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**United Nations Commission on  
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**Working Group VI (Judicial Sale of Ships)**  
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## **Draft Instrument on the Judicial Sale of Ships: Annotated Fourth Revision of the Beijing Draft**

### **Note by the Secretariat**

1. The annex to this document contains an annotated fourth revision of the Beijing Draft (“fourth revision” or “present draft”), which the secretariat has prepared to incorporate the deliberations and decisions of the Working Group at its thirty-eighth session ([A/CN.9/1053](#), paras. 13–60). The Working Group may wish to use the fourth revision as a basis for its deliberations at its thirty-ninth session.
2. The annotations make reference to the “original” Beijing Draft ([A/CN.9/WG.VI/WP.82](#)), as well as to its “first revision” ([A/CN.9/WG.VI/WP.84](#)), “second revision” ([A/CN.9/WG.VI/WP.87](#)) and “third revision” ([A/CN.9/WG.VI/WP.90](#)).



## Annex

### Fourth Revision of the Beijing Draft

*The States Parties to this 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 realized 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,

*Considering further* that the objective of recognition of the judicial sale of ships requires that, to the extent possible, uniform rules are adopted with regard to the notice to be given of the judicial sale, the legal effects of that sale and the deregistration or registration of the ship,

*Have agreed* as follows:<sup>1</sup>

#### *Article 1. Purpose*

This Convention governs the effects, in a State Party, of the judicial sale of a ship conducted in another State Party.

#### *Article 2. Definitions*

For the purposes of this Convention:

(a) “Charge” means any right whatsoever and howsoever arising which may be asserted against a ship, whether by means of arrest, attachment or otherwise, and includes a maritime lien, lien, encumbrance, right of use or right of retention but does not include a mortgage or hypothèque;

(b) “Clean title” means title free and clear of any mortgage, hypothèque or charge;

(c) “Judicial sale” of a ship means any sale of a ship:

(i) Which is ordered, approved or confirmed by a court or other public authority<sup>2</sup> either by way of public auction or by private treaty carried out under the supervision and with the approval of a court; and

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<sup>1</sup> *Preamble*: The preamble reproduces the preamble contained in the original Beijing Draft and has not been considered by the Working Group.

<sup>2</sup> *Definitions – “authority” and “public authority”*: The present draft refers to a “public authority” conducting a judicial sale (article 2(c)(i)) or issuing a certificate of judicial sale (article 5(1)), as well as to an “authority” taking action on the register (article 7) and an “authority” of one State party corresponding directly with that of another State (article 12). It was suggested at the thirty-seventh session that the term “public authority” in article 2(c)(i) should be defined (A/CN.9/1047/Rev.1, para. 32). It has also been suggested that the term “authority” should be defined for the purposes of article 12 (A/CN.9/WG.VI/WP.88, para. 36). Neither suggestion was considered by the Working Group at its thirty-eighth session.

- (ii) For which the proceeds of sale are made available to the creditors;
- (d) “Maritime lien” means any charge<sup>3</sup> that is recognized as a maritime lien or *privilège maritime* on a ship under applicable law;
- (e) “Mortgage” or “hypothèque” means any mortgage or hypothèque that is:<sup>4</sup>
- (i) Effected on a ship and registered in the State in whose registry of ships or equivalent registry the ship is registered; and
- [(ii) Recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale;]
- (f) “Owner” of a ship means any person registered as the owner of the ship in the registry of ships or an equivalent registry in which the ship is registered;<sup>5</sup>
- (g) “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;
- [(h) “Purchaser” means any person to whom the ship is sold in the judicial sale];<sup>6</sup>
- (i) “Registered charge” means any charge that is registered in the registry of ships or an equivalent registry in which the ship is registered [or in any different registry in which mortgages or hypothèques are registered in the State in whose registry of ships or equivalent registry the ship is registered];<sup>7</sup>

<sup>3</sup> *Definitions – “maritime lien”*: At its thirty-eighth session, the Working Group agreed to retain the definition without amendment (A/CN.9/1053, para. 44). The word “claim” has been replaced with “charge” to reflect that a maritime lien is defined as a charge in article 2(a).

