

Japanese MLA's Comments
on the Beijing Draft as amended in Dublin of
International Convention on Recognition of Foreign Judicial Sales of Ships

Japanese MLA has carefully reviewed the Beijing Draft as amended in Dublin of International Convention on Recognition of Foreign Judicial Sales of Ships, and wishes to submit its comments and proposal. Japanese MLA also made inquiry to the Ministry of Justice and the Japanese Shipowner's Association to have their comments on the said Draft.

1. Article 3, para 1 (c)

The above paragraph requires that a notice prior to the Judicial Sale shall be made to all holders of maritime liens, "*provided that the Competent Authority conducting the Judicial Sale has received notice of their respective claims;*" Most holders of maritime liens would not have an opportunity to submit their claims before the Competent Authority makes notice of Judicial Sale to them. The proviso itself does not seem logical, according to the Ministry of Justice and the Japanese Shipowner's Association. One of the solutions could be to add a sentence to make a notice to holders of maritime lien whom the applicant for Judicial Sale knows as having a claim with maritime lien; e.g. "*or that the applicant for Judicial Sale knows a holder of Maritime Lien*" after the above "*provided that the Competent Authority conducting the Judicial Sale has received notice of their respective claims*". However, we have recognized that it would raise the other issues or problems, such as, what to the extent the applicant should know their claims; whether they should review if the claims are attached with maritime lien; what would happen when the applicant fails to make notice to such known maritime lien holders, etc. Therefore, Japanese MLA would not insist that the above proviso shall be deleted or revised.

2. Article 5, para 2

In accordance with para 2 (iii), the Certificate needs to have the entry of the address of the Competent Authority. Would this be really necessary? Japanese judgment or order or the court document would not have the court's address therein.

In para2 (viii)(ix), "and (if any) Subsequent Purchaser" shall be inserted after "Purchaser".

3. Article 7, para 2

Article 7, para 2 limits the applicant only to Interested Person, but Article 8, para 3 provides that the application for recognition or refusal could be made by anyone. Thus, "(except in case of paragraph 3 of Article 8)" shall be inserted between "Interested Person" and "and" on 5th line, for clarification.

4. Article 8

Japanese MLA propose that Article 8, para 3 shall be revised as follows.

3. Recognition of a Judicial Sale may also be refused if the Court in a state party in which Recognition or its Refusal is sought finds that Recognition of the Judicial Sale would be ~~manifestly~~ contrary to the public policy of that state party.

[End]