



Comments of the Spanish MLA (hereinafter AEDM), to the proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships (Known as the “Beijing Draft”) done at Beijing on 19 October 2012 and as amended in Dublin on 28 September 2013 (hereinafter, the Convention).

By letter of the President of the CMI to the Presidents of the National MLAs dated 4th February 2014 and attached documentation, final comments have been requested to the said National MLAs in order to prepare the scheduled meetings of the IWG in Hamburg (14 and 15th June) to complete a final draft that will be debated in the Plenary Session of 17th June.

The Spanish MLA will, as requested by the President of the CMI in his captioned letter, have at least two delegates duly empowered according to the By-laws of the AEDM to approve the final text, if agreed.

The Spanish MLA, as encouraged by the IWG has contacted the competent Authorities who are not against an International Convention on the Recognition of Foreign Judicial Sales of Ships with the following qualifications:

- Spain is a Member State of the European Union, so that it is bound to respect the European Conventions and Regulations on recognition and enforcement of Sentences and other Judicial awards. Any action that Spain may take regarding the proposed Convention will be coordinated in the appropriate organisms of the European Union.
- Any article that may be inconsistent with the EU Regulations (not International Conventions but transnational Law) could not be adopted by Spain. A reserve article is needed in the final clauses of the proposed Convention.

The Kingdom of Spain has duly ratified the MLM 1993 so that the contents of art.3 of the proposed Convention must be almost identical the art.11 of the MLM 93, and where not, it must not be inconsistent with it.

Taking the foregoing into account, the AEDM wish to give thanks to all the members of the IWG on the proposed Convention for their hard work and all any other contributors and would like to apologize for past not active cooperation in this matter. The new Executive Committee (on duty since October 2012) has remedied and is remedying this as the CMI has seen, participating actively and answering all the questionnaires of the “work in progress” as requested by the CMI.

Having said that, the final comments of the AEDM are as follows:

- i. Most of the draft Convention is acceptable for the AEDM and will not be inconsistent with the laws, conventions and EU Regulations in force.
- ii. Art.3 should be amended as suggested to be identical or, at least, almost identical, to art. 11 of MLM 93. AEDM is particularly concerned about the issues arising out of the form or the notice (paragraph 4, a) and b) of art. 3 provides “either” direct notice “and” announcement but it is unclear to us if both notices or just one are needed.

- iii. Proposed amendments to arts. 3 and 8 are attached with “track changes” for easier reference.
- iv. The order of the articles of the Convention should be changed not just for aesthetic questions but for the sake of clearer reading and interpretation and correct construction, starting by the substantive issues on recognition and passing later on to the procedural or ones:

Present layout

Article 1 Definitions

Article 2 Scope of Application

Article 3 Notice of Judicial Sale

Article 4 Effect of Judicial Sale

Article 5 Issuance of a Certificate of Judicial Sale

Article 6 Deregistration and Registration of the Ship

Article 7 Recognition of Judicial Sale

Article 8 Circumstances in which Recognition may be Suspended or Refused

Article 9 Relations with other International Instruments

Proposed layout

Article 1 Definitions

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Yours sincerely,

Rodolfo González-Lebrero
President

Madrid, 3rd June 2014

A Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships
(Known as the "Beijing Draft")

(Done at Beijing on 19 October 2012 and as amended in Dublin on 28 September 2013)

The States Parties to the present Convention

RECOGNIZING 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 maritime claims and the enforcement of judgments or arbitral awards or other enforceable documents against the Owners of Ships;

CONCERNED that any uncertainty for the prospective Purchaser regarding the international Recognition of a Judicial Sale of a Ship and the deletion or transfer of registry may have an adverse effect upon the price realised by a Ship sold at a Judicial Sale to the detriment of interested parties;

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

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

BELIEVING that the most convenient forum for assessing whether or not a Judicial Sale is valid 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; and

CONSIDERING further that the objective of Recognition of the Judicial Sale of Ships requires that, to the extent possible, uniform substantive rules are given with regard to the notice to be given of the judicial sale, the legal effects of that sale and of the re-registration or registration of the ship.

HAVE AGREED as follows:

Article 1 Definitions

For the purposes of this Convention:

1. "Certificate" means the original duly issued document, or a certified copy thereof, as provided for in Article 5.
2. "Charge" includes any charge, maritime lien, lien, *privilege maritime*, encumbrance, claim, arrest, attachment, right of retention or notice of interest whatsoever and howsoever arising in relation to the Ship.

