



International Working Group on Judicial Sale
Report at Buenos Aires on 25th October 2010
On the Key Procedural Elements of Judicial Sales of Ships
(Second set of Questions)
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Rules of procedures are always the fruit of a difficult search for an equilibrium between on the one hand keeping the consumption of time and money as low as possible and on the other hand protecting the rights of whoever may be affected by the procedure.

The rule maker will always have to make a compromise. In abstract terms it is probably not possible to provide absolute protection of the defendant and others affected by plaintiff's action within a fast and cost effective proceeding.

How far should one go in ascertaining that the shipowner was properly and timely advised of the ongoing proceeding? Is a notice to the master sufficient, whether or not hired by the shipowner, to the agent? Who is deemed to be the agent? What if he is no longer the agent? Should the creditors be advised, if so, which creditors, what is a "known" and what is an "unknown" creditor? You will not receive answers to those questions hereunder, but these questions are a necessary background for the reflection regarding the recognition.

More than for the judicial sale of any other asset, the reliability of the procedure is especially challenged when the forced sale concerns a ship, who, by her nature, is exposed to the law of as many countries as she transgresses national frontiers. Therefore, when finding out whether or not a judicial sale will be recognized, the preliminary question is really how the procedure was conducted. The question of recognition is in fact asking how resistant the procedure in one country will be to the law and practice in another country. And the answer is probably that the rule maker should be especially vigilant, and it may be necessary to set a higher standard of protection of the defendant's rights, in order to resist to challenges which may be brought under the laws of other countries

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Question 2.1:

Briefly and without going into detail, what is the general procedure or the key procedural elements of a judicial sale of ship in your jurisdiction?

This question seeks a general overview of the proceeding. While for the next questions within this second set, we will be able to present a summary, a synoptic presentation of the answers of this first question would be doomed to inaccuracy.

This general question is necessary for the understanding of each system, but the summary of the replies to the next questions serves the purpose of this reporting.

Question 2.2.

Is it necessary to provide written notice to the register of ships in which a ship is entered before that ship is sold by way of judicial sale?

Summary of the replies:

Argentina	Yes, and if registered in foreign register to the consul of that country.
Australia	No.
Belgium	Only to the Belgian register, regardless the nationality of the ship.
Canada	No, unless so ordered by Federal Court.
China	Yes.
Croatia	Yes.
Denmark	Yes, and if Ship not registered in Denmark then publication in accordance with rules of the country of registration.
Dominican Republic	No.
France	No.
Germany	[in register of which country?]
Italy	(No), but attachment should be endorsed on ship register, and if ship registered abroad, then also to Consul of the country of registration..
Japan	Yes, if registered with Japanese register.
Malta	Not in Maltese register [How about foreign register?]
Nigeria	No.
Norway	No.
Singapore	No.
South Africa	No.
Slovenia	Yes, but only if the ship is registered in Slovenian register.
Spain	Yes.
Sweden	Yes.
USA	No.
Venezuela	Yes.



Question 2.3. Is it necessary to provide written notice to the registered ship-owner before a ship is sold by way of judicial sale? And, is there any procedure by which the registered ship-owner may challenge the sale of the ship? If yes, please explain in detail.

Summary of the replies:

Argentina	Yes. Within 5 days shipowner can file any of the 5 defenses available. Any party with an interest can apply for nullity.
Australia	No. “However, in circumstances where a registered ship owner does become aware of the judicial sale and is aggrieved by that process then s/he can file a notice of appearance in relation to the in rem proceedings as well as a formal application.”
Belgium	Yes. But remittance of deed of service to Master is a service to the ship owner. The shipowner, at various steps in the proceedings, has the occasion to challenge the enforcement.
Canada	No. “It is not required to serve the ship owner personally.” <i>In rem</i> “But, the minimum requirement under the Federal Court Rules is that the ship must be served with the “ <i>in rem</i> ” legal proceedings [...] The ship-owner may apply to set aside the default judgement and /or set aside the Order of Appraisalment and Sale, and/or challenge the actual sale.” If Shipowner is served personally or intervenes: “In the event that the ship owner is served personally, or instructs legal counsel to seek leave to intervene on the ground that it has a proprietary interest, then the claimant is required to serve on that legal representative all of the legal proceedings to be filed into court and to give notice of its intentions with respect to the ship [...]” and the course of the procedure. “The ship owner has the right to contest and challenge each step being undertaken by the claimant.”
China	“Yes. The ship-owner may challenge and apply for a review of the ruling of the judicial sale within 5 days of receipt of the notice during which period the sale should be suspended. [...]”
Croatia	Yes. “If the ship-owner is not in Croatia or the ship-owner's seat is unknown, the court will appoint the master as the ship-owner's attorney-in-fact, and shall deliver the writ of execution to the master.” “The ship-owner may challenge the sale of the ship by lodging an



