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Draft Instrument on the Judicial Sale of Ships: Annotated Second Revision of the Beijing Draft

Note by the Secretariat

1. At its thirty-fifth session (New York, 13–17 May 2019), the Working Group considered a draft convention prepared by the Comité Maritime International (CMI) on the recognition of foreign judicial sales of ships, known as the "Beijing Draft" (see A/CN.9/WG.VI/WP.82). The Working Group decided that the Beijing Draft provided a useful basis for its deliberations on the topic of the judicial sale of ships (A/CN.9/973, para. 25).

2. The Working Group proceeded its deliberations at its thirty-sixth session (Vienna, 18–22 November 2019) on the basis of a first revision of the Beijing Draft, which had been prepared by the Secretariat to incorporate the discussions and decisions of the Working Group at its thirty-fifth session (see A/CN.9/WG.VI/WP.84).

3. The annex to this document contains an annotated second revision of the Beijing Draft ("second revision" or "present draft"), which has been prepared by the Secretariat to incorporate the discussions and decisions of the Working Group at its thirty sixth session. The Working Group may wish to use the second revision as a basis for its deliberations at its thirty seventh session. The Secretariat has also prepared document A/CN.9/WG.VI/WP.87/Add.1 to accompany the second revision ("accompanying note"), which highlights some overarching issues for consideration by the Working Group.

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Annex

Second Revision of the Beijing Draft

The State 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:[1]

Article 1. Purpose

This Convention sets forth the conditions under which the judicial sale of a ship conducted in one State Party shall have effects in another State Party, including for purposes of registration and deregistration of ships.[2]

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;[3]

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[1] *Preamble*: This second revision of the Beijing Draft reproduces the preamble contained in the Beijing Draft. Preambles are a usual feature of UNCITRAL instruments in the form of treaties. They also feature in some UNCITRAL model laws (see, e.g., Model Law on Cross-Border Insolvency (United Nations publication, Sales No. E.14.V.2) and the more recent Model Law on Recognition and Enforcement of Insolvency-Related Judgments (United Nations publication, Sales No. E.19.V.8), although in a different form. On the form of the instrument, see paragraph 2 of the accompanying note.

[2] *Purpose provision*: The Working Group agreed to insert a provision, at the start of the instrument, which declares – in positive terms – the object and purpose of the instrument (A/CN.9/1007, para. 48). A similar provision was originally provided in article 2 of the Beijing Draft under the title "scope of application". At the thirty-sixth session, it was felt that a provision on the substantive scope of the instrument scope (article 3 of the current draft) should not function as a statement of object and purpose (ibid., para. 34).

[3] *Definitions – "charge"*: Although the Working Group had agreed at its thirty-fifth session to delete "arrest" from the definition on the grounds that it was a remedy and not a right (A/CN.9/973, para. 79), at the thirty-sixth session there was support for including reference to a "right to arrest" in the definition, noting that such a right should be understood in many jurisdictions since both the International Convention Relating to the Arrest of Seagoing Ships (1952) (United Nations, *Treaty* Series, vol. 439, No. 6330) and the International Convention on

(b) "Clean title" [to a ship means that any title to or rights and interests in the ship existing prior to its judicial sale have been extinguished and that any charge or mortgage have ceased to attach to the Ship] [means title free and clear of any mortgage or charge];[4]

(c) "Judicial sale" of a ship means any sale of a ship:

(i) Which is ordered, approved or carried out by a court or other public authority by way of public auction or private treaty carried out under the supervision and with the approval of a court, or any other way provided for by the law of the State of judicial sale; and

(ii) For which the proceeds of sale are made available to the creditors;[5]

(d) "Maritime lien" means any claim recognized as a maritime lien or privilège maritime on a ship under applicable law;[6]

(e) "Mortgage" means any mortgage or hypothèque that is:[7]

Arrest of Ships (1999) (United Nations, *Treaty* Series, vol. 2797, No. 49196) referred to the arrest of ships in respect of maritime claims. However, concerns were expressed as to the need to distinguish between a charge and the rights and obligations that may arise from it. In response, it was suggested that the definition should focus on rights that gave rise to the right to arrest or right of attachment (A/CN.9/1007, para. 12). The Working Group also agreed to proceed on the understanding that the term "charge", as used in the instrument, did not include mortgages (ibid., para. 14).

