

## **A Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships**

(Done at Beijing on 19 October 2012)

CONSIDERING that the needs of the maritime industry and ship finance require that the Judicial Sale of ships is maintained as an effective way of securing and enforcing of maritime claims and enforcement of judgments or arbitral awards or other enforceable documents against the owners of ships;

CONCERNED that uncertainty for the prospective purchaser about the international recognition of foreign Judicial Sales of ships and transfer of registry may have an adverse effect upon the level of proceeds generated by a ship sold at a Judicial Sale to the detriment of interested parties;

CONSIDERING that necessary and sufficient protection should be provided to Purchasers of Ships at Judicial Sales by channelling the remedies available to interested parties to challenge the validity of the Judicial Sale and any subsequent transfers of the ownership in the ship;

CONSIDERING that in principle once a ship is sold by way of a Judicial Sale, the ship should no longer be subject to arrest for any claim arising prior to its Judicial Sale; and

CONSIDERING that the most convenient forum for assessing whether or not a Judicial Sale is regular or effective is the court of the State in which the Judicial Sale took place, therefore only the competent court in that state should have jurisdiction over actions challenging the Judicial Sale;

### **Article 1 Definitions**

For the purposes of this Convention:

1. "Certificate" means the original duly authorized document, or a certified copy thereof, as provided in Article 5.
2. "Charge" includes any charge, lien, privilège, encumbrance, claim, arrest, attachment, right of retention or notice of interest whatsoever and howsoever arising in relation to the ship.
3. "Clean Title" means free and clear of all mortgages, "hypothèques" or Charges.

4. "Competent Authority" means any person, court or authority which is empowered under the laws of the State in which the sale takes place to order, sell or transfer a ship free and clear of any and all mortgages, "hypothèques" or Charges, and all maritime and other liens and other encumbrances of whatsoever nature and howsoever arising.
5. "Court" means any judicial body established under the law of the State in which it is located and empowered to determine the matters covered under this Convention.
6. "Day" means any calendar day.
7. "Deficiency Amount" means any amount of a creditor's claim against any person personally liable on an obligation which is secured by a mortgage, or "hypothèque" or Charge, which remains unpaid after application of such creditor's share of proceeds actually received following and as a result of a Judicial Sale.
8. "Interested Person" means the Owner of a Ship prior to its Judicial Sale or the holder of a mortgage, "hypothèque" or Registered Charge attached to the ship prior to its Judicial Sale.
9. "Judicial Sale" means any sale of a Ship accomplished by a Competent Authority or under the control of a Court in a State by way of public auction or private treaty or any other appropriate ways provided for by the law of the State where the sale takes place by which clean title to the Ship is given to the Purchaser and the proceeds of sale are made available to the creditors.
10. "Maritime Lien" means any claim recognized as a maritime lien or *privilege maritime* on a Ship by the law applicable in accordance with the private international law rules of the State in which the Ship is sold by way of Judicial Sale.
11. "Mortgage" means any mortgage or hypothèque effected on a Ship and recognized as such by the law applicable in accordance with the private international law rules of the State in which the Ship is sold by way of Judicial Sale.
12. "Owner" means any person registered in the register of ships of the State of Registration as the owner of the Ship.
13. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

14. "Purchaser" means any person to whom the property in a Ship is transferred or is intended to be transferred pursuant to a Judicial Sale.
15. "Recognition" means that a judicial sale of a Ship has the same effect in the State in which recognition is sought as it does in the State in which that judicial sale was effected
16. "Registered Charge" means any charge or interest entered in the register of the Ship the subject of the Judicial Sale;
17. "Ship" means any ship or other vessel capable of being an object of a Judicial Sale under the law of the State in which the Sale takes place.
18. "State" means any member state of the United Nations.
19. "State of Registration" means the State in whose register of ships ownership of a Ship is registered at the time of its Judicial Sale.
20. "Subsequent Purchaser" means any person to whom property in a Ship has been transferred through a Purchaser.

## **Article 2 Scope of Application**

This Convention shall apply to the Recognition in a State Party of a Judicial Sale taking place in the territory of another State Party.