<sup>4</sup> *Definitions – “mortgage”*: The definition of “mortgage” has been revised to reflect the deliberations of the Working Group at its thirty-eighth session (A/CN.9/1053, paras. 45–49). In particular, subparagraph (i) has been amended to delete reference to recordation (*ibid.*, para. 48), while subparagraph (ii) has been placed in square brackets to indicate its possible deletion, for which broad support was expressed within the Working Group (*ibid.*, para. 47). The present draft has also been amended throughout to refer to “hypothèque” alongside “mortgage”, as agreed by the Working Group (*ibid.*, para. 45: see the definitions of “charge”, “clean title”, “mortgage” and “registered charge”, as well as articles 4(1)(b), 4(4)(b), 7(1)(a) and Appendix I).

<sup>5</sup> *Definitions – “owner”*: The definition of “owner” was not considered by the Working Group at its thirty-seventh or thirty-eighth sessions, and therefore remains unchanged from the second revision. The Working Group may wish to consider aligning the definition with the definition of “ship” in article 2(j), which has been revised to include a requirement of registration.

<sup>6</sup> *Definitions – “purchaser”*: The definition of “purchaser” was not considered by the Working Group at its thirty-seventh or thirty-eighth sessions, and therefore remains unchanged from the second revision. At its thirty-sixth session, the Working Group agreed to put the definition in square brackets to indicate its possible deletion and asked the secretariat to propose text for a definition for future consideration that did not refer to ownership (A/CN.9/1007, para. 27). The present draft of the definition responds to that request.

<sup>7</sup> *Definitions – “registered charge”*: The definition has been inserted to reflect the deliberations of the Working Group at its thirty-eighth session (A/CN.9/1053, para. 43). It is based on the definition of “registered charge” in the original Beijing Draft (A/CN.9/WG.VI/WP.82, art. 1(o)), which refers to the registry of ships. The definition has been revised to reflect how that registry is referenced in the definition of “owner” (see A/CN.9/1007, para. 22). It has been observed in the Working Group that, in some jurisdictions, the registry of ships (or equivalent registry) is separate from the registry of ship mortgages (see A/CN.9/1007, para. 97), and that the practice of registering charges in those separate registries is contemplated in article 4(4)(b) (see A/CN.9/1047/Rev.1, para. 55). The words in square brackets are proposed for the consideration of the Working Group if it wishes to cover charges that are registered in those separate registries. The words refer only to registries of ship mortgages, which may address concerns raised at the thirty-seventh session about the need for a connection between the registry in which the charge is registered and the registry of ships (*ibid.*).

(j) “Ship” means any ship or other vessel [registered in a registry that is open to public inspection] that may be the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale;<sup>8</sup>

(k) “State of judicial sale” means the State in which the judicial sale of a ship is conducted;

(l) “Subsequent purchaser” means any person who purchases the ship previously sold to a purchaser in the judicial sale.<sup>9</sup>

#### *Article 3. Scope of application*

1. This Convention applies only to a judicial sale of a ship if:

(a) The ship was physically within the territory of the State of judicial sale at the time of the sale; and

(b) Under the law of that State, the judicial sale confers clean title to the ship on the purchaser.

2. This Convention shall not apply to warships or naval auxiliaries, or other vessels owned or operated by a State and used, at the time of judicial sale, only on government non-commercial service.

#### *Article 4. Procedure and notice of judicial sale*

[1bis. The judicial sale shall be conducted in accordance with the law of the State of judicial sale, including as regards notification. The law of the State of judicial sale shall further determine the time of the sale for the purposes of this Convention.]<sup>10</sup>

1. Notwithstanding paragraph 1bis, if a certificate is to be issued in accordance with article 5, prior to the judicial sale of a ship, a notice of the sale shall be given to:<sup>11</sup>

(a) The registrar of the registry of ships or equivalent registry in which the ship is registered;

(b) All holders of any mortgage, hypothèque or registered charge, provided that the registry in which it is registered, and any instrument required to be registered with the registrar under the law of the State of the registry, are open to public inspection, and that extracts from the registry and copies of such instruments are obtainable from the registrar;

<sup>8</sup> *Definitions – “ship”*: At its thirty-seventh session, the Working Group agreed to insert the words in square brackets to address a concern that the draft convention should only apply to vessels that are registered (A/CN.9/1047/Rev.1, para. 28). The Working Group agreed to revert to the matter at a later stage. The Working Group did not consider the definition at its thirty-eighth session.

