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## **Draft Convention on the Judicial Sale of Ships: Annotated Fifth Revision of the Beijing Draft**

**Note by the Secretariat**

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## I. Introduction

1. The annex to this document contains a fifth revision of the Beijing Draft (“fifth revision” or “present draft”), which the secretariat has prepared to incorporate the deliberations and decisions of the Working Group at its thirty-ninth session (A/CN.9/1089, paras. 11–113). At that session, the Working Group considered articles 1 to 5 and Appendix I of the draft convention, as contained in the fourth revision (A/CN.9/WG.VI/WP.92) (“fourth revision” or “previous draft”). Annotations on the revisions to those provisions, as reflected in the fifth revision, are set out in chapter II below.

2. The deliberations of the Working Group also touched on later provisions of the draft convention. For the most part, those provisions remain unchanged in the fifth revision, although some have been revised in light of the deliberations of the Working Group. Annotations on those revisions are set out in chapter III below.

3. The annotations in the document 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).

## II. Annotations on articles 1 to 5

### A. Article 1. Purpose

4. Article 1 has been revised to reflect the decisions of the Working Group (A/CN.9/1089, paras. 11, 42 and 47). It now declares the principle that the convention only governs the recognition of clean title sales. The principle is operationalized by article 5 (which provides that a certificate of judicial sale is issued only upon completion of a judicial sale that confers clean title) and article 6, 7 and 8 (which only apply to judicial sales for which a certificate of judicial sale has been issued). As for reflecting the principle in article 9, see below (para. 27).

5. The geographic element has also been removed from article 1 and recast as a matter of scope of application in article 3(1)(a) (see para. 8 below). To that end, article 1 no longer refers to the effects of the judicial sale in another State Party, which in turn acknowledges that aspects of the recognition regime under the draft convention (especially articles 7 and 8) are equally applicable in the State of judicial sale.

### B. Article 2. Definitions

#### 1. Order

6. In response to the request by the Working Group (A/CN.9/1089, para. 12), the definitions in article 2 have been reordered as follows:

<i>Defined term</i>	<i>Fifth revision</i>	<i>Fourth revision</i>	<i>Logic</i>
“Judicial sale”	Art. 2(a)	Art. 2(c)	The “judicial sale” of a “ship” that confers “clean title” therein is the primary focus of the draft convention, and thus the definitions for those terms should be presented first.
“Ship”	Art. 2(b)	Art. 2(j)	
“Clean title”	Art. 2(c)	Art. 2(b)	
“Mortgage or hypothèque”	Art. 2(d)	Art. 2(e)	The definitions for the component elements of “clean title” should be presented
“Charge”	Art. 2(e)	Art. 2(a)	

<i>Defined term</i>	<i>Fifth revision</i>	<i>Fourth revision</i>	<i>Logic</i>
			together after the definition of “clean title”.
“Registered charge”	Art. 2(f)	Art. 2(i)	The definition for particular types of charges should be presented together after the definition of “charge”.
“Maritime lien”	Art. 2(g)	Art. 2(d)	
“Owner”	Art. 2(h)	Art. 2(f)	The definitions for the outgoing and incoming owners of the ship should be presented together in chronological order.
“Purchaser”	Art. 2(i)	Art. 2(h)	
“Subsequent purchaser”	Art. 2(j)	Art. 2(l)	
“State of judicial sale”	Art. 2(k)	Art. 2(k)	

## 2. Revisions

7. Several definitions have been revised to reflect the decisions of the Working Group:

(a) The term “mortgage or hypothèque” is used throughout the text, including as the term defined in article 2(d) (A/CN.9/1089, para. 17). Consequential amendments have been made to the definition of “clean title” and to articles 4(3)(b), 4(7)(b) and 7(1)(a);

(b) The definition of “mortgage or hypothèque” in article 2(d) has been revised to remove the qualification that the mortgage or hypothèque be must be “recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale” (A/CN.9/1089, para. 16);

(c) The definition of “registered charge” has been revised to simplify the reference to registers in the State of registration other than the register of ships (A/CN.9/1089, para. 29);

(d) The definition of “person” has been deleted (A/CN.9/1089, para. 26).

## C. Article 3. Scope of application

8. As noted above (para. 4), article 3(1) has been revised to incorporate the geographic element previously reflected in article 1 (A/CN.9/1089, para. 42) and to remove the conferral of clean title as a matter of scope (A/CN.9/1089, para. 47).