## **Article 3 Notice of Judicial Sale**

1. No State is required to recognize a Judicial Sale in another State unless the party seeking Recognition establishes that the following notices, where applicable, have been provided prior to such Judicial Sale either by the Competent Authority in such State or by one or more parties to the proceedings resulting in such Judicial Sale, in accordance with the laws of such State:
  - (a) The authority in charge of the ship's register in the State of Registration.

- (b) All holders of registered mortgages, "hypothèques" or Registered Charges;
- (c) All holders of Maritime Liens, provided that the Court conducting the Judicial Sale has received notice of their respective claims; and
- (d) The registered owner of the ship;

2. The notice required by paragraph 1 of this Article shall be provided at least 30 days prior to the Judicial Sale and shall contain, as a minimum, the following information:-

- (a) The name of the ship, the IMO number (if assigned) and the name of the Owner, as appearing in the registry records (if any) in the State of Registration (if any).
- (b) The time and place of the Judicial Sale; or if the time and place of the Judicial Sale cannot be determined with certainty, the approximate time and anticipated place of the Judicial Sale which shall be followed by additional notice of the actual time and place of the Judicial Sale when known but, in any event, not less than seven days prior to the judicial sale; and
- (c) Such particulars concerning the Judicial Sale or the proceedings leading to the Judicial Sale as the Competent Authority conducting the proceedings shall determine are sufficient to protect the interests of persons entitled to notice.

The notice specified in paragraph 2 of this Article shall be in writing, and either given by registered mail, or given by any electronic or other appropriate means [which provide confirmation of receipt], to the persons as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State in which the Judicial Sale is conducted and if deemed appropriate by the Court conducting the Judicial Sale, in other publications.

**Comment [HL1]:** Unresolved issue?  
 1. Concern that any deviation of MLM could immediately put MLM-countries in breach/ a point to be checked. 2. If lack of receipt invalidates the judicial sale, the purpose of this Convention is defeated.

**Article 4 Effect of Judicial Sale**

Subject to:

- (a) the Ship being within the jurisdiction of the State in which the Judicial Sale is accomplished, at the time of the Judicial Sale and
- (b) the Judicial Sale having been conducted in accordance with the law of the State in which the Judicial Sale is accomplished and the provisions of this Convention

all rights, title and interests in the ship existing prior to its Judicial Sale shall be extinguished and all mortgages, "hypothèques" or charges, except those assumed by the Purchaser, all maritime and other liens, and all encumbrances of whatsoever nature and howsoever arising, shall cease to attach to the ship and title to the ship shall be transferred to the Purchaser in accordance with the law applicable.

Notwithstanding the preceding provisions of this article, no Judicial Sale or deletion pursuant to article 6-1 hereof shall extinguish any remedies other than those enforceable against the Ship the subject of the Judicial Sale.

#### **Article 5 Issuance of a Certificate of Judicial Sale**

When a Ship is sold by way of Judicial Sale and the conditions required by the law of the State where the Judicial Sale is made and by this Convention have been met, the Competent Authority conducting the Judicial Sale shall, at the request of the Purchaser, issue a Certificate to the Purchaser containing the date of the Judicial Sale and recording that (1) the Ship has been sold to the Purchaser in accordance with the law of the said State and the provisions of this Convention free of all mortgages, "hypothèques" or charges, except those assumed by the Purchaser, of all maritime and other liens and of all encumbrances of whatsoever nature and howsoever arising, and (2) all rights and interests existing in the Ship prior to its Judicial Sale are extinguished.

#### **Article 6 Deregistration and Registration of the Ship**

1. Upon production by a Purchaser of a Certificate provided for in Article 5 of this Convention or a copy thereof duly certified in accordance with the law of the State in which the Judicial Sale has taken place, the Registrar of the Registry where the Ship was registered prior to its Judicial Sale shall be bound to delete all registered mortgages, "hypothèques" or Registered Charges except those assumed by the Purchaser, and either to register the Ship in the name of the Purchaser or to delete the Ship from the Register and to issue a certificate of deregistration for the purpose of new registration, as the case may be.
2. If the Certificate as provided for in Article 5 is not made in an official language of the State in which the abovementioned Registrar is located, the Registrar may request the Purchaser to submit a duly certified translation of the Certificate into such language.
3. The Registrar may also request the Purchaser to submit a duly certified copy of the said Certificate for its files.