<sup>9</sup> *Definitions – “subsequent purchaser”*: The definition of “subsequent purchaser” was not considered by the Working Group at its thirty-seventh or thirty-eighth sessions, and therefore remains unchanged from the second revision. The definition has been aligned with the definition of “purchaser”, as requested by the Working Group, and is designed to cover not only the first subsequent purchaser but also later purchasers (A/CN.9/1007, para. 27).

<sup>10</sup> *Procedural requirements*: It has been emphasized within the Working Group that the convention should not govern the procedure for judicial sales, and that those procedures differ among States. One area of difference is the requirements under domestic law for notifying or advertising the sale. Another area of difference is the circumstances in which a judicial sale procedure starts and ends, and the various stages of the procedure in between. While article 14 of the present draft already lists several matters not governed by the convention, it may be useful for the convention to include a clear statement that procedural matters are governed by the law of the State of judicial sale. Article 4(1bis) has therefore been inserted for consideration by the Working Group.

<sup>11</sup> *Notice requirements – function*: At the thirty-eighth session, the prevailing view within the Working Group was that the notice requirements in article 4 did not serve as a stand-alone requirement but needed to be read together with article 5 (certificate of judicial sale) and following provisions (A/CN.9/1053, para. 17). The chapeau of article 4(1) has been amended for the consideration of the Working Group to confirm that view.

- (c) All holders of any maritime lien, provided that they have notified the court or other authority conducting the judicial sale of the claim secured by the maritime lien [in accordance with the regulations and procedures of the State of judicial sale];<sup>12</sup>
- (d) The owner of the ship for the time being; and
- (e) If the ship is granted bareboat charter registration in a State:
- (i) The person registered as the bareboat charterer of the ship in the registry of ships or equivalent registry in that State;<sup>13</sup> and
- (ii) The registrar of the registry of ships or equivalent registry in that State.
2. The notice shall be given in accordance with the law of the State of judicial Sale, and shall contain, as a minimum, the information mentioned in the model contained in Appendix I to this Convention.<sup>14</sup>
3. The notice shall also be:
- (a) Published by press announcement in the State of judicial sale [and, if required by the law of the State of judicial sale, in other publications published or circulated elsewhere];<sup>15</sup> and
- (b) Transmitted to the repository referred to in article 11 for publication.
4. In determining the identity or address of any person to whom the notice is to be given, reliance may be placed exclusively on:
- (a) Information set forth in the registry of ships or equivalent registry in which the ship is registered or of the State in which it is granted bareboat charter registration;
- (b) Information set forth in the registry in which the mortgage, hypothèque or charge referred to in paragraph 1, subparagraph (b) is registered, if different to the registry of ships or equivalent registry; and
- (c) Information contained in the notice referred to in paragraph 1, subparagraph (c).

<sup>12</sup> *Notice requirements – notifying holders of maritime liens*: Subparagraph (c) reflects the deliberations of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 54). The third revision (A/CN.9/WG.VI/WP.90, footnote 17) invited the Working Group to consider several aspects of the provision which were not considered at the thirty-eighth session, namely (a) the insertion of the words “in accordance with its regulations and procedures”, and (b) whether, owing to the variety of procedures by which a claim secured by a maritime lien may be notified, the proviso should be for the court to be notified without specifying which person is to notify the court, in which case the words “they have notified the court or other authority conducting the judicial sale of the claim secured by the maritime lien” could be replaced with the words “the court or other authority conducting the judicial sale has been notified of the claim secured by the maritime lien”.

<sup>13</sup> *Notice requirements – bareboat charterer*: The original Beijing Draft did not require notice to be given to bareboat charterers. That requirement was added following a suggestion made at the thirty-sixth session (A/CN.9/1007, para. 63). Subsequent revisions referred to the bareboat charterer registered in the State of registration (see, e.g., article 4(1)(e) of the third revision). The present draft refers to the bareboat charterer registered in the State of bareboat charter registration. The Working Group may wish to confirm that the new reference in subparagraph (e)(i) is correct.

<sup>14</sup> *Notice requirements – model form*: See footnote 33.