	appeal against the writ of execution. [...]"
Denmark	Yes, the court must. However, only if the address [...] is apparent from the transcript of register provided by the creditor claimant [...]" "The debtor can not challenge the judicial sale but he can appeal the attachment levied on the ship to the ordinary courts within 4 weeks after the attachment. This is not to be confused with the 4 week appeal period after the judicial sale auction. If the attachment is appealed, the bailiff's court will have to wait for the decision from the ordinary courts before it can proceed with the judicial sale, cf. the AJA, Section 542 (2)."
Dominican Republic	Yes. Service on master or local agent is usually accepted by court.
France	Yes. Shipowner can challenge the sale on an number of grounds.
Germany	Yes. ("to the debtor, i.e. the registered ship owner") The sale may be suspended in case <ul style="list-style-type: none"> - "the debtor can prove that he is able to pay the claim amount within 6 months"; - "of extraordinary hardship [...]". <p>And, generally, "orders rendered by the local court competent for execution are subject to appeal with the competent regional court."</p>
Italy	Yes. Shipowner may oppose the Sale on the ground that the claimant has no enforceable title.
Japan	Yes. "Upon application, the court will order the bailiff to serve the written notice, and the bailiff will serve the documents on the master who is deemed to have capacity to represent the ship owner." "The ship owner or the debtor may contest the court order commencing the judicial sale, on grounds that the claim or maritime lien (or other basis to the judicial sale of the ship) does not exist or has been extinguished or that the procedure of arrest and/or judicial sale is against the law."
Malta	Yes (nuanced). And the Shipowner may file a response opposing the request of the execution creditor
Norway	Yes. (Master has authority to receive notice(?)) "The ship-owner may demonstrate or argue that the conditions for forced sale are not fulfilled – the claimant/creditor has no claim or the claim is paid, the claim has not fallen due etc."
Slovenia	No.
South Africa	"No, there is no formal requirement, but it is most unlikely that an Applicant will succeed in its application for the judicial sale of a ship



	if it has not notified the owner, operator and/or manager of the ship [...]” “The ship-owner is perfectly entitled to oppose the application at any time prior to the interim order being made final [...]”
Spain	No. “Challenge can be made by a claim for ownership where the true Owner not the Defendant or by third-party action of prior right of claim than the one shown by the Plaintiff.”
Sweden	Yes. “An arrest, or a seizure, or an auction or a distribution of proceeds may all be appealed separately.”
USA	“Written notice need not necessarily be given to the registered owner of a ship before a judicial sale. In fact, U.S. law does not currently require notice of the arrest of the vessel to be provided to the vessel’s registered owner. Notice to the master or individual in charge of the vessel is deemed sufficient to notify the vessel’s owner of the arrest. A person who asserts a right of possession or an ownership interest in an arrested vessel may, however, file a statement of right or interest in the vessel and an answer following the arrest of a vessel. SUPP. ADM. R. C(6).
Venezuela	Yes. “The judicial sale might be challenged by a repossession action, under article 584 of the Civil Procedure Code and by a constitutional protection action.”

Question 2.4.

Is it necessary to provide written notice to the registered mortgagees, the known holders of maritime liens and/or the known holders of other charges in respect of the ship before the ship is sold? And, is there any procedure by which the mortgagees and/or the aforesaid holders may get access to the distribution of the proceeds of the sale of the ship? If yes, please explain in detail.

Summary of the replies:

Argentina	Yes.
Australia	“No, there is no requirement to provide written notice specifically directed to known registered mortgagees, holders of maritime liens or charges. However, there is a general requirement pursuant to the Admiralty Rules [...] for the Admiralty Marshal to publish, by way of a prescribed Notice of Application to Determine Priorities, the fact that a ship is about to be sold or has been sold.”
Belgium	Yes. And advertisement.
China	Yes.
Croatia	Yes.
Denmark	Yes, to “all parties with registered encumbrances over the ship. However, only if the addresses of these persons/companies are



	<p>apparent from the transcript of register provided by the creditor claimant, cf. the AJA, Section 544”</p> <p>“Although this is not clear from the AJA we are the opinion that written notice should also be given to known holders of maritime liens and other charges in respect of the ship. However, if this is not done it is doubtful if there would be any consequences of not doing so. Only registered encumbrances are on the face of things required to be notified. Others are assumed to be notified through the official announcements in the Danish Official Journal etc. “</p>
Dominican Republic	No.
France	To the mortgagee of a French registered ship
Germany	Yes.
Italy	Yes.
Japan	The court shall provide written notice to “known” creditors. If such a creditor's address is overseas or unknown, the court will make a public notice to them. Notice to tax authority is also provided for. “These creditors will be treated as the creditors who are entitled to receive a share of the proceeds of the judicial sale of the ship. The other creditors will not receive the court's notice, and they will have to apply for another judicial sale or claim a share of the proceeds in order to be included in the distribution of the proceeds of the judicial sale of the said ship.”
Malta	<p>“To the parties who have filed an arrest warrant against the vessel, if the mortgagee has not filed such arrest warrant than there is no obligation to notify him in writing.</p> <p>The purchase price of the vessel will be deposited in Court. Under Maltese law, when there is deposited money in respect of which more than two parties allege claims of preference or priority, the Court will publish a notice calling upon all interested parties to put in their respective claims [...]”</p>
Norway	Yes, to all known creditors.
Slovenia	No, creditors may intervene in the proceeding with defences both procedural or substantive.
South Africa	“There is no specific requirement in the Act or the admiralty rules for the mortgagee bank to be advised of the sale. Given the general obligation upon the Applicant to advise all parties that may be affected by the arrest, the Applicant may make enquiries regarding the presence or otherwise of a mortgagee bank.”
Spain	
Sweden	Yes.
USA	
Venezuela	Yes.