9. Article 3(2) has been revised to focus the enquiry on the use of the ship “immediately prior to the time of judicial sale” rather than “at the time of judicial sale” (A/CN.9/1089, para. 48).

## D. Article 4. Notice of judicial sale

### 1. Heading

10. The heading of article 4 contained in the third revision has been reinstated (A/CN.9/1089, para. 51).

### 2. Preserving domestic law relating to the procedure for conducting judicial sales

11. Article 4(1) restates article 4(1bis) of the fourth revision with amendments agreed by the Working Group (A/CN.9/1089, paras. 57). The amendments have allowed the text considered by the Working Group (*ibid.*, para. 60) to be collapsed into a single sentence.

### 3. Function of the notice requirements and relationship with domestic law

12. Article 4(2) of the previous draft has been split into two separate paragraphs in the present draft:

(a) Article 4(2) of the present draft specifies that it is the notice requirements in articles 4(3) to 4(7) that apply “notwithstanding article 4(1)”. This responds to a request by the Working Group to clarify the relationship between the notice requirements under the convention and the law of the State of judicial sale (A/CN.9/1089, para. 61). The notice requirements consist not only of giving the notice to listed persons (article 4(3)), but also of satisfying minimum content (article 4(4) and language requirements (article 4(6), if included) for the notice, publishing the notice (article 4(5)(a)), and transmitting the notice to the repository (article 4(5)(b));

(b) Article 4(3) of the present draft contains the balance of article 4(2) of the previous draft and is thus concerned solely with listing the persons to be notified. Subparagraphs (c) and (e) have been revised to reflect the decisions of the Working Group (A/CN.9/1089, paras. 64, 66 and 68).

13. Article 4(2) of the present draft has also been revised to state more clearly that the notice requirements serve as a condition for the issuance of the certificate of judicial sale (A/CN.9/1089, paras. 52 and 57). Specifically, the words “for the purposes of article 5” are designed to clarify that the notice requirements are part of the “requirements of this Convention” that must be met by a judicial sale in order for a certificate of judicial sale to be issued under article 5(1), while ensuring that the conditions for issuance are consolidated in a single place (i.e. the chapeau of article 5(1)).

### 4. Publication of notice

14. Article 4(5)(a) of the present draft has been revised to remove the requirement to publish the notice in other publications if required by the law of the State of judicial sale (A/CN.9/1089, para. 82). The secretariat has also reviewed the provision to ensure that it is drafted in medium-neutral terms, as requested by the Working Group (A/CN.9/1089, para. 84). To avoid doubt as to the scope and medium of announcements in the “press”, the provision has been amended to insert a reference to “other publication”, which could include periodicals published online, such as TradeWinds and Lloyd’s List. Reference is also made to the publications being “available” in the State of judicial sale, to reflect the second element of a proposal that received considerable support in the Working Group (ibid.).

### 5. Language requirements

15. Article 4(6), which has been inserted for consideration by the Working Group, builds on the outcome of discussions at the thirty-ninth session (A/CN.9/1089, para. 72). It also refers to the working languages of the Secretariat of the International Maritime Organization (IMO), which would serve as repository under the arrangement that is currently being explored, rather than the working language of the Secretariat of the United Nations. The working language of the IMO secretariat are English, French and Spanish. The paragraph is placed in square brackets to indicate that the Working Group has not decided to include a provision on language requirements, let alone its content.

16. As drafted, article 4(6) applies not to the notice of judicial sale but rather to the minimum content required by article 4(4). As such, it is conceivable that the notice requirements of the convention could be met by using an existing form (in a language other than a working language of the repository) as well as an accompanying document containing the minimum content (in English, French or Spanish). Unlike articles 7(3) and 8(3), which contain translation requirements for the production of the certificate of judicial sale to particular authorities, article 4(6) does not mention a requirement for the translation to be certified.

17. The Working Group may wish to consider whether the language requirement (if included) would apply when the notice is transmitted to the repository, and the extent to which it would apply when the notice is given to a person listed in article 4(3). If a translation is only required when the notice is transmitted to the repository, it is conceivable that the requirement could be satisfied by the notice giver entering the minimum content online – in either English, French or Spanish – in the relevant data fields of a web form (see [A/CN.9/1089](#), para. 88).