<sup>15</sup> *Notice requirements – publication of notice*: Paragraph 3(a) was considered by the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 63). The Working Group may wish to consider whether the words in square brackets may be omitted on the basis that publication in such “other publications” is already covered by article 4(2).

*Article 5. Certificate of judicial sale*

1. Upon completion of the sale to the purchaser under the law of the State of judicial sale, the public authority designated by the State of judicial sale shall, in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser recording that:<sup>16</sup>

(a) The ship was sold in accordance with the law of the State of judicial sale and the notice requirements in article 4;

(b) The ship was physically within the territory of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship.

2. The certificate of judicial sale shall be issued substantially in the form of the model contained in Appendix II and shall contain the following minimum additional particulars:

(a) The name of the State of judicial sale;

(b) The name, address and the contact details of the authority issuing the certificate;

(c) The name of the court or other public authority that conducted the judicial sale and the date on which the sale was completed;

(d) The name of the ship and registry of ships or equivalent registry in which the ship is registered;

(e) The IMO number of the ship or, if not available, other information capable of identifying the ship, such as the shipbuilder, time and place of shipbuilding, distinctive number or letters, and recent photographs;

(f) The name, address or residence or principal place of business and contact details, if available, of the owner(s) of the ship immediately prior to the judicial sale;

(g) The name, address or residence or principal place of business and contact details of the purchaser;

(h) The place and date of issuance of the certificate; and

(i) The signature, stamp or other confirmation of authenticity of the certificate.

3. The authority shall promptly transmit the certificate to the repository referred to in article 11.

4. The certificate of judicial sale shall be exempt from legalization or similar formality.<sup>17</sup>

5. The certificate of judicial sale shall constitute conclusive evidence of the particulars therein, including the matters required to be recorded by paragraph 1.

[6. A certificate of judicial sale shall have effect under this Convention unless the sale is avoided in the State of judicial sale by a court exercising jurisdiction under article 9 by a judgment that is no longer the subject of review in that State.]<sup>18</sup>

<sup>16</sup> *Certificate of judicial sale – conditions for issuance*: The chapeau of article 5(1) has been revised to reflect the amendments agreed upon by the Working Group at its thirty-eighth session (A/CN.9/1053, para. 26).

<sup>17</sup> *Certificate of judicial sale – no legalization*: Article 5(4) of the third revision established a verification procedure for certificates of judicial sale, which the Working Group agreed to delete at its thirty-eighth session (A/CN.9/1053, para. 32). In the present draft, article 5(4) contains the provision on no legalization that was contained in article 11(1) of the third revision, which the Working Group agreed to place in article 5 or in a separate adjacent article (A/CN.9/1053, para. 38).

<sup>18</sup> *Certificate of judicial sale – effect in the event of avoidance*: See footnote 26.

[7. At the request of the purchaser, subsequent purchaser, or any person to whom the notice of judicial sale was to be given, the authority shall transmit to the repository referred to in article 11 the particulars of any judgment referred to in paragraph 6.]

*Article 5bis. Electronic form of the certificate of judicial sale*<sup>19,20</sup>

1. The certificate of judicial sale may be in the form of an electronic record provided that:

(a) The information contained therein is accessible so as to be usable for subsequent reference;

(b) A method is used to identify the authority issuing the certificate; and

(c) A method is used to detect any alteration to the record after the time it was generated, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display.

2. A certificate of judicial sale shall not be rejected on the sole ground that it is in electronic form.

*Article 6. International effects of a judicial sale*

A judicial sale for which a certificate of judicial sale referred to in article 5 has been issued shall have the effect in every other State Party of conferring clean title to the ship on the purchaser.<sup>21</sup>

*Article 7. Action by registrar*

1. At the request of the purchaser or subsequent purchaser<sup>22</sup> and upon production of the certificate of judicial sale referred to in article 5, the competent registrar or other competent authority of a State Party shall, in accordance with the law of that State [, but without prejudice to article 6]<sup>23</sup>:

(a) Delete any mortgage, hypothèque or registered charge attached to the ship;

(b) Delete the ship from the register and issue a certificate of deregistration for the purpose of new registration;

<sup>19</sup> *Additional provisions relating to the certificate of judicial sale – placement*: The provisions of article 5bis reproduce articles 11(2) and (3) of the third revision. The current placement of the provisions reflects the deliberations of the Working Group at its thirty-eighth session (A/CN.9/1053, para. 38). If articles 5(6) and 5(7) are deleted (see footnote 26), it might be desirable for the provisions to be incorporated into article 5 itself.