3. "Clean Title" means a title free and clear of all Mortgages or Charges (unless such Mortgages and Charges have been assumed by any Purchaser or Subsequent Purchaser), all Maritime Liens and other liens, and any other encumbrances of whatsoever nature and howsoever arising.
4. "Competent Authority" means any Person, Court or authority empowered under the laws of the State of Judicial Sale to sell or transfer or order to be sold or transferred, by a Judicial Sale, a Ship with Clean Title.
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 by this Convention.
6. "Day" means any calendar day.
7. "Interested Person" means the Owner of a Ship immediately prior to its Judicial Sale or the holder of a Mortgage or Registered Charge attached to the Ship immediately prior to its Judicial Sale.
8. "Judicial Sale" means any sale of a Ship by a Competent Authority by way of public auction or private treaty or any other appropriate ways provided for by the law of the State of Judicial Sale by which Clean Title to the Ship is given to the Purchaser and the proceeds of sale are made available to the creditors.
9. "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 of Judicial Sale.
10. "Mortgage" means any mortgage or "*hypothèque*" effected on a Ship in the State of Registration and recognized as such by the law applicable in accordance with the private international law rules of the State of Judicial Sale.
11. "Owner" means any Person registered in the register of ships of the State of Registration as the owner of the Ship.
12. "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.
13. "Purchaser" means any Person to whom the property in a Ship is transferred or is intended to be transferred pursuant to a Judicial Sale.
14. "Recognition" means that the effect of the Judicial Sale of a Ship shall be the same in the state in which Recognition is sought as it has in the State of Judicial Sale.
15. "Registered Charge" means any Charge entered in the register of the Ship that is the subject of the Judicial Sale.
16. "Registrar" means the registrar or equivalent official in the State of Registration or the State of Bareboat Charter Registration, as the context requires.
17. "Ship" means any ship or other vessel capable of being an object of a Judicial Sale under the law of the State of Judicial Sale.

18. "State of Registration" means the state in whose register of ships ownership of a Ship is registered at the time of its Judicial Sale.

19. "State of Judicial Sale" means the state in which the Ship is sold by way of Judicial Sale.

20. "State of Bareboat Charter Registration" means the state which granted registration and the right to fly temporarily its flag to a Ship bareboat chartered-in by a charterer in the said state for the period of the relevant charter.

21. "Subsequent Purchaser" means any Person to whom property in a Ship has been transferred through a Purchaser.

22. "Unsatisfied Personal Obligation" means the amount of a creditor's claim against any Person personally liable on an obligation which is secured by a Mortgage 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.

Article 2 Scope of Application

This Convention shall apply to the Recognition in a state party of a Judicial Sale taking place in another state party.

Article 3 Notice of Judicial Sale [SEE COMMENTS]

1. ~~Prior to a Judicial Sale the following notices shall have been given~~ either by the Competent Authority in the State of Judicial Sale or by one or more parties to the proceedings resulting in such Judicial Sale, in accordance with the law of the State of Judicial Sale, to:

(a) The Registrar of the Ship's register in the State of Registration;

(b) All holders of registered Mortgages or Registered Charges;

(c) All holders of Maritime Liens, provided that the Competent Authority conducting the Judicial Sale has received notice of their respective claims; and

(d) The Owner of the Ship.

2. If the Ship subject to Judicial Sale is flying the flag of a State of Bareboat Charter Registration, the notice required by paragraph 1 of this Article shall also be given to the Registrar of the Ship's register in such State.

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

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(a) The name of the Ship, the IMO number (if assigned) and the name of the Owner and the bareboat charterer (if any), as appearing in the registry records (if any) in the State of Registration (if any) and the State of Bareboat Charter 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.

4. The notice specified in paragraph 3 of this Article shall be in writing, and given as expediently as possible and not in a way to frustrate or significantly delay the (proceedings concerning) the Judicial Sale:

(a) either by registered mail, or by any electronic or other appropriate means to the Persons as specified in paragraphs 1 and 2; and

(b) by press announcement either published or circulated in the State of Judicial Sale and, if deemed appropriate by the Competent Authority conducting the Judicial Sale, in other publications published or circulated elsewhere.

5. Nothing in this Article shall prevent a state party from complying with any other international convention or instrument to which it is a party and to which it consented to be bound before the date of entry into force of the present Convention.

Article 4 Effect of Judicial Sale

1. Subject to:

(a) the Ship being physically within the jurisdiction of the State of Judicial Sale, at the time of the Judicial Sale; and

(b) the Judicial Sale having been conducted in accordance with the law of the State of Judicial Sale and the provisions of this Convention,

any title to and all rights and interests in the Ship existing prior to its Judicial Sale shall be extinguished and all Mortgages or Registered Charges, except those assumed by the Purchaser or Subsequent Purchaser, all other Charges, all Maritime Liens 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 or Subsequent Purchaser in accordance with the law applicable.

2. Notwithstanding the provisions of the preceding paragraph, no Judicial Sale or deletion pursuant to paragraph 1 of Article 6 shall extinguish any remedies including, without limitation, any claims for Unsatisfied Personal Obligations, other than those enforceable against the Ship the subject of the Judicial Sale.

Article 5 Issuance of a Certificate of Judicial Sale

1. When a Ship is sold by way of Judicial Sale and the conditions required by the law of the State of Judicial Sale and by this Convention have been met, the Competent Authority shall, at the request of the Purchaser, issue a Certificate to the Purchaser recording that

(a) 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 or Registered Charges, except those assumed by the Purchaser, all other Charges, all Maritime Liens and other liens, and all encumbrances of whatsoever nature and howsoever arising; and

(b) any title to and all rights and interests existing in the Ship prior to its Judicial Sale are extinguished.

