

HRVATSKO DRUŠTVO ZA POMORSKO PRAVO



*ASSOCIATION CROATE DE DROIT MARITIME
CROATIAN MARITIME LAW ASSOCIATION
Member of Comité Maritime International
C/o University of Rijeka Faculty of Maritime Studies
Studentska 2, HR 51000 Rijeka, Croatia*

Rijeka, 20 September 2013

Stuart Hetherington, Esq.
President of the CMI

**Re: Comments by the Croatian Maritime Law Association on the Beijing Draft
International Convention on Recognition of Foreign Judicial Sales of Ships**

Dear Mr. Hetherington,

With reference to your letter of 25 March 2013, please find attached the comments by the Croatian Maritime Law Association on the Beijing Draft International Convention on Recognition of Foreign Judicial Sales of Ships. On behalf of the Croatian MLA, the comments were drafted by Dr. Gordan Stanković, who will represent our Association at the meetings of the International Subcommittee and will be empowered to approve any final wording at the meeting of the Assembly. We apologise that these comments arrive only a week before the Dublin meeting but hopefully they still may be circulated to the members of the ISC.

Yours sincerely,

President
Dr. Petar Kragić

Beijing Draft International Convention on Recognition of Foreign Judicial Sales of Ships

Comments by the Croatian Maritime Law Association

Draft Article	Proposed amendment / Comment	Reasons
<u>3. para. 1</u>	Delete the words <i>"or by one or more parties to the proceedings"</i> .	Is it appropriate for such an important document as the notice of judicial sale to be provided by anyone except the Competent Authority? The Croatian MLA thinks this task should not be entrusted to the "parties to the proceedings".
<u>4. para. 1</u>	Replace <i>"shall be transferred to the Purchaser"</i> with <i>"shall be acquired by the Purchaser"</i> .	"Transferred" implies the procedure of transferring title. In many countries, the transfer of title is obtained by way of registration and the procedure is carried out by the registrar in the ship's state of registration. The effect of judicial sale is to provide the Purchaser with a title, capable of being registered in the ship register.
<u>4. para. 1</u>	Delete the words <i>"in accordance with the law applicable"</i> .	Those words create a question as to which law is applicable, and imply that the Judicial Sale will have the result of transferring the title to the Purchaser only if the (unknown) applicable law so permits. This is all unnecessary.
<u>5. caption (2)</u>	At the end, insert "and that the ownership has been acquired by the Purchaser."	If acquisition of title by the Purchaser is one of the effects of the Judicial Sale pursuant to Article 4, this should be stated in the Certificate.

5	At the end of the Article, add: "and (3) that the Sale is not subject to regular appeal in the said State".	In the opinion of the CMLA, as long as any participant to the Judicial Sale has a possibility to challenge the Judicial Sale by way of a regular appeal, the Certificate should not be issued.
5	It would be useful and practical to provide a <u>form of such Certificate</u> (to be attached as a Schedule to the Instrument), in order to introduce uniformity and avoid doubts.	
<u>7, para.3</u>	At the end of the paragraph, add a new sentence reading: <i>"Pending its final decision on the subject, such Court shall have the right to suspend the legal effect of the Judicial Sale"</i> .	According to Article 8/2(a), the recognition may be suspended by the court of recognition if the court before which the action has been brought to challenge the judicial sale has "suspended the legal effect of the Judicial Sale". The possibility for the latter court to suspend the legal effect of the judicial sale has therefore been hinted, but not clearly provided. This means that the possibility to suspend the legal effect of the judicial sale (as an interim measure pending the final decision on the action to challenge the legal effects of the judicial sale) will depend on the procedural rules of the State in which the action to challenge has been brought. This is a pity. The CMLA believes therefore that Article 7, paragraph 3 should expressly provide for such power by the court seized of an action to challenge the legal effects of the judicial sale.
<u>7 + 8</u>	Replace <i>"State Party"</i> with <i>"State"</i> .	Pursuant to Article 2, the Convention applies to recognition in a State Party of Judicial Sales taking place in another State Party. Articles 3 to 6 use the term "State", which is correct. Nevertheless, starting with Article 7, the Draft uses the term "State Party", which may create confusion. The CMLA believes that it is correct to use the term "State" throughout the Convention.