## 6. Appendix I

18. Appendix I has been reformatted and its content revised as agreed by the Working Group ([A/CN.9/1089](#), para. 80).

## E. Article 5. Certificate of judicial sale

### 1. Identity of the issuing authority

19. Article 5 has been revised to refer to the issuance of the certificate by a “competent authority” of the State of judicial sale rather than by a public authority that is “designated” by that State ([A/CN.9/1089](#), para. 99). Some additional commentary on the mechanism for notifying the depositary of designated authorities is set out below (see paras. 34–36).

### 2. Conditions for issuance

20. The chapeau of article 5(1) has been revised to state the conditions for issuing the certificate of judicial sale, as agreed by the Working Group ([A/CN.9/1089](#), para. 97).

### 3. Contents of the certificate

21. Two drafting proposals were put forward in the Working Group for presenting the conditions for issuance, the matters being certified, and the other content requirements for the certificate of judicial sale. Article 5(1) of the present draft reflects the second proposal, which called for those elements to be combined in a single paragraph ([A/CN.9/1089](#), para. 101). Accordingly, subparagraphs (a) to (k) of article 5(1) combine the matters listed in subparagraphs (a) and (c) of the previous draft and the minimum content requirements in article 5(2) of the previous draft.

22. Alternatively, the first proposal, by which article 5(1) would deal solely with the conditions for issuance, could be implemented by amending article 5(1) as follows:

“1. Upon completion of a judicial sale which conferred clean title to the ship under the law of the State of judicial sale and was conducted in accordance with the requirements of that law and the requirements of this Convention, the competent authority shall, in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser.

2. The certificate of judicial sale shall be substantially in the form of the model contained in Appendix II and contain ~~which contains~~: [*insert subparagraphs (a) to (k) of article 5(1) and renumber the remaining paragraphs of article 5 accordingly*]

23. The matters being certified and the other content requirements have been revised to reflect the decisions of the Working Group ([A/CN.9/1089](#), paras. 102-104). The model certificate contained in Appendix II has also been revised accordingly.

### 4. Transmission of certificate to the repository

24. Article 5(2) of the present draft has been reformulated along the lines of article 4(5)(b), as agreed by the Working Group ([A/CN.9/1089](#), para. 107).

## 5. Evidentiary value of the certificate

25. Article 5(4) of the present draft has been revised to reflect the agreement of the Working Group ([A/CN.9/1089](#), para. 112).

## III. Annotations on later provisions

### A. Article 7. Action by registrar

26. The Working Group may wish to consider the following issues, raised at the thirty-ninth session, in its consideration of article 7:

(a) The extent to which the registrar is required to take action at the request of a subsequent purchaser (see [A/CN.9/1089](#), paras. 36-38). A related issue is whether the draft convention should specify that the actions listed in subparagraphs (a) to (d) of article 7(1) are only required to be taken once, regardless of whether it is at the request of the purchaser or a subsequent purchaser. Another related issue is whether the draft should specify that the action listed in subparagraph (a) only applies with respect to mortgages, hypothèques and registered charges that are effected before the judicial sale;

(b) Whether the requirement for the registrar to act “at the request” of the purchaser or subsequent purchaser is sufficient to clarify that not all actions listed may be required of the registrar. Specifically, if the registrar is requested to reregister the ship in the name of the purchaser under subparagraph (c) of article 7(1), no action would be required to deregister the ship under subparagraph (b). While the original Beijing Draft presented the actions in subparagraphs (b) and (c) as alternatives to be taken “as the purchaser may direct” (c.f. article 12(5) of the International Convention on Maritime Liens and Mortgages (1993) (“MLMC 1993”)), the Working Group agreed at the thirty-seventh session that those words would be redundant if the registrar were required to act “at the request” of the purchaser ([A/CN.9/1047/Rev.1](#), para. 95);

(c) Whether the draft convention should only apply if the State of registration is party to the convention, as has been proposed to the Working Group (see [A/CN.9/1089](#), para. 32). A related issue is the extent to which article 7(1) applies to action taken by the registrar in a State other than the State of registration. For instance, if the registrar in the State of registration takes action to deregister the ship under subparagraph (b) of article 7(1), the purchaser may wish to rely on subparagraph (c) to request new registration in a third State.

### B. Article 9. Jurisdiction to avoid and suspend judicial sale

27. At the thirty-ninth session, it was noted that the Working Group may wish to consider whether, in view of the decision to remove the conferral of clean title as a matter of scope ([A/CN.9/1089](#), para. 47), the exclusive jurisdiction conferred by article 9(1) should apply to any judicial sale or only to a judicial sale conferring clean title (*ibid.*, para. 45).