## Article 7 Recognition of Judicial Sale

1. Subject to the provisions of this Convention, the Court of each State Party on the application of a Purchaser or Subsequent Purchaser shall recognize a Judicial Sale conducted in any other State Party with a Certificate issued as provided for by Article 5 of this Convention, as having the effect:
  - (i) that the ownership of the Ship has been transferred to the Purchaser and the right, title and interest of the previous owner enforceable against the Ship have been extinguished;
  - (ii) that the Ship has been sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the Purchaser, of all maritime and other liens and of all encumbrances and claims of whatsoever nature and howsoever arising.
2. Where a Ship which was sold by way of a Judicial Sale is sought to be arrested or is arrested by order of a Court in a State Party for a claim arising prior to the Judicial Sale, the Court shall reject the application for arrest or release the Ship from arrest upon production by the Purchaser or Subsequent Purchaser of a Certificate as provided for in Article 5 of this Convention, unless the arresting party is an Interested Person and furnishes proof evidencing existence of any of the circumstances provided for in Article 8 of this Convention.
3. Where a ship is sold by way of Judicial Sale in a State Party, any legal proceeding challenging the Judicial Sale shall be brought only before a competent court of a State Party in which the Judicial Sale took place and no Court other than a competent Court of the State Party in which the Judicial Sale took place shall have jurisdiction to entertain any action challenging the Judicial Sale.
4. In the absence of proof that a circumstance exists under Article 8 of this Convention to refuse Recognition of a Judicial Sale, a Certificate issued as provided for in Article 5 of this Convention shall constitute conclusive evidence that the Judicial Sale has taken place and has the effect provided in Article 4 hereof, but shall not be conclusive evidence in any proceeding to establish the rights of any Person in any other respect.
5. No person other than an Interested Person as defined by this Convention shall be entitled to take any action challenging a Judicial Sale before a competent court, and no competent court shall exercise its jurisdiction over any claim challenging a Judicial Sale unless it is made by an Interested Person as defined by this Convention. No remedies shall be exercised either against

the Ship the subject of the Judicial Sale or against any bona fide purchaser of that Ship.

#### **Article 8 Circumstances in which Recognition may be Refused or Suspended**

1. Recognition of a Judicial Sale may be refused or revoked by a Court of the State Party, at the request of an Interested Person, only if that Interested Person furnishes to the Court proof that at the time of the Judicial Sale, the Ship was not physically within the jurisdiction of the State in which the Court issuing the Certificate provided for in Article 5 is located.
  
2. Recognition of a Judicial Sale may be
  - a) suspended by a Court of the State Party, at the request of an Interested Person, only if that Interested Person furnishes to the Court proof that a legal proceeding pursuant to paragraph 3 of Article 7 has been commenced and the competent court has suspended the legal effect of the Judicial Sale; and
  
  - b) refused by a Court of the State Party, at the request of an Interested Person, only if that Interested Person furnishes to the Court proof that the competent court in a judgment no longer subject to appeal has nullified the Judicial Sale and its effects.
  
3. Recognition of a Judicial Sale may also be refused if the Court in a State Party in which recognition is sought finds that Recognition of the Judicial Sale would be contrary to the public policy of that State Party.
  
4. Notwithstanding the provisions of paragraph 1 and 2, no such request by an Interested Person will be admitted unless it is presented within three months of the date of the Judicial Sale as recorded in the Certificate. This three months period shall not be subject to any suspension, interruption or extension whatsoever.

#### **Article 9 Relation with other International Instruments**

Nothing in this Convention shall derogate from any other basis for the Recognition of Judicial Sales under any other bilateral or multilateral Convention, Instrument or agreement or principle of comity.

**[Final clauses in respect of signature, ratification, acceptance, approval, accession, denunciation, coming into force, language, etc shall be drafted later and separately]**