Question 2.5.

Following the judicial sale of a ship, will a document such as an order or a certificate be issued to the purchaser by the court that conducted or controlled the judicial sale of ship, to the effect that the ship is sold free of all mortgages, liens, charges and encumbrances, or that the purchaser has acquired a clean title of the ship from the judicial sale?

Summary:

In most country a document of title is issued, either because it is so provided by statute or as a matter of practice.

In some cases, such as in Japan, for Japanese ships, there will not be such an instrument but the ship registrar will be ordered to change ownership and delete all registered mortgages or other encumbrances.

Whether the document also mentions the freedom of encumbrances and to what extent, varies from country to country.

Summary country per country:

Provided always a number of conditions are met:

Argentina	Yes.
Australia	Yes.
Belgium	Yes, the purchaser will receive a deed. The statute does not provide for the duty to the court marshal to issue a deed according to which the ship was sold free of incumbrances, however, it will usually include the sale conditions which ordinarily mention that the ship will be sold free of encumbrances or at least that according to Belgian law, the ship is sold free of encumbrances. .
China	Yes.
Canada	“The sale is confirmed by an order of the Court declaring the new buyer to be the owner of the ship free of any liens under Canadian maritime law and directing the Sheriff to sign and issue a Bill of Sale to the buyer on payment of any balance of sale price owing.”
Croatia	“The court will issue an order that the ship be delivered to the purchaser, that the purchaser be entered in the ship register as the owner of the ship and that all encumbrances and charges be deleted from the ship register.”
Denmark	Yes, “the buyer be entitled to a title deed[...]” “This can then be used to register the transfer of title in the Danish Ships Register/the Danish International Register of Ships.” “In our experience it is not common for the bailiff's court to issue a certificate stating explicitly that the ship has been sold free of all mortgages, liens, charges and encumbrances and/or that the



	buyer has acquired clean title to the ship. Accordingly, the buyer can not expect to receive a formal Bill of Sale.”
Dominican Republic	Yes.
France	The purchaser receives from the Court an enforceable copy of the auction judgment. By operation of French law, the purchaser acquires a clean title.
Germany	Yes.
Italy	Yes.
Japan	<p>Japan registered ships: no need for a bill of sale or such instrument, the ship registrar will be ordered to change ownership and delete all registered mortgages or other encumbrances. Although maritime liens may not be registered in Japan, such liens will also be extinguished by the provisions of the <i>Civil Enforcement Law</i>.</p> <p>Ship not registered in Japan: statute does not provide for the duty of issuing such instrument. “However, in practice, the courts issue a certificate to the overseas register of ships to certify <i>as under Japanese law</i></p> <p>(i) that the ship was sold by judicial sale to the successful bidder, and</p> <p>(ii) that there are no longer any mortgages or other encumbrances over the ship.”</p>
Malta	Yes.
Nigeria	Yes.
Norway	If the buyer of the vessel so requires, the court shall issue a bill of sale for the vessel showing if any encumbrances has been taken over by the buyer and list the rights in the vessel that has been overturned / deleted as a consequence of the forced sale process.
South Africa	Bill of sale issued, [showing she is sold clean and free?]
Spain	Yes.
Sweden	“Evidence of title will be given by a protocol of the auction signed by the Authority. This legal title is the best title a buyer can obtain under Swedish law, in the sense that the sale extinguishes any pre-existing rights against the vessel, except for those mortgages which survive with the buyer’s consent.”
USA	“U.S. law does not expressly provide for the issuance of such a document. However, U.S. law does expressly provide that a sale by a district court in an in rem action brought to enforce a preferred mortgage lien acts to terminate any lien, maritime lien or possessory common law claims in the vessel. 46 U.S.C. § 31326(a). The order of sale ordinarily states that the vessel will be sold as is, where is, and free and clear of any claims, liens, maritime liens, rights in rem, rights of redemption, or encumbrances whatsoever. The Bill of Sale issued by the U.S. Marshal to the confirmed purchaser may also recite that the vessel has been sold free and clear of all liens. The standard form Bill of Sale by Governmental Entity Pursuant to Court Order or Administrative Decree of Forfeiture (CG-1356) (Rev. 06/04) does not



	contain this language. Nevertheless, the form's instructions state: "Use 'Remarks' section above if vessel is not sold free and clear"
Venezuela	Yes.

Question 2.6.

Is there any difference in procedure if the ship to be sold by way of judicial sale is a foreign ship? If yes, please highlight the difference in detail.

Summary: Most countries make no difference between domestic and foreign ships. Some countries provide for adapted notifications or advertisement when the ship is registered abroad. Norway limits the possibility to proceed to a judicial sale, when the ship is foreign.