### C. Article 11. Repository

28. Article 11 establishes the repository mechanism, which is operationalized by the transmission requirements in articles 4(5)(b) and 5(2). While aspects of the repository mechanism and transmission requirements were discussed by the Working Group at its thirty-ninth session ([A/CN.9/1089](#), paras. 85-91 and 106-107), article 11 itself was not. The provision is drawn from the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (“Rules on Transparency”), which establish a “repository” of information published under the rules – known as the Transparency

Registry. The repository function is discharged by the Secretary-General through the International Trade Law Division of the Office of Legal Affairs, which serves as the UNCITRAL secretariat.

29. Article 11(1) is based on article 8 of the Rules on Transparency, while article 11(2) is based on article 2. Article 3(5) of the Rules on Transparency provides an alternative formulation for article 11(2) that the Working Group may consider to be more appropriate in view of subsequent deliberations within the Working Group regarding the limited role of the repository. It requires the repository to make certain documents available to the public “in a timely manner, in the form and in the language in which it receives them”.

30. Another international precedent for establishing a similar mechanism is the United Nations Convention on the Law of the Sea (1982) (“UNCLOS”), which confers on the Secretary-General certain functions related to the deposit by States of charts and/or lists of geographical coordinates of points under UNCLOS. Among other things, article 76(9) of UNCLOS provides that the Secretary-General shall “give due publicity” to material deposited by coastal States concerning the outer limits of the continental shelf. The function is discharged through another division of the Office of Legal Affairs – the Division for Ocean Affairs and the Law of the Sea – which publishes deposited material in an online maritime space database.

31. At its thirty-eighth session, the Working Group reaffirmed that the role of the depository under the draft convention would be limited to publishing information that it received and that the convention would impose no duty on the repository to ensure the accuracy or completeness of published information that was capable of giving rise to liability on its part for failure to do so (A/CN.9/1089, para. 91). Neither the Rules on Transparency nor UNCLOS make further provision disclaiming responsibility of the Secretariat with respect to published information, which is instead addressed in disclaimers published by the Secretariat on the websites used to publish information. A similar disclaimer is published by the IMO secretariat on the GISIS website, which was drawn to the attention of the Working Group at its thirty-ninth session (A/CN.9/1089, para. 89).

## D. Article 12. Competent authorities and communication between them

### 1. Taking stock of authorities

32. Article 12 provides an opportunity for the Working Group to take stock of the various authorities with recognized roles under the draft convention (see A/CN.9/1089, para. 99). The fifth revision refers to roles carried out by the following authorities of States Parties:

<i>Authority</i>	<i>Provision</i>	<i>Role</i>
“Court” or “other public authority”	Article 2(a)(i)	Conducting the judicial sale
“Registrar” of the register of ships	Article 4(3)(a)	Receiving the notice of judicial sale
“Registrar” of the register in which the mortgage or hypothèque is registered	Article 4(3)(b)	Receiving the notice of judicial sale
“Registrar” of the register in which the registered charge is registered	Article 4(3)(b)	Receiving the notice of judicial sale
“Registrar” of the bareboat charter register	Article 4(3)(e)	Receiving the notice of judicial sale

<i>Authority</i>	<i>Provision</i>	<i>Role</i>
“Competent authority”	Article 5(1)	Issuing the certificate of judicial sale
“Competent registrar” or “other competent authority”	Article 7(1)	Deleting the mortgage or hypothèque or the registered charge from the register Deleting the ship from the register and issuing a certificate of deregistration Registering the ship Updating the register with any other relevant particulars in the certificate of judicial sale
“Competent registrar” or “other competent authority”	Article 7(2)	Deleting the ship from the bareboat charter register and issuing a certificate of deletion
“Court”	Article 8	Dismissing an application to arrest the ship Ordering the release of the ship from arrest
“Court”	Article 9	Hearing or dismissing a claim or application to avoid the judicial sale
“Court”	Article 10	Determining whether a ground for refusal applies

33. The Working Group may wish to confirm that the roles provided for in article 7, to be carried out by the “registrar” or “other competent authority” align with the roles carried out by the “registrar” referred to in article 4(3), noting that the Working Group has previously accepted that not all roles referred to in article 7(1) fall within the competence of a “registrar” ([A/CN.9/1047/Rev.1](#), para. 90).