<sup>20</sup> *Additional provisions relating to the certificate of judicial sale – copies and translations*: Articles 7(3) and 8(3) provide for the production of a translation of the certificate of judicial sale. Article 7(4) provides for the production of a copy of the certificate of judicial sale in addition to (not in substitution of) production of the original. The Working Group agreed at its thirty-seventh session to consider translation and copy requirements in conjunction with the provisions of article 11 (A/CN.9/1047/Rev.1, para. 101), which are set out in article 5bis of the present draft. The Working Group did not consider the issue at its thirty-eighth session, although a view in support of maintaining the translation and copy requirements in articles 7(3) and 7(4) was expressed at the session (A/CN.9/1053, para. 34).

<sup>21</sup> *International effects of judicial sale – conditions*: Article 6 has been amended to reflect the deliberations of the Working Group at its thirty-eighth session (A/CN.9/1053, paras. 19–21).

<sup>22</sup> *Action by registrar – application by the purchaser*: The Working Group has agreed that the registrar (or other authority) should act on the application of the purchaser (A/CN.9/1047/Rev.1, para. 94). Considering that paragraph 1(c) contemplates reregistration of the ship in the name of the subsequent purchaser, the secretariat has updated article 7 to accommodate applications by the subsequent purchaser (cf. article 6(1) of the original Beijing Draft).

<sup>23</sup> *Action by registrar – compliance with domestic law*: The words in square brackets were inserted in the third revision following agreement by the Working Group to consider an additional provision to the effect that observance by the registrar of registration requirements under domestic law would not affect the conferral of clean title on the purchaser (see A/CN.9/WG.VI/WP.90, footnote 32). The issue was not considered by the Working Group at its thirty-eighth session.

- (c) Register the ship in the name of the purchaser or subsequent purchaser; and
  - (d) Update the register with any other relevant particulars in the certificate of judicial sale.
2. At the request of the purchaser or subsequent purchaser and upon production of the certificate of judicial sale referred to in article 5, the competent registrar [or other competent authority] of a State Party in which the ship was granted bareboat charter registration shall delete the ship from the register and issue a certificate of deletion.<sup>24</sup>
  3. If the certificate of judicial sale is not issued in an official language of the registrar, the registrar or other competent authority may request the purchaser or subsequent purchaser to produce a [certified] translation into such an official language.
  4. The registrar may also request the purchaser or subsequent purchaser to produce a [certified] copy of the certificate of judicial sale for its records.
  5. Paragraphs 1 and 2 do not apply if a court in the State Party determines under article 10 that the effect of the judicial sale under article 6 would be [manifestly] contrary to the public policy of that State.

*Article 8. No arrest of the ship*

1. If an application is brought before a court in a State Party to arrest a ship or to take any other similar measure against a ship for a claim arising prior to an earlier judicial sale of the ship, the court shall, upon production of the certificate of judicial sale referred to in article 5, dismiss the application.
2. If a ship is arrested or a similar measure is taken against a ship by order of a court in a State Party for a claim arising prior to an earlier judicial sale of the ship, the court shall, upon production of the certificate of judicial sale referred to in article 5, order the release of the ship.
3. If the certificate is not issued in an official language of the court, the court may request the person producing the certificate to produce a [certified] translation into such an official language.
4. Paragraphs 1 and 2 do not apply if the court determines that dismissing the application or ordering the release of the ship, as the case may be, would be [manifestly] contrary to the public policy of that State.

*Article 9. Jurisdiction to avoid and suspend judicial sale*

1. The courts of the State of judicial sale shall have exclusive jurisdiction to hear any claim or application to avoid a judicial sale of a ship conducted in that State or to suspend its effects, which shall extend to any claim or application to challenge the issuance of the certificate of judicial sale referred to in article 5.
2. The courts of a State Party shall decline jurisdiction in respect of any claim or application to avoid a judicial sale of a ship conducted in another State Party or to suspend its effects.
- [3. A judicial sale of a ship shall [not have][cease to have] the effect provided in article 6 in a State Party if the sale is avoided in the State of judicial sale by a court exercising jurisdiction under paragraph 1 by a judgment that is no longer subject to appeal in that State.]
- [4. The effects of a judicial sale of a ship provided in this Convention shall be suspended in a State Party if, and for as long as, the effects of the sale are suspended in the State of judicial sale by a court exercising jurisdiction under paragraph 1.]<sup>25</sup>

<sup>24</sup> *Action by registrar – bareboat charter registration:* The Working Group may wish to confirm whether article 7(2), like article 7(1), should also be addressed to “other competent authorities”.

