised institute will only ensure pursuance of a stronger maritime product and instil further confidence in this sector and the country in general.

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## Registration of Vessels Under the Malta Flag Extended to Citizens of the EEA and Switzerland

Through a legal notice that came into force last week, citizens of the European Economic Area (EEA) and likewise, citizens of Switzerland are now allowed to own and register vessels under the Malta Flag. Previously, Swiss citizens as well as natural persons that were citizens of member states that form part of the EEA could not register vessels in Malta – this right was previously limited to citizens of Malta and the EU. This anomaly has now been removed on the strength of an amendment made to the Merchant Shipping (Ships Eligible for Registration) Regulations (S.L. 234.23).

## Court approved private sale of MV D Ladybug

On October 8 2014, the First Hall Civil Court gave judgment ordering the private sale of vessel MV D Ladybug to White Tulip Shipping S.A, in the case “Dr Ann Fenech in representation of Bank of America N.A. vs. MV D Ladybug”. This judgment highlights the essential elements of court approved private sales introduced into our Maltese Code of Organisation and Civil Procedure in 2008.

The Court observed that the Bank had an executive title against the debtor and said that our law gave the creditor having an executive title the opportunity to request the sale of the vessel of its debtor by court approved private sale, instead of by Court auction.

The Court further noted that a MoA was signed and two independent valuations of the vessel were presented by the claimant. The Court argued that it was up to the debtor or the other creditors to rebut these valuations, for the Court not to approve the sale.

The Court was satisfied that the price was reasonable in the circumstances and that the sale of the vessel was for the benefit of the other creditors. The Bank publicized the sale of the vessel. Only four companies showed an interest, out of which White Tulip Shipping made the highest offer.

Once all the elements in the law were established the Court ordered the private sale of the vessel, which vessel was to be sold free of any privileges and encumbrances. For the order to have effect the sale had to take place within three weeks from the date of this decision. Dr. Adrian Camilleri was appointed in terms of article 362 chapter 12 to transfer the vessel according to the MoA as if he were the registered owner, with all effects as stipulated under article 363 and 364 chapter 12.

## MSD NOTICES

MSD SHIPPING NOTICE 115 ON

### Restrictive measures in view of the situation in Ukraine

22 September 2014

Shipping organizations established in Malta or operating Maltese ships are reminded to abide by the restrictive measures adopted in view of the situation in Ukraine, when planning their operations. The shipping notice, drawing attention to particular important prohibitions, can be accessed [here](#).

Ship masters, owners, and all interested persons, may contact us on [shipreg@ganadoadvocates.com](mailto:shipreg@ganadoadvocates.com), to obtain further information and to ensure that all preparations are in line with legal updates.

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## Maritime Agreement signed between Malta and Turkey

The Malta Department of Information (DOI) has reported that on the 23rd January, 2015 a "Maritime Agreement" was signed between Malta and Turkey intended to serve as a fresh impetus for cooperation between the two countries. The Agreement creates a comprehensive framework encompassing transport and maritime affairs and is intended to assist the two states in continuing to develop relations in this sector for the mutual benefit of both countries. The Maritime Agreement strives to enhance cooperation in the maritime field, encouraging both countries to promote coordination in the context of maritime trade which will, in turn, serve to improve safety and security aspects of navigation. The Agreement also serves to pave the way for more future contacts on a more technical level between the two countries.

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## The BWM Convention

Malta is not a signatory to the BWM convention, however it is actively pursuing ratification and has begun drafting local legislation in order to prepare for the requirements which the Convention imposes.

On one end of the spectrum, ballast water is vital to ship stabilization and ensuring safe operation of a vessel during voyages. However, on the other end, are the effects of ballast water on the marine environment. As ballast water is transported from one sea to another, so too are bacteria which are invasive to other host environments. In response to the threat of contaminated ballast water, the International Maritime Organization (IMO) adopted the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (BWM Convention).

The BWM Convention aims to implement Ballast Water Management through various methods, including but not limited to, the keeping of ballast water log books and requiring vessels to have an approved ballast water management plan which includes detailed descriptions of the actions to be taken in order to comply with the Convention. These requirements impose high levels of responsibility on managers and crew of the vessel.

Although the Convention is not yet in force, and will only enter into force 12 months after ratification by 30 States, representing 35% of world merchant shipping tonnage when it does become binding, significant changes will have to be implemented both on vessels and in port State control in order to comply with the requirements of the Convention.

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## Monitoring, Reporting and Verification of CO<sup>2</sup> Emissions from Large Ships using EU Ports

The maritime industry is considered a fast growing source of greenhouse gas emissions, which is contributing to climate change. As a first step towards reducing emissions from the maritime sector, the European Commission put forward a legislative proposal

to establish an EU wide system for the monitoring, reporting and verification (MRV) of emissions from large ships using EU ports.

On the 17th December 2014 the Environment Council reached a political agreement with respect to this new regulation on MRV rules for emissions from large ships. A formal common position will be adopted at a later stage, after legal linguistic experts have checked the text.

This regulation, once formally adopted, is to enter into force on the 1st July 2015 and from the 1st January 2018, ship owners will be obliged to monitor emissions for each ship on a per voyage basis and on annual basis. This regulation will cover CO<sub>2</sub> emissions from ships over 5000 gross tons. In addition to this, the regulation will apply to all vessels over 5000 GT arriving or departing from a port located under the jurisdiction of a Member State irrespective of where the vessel is flagged. However, the regulation does not apply to warships, naval auxiliaries, fish catching or processing ships, wooden ships of a primitive build, ships not propelled by mechanical means and government ships used for non-commercial purposes. By 31 August 2017, companies shall submit to the verifiers a monitoring plan indicating the method chosen to monitor and report emissions and other relevant information for each of their ships above 5000 GT. Emissions shall be monitored in accordance with the said monitoring plan. From 2019, by 30 April of each year, companies shall submit to the Commission and to the authorities of the flag States concerned an emission report. In addition to this, The European Commission will have to publish an annual report on emissions from maritime transport to inform the public and to allow for an assessment of the emissions.

This new regulation will improve data collection and information on emission trends from the maritime sector and any new legislative proposals on the reduction of emission from maritime transport should be guided by this robust data collection.

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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.

Further, should you wish to unsubscribe from the **Shipping & Maritime Law** please click **unsubscribe** on the email sending this newsletter, or by contacting **Dr Jotham Scerri Diacono** at [jsdiacono@ganadoadvocates.com](mailto:jsdiacono@ganadoadvocates.com).

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## Disclaimer

This update is not intended to impart advice; readers are advised to seek confirmation of statements made herein before acting upon them. Specialist advice should always be sought on specific issues.