## 2. Designating authorities

34. At the thirty-ninth session, the Working Group heard several proposals to clarify the meaning of the term “other public authority” as used in the definition of “judicial sale” (article 2(a)(i) of the present draft). One proposal, which had already been put forward at the thirty-fifth session with respect to the issuing authority under article 5 ([A/CN.9/973](#), para. 19), was to establish a mechanism whereby each State Party would notify the depositary of the authorities competent in its jurisdiction to conduct judicial sales ([A/CN.9/1089](#), para. 20). The proposal received some support during the session, although questions were raised as to the feasibility of maintaining such a mechanism. No decision was taken on the proposal.

35. If the Working Group wishes to pursue this option, the draft convention could be amended by:

(a) Replacing the term “other public authority” with “designated competent authority”;

(b) Inserting a new provision in the final clauses along the following lines, based on article 21 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (“Service Convention”) and in keeping with existing terminology in article 17(2) of the present draft:



“A Party to the Convention may, at the time of signature, ratification, acceptance, approval or accession, or at a later date, notify the depositary of the designation of competent authorities for the purposes of article 2, paragraph (a), subparagraph (i), and shall promptly notify the depositary of any amendment.”

36. Such mechanisms are not uncommon in legal co-operation conventions, such as the Service Convention, and can be used to accommodate the designation of different authorities for the respective territorial units of a particular State. Moreover, although the Working Group has decided to delete reference in article 5(1) to the issuance of the certificate of judicial sale by a “designated” authority (see para. 19 above), the mechanism could readily be applied to the issuing authority by inserting a reference to article 5(1) in the new provision.

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

37. Article 12(1) singles out articles 7 and 8, which require action by the authorities in the State of recognition. Deliberations within the Working Group suggest that other provisions of the draft convention might benefit from cross-border cooperation, such as articles 4 and 5, which require action by the authorities in the State of judicial sale. The Working Group may therefore wish to broaden the provision to authorize communication between authorities “for the purposes of this Convention”. It may also wish to amend the title of the provisions to refer to communication “between authorities” (see [A/CN.9/WG.VI/WP.88](#), para. 87).

## **E. Article 13. Relationship with other international instruments and domestic law**

### **1. Residual application of domestic law recognition regimes**

38. It has been observed several times within the Working Group that the draft convention does not affect the ability of a State to recognize judicial sales conducted in a non-State Party under its domestic law ([A/CN.9/1047/Rev.1](#), para. 17; [A/CN.9/1089](#), para. 41). However, the Working Group has not considered the residual application of domestic law recognition regimes to judicial sales conducted in a State Party. At its thirty-ninth session, the Working Group agreed to consider the issue in its consideration of article 13. To assist the Working Group in its deliberations, the secretariat has inserted new paragraph 3 into article 13.

### **2. Avoiding the exclusive application of the Service Convention**

39. At its thirty-ninth session, the Working Group agreed to insert a provision in the draft convention that avoided recourse to the channels of transmission provided under the Service Convention where that would lead to notification times that were not suited to the time frames that the judicial sale procedure required ([A/CN.9/1089](#), para. 41). The secretariat has inserted new paragraph 4 into article 13 for the consideration of the Working Group.

## **F. Other annotations**

40. The footnotes in the annex contain additional annotations on the later provisions of the fifth revision, which are largely retained from the fourth revision. Some of the annotations identify issues for possible consideration by the Working Group.

## Annex

### Fifth 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 of a judicial sale of a ship that confers clean title on the purchaser.

#### *Article 2. Definitions*

For the purposes of this Convention:

- (a) “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 either by way of public auction or by private treaty carried out under the supervision and with the approval of a court; and
  - (ii) For which the proceeds of sale are made available to the creditors;
- (b) “Ship” means any ship or other vessel registered in a register 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;
- (c) “Clean title” means title free and clear of any mortgage or hypothèque and of any charge;
- (d) “Mortgage or hypothèque” means any mortgage or hypothèque that is effected on a ship and registered in the State in whose register of ships or equivalent register the ship is registered;
- (e) “Charge” means any right whatsoever and howsoever arising which may be asserted against a ship, whether by means of arrest, attachment or otherwise, and

<sup>1</sup> *Preamble*: The preamble reproduces the preamble contained in the original Beijing Draft. While the Working Group anticipated that certain elements of article 1 and 3(1) of the fourth revision might be re-allocated among those provisions and the preamble (A/CN.9/1089, para. 47), it has not yet considered the preamble, which remains unchanged from the fourth revision.

includes a maritime lien, lien, encumbrance, right of use or right of retention but does not include a mortgage or hypothèque;

(f) “Registered charge” means any charge that is registered in the register of ships or equivalent register in which the ship is registered or in any different register in which mortgages or hypothèques are registered;

(g) “Maritime lien” means any charge that is recognized as a maritime lien or privilège maritime on a ship under applicable law;

(h) “Owner” of a ship means any person registered as the owner of the ship in the register of ships or equivalent register in which the ship is registered;

(i) “Purchaser” means any person to whom the ship is sold in the judicial sale;

(j) “Subsequent purchaser” means any person who purchases the ship previously sold to a purchaser in the judicial sale;

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

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

1. This Convention applies only to a judicial sale of a ship if:
  - (a) The judicial sale was conducted in a State Party;
  - (b) The ship was physically within the territory of the State of judicial sale at the time of the sale.
2. This Convention shall not apply to warships or naval auxiliaries, or other vessels owned or operated by a State and used, immediately prior to the time of judicial sale, only on government non-commercial service.

#### *Article 4. Notice of judicial sale*

1. The judicial sale shall be conducted in accordance with the law of the State of judicial sale, which also determines the time of the sale for the purposes of this Convention.
2. Notwithstanding paragraph 1, for the purposes of article 5, a notice of judicial sale shall be given prior to the judicial sale of a ship in accordance with the requirements of paragraphs 3 to 7.
3. The notice of judicial sale shall be given to:
  - (a) The registrar of the register of ships or equivalent register in which the ship is registered;
  - (b) All holders of any mortgage or hypothèque and of any registered charge, provided that the register in which it is registered, and any instrument required to be registered with the registrar under the law of the State of registration, are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar;
  - (c) All holders of any maritime lien, provided that they have notified the court or other public 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;
  - (d) The owner of the ship for the time being; and
  - (e) If the ship is granted bareboat charter registration:
    - (i) The person registered as the bareboat charterer of the ship in the bareboat charter register; and
    - (ii) The registrar of the bareboat charter register.

4. The notice of judicial sale 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 Appendix I to this Convention.
5. The notice of judicial sale shall also be:
  - (a) Published by announcement in the press or other publication available in the State of judicial sale; and
  - (b) Transmitted to the repository referred to in article 11 for publication.
- [6. If the notice of judicial sale is not in a working language of the repository, it shall be accompanied by a translation into such a working language of the information mentioned in Appendix I.]
7. In determining the identity or address of any person to whom the notice of judicial sale is to be given, reliance may be placed exclusively on:
  - (a) Information set forth in the register of ships or equivalent register in which the ship is registered or in the bareboat charter register;
  - (b) Information set forth in the register in which the mortgage or hypothèque or the registered charge is registered, if different to the register of ships or equivalent register; and
  - (c) Information notified under paragraph 3, subparagraph (c).

*Article 5. Certificate of judicial sale*

1. Upon completion of a judicial sale that conferred clean title to the ship under the law of the State of judicial sale and was conducted in accordance with the requirements of that law and the requirements of this Convention, the competent authority of the State of judicial sale shall, in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser substantially in the form of the model contained in Appendix II which contains:
  - (a) A statement that the ship was sold in accordance with the requirements of the law of the State of judicial sale and the requirements of this Convention;
  - (b) A statement that the purchaser acquired clean title to the ship;
  - (c) The name of the State of judicial sale;
  - (d) The name, address and the contact details of the authority issuing the certificate;
  - (e) The name of the court or other public authority that conducted the judicial sale and the date of the sale;
  - (f) The name of the ship and register of ships or equivalent register in which the ship is registered;
  - (g) 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;
  - (h) 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;
  - (i) The name, address or residence or principal place of business and contact details of the purchaser;
  - (j) The place and date of issuance of the certificate; and
  - (k) The signature or stamp of the competent authority or other confirmation of authenticity of the certificate.
2. The certificate of judicial sale shall promptly be transmitted to the repository referred to in article 11 for publication.

3. The certificate of judicial sale shall be exempt from legalization or similar formality.
4. Without prejudice to articles 9 and 10, the certificate of judicial sale shall be sufficient evidence of the matters contained therein.

*Article 5bis. Electronic form of the certificate of judicial sale*<sup>2</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*<sup>3</sup>

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.

*Article 7. Action by registrar*<sup>4</sup>

1. 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 shall, in accordance with the law of that State [, but without prejudice to article 6]:<sup>5</sup>
  - (a) Delete any mortgage or hypothèque and any registered charge attached to the ship;
  - (b) Delete the ship from the register<sup>6</sup> and issue a certificate of deregistration for the purpose of new registration;
  - (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.