<sup>25</sup> *Suspension of judicial sale:* The original Beijing Draft and subsequent revisions deal with suspending the effects of a judicial sale. The Working Group has so far not considered the issue



[5. The effects of avoidance of a judicial sale shall be determined by applicable law].<sup>26</sup>

*Article 10. Circumstances in which judicial sale has no international effect*

A judicial sale of a ship shall not have the effect provided in article 6 in a State Party other than the State of judicial sale if a court in the other State Party determines that the effect would be [manifestly] contrary to the public policy of that other State Party.<sup>27</sup>

*Article 11. Repository*<sup>28</sup>

1. The repository of notices given under article 4 and certificates issued under article 5 shall be [the Secretary-General of the United Nations or an institution named by UNCITRAL].
2. Upon receipt of a notice or certificate under this Convention, the repository shall promptly make it available to the public.

*Article 12. Communication between Parties*<sup>29</sup>

For the purposes of articles 7 and 8, the authorities of a State Party shall be authorized to correspond directly with the authorities of any other State Party.

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and may wish to consider whether it is necessary for the convention to address it. While the secretariat has identified cases in which a judicial sale has been or may be suspended before completion (e.g., Francesco Berlingieri, “Synopsis of replies from the Maritime Law Associations”, CMI Yearbook 2010 (Antwerp, 2011), pp. 295–301 (replies to question 2.3 of a 2010 CMI questionnaire in respect of the recognition of foreign judicial sales of ships); High Court of England and Wales, *Qatar National Bank v. Owners of the Yacht “Force India”*, case No. AD 2018 000096, Judgment, 25 March 2020, *Lloyd’s Law Reports*, vol. 2 (2020), p. 348, [2020] EWHC 719), it has not identified any cases in which the effects of the sale have been or may be suspended after completion. Presumably, if a sale is suspended before completion, no certificate of judicial sale will be issued (article 5(1)) and therefore the judicial sale will have no international effect under the convention (article 6).

<sup>26</sup> *Avoidance of judicial sale – international effect*: The Working Group engaged in a detailed discussion at its thirty-eighth session of the legal consequences that would flow in the “exceedingly rare” event of a judicial sale being avoided after issuance of the certificate of judicial sale (A/CN.9/1053, paras. 27–31). Different options were put forward for dealing with the issue (ibid., paras. 29 and 30), which the Working Group agreed to consider further (ibid., para. 31). As an alternative, it was suggested that the convention should not seek to find a solution, and therefore that the provisions dealing with the issue should be deleted and replaced by a provision acknowledging that the issue is a matter for the domestic law of the State concerned (ibid.). To reflect the outcome of those deliberations, articles 5(7), 9(3) and 9(4) have been placed in square brackets, and article 9(5) has been inserted for consideration by the Working Group as an alternative to those provisions.

<sup>27</sup> *Grounds for refusal – public policy*: At its thirty-seventh session, the Working Group considered a proposal to delete the word “manifestly” and decided to retain the wording of the public policy ground for the time being (A/CN.9/1047/Rev.1, para. 86). The issue was not considered by the Working Group at its thirty-eighth session.

<sup>28</sup> *Centralized online repository*: Article 11 (article 12 of the second and third revisions) was inserted in the first revision of the Beijing Draft (para. 8(k)) in response to deliberations of the Working Group at its thirty-fifth session (A/CN.9/973, paras. 46 and 73). The Working Group has not yet considered the provision.

<sup>29</sup> *Cooperation between authorities*: Article 12 (article 13 of the second and third revisions) was not considered by the Working Group at its thirty-seventh or thirty-eighth sessions, and therefore remains unchanged from the second revision. It reflects a suggestion made at the thirty-fifth session that the draft instrument should contain a provision similar to article 14 of the International Convention on Maritime Liens and Mortgages (1993), which provides for cooperation between authorities (A/CN.9/973, para. 74).

*Article 13. Relations with other international conventions*

1. Nothing in this Convention shall derogate from any other basis for the recognition of a judicial sale of a ship under any other international convention.<sup>30</sup>
2. Nothing in this Convention shall affect the application of the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No. 2 Concerning Attachment and Forced Sale of Inland Navigation Vessels, including any future amendment to that Convention or Protocol.

*[Article 14 Matters not governed by this Convention]<sup>31</sup>*

Nothing in this Convention shall affect:

- (a) The procedure for or priority in the distribution of proceeds of a judicial sale; or
- (b) Any personal claim against a person who owned the ship prior to the judicial sale.]

*Article 15. Depositary<sup>32</sup>*

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

*Article 16. Signature, ratification, acceptance, approval, accession*

1. This Convention is open for signature by all States in [*city*], [on][from] [*date/date range*], and thereafter at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval by the signatories.
3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

*Article 17. Participation by regional economic integration organizations*

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over

<sup>30</sup> *Relationship with other international conventions and domestic law*: Article 13(1) (article 14(1) of the second and third revisions) reproduces article 10 of the Beijing Draft with amendments suggested by the secretariat in the third revision (A/CN.9/WG.VI/WP.90, footnote 45). The provision has not been considered by the Working Group. The Working Group may wish to consider expanding the provision to preserve the application of domestic laws that are more favourable to the recognition of foreign judicial sale, in which case a third paragraph could be inserted to the effect that nothing in the convention shall prevent the recognition of a judicial sale under domestic law.

<sup>31</sup> *Matters not governed by the Convention*: Article 14 (article 14bis of the third revision) reproduces article 6(2) of the second revision. At the thirty-seventh session of the Working Group, diverging views were expressed as to the placement of this provision, with support expressed for (a) leaving it in article 6, (b) moving it to the provision on scope of application (article 3), or (c) moving it to a new provision that identifies matters that are not governed by the draft convention (A/CN.9/1047/Rev.1, para. 47). The Working Group did not consider the issue at its thirty-eighth session. The present draft implements option (c). The provision is placed in square brackets to indicate that no decision has been taken on its placement.

<sup>32</sup> *Final clauses*: The final clauses in articles 15 to 20 were not considered by the Working Group at its thirty-seventh or thirty-eighth sessions, and therefore remain unchanged from the second revision. They are drawn from the United Nations Convention on International Settlement Agreements Resulting from Mediation (2018), the most recent treaty prepared by UNCITRAL.

matters governed by this Convention. Where the number of States Parties is relevant in this Convention, the regional economic integration organization shall not count as a State Party in addition to its member States that are Parties to the Convention.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “State” or “States” in this Convention applies equally to a regional economic integration organization where the context so requires.

#### *Article 18. Non-unified legal systems*

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

(a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

#### *Article 19. Entry into force*

1. This Convention shall enter into force six months after deposit of the [third] instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 18 six months after the notification of the declaration referred to in that article.

#### *Article 20. Amendment*

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the conference.
3. An adopted amendment shall be submitted by the depositary to all States Parties for ratification, acceptance or approval.
4. An adopted amendment shall enter into force six months after the date of deposit of the [third] instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those States Parties to the Convention that have expressed consent to be bound by it.
5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

*Article 21. Denunciations*

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.
2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. [The Convention shall continue to apply to judicial sales conducted before the denunciation takes effect.]

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

## Appendix I to the [draft instrument on the judicial sale of ships]

### Notice of Judicial Sale<sup>33</sup>

*Given in accordance with the provisions of article 4 of the [draft instrument on the judicial sale of ships] and transmitted in the manner customarily used by the courts of the State of judicial sale for similar purposes, which may include (a) registered mail or courier; (b) electronic means; (c) any other manner agreed to by the person to whom the notice is to be given.* <sup>(See note 1)</sup>

In accordance with ..... *[relevant provisions of the State's rules of civil procedure governing notices of judicial sales]*, notice is hereby given that by order of ..... *[name of court or other public authority conducting the sale and such particulars concerning the sale or the proceedings leading to the judicial sale as the court or other authority determines are sufficient to protect the interests of persons entitled to notice under article 4]*