[4] *Definitions – "clean title"*: The Working Group has agreed to omit reference to mortgages and charges that are "assumed by [the] purchaser" (A/CN.9/1007, para. 15). The two options in square brackets are proposed as alternatives for the Working Group to choose from in view of the suggestion that the definition of clean title might need to be revisited to ensure that it accurately covers all effects contemplated in the original Beijing Draft (ibid., para. 49). In this regard, article 1(c) of the original Beijing Draft defines clean title in the terms of the second option. Similar terminology is used in the Convention on the International Recognition of Rights in Aircraft (1948) (United Nations, *Treaty Series*, vol. 310, No. 4492), which refers in article VIII to the forced sale of an aircraft effecting the transfer of property in the aircraft "free from all rights". But the original Beijing Draft also provides, in article 4(1), that the effect of a judicial is not only to confer clean title, but also, in terms similar to the first option, to extinguish "any title to and all rights and interests in the ship existing prior to its judicial sale" and for "any mortgage/hypothèque or charge" to cease to attach to the ship. Similar provision is made in article 5 (on the statement contained in the certificate of judicial sale regarding the effect of the judicial sale) and article 7(1)(a) (on the "recognition" of the effects of the judicial sale abroad) of the original Beijing Draft. If the Working Group prefers the first option, it may wish to consider how the title, rights and interest referred to in that option relate to the notion of "charge" as defined in article 1(a).

[5] *Definitions – "judicial sale"*: The Working Group has agreed to add a reference to the "approval" of judicial sales in the definition and to specify that any "other authority" must be a "public" authority (A/CN.9/1007, para. 16). The Working Group has also agreed to insert a clarification that a sale by "private treaty" was not a private sale, but rather a sale that is carried out under the supervision and with the approval of a court (ibid., para. 18). The Working Group has further agreed to restore the reference contained in the original Beijing Draft to the availability of the proceeds of sale for distribution to the creditors (ibid., para. 37).

[6] *Definitions – "maritime lien"*: At the thirty-sixth session of the Working Group, it was suggested that the term "maritime lien" should not always be limited to those maritime liens that are recognized "by the law applicable in accordance with the private international law rules *of the State of judicial sale*" (A/CN.9/1007, para. 19, emphasis added). A suggestion has been made that, while such a limitation should be retained for the purposes of defining the persons entitled to notice (article 4(1)(c) of the present draft), it is neither necessary nor desirable to do so for the purposes of defining the "clean title" conferred by a judicial sale. The Secretariat suggests that this "dual use" might be addressed in all instances of the draft instrument by defining the term "maritime lien" by reference to those maritime liens that are recognized "under applicable law", and invites the Working Group to consider the revised definition as drafted in the present draft.

[7] *Definitions – "mortgage"*: The Working Group agreed to include the words "and registered or recorded" after the words "effected on a ship" and to defer further discussion of the definition to the substantive provisions in which the term "mortgage" is used (A/CN.9/1007, para. 21). In this regard, the term is used to define "clean title" (article 1(b)), the persons entitled to notice (article 4(1)(b)), the obligations of the registrar (article 7(1)(a)), and the persons with standing to bring an action under article 10 (article 10(2)). The Working Group may wish to consider

(i) Effected on a ship and registered or recorded 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;[8]

(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];[9]

(i) "Ship" means any ship or other vessel 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;[10]

(j) "State of judicial sale" means the State in which the judicial sale of a ship is conducted;

(k) "Subsequent purchaser" means any person who purchases the ship previously sold to a purchaser in the judicial sale.[11]

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 jurisdiction 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.[12]

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whether, for each of these uses, it is appropriate to limit the term "mortgage" to those "recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale", particularly when the term is used to define an obligation that is addressed to States other than the State of judicial sale.

[8] *Definitions – "owner"*: It has been noted that smaller vessels such as fishing trawlers might not be registered in a registry of ships but in some other form of registry (A/CN.9/1007, para. 22). The words "or an equivalent registry" have been inserted into the definition to reflect this possibility.

[9] *Definitions – "purchaser"*: The Working Group has agreed to put the definition in square brackets to indicate its possible deletion and has 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.