<sup>2</sup> *Electronic certificate of judicial sale – general*: Article 5bis remains unchanged from the fourth revision. In view of the decision by the Working Group at its thirty-ninth session to delete articles 5(6) and 5(7) of the fourth revision (A/CN.9/1089, para. 113), and in response to the request by the Working Group at its thirty-eighth session (A/CN.9/1053, para. 38), the secretariat recommends that the provisions be placed at the end of article 5 in the next revision.

<sup>3</sup> *International effects of judicial sale – general*: Article 6 remains unchanged from the fourth revision.

<sup>4</sup> *Action by registrar – general*: Article 7 remains unchanged from the fourth revision save for several changes to reflect terminology agreed by the Working Group at its thirty-ninth session. Specifically, article 7(1)(a) uses the defined term “mortgage or hypothèque” (A/CN.9/1089, para. 17), while article 7(2) refers to the “bareboat charter register” as that term is now used in article 4(3)(e) (*ibid.*, para. 68).

<sup>5</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 at its thirty-seventh session 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 Working Group has not yet considered those words.

<sup>6</sup> *Action by registrar – “register”*: The English version of the present draft uses the term “register” (not “registry”) for the record in which particulars of a ship, mortgage, hypothèque or registered charge are entered. This usage is consistent with terminology used in the United Nations Convention on Conditions for Registration of Ships (1986) and the MLMC 1993.

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 bareboat charter register and issue a certificate of deletion.<sup>7</sup>
3. If the certificate of judicial sale is not issued in an official language of the registrar or other competent authority, 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*<sup>8</sup>

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*<sup>9</sup>

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>10</sup>

<sup>7</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>8</sup> *No arrest – general*: Article 8 remains unchanged from the fourth revision.

<sup>9</sup> *Avoidance of judicial sale – general*: Article 9 remains unchanged from the fourth revision.

<sup>10</sup> *Suspension of effects 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 and may wish to consider whether it is necessary for the convention to address it. While the

[5. The effects of avoidance of a judicial sale shall be determined by applicable law].<sup>11</sup>

*Article 10. Circumstances in which judicial sale has no international effect*<sup>12</sup>

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>13</sup>

*Article 11. Repository*<sup>14</sup>

1. The repository of notices given under article 4 and certificates issued under article 5 shall be [the Secretary-General of the International Maritime Organization].
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>15</sup>

1. 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.
2. Nothing in this article affects bilateral or multilateral agreements on judicial assistance in respect of civil and commercial matters that may exist between States Parties.

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secretariat has identified cases in which a judicial sale has been or may be suspended before completion, 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>11</sup> *Avoidance of judicial sale – international effect*: Articles 9(3) and 9(4) (including the square brackets) remain unchanged from the second revision. Following initial discussions at the thirty-seventh session (A/CN.9/1047/Rev.1, para. 108), 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(6), 9(3) and 9(4) were placed in square brackets in the fourth revision, and article 9(5) was inserted for consideration by the Working Group as an alternative to those provisions. At its thirty-ninth session, the Working Group agreed to delete article 5(6) (and article 5(7)). The Working Group may wish to confirm whether articles 9(3) and 9(4) should also be deleted, and whether article 9(5) should be retained.

<sup>12</sup> *Ground for refusal – general*: Article 10 remains unchanged from the fourth revision.

<sup>13</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 has not since been considered by the Working Group.

<sup>14</sup> *Centralized online repository – general*: See paragraph 28 to 31 of the cover note. Article 11 remains unchanged from the fourth revision, except that it now designates the International Maritime Organization as the repository. This designation is in square brackets to indicate that the matter is still the subject of ongoing consultation with the IMO secretariat. A provision establishing the repository mechanism was inserted in the first revision of the Beijing Draft in response to deliberations of the Working Group at its thirty-fifth session (A/CN.9/973, paras. 46 and 73) and has not yet been considered by the Working Group.

<sup>15</sup> *Communication between authorities*: See paragraph 37 of the cover note regarding the scope and title of article 12. Article 12(1) reproduces article 12 of the fourth revision without amendment. A provision authorizing communication between authorities in different States was inserted in the first revision in response to a suggestion made at the thirty-fifth session that the draft instrument contain a provision similar to article 14 of the MLC 1993 (A/CN.9/973, para. 74). The provision has not yet been considered by the Working Group. Article 12(2) has been inserted for consideration by the Working Group on the assumption that communication between

*Article 13. Relationship 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>16</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.
3. Nothing in this Convention prevents the recognition of a judicial sale under domestic law.<sup>17</sup>
4. Without prejudice to article 4, paragraph 4, as between States Parties to this Convention that are also parties to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965), the notice of judicial sale may be transmitted abroad using channels other than those provided for in that Convention.<sup>18</sup>

*[Article 14 Matters not governed by this Convention]<sup>19</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.]

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authorities with roles under the draft convention may also be covered by other international agreements.

<sup>16</sup> *Relationship with other international conventions*: Article 13(1), which reproduces article 10 of the original Beijing Draft with amendments suggested by the secretariat in the third revision (A/CN.9/WG.VI/WP.90, footnote 45), remains unchanged from the fourth revision. The provision has not been considered by the Working Group. Article 13(2), which the Working Group agreed to retain at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 29, also remains unchanged from the fourth revision.

<sup>17</sup> *Relationship with domestic law*: See paragraph 38 of the cover note. The original Beijing Draft preserved recognition under the “principle of comity” but did not preserve domestic law recognition regimes generally. This new paragraph, foreshadowed in footnote 30 of the fourth revision, is based on article 15 of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).

<sup>18</sup> *Relationship with the Service Convention*: See paragraph 39 of the cover note. This new paragraph, which has been formulated in consultation with the Permanent Bureau of the Hague Conference on Private International Law, invokes the general principle reflected in article 30(3) of the Vienna Convention on the Law of Treaties (1969) that a later treaty prevails over an earlier treaty to the extent of any incompatibility between the two. It does not seek to oust the application of the Service Convention entirely but rather to avoid the exclusive application of the channels of transmission provided thereunder. The paragraph picks up the wording in article 11 of the Service Convention but does not rely on that provision inasmuch as the draft convention does not specify channels of transmission. Instead, it leaves it to the law of the State of judicial sale to determine which channels to use pursuant to article 4(4).

<sup>19</sup> *Matters not governed by the Convention*: Article 14, which reproduces article 6(2) of the second revision, remains unchanged from the fourth 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 or thirty-ninth sessions. The present draft implements option (c). The provision is placed in square brackets to indicate that no decision has been taken on its placement.



*Article 15. Depositary*<sup>20</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 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;

<sup>20</sup> *Final clauses*: The final clauses in articles 15 to 21, which have not been considered by the Working Group, remain unchanged from the fourth revision. They are drawn from the United Nations Convention on International Settlement Agreements Resulting from Mediation (2018), the most recent treaty prepared by UNCITRAL.

(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.

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**Appendix I to the [draft convention on the judicial sale of ships]<sup>21</sup>**

**Minimum information to be contained in the notice of judicial sale**

1. Statement that the notice of judicial sale is given for the purposes of the [draft convention on the judicial sale of ship]
2. **State of judicial sale** .....
3. **Judicial sale**
  - 3.1 Court or other public authority conducting the judicial sale .....
  - 3.2 Reference number or other identifier for the sale procedure .....
4. **Ship**
  - 4.1 Name .....
  - 4.2 Register .....
  - 4.3 IMO number .....
  - 4.4 *(If IMO number not available)* Other information capable of identifying the ship .....
5. **Owner(s)**
  - 5.1 Name .....
  - 5.2 Address or residence or principal place of business .....
  - 5.3 Telephone/fax/email .....
6. **Anticipated time and place of judicial sale** .....
7. Statement as to whether the sale will confer clean title to the ship, including the circumstances under which the sale would not confer clean title
8. Other information required by the law of the State of judicial sale, in particular any information deemed necessary to protect the interests of the person receiving the notice

<sup>21</sup> *Appendix I:* See paragraph 18 of the cover note.

## Appendix II to the [draft convention on the judicial sale of ships]<sup>22</sup>

### Model certificate of judicial sale

*Issued in accordance with the provisions of article 5 of the [draft convention 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 requirements of the law of the State of judicial sale and the requirements of the [draft convention on the judicial sale of ships]; and

(b) 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 or other public authority that conducted the sale .....

3.2 Date of the sale .....

**4. Ship**

4.1 Name .....

4.2 Register .....

4.3 IMO number .....

4.4 *(If IMO number 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 .....

*(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 .....

<sup>22</sup> Appendix II: See paragraph 23 of the cover note.

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 of issuing authority or other confirmation of authenticity of the certificate

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