

Comments on the Beijing Draft (as amended in Dublin on 28 September 2013) - Reply from the China MLA

The China MLA would like to thank the CMI and the International Working Group for their substantial work to prepare a Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships which is known as the “Beijing Draft” and amend it on Dublin meeting. In order to achieve explicit objective of the Convention and substantially protect interests of bona fide Purchaser and the Subsequent Purchaser, the China MLA has the following comments on the Beijing Draft (as amended in Dublin on 28 September 2013):

1. Article 1, paragraph 3, Article 4, paragraph 1, Article 5, paragraph 1 (a) and Article 7, paragraph 1 (b)

It is suggested to remove the repeated and superfluous words “all Maritime Liens and other liens, and any other encumbrances of whatsoever nature and howsoever arising” in the above articles, as they have already been included in the definition of “Charge” and there may exist circumstances that some other encumbrances have also been assumed personally by the purchaser or subsequent purchaser.

2. Article 5, paragraph 2

It is suggested to include a suitable form of example of certificate as an annexure just like it included in CLC1992, contents of which shall be mandatory, but it should allow the state of judicial sale to add additional information in it according to their domestic law or practice. If the above annexure is included into the Convention, it is suggested to remove the numerical listing information in this paragraph.

At least the strict requirement as “in consecutively numbered paragraphs or data fields corresponding to the numerical listing in this paragraph” should be removed.

3. Article 7, paragraph 1 (b)

It is suggested to delete “registered” before the word “Mortgages”, as judicial sale should have such effect that all mortgages, except those assumed by the purchaser or subsequent purchaser, are deleted to make sure that the purchaser or subsequent purchaser could obtain clean title through it.

4. Article 7, paragraph 4

It is suggested to insert words “or the Subsequent Purchaser” after “*bona fide* Purchaser” to make sure that the subsequent purchasers who purchase the ship from *bona fide* purchasers could not be claimed against for remedies by Interested Persons.