2. The Certificate shall also contain, in consecutively numbered paragraphs or data fields corresponding to the numerical listing in this paragraph, the following information:

- i. The Certificate is issued under this Convention;
- ii. The name and state of the Competent Authority;
- iii. The address of the Competent Authority;
- iv. The name of the Ship subject of the Judicial Sale when the Judicial Sale was effected;
- v. The distinctive number or letters of the Ship subject of the Judicial Sale when the Judicial Sale was effected;
- vi. The port of registry or place of issuance of the distinctive number or letters of the Ship subject of the Judicial Sale when the Judicial Sale was effected;
- vii. The effective date of the Judicial Sale;
- viii. The name of the Purchaser;
- ix. The address of the Purchaser;
- x. The date and place of issuance of the Certificate;
- xi. The signature, stamp or other confirmation of authenticity of the Certificate.

Article 6 Deregistration and Registration of the Ship

1. Upon production by a Purchaser or Subsequent Purchaser of a Certificate issued in accordance with Article 5, the Registrar of the Ship's registry where the Ship was registered prior to its Judicial Sale shall delete all registered Mortgages or Registered Charges, except those assumed by the Purchaser or Subsequent Purchaser, and either to register the Ship in the name of the Purchaser or Subsequent 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 Ship was flying the flag of a State of Bareboat Charter Registration at the time of the Judicial Sale, upon production by a Purchaser or Subsequent Purchaser of a Certificate issued in accordance with Article 5, the Registrar of the Ship's registry in such state shall delete the Ship from the register and to issue a certificate to the effect that the permission for the Ship to register in and fly temporarily the flag of the state has been withdrawn.

3. If the Certificate referred to in Article 5 is not issued in an official language of the state in which the abovementioned Register is located, the Registrar may request the Purchaser or Subsequent Purchaser to submit a duly certified translation of the Certificate into such language.

4. The Registrar may also request the Purchaser or Subsequent Purchaser to submit a duly certified copy of the said Certificate for its records.

Article 7 Recognition of Judicial Sale

1. Subject to the provisions of Article 8, the Court of a state party shall, on the application of a Purchaser or Subsequent Purchaser, recognize a Judicial Sale conducted in any other state party for which a Certificate has been issued in accordance with Article 5, as having the effect:

(a) that the ownership of the Ship has been transferred to the Purchaser or Subsequent Purchaser and any title to and all the rights and interests in the Ship existing prior to its Judicial Sale have been extinguished; and

(b) that the Ship has been sold free of all registered Mortgages and Registered Charges, except those assumed by the Purchaser or Subsequent Purchaser, all other Charges, all Maritime Liens and other liens, and 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 that had arisen prior to the Judicial Sale, the Court shall dismiss, set aside or reject the application for arrest or release the Ship from arrest upon production by the Purchaser or Subsequent Purchaser of a Certificate issued in accordance with Article 5, unless the arresting party is an Interested Person and furnishes proof evidencing existence of any of the circumstances provided for in Article 8.

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 the State of Judicial Sale and no Court other than a competent Court of the State of Judicial Sale shall have jurisdiction to entertain any action challenging the Judicial Sale.

4. No Person other than an Interested Person shall be entitled to take any action challenging a Judicial Sale before a competent Court of the State of Judicial Sale, and no such competent Court shall exercise its jurisdiction over any claim challenging a Judicial Sale unless it is made by an Interested Person. No remedies shall be exercised either against the Ship the subject of the Judicial Sale or against any *bona fide* Purchaser of that Ship.

5. In the absence of proof that a circumstance referred to in Article 8 exists, a Certificate issued in accordance with Article 5 shall constitute conclusive evidence that the Judicial Sale has taken place and has the effect provided for in Article 4, but shall not be conclusive evidence in any proceeding to establish the rights of any Person in any other respect.

Article 8 Circumstances in which Recognition may be Suspended or Refused [SEE COMMENTS]

Recognition of a Judicial Sale may be suspended or refused only in the circumstances provided for in the following paragraphs:

1. Recognition of a Judicial Sale may be refused by a Court of a state party, at the request of an Interested Person 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 Competent Authority issuing the Certificate in accordance with Article 5 is located or if the notices provided for in art.3 were not given.

2. Recognition of a Judicial Sale may be

a) suspended by a Court of a state party, at the request of an Interested Person, if that Interested Person furnishes to the Court proof that a legal proceeding pursuant to paragraph 3 of Article 7 has been commenced on notice to the Purchaser or Subsequent Purchaser and that the competent Court of the State of Judicial Sale has suspended the Judicial Sale and its effects; and

b) refused by a Court of a state party, at the request of an Interested Person, if that Interested Person furnishes to the Court proof that the competent Court of the State of Judicial Sale (whether or not after suspension of the legal effect of the Judicial Sale) in a judgment or similar judicial document no longer subject to appeal has subsequently 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.

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Article 9 Relations 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, RESERVES, ratification, acceptance, approval, accession, denunciation, coming into force, language, etc. shall be drafted later and separately]