[10] *Definitions – "ship"*: The Working Group has agreed to retain the requirement that a ship should be "capable of being subject of a judicial sale under the law of the State of judicial sale" and has requested the Secretariat to clarify the meaning of that phrase (A/CN.9/1007, para. 28). The Working Group may wish to consider whether the revised definition, which focuses on whether the ship is amenable to arrest under the law of the State of judicial sale, may make it unnecessary to specify that the arrest is "capable of leading to a judicial sale". For more on the types of ships covered by the draft instrument, see paragraphs 4 to 9 of the accompanying note.

[11] *Definitions – "subsequent purchaser"*: This definition has been aligned to 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).

[12] *Substantive scope – judicial sales within scope*: There is wide agreement to limit the scope of the instrument to judicial sales that (already) provide clean title under the domestic law of the State of judicial sale (A/CN.9/1007, para. 27). Article 3(1)(b) is drafted so as to allow an assessment of whether a judicial sale falls within the scope of application of the instrument to be carried out on a case-by-case basis (ibid., para. 43). There is general support for including a rule that the ship should be physically present within the State of judicial sale (ibid., para. 83). The Secretariat invites the Working Group to consider functionalizing this rule as a limitation on the scope of the instrument and has proposed the insertion of article 3(1)(a) accordingly. For an explanation of this proposal, see paragraphs 19 to 22 of the accompanying note.

2. This Convention shall not apply to:

[(a) The judicial sale of a ship following a seizure or confiscation of the ship by tax, customs or other law enforcement authorities;][13]

(b) Warships or naval auxiliaries, or other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.[14]

Article 4. Notice of judicial sale[15]

1. Prior to a judicial sale of a ship,[16] a notice of the sale shall be given to:[17]

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

(b) All holders of any mortgage 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;

(c) All holders of any maritime lien, provided that the court or other authority ordering the judicial sale has received notice of the claim secured by the maritime lien;

(d) The owner of the ship for the time being;

(e) The person registered as the bareboat charterer of the ship in the registry of ships in which the ship is registered; and

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[13] *Substantive scope – exclusion of sales by tax, customs and other law enforcement authorities*: A provision excluding judicial sales "in tax, administrative or criminal proceedings" was introduced in the first revision to the Beijing Draft to address concerns expressed at the thirty-fifth session of the Working Group about applying the recognition regime to forced sales in tax, administrative and criminal matters (A/CN.9/973, paras. 19 and 90). Another option, also suggested at the thirty-fifth session, was to exclude from the scope of the draft instrument those judicial sales for which the proceeds were not to be paid out to creditors (ibid.). Although the rationale for the proposed exclusion was not explicitly articulated at the time, it seems that the underlying concern was to avoid interference with acts of public authorities exercising enforcement powers such as seizure or confiscation. The Working Group has agreed to retain subparagraph (a) (A/CN.9/1007, para. 39) and, at the same time, to amend the definition of "judicial sale" to limit it to those sales for which the proceeds are made available to the creditors (see footnote 5). The Working Group may wish to consider whether the exclusion is still needed in the light of the amended definition of judicial sale and, if so, whether the additional qualification adequately clarifies its scope.

[14] *Substantive scope – exclusion of State-owned ships*: This provision has been reformulated to align it more closely with the wording of article 16 of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) and articles 95 and 96 of the United Nations Convention on the Law of the Sea (1982) (United Nations, *Treaty Series*, vol. 1833, No. 31363) (A/CN.9/1007, paras. 40–42).

[15] *Notice requirements – general*: Article 3 of the first revision has been renumbered as article 4 in the present draft. The provision has been revised to reflect discussions at the thirty-sixth session (A/CN.9/1007, paras. 55–67), in particular the view expressed by many delegations that the matters covered in articles 3(2) and (3) of the first revision should be left to domestic law but could still be addressed by way of guidance notes set out in a model notice form annexed to the instrument (ibid., para. 66). These paragraphs have been deleted and incorporated in the body of the model notice contained in appendix I and the footnotes thereto, as appropriate.

