

**Japanese MLA's Comments
on the Second Draft Instrument
in respect of Recognition of Foreign Judicial Sales of Ships**

Japaense MLA has reviewed the Second Draft Instrument in respect of Recognition of Foreign Judicial Sales of Ships, and hereby make our comments and proposal thereon.

1. Revision of Article 8, para 2

The Instrument is intended to apply to the judicial sales of ships based on almost all types of claims, with or without mortgage, charge, lien, and including the claims based on the judgment. This makes the Instrument independent from 1993 Convention. We fully understand the necessity for recognition of the foreign judicial sales of ships. However, we do not think it well-balanced if we automatically recognize a result of judicial sale based on the judgment without lien or mortgage, while we need to satisfy certain conditions in order to obtain a judgment to recognize and enforce a foreign judgment. Under the current proposal, a judicial sales of a ship should be recognized even when such a sales is based on a foreign judgment which cannot be recognized and enforced. We also hesitate to accept a scheme under which a result of foreign judicial sale is automatically recognized without review of the procedure and the nature of the claim, based on which the judicial sale was sought. Although the Second Draft took into account the due process of the judicial sale which should be recognized, we do not think it sufficient. The Second Draft followed the New York Convention, but the arbitration is in any rate based on the relevant parties' agreement to be bound, while the judicial sale does not have such basis. We therefore propose Article 8, 2nd para to be revised as follows: -

8.2 Recognition of a Judicial Sale may also be refused if the Court in a State Party in which recognition is sought finds that (i) the recognition of the Judicial Sale and/or (ii) any of the underlying procedures and/or (iii) claims and/or documentation pursuant to which the Judicial Sale was obtained would be contrary to the public policy of that State Party.

2. Deletion of Article 1, para 5 and the last sentence of Article 4

We also wonder if Article 1, para 5 is necessary. It defines 'Deficiency Amount', but the words are used only in the last sentence of Article 4. In addition, the last sentence of Article 4 just refers to usual result of judicial sale, and would not be necessary. We thus propose deletion of Article 1, para 5 and the last sentence of Article 4.