**the ship** ..... *[description by name of the ship, the IMO number (if assigned), or, where not available other information capable of identifying the ship, such as the shipbuilder, time and place of the shipbuilding, licence number, and recent photographs]*

**physically present at** ..... *[location of the ship]*

**owned by** ..... *[names of the owner of the ship immediately prior to the judicial sale and the bareboat charterer (if any), as appearing in the registry of ships in which the ship is registered or granted bareboat charter registration]*

will be **sold by way of judicial sale** free and clear of all mortgages, hypothèques and charges [to the highest bidder at or above the amount as set by the *[court or other public authority conducting the sale]* subject to the terms and conditions set out below.]

*[For sale by public auction]* The sale will take place by public auction on ..... *[date/month/year]*, at ..... *[hour]* at ..... *[place]*. <sup>(See note 2)</sup>

*[For sale by private treaty]* The sale will take place by private treaty for which interested parties are invited to submit bids **by** ..... *[date/month/year]*, at ..... *[hour]* at ..... *[place]*.

**Terms of the sale:** *[such terms and conditions as apply to judicial sales conducted in the State, for instance: disclaimers of warranties or liabilities by the court or other authority; requirements and procedures for registration or admission to bid at the sale; payment conditions; finality of sales; consequences of failure to pay; persons excluded from bidding (e.g. under anti-corruption, anti-money-laundering or similar regulations)].*

Note 1: Article 4(1) requires notice to be given prior to the judicial sale. The time between the giving of notice and the actual sale should allow the interested parties to make the necessary arrangements to bid if they so wish. While 30 days would generally constitute an adequate period, the court or other public authority conducting

<sup>33</sup> *Notice of judicial sale – model form:* The Working Group has not yet considered the content of the model notice form, which was inserted following the thirty-sixth session (A/CN.9/1007, para. 66). The form has been revised to accommodate judicial sales by private treaty. Guidance on the means for transmitting the notice, previously set out in a footnote, has also been elevated to the body of the form in response to concerns expressed at the thirty-seventh session about the application of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (“Service Convention”) (A/CN.9/1047/Rev.1, para. 60). The Working Group may wish to consider, as an alternative, inserting a provision in the draft convention to the effect that, as between parties to the Service Convention, the latter shall not apply to the transmission of the notice of judicial sale.

the judicial sale may have the discretion to provide a shorter notice period (for instance where the ship faces deterioration).

Note 2: If the time and place of the judicial sale cannot be determined with certainty, the approximate time and anticipated place of the judicial sale shall be indicated, provided that an additional notice of the actual time and place of the judicial sale shall be given when known but, in any event, not less than seven days prior to the judicial sale.

## Appendix II to the [draft instrument on the judicial sale of ships]

### Certificate of judicial sale

*Issued in accordance with the provisions of article 5 of the [draft instrument on the judicial sale of ships]*

This is to certify that:

(a) The ship described below was sold by way of judicial sale in accordance with the law of the State of judicial sale and the notice requirements in article 4 of the Convention;

(b) The ship was physically within the territory of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship.

- 1. State of judicial sale** .....
- 2. Authority issuing this certificate**
  - 2.1 Name .....
  - 2.2 Address .....
  - 2.3 Telephone/fax/email, if available .....
- 3. Judicial sale**
  - 3.1 Name of court/public authority conducting the sale .....
  - 3.2 Date of sale (e.g., date of order confirming the sale) .....
- 4. Ship**
  - 4.1 Name .....
  - 4.2 IMO number .....
  - 4.3 Registry .....
  - 4.4 Other information capable of identifying the ship, such as the shipbuilder, time and place of the shipbuilding, distinctive number or letters, and recent photographs, if available .....  
(Please attach any photos to the certificate)
- 5. Owner(s) immediately prior to the judicial sale**
  - 5.1 Name .....
  - 5.2 Address or residence or principal place of business .....

5.3 Telephone/fax/email .....

**6. Purchaser**

6.1 Name .....

6.2 Address or residence or  
principal place of business .....

6.3 Telephone/fax/email .....

**At**.....  
(place)

**On**.....  
(date)

.....  
Signature and/or stamp

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