

1926 年國際統一優先權及抵押權某些規則公約

1926 年 4 月 10 日 訂於布魯塞爾，1931 年 6 月 2 日生效

International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages,

Signed at Brussels, April 10, 1926 Entered into force June, 2, 1931

1926 Maritime Lien

Article 1

Mortgages, hypothecations, and other similar charges upon vessels, duly effected in accordance with the law of the Contracting State to which the vessel belongs, and registered in a public register either at the port of the vessel's registry or at a central office, shall be regarded as valid and respected in all the other contracting countries.

Article 2

The following give rise to maritime liens on a vessel, on the freight for the voyage during which the claim giving rise to the lien arises, and on the accessories of the vessel and freight accrued since the commencement of the voyage:

- (1) Law costs due to the State, and expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale; tonnage dues, light or harbor dues, and other public taxes and charges of the same character; pilotage dues; the cost of watching and preservation from the time of the entry of the vessel into the last port;
- (2) Claims arising out of the contract of engagement of the master, crew, and other persons hired on board;
- (3) Remuneration for assistance and salvage, and the contribution of the vessel in general average;
- (4) Indemnities for collision or other accident of navigation, as also for damage caused to works forming part of harbors, docks, and navigable ways; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;
- (5) Claims resulting from contracts entered into or acts done by the master, acting within the scope of his authority, away from the vessel's home port, where such contracts or acts are necessary for the preservation of the vessel or the continuation of its voyage, whether the master is or is not at the same time owner of the vessel, and whether the claim is his own or that of ship-chandlers, repairers, lenders, or other contractual

第 1 條

船舶抵押權、質權及其他類似之船舶負擔，依船舶所屬之締約國法律成立並在船籍港或中央機關公開登記者，即應認為有效，並為其他締約國所尊重。

第 2 條

下列事項對於船舶於發生優先權航行期內之運費及發航後所生船舶與運費之附屬費，有優先權：

- (1) 應付國家之訴訟費，及為債權人共同利益而保存船舶或標賣並分配賣得價金所支出之費用；噸稅、燈塔費或港埠稅、及其他類似性質之稅捐，引水費；自船舶進入最後港後之看守及保存費用。
- (2) 船長、船員及其他在船上服務人員本於僱傭契約所生之債權。
- (3) 救助及撈救之報酬，及船舶對於共同海損之分擔額。
- (4) 船舶碰撞或其他航行事故所生之損害賠償；加於海港、碼頭、及航道工作物之損害賠償；對旅客或船員身體傷害之賠償；貨載或行李滅失毀損之賠償。
- (5) 船長在船籍港外，依其職權，為保存船舶或繼續航行之必要行為或所訂契約所生之債權，不論船長是否同為船舶所有人，亦不論該債權係屬於船長本人，或屬船舶供應品之供應商、修繕人、借貸人或其他契約債權人。

creditors.

Article 3

The mortgages, hypothecations, and other charges on vessels referred to in Article 1 rank immediately after the secured claims referred to in the preceding article.

National laws may grant a lien in respect of claims other than those referred to in the said last-mentioned article, so, however, as not to modify the ranking of claims secured by mortgages, hypothecations, and other similar charges, or by the liens taking precedence thereof.

Article 4

The accessories of the vessel and the freight mentioned in Article 2, mean:

- (1) Compensation due to the owner for material damage sustained by the vessel and not repaired, or for loss of freight;
- (2) General average contributions due to the owner, in respect of material damage sustained by the vessel and not repaired, or in respect of loss of freight;
- (3) Remuneration due to the owner for assistance and salvage services rendered at any time before the end of the voyage, any sums allotted to the master or other persons in the service of the vessel being deducted.

The provision as to freight apply also to passage money, and, in the last resort, to the sums due under Article 4 of the Convention on the limitation of shipowners' liability.

Payments made or due to the owner on policies of insurance, as well as bounties, subventions, and other national subsidies are not deemed to be accessories of the vessel or of the freight.

Notwithstanding anything in the opening words of Article 2, (2), the lien in favour of persons in the service of the vessel extends, to the total amount of freight due for all voyages made during the subsistence of the same contract of engagement.

Article 5

Claims secured by a lien and relating to the same voyage rank in the order in which they are set out in Article 2. Claims included under any one heading share concurrently and rateably in the event of the fund available being insufficient to pay the claims in full.

The claims mentioned under Nos. 3 and 5 in that article rank, in each of the two categories, in the inverse order of the dates on which they came into existence.

Claims arising from one and the same occurrence are deemed to have come into existence at the same time.

Article 6

第 3 條

第 1 條所稱之船舶抵押權、質權及其他船舶負擔之位次於前條所列優先權之後。

國內法得另行規定前條以外之優先權，然不得變更船舶抵押權、質權或其他船舶負擔之位次，亦不得變更應在抵押權等以前之優先權之位次。

第 4 條

第 2 條船舶及運費之附屬費係指：

- (1) 船舶所有人因船舶所受損害而未經修復或因運費之喪失所應得之賠償；
- (2) 船舶所有人因船舶所受損害而未經修復或因運費之喪失所應得之共同海損分擔額；
- (3) 船舶所有人於航行完成前，因施行救助及撈救所應得之報酬，然應分配予船長或其他服務於船舶人員者，應予扣除。

關於運費規定，包括旅客票價，於依責任限制公約限制責任時，應適用該公約第 4 條所定之金額。¹

船舶所有人因保險契約所得或應得之賠償金，以及獎金、津貼、或其他國家補助金，均不得視為船舶或運費之附屬費。

服務於船舶之人員之優先權應及於同一僱傭契約有效期間內所有航次全部應收運費，不受第 2 條首句規定之影響。

第 5 條

屬於同次航行所生之債權，其優先位次依第 2 條所列之順序；同一項款中有數債權者，如所有金額不足全部清償時，同時依比例受償。

第 2 條第 3 款及第 5 款所列債權，如有二個以上屬於同一款者，其發生在後者優先受償。

因同一事故所發生之債權視為同時發生之債權。

第 6 條

¹譯者註：指一九二四年海船所有人責任限制統一公約，其第四條規定運費為船舶在發航時價值之百分之十

Claims secured by a lien and attaching to the last voyage have priority over those attaching to previous voyage. Provided that claims, arising on one and the same contract of engagement extending over several voyages, all rank with claims attaching to the last voyage.

Article 7

As regards the distribution of the sum resulting from the sale of the property subject to a lien, the creditors whose claims are secured by a lien have the right to put forward their claims in full, without any deduction on account of the rules relating to limitation of liability; provided, however, that the sum apportioned to them may not exceed the sum due having regard to the said rules.

Article 8

Claims secured by a lien follow the vessel into whatever hands it may pass.

Article 9

The liens cease to exist, apart from other cases provided for by national laws, at the expiration of one year, and, in the case of liens for supplies mentioned in No. 5 of Article 2, shall continue in force for not more than six months.

The periods for which the lien remains in force in the case of liens securing claims in respect of assistance and salvage run from the day when the services terminated, in the case of liens securing claims in respect of collision and other accidents and in respect of bodily injuries from the day when the damage was caused; in the case of liens for the loss of or damage to cargo or baggage from the day of the delivery of the cargo or baggage or from the day when they should have been delivered; for repairs and supplies and other cases mentioned in No. 5 of Article 2 from the day the claim originated. In all the other cases the period runs from the enforceability of the claim.

The fact that any of the persons employed on board, mentioned in No. 2 of Article 2 has a right to any payment in advance or on account does not render his claim enforceable.

As respects the cases provided for in the national laws in which a lien is extinguished, a sale shall extinguish a lien only if accompanied by formalities of publicity which shall be laid down by the national laws. These formalities shall include a notice given in such form and within such time as the national laws may prescribe to the authority charged with keeping the registers referred to in Article 1 of this Convention.

The grounds upon which the above periods may be interrupted are determined by the law of the court where the case is tried.

The High Contracting Parties reserve to themselves the right to provide by legislation in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the vessel to which a lien attaches in the territorial waters of the state in which the claimant has his domicile or his principal place of business, provided that the extended period shall not exceed three years from the time when the claim originated.

不屬同次航行之優先權，其後次航行之優先權先於前次航行之優先權。

本於同一僱傭契約所生之債權延及數航次者，其優先權位次均作為最後航次所生。

第 7 條

關於分配優先權標的物出賣所得價金，具有優先權之債權人均有主張全部債權之權，不因船舶所有人責任限制之規定而有所扣減，然其債權人所受分配之總金額不得超過依責任限制規定所可獲得之金額。

第 8 條

優先權不因船舶所有權之移轉而受影響。

第 9 條

除國內法另有允許成立之優先權外，優先權經過一年而消滅。第 2 條第 5 款所述供應之優先權繼續有效之期間不得超過六個月。

救助撈救報酬優先權之有效期間，自救助撈救行為終了之日起算；因船舶碰撞及其他航行事故及因身體傷害所生之優先權之有效期間，自損害發生之日起算；因貨載或行李之毀損滅失而生之優先權之有效期間，自貨載或行李交付之日或自應交付之日起算；因修繕、供應及第 2 條第 5 款所述其他情形所生之優先權之有效期間，自債權發生之日起算。於所有其他情形，優先權之有效期間自債權得為請求之日起算。

第 2 條第 2 款所述任何在船舶上服務之人員有權預支任何款項者，並不因此項事實而使此項權利具有優先權。

關於國內法所訂優先權消滅之規定，只有標的物之出賣必須係經國內法規定公開程序為之者，方得使優先權消滅。此項公開程序應包括向本公約第 1 條所述之登記機關依國內法規定之方式及期間所為之出賣公告。

上述有效期間得予中斷之原因，依審判法院所在地之法律定之。

締約國為權利保留者，得以立法規定，針對加負擔優先權之船舶在債權人設有住所或主事務所之國家領水內無法予以扣押者，得將優先權有效期間予以延長；然其延長之期間，自債權發生之時起算，不得超過三年。

Article 10

A lien on freight may be enforced so long as the freight is still due or the amount of the freight is still in the hands of the master or the agent of the owner. The same principle applies to a lien on accessories.

Article 11

Subject to the provisions of this Convention, liens established by the preceding provisions are subject to no formality and to no special condition of proof.

This provision does not affect the right of any State to maintain in the legislation provisions requiring the master of a vessel to fulfil special formalities in the case of certain loans raised on thy security of the vessel, or in the case of the sale of its cargo.

Article 12

National laws must prescribe the nature and the form of documents to be carried on board the vessel in which entry must be made of the mortgages, hypothecations, and other charges referred to in Article 1; so, however, that the mortgagees requiring such entry in the said form be not held responsible for any omission, mistake, or delay in inscribing the same on the said documents.

Article 13

The foregoing provisions apply to vessels under the management of a person who operates them without owning them or to the principal charterer, except in cases where the owner has been dispossessed by an illegal act or where the claimant is not a bona fide claimant.

Article 14

The provisions of this Convention shall be applied in each Contracting State in cases in which the vessel to which the claim relates belongs to a Contracting State, as well as in any other cases provided for by the national laws.

Nevertheless the principle formulated in the preceding paragraph does not affect the right of the Contracting States not to apply the provisions of this Convention in favour of the nationals of a non-contracting State.

Article 15

This Convention does not apply to vessels of war, nor to government vessels appropriated exclusively to the public service.

Article 16

第 10 條

運費之優先權，於運費屬應付未付或運費係在船長或船舶所有人之代理人持有中時，即得行使。此項原則對於附屬費亦適用之。

第 11 條

除本公約規定外，依前述條款成立之優先權不需任何程序或特別證明要件。

前項規定不影響任何國家於其本國立法規定船長以船舶抵押借款時或變賣貨載時應履行特別程序之權利。

第 12 條

國內法必須規定船舶應具備用以登載第 1 條所述船舶抵押權、質權及其他船舶負擔之文書之種類及格式。然需登載於此項文書之船舶抵押權不因此項文書記錄之遺漏、錯誤或遲延而承擔責任。

第 13 條

本公約前述規定，對於船舶係由非所有人營運管理者或船舶承租人亦適用之。然船舶所有人之占有係被非法行為所剝奪或主張權利人非屬善意者，不在此限。

第 14 條

本公約之規定，於各締約國內，凡屬締約國之船舶而與債權有關者，及國內法所規定之其他情形，亦適用之。

然前項所確定之原則不影響締約國為一非締約國國民之利益，而不採用本公約各項規定之權利。

第 15 條

本公約不適用軍用船舶及專供公務使用之政府船舶。

第 16 條

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure or methods of execution authorized by the national law.

Article 17

After an interval of not more than two years from the day on which the Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratifications shall be recorded in a process verbal signed by the representatives of the powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Belgian Government, and accompanied by the instrument of ratification.

A duly certified copy of the process-verbal relating to the first deposit of ratifications, of the notification referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the powers who have signed this Convention or who have acceded to it. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

Article 18

Non-signatory States may accede to the present Convention whether or not they have been represented at the international Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the states which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

Article 19

The High Contracting Parties may at the time of signature, ratification, or accession declare that their acceptance of the present Convention does not include any or all of the self-governing dominions, or of the colonies, overseas possessions, protectorates, or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate or territory excluded in their declaration. They may also denounce the Convention separately in accordance with its provision in respect of any self-governing dominion, or any colony, overseas

前述各規定，不應視為對國內法所定訴訟管轄、訴訟程序或執行方法有任何影響。

第 17 條

在本公約簽字後至多兩年內，比利時政府應諮詢準備批准之締約國對批准已否決定。其批准書應於相關政府協議之日存放於布魯塞爾。第一次批准書之存放，應作成書面紀錄，由相關締約國之代表及比利時外交部長簽署之。

嗣後批准書應以書面照會連同批准文件送比利時政府。

前項紀錄及照會，連同批准書，應由比國政府抄錄正式副份，經由外交途徑轉致簽字國或加入國，並同時敘明收到日期。

第 18 條

未經簽署之國家，不論有無代表出席布魯塞爾之國際會議，均得加入本公約。

凡欲加入者，應備具加入書，以書面照會比利時政府，並將其加入書存放比利時政府檔案處。

比利時政府應隨以該加入書之副份抄送各簽字國或加入國，並敘明收到日期。

第 19 條

締約國在簽字、批准或加入時，得聲明本公約之接受，不包括任何或全體自治領域、或殖民地、海外管領地、保護國、或其主權或權力所屬之其他領域。各該地域得嗣後分別加入，亦得依照規定，分別退出。

possession, protectorate, or territory under their sovereignty or authority.

Article 20

The present Convention shall take effect, in the case of the states which have taken part in the first deposit of ratifications, one year after the date of the process-verbal recording such deposit. As respects the states which ratify subsequently or which accede, and also in cases in which the convention is subsequently put into effect in accordance with article 19, it shall take effect six months after the notifications specified in article 17, §2, and article 18, §2, have been received by the Belgian Government.

Article 21

In the event of one of the Contracting States wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other states informing them of the date on which it was received.

The denunciation shall only operate in respect of the state which made the notification, and on the expiration of one year after the notification has reached the Belgian Government.

Article 22

Any one of the Contracting States shall have the right to call for a new conference with a view to considering possible amendments. A State which would exercise this right should give one year advance notice of its intention to the other states through the Belgian Government, which would make arrangements for convening the conference.

PROTOCOL OF SIGNATURE

In proceeding to the signature of the International Convention for the unification of certain rules relating to maritime liens and mortgages, the undersigned Plenipotentiaries have adopted the present Protocol, which will have the same force and the same value as if the provisions were inserted in the text of the Convention to which it relates:

(1) It is understood that the legislation of each state remains free

- (a) to establish among the claims mentioned in No. 1 of article 2, a definite order of priority with a view to safeguarding the interests of the Treasury;
- (b) to confer on the authorities administering harbours, docks, lighthouses, and navigable ways, who have caused a wreck or other obstruction to navigation to be removed, or who are creditors in respect of harbour dues, or for damage caused by the fault of a vessel, the right, in case of non-payment, to detain the vessel, wreck, or other property, to sell the same, and to indemnify themselves out of the proceeds in priority to other claimants, and

第 20 條

於參加最初批准之國家間，本公約自批准紀錄完成之日一年後生效。嗣後批准或加入，及依第 19 條規定加入者，自批准書依第 17 條第 2 項及第 18 條第 2 項經比利時政府收到六個月後生效。

第 21 條

締約國之一欲退出本公約者，其退出應以書面通知比利時政府，比利時政府隨即以副本抄知其他國家，並敘明收到日期。

其退出僅對該退出國有效，並自比利時政府接到通知之一年後生效。

第 22 條

任一締約國為謀修正本公約有召集新會議之權。行使前項權利之國家，應將其意願於一年前經由此利時政府轉知其他各國，並由其籌備召集會議。

最後議定書

於簽署優先權及抵押權統一規定公約時，各全權代表採用本議定書，其規定視為本公約之部分與本公約具有同一效力與價值：

(1) 各締約國對於左列事項得以立法自由規定：

- (a) 為保障國庫之利益，就第 2 條第 1 項各債權相互間制定明確的優先順序。
- (b) 對於造成沈船或其他航行障礙而應移除者或為港埠稅或船舶過失所致損害之債權人者，於賠償未經清償時，得授權港埠、碼頭、燈塔、及航道主管機關有權針對船舶、沈船、或其他財產加以扣押、出賣，並就賣得價金為最優先受償之權

- (c) to determine the rank of the claimants for damages done to works otherwise than 'as stated in Article 5 and in Article 6.
- (2) There is no impairment of the provisions in the national laws of the Contracting State's conferring a lien upon public insurance associations in respect of claims arising out of the insurance of the personnel of vessels.

Done at Brussels, in a single copy, April 10th, 1926.

利。

- (c) 於第 5 條及第 6 條規定外，對工作物所加損害之各求償權，得明確規定其優先順序。
- (2) 締約國國內法就公共保險機構因船舶服務人員之保險而取得之債權，予以優先權者，其規定不因本公約而受限制。

1926 年 4 月 10 日訂於布魯塞爾。繕寫一份。