[16] *Notice requirements – applicability to judicial sales within scope*: By virtue of article 3(1), the present draft applies only to judicial sales that provide clean title under the domestic law of the State of judicial sale. Unlike other requirements in the draft instrument, the notice requirements apply *prior* to the judicial sale being conducted. The Working Group may wish to confirm whether, at this point in time, it will be known – in all cases – that the judicial sale will result in the conferral of clean title.

[17] *Notice requirements – persons to be notified*: The list of persons to be notified of the judicial sale remains essentially unchanged from the original Beijing Draft, and has not been determined by the Working Group. It has been suggested to add bareboat charterers because they are not holders of a registered charge in some jurisdictions (A/CN.9/1007, para. 63).

(f) The registrar of the registry of ships in any State in which the ship is granted bareboat charter registration.

2. The notice required by paragraph 1 shall be given in accordance with the law of the State of judicial Sale,[18] and shall contain, as a minimum, the information mentioned in the model contained in Appendix I to this Convention.

3. The notice shall also be:

(a) Published by press announcement in the State of judicial sale and in other publications published or circulated elsewhere, if required by the law of the State of judicial sale; and

(b) Transmitted to the repository referred to in article 12 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 the registry of ships in which it is granted bareboat charter registration;

(b) Information set forth in the registry in which the mortgage or charge referred to in paragraph 1, subparagraph (b) is registered or recorded, if different to the registry of ships or equivalent registry; and

(c) Information contained in the notice referred to in paragraph 1, subparagraph (c).

Article 5. Certificate of judicial sale

1. When a ship is sold by way of judicial sale that is conducted in accordance with the law of the State of judicial sale and the notice requirements in article 4,[19] the public authority designated by the State of judicial sale[20] shall, at the request of the

[18] *Notice requirements – domestic law*: paragraph 2 reinstates the requirement in article 3(1) of the original Beijing Draft that the notice of judicial sale should be given "in accordance with the law of the State of judicial sale", in line with the view that the matters covered in articles 3(2) and (3) should be left to domestic law (A/CN.9/1007, para. 66).

[19] *Certificate of judicial sale – compliance with "conditions required by the law of the State of judicial sale"*: In the first revision, a question was raised as to the need for, and meaning of, the requirement in the introductory words of article 5(1) that a judicial sale should meet "the conditions required by the law of the State of judicial sale" (A/CN.9/WG.VI/WP.84, para. 8(j)). On the question of need, it was noted that this requirement might expose the judicial sale to unwarranted challenge in the State of judicial sale (particularly if the authority issuing the certificate was not the same as the authority that conducted the judicial sale). On the question of meaning, it was noted that, if the intention of the requirement was to allow the State of judicial sale to specify procedures for applying for a certificate (including costs), the Working Group might wish to consider reformulating the requirement to make this clear. In the first revision, the requirement was put in square brackets to indicate its possible deletion. At its thirty-sixth session, the Working Group agreed to remove the square brackets on the basis that the requirement was needed (A/CN.9/1007, para. 91), but did not address its meaning. It seems to the Secretariat that the requirement is primarily concerned with compliance with the requirements of conducting a judicial sale, and not with allowing the State of judicial sale to specify procedures for applying for a certificate. The introductory words of article 5(1) of the present draft have been revised accordingly, mirroring the wording in article 6(1)(b). If the Working Group considers it desirable to allow the State of judicial sale to specify procedures for applying for the certificate, the words "in accordance with its regulations and procedures", which have also been added to article 7(1), have been added for consideration.

[20] *Certificate of judicial sale – issuing authority*: It has been pointed out that the authority issuing the certificate of judicial sale might be different to the authority that orders or conducts the judicial sale (A/CN.9/973, para. 82). It has also been suggested that, if the instrument takes the form of a convention, a mechanism could be set up by which a State joining the convention would be required to notify the depositary of the authorities competent in its jurisdiction for the purposes of the convention (which could include different authorities for the purposes of different provisions of the instrument) (ibid., para. 84).

purchaser, and in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser recording that:

(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 jurisdiction of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship.[21]

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 place and date of the judicial sale;

(d) The name and [port of registry][22] of the ship;

(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;[23]

(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 purchase price;][24]

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

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

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[21] *Certificate of judicial sale – matters being certified*: The Working group has agreed to delete all references to preservation of mortgages and charges "assumed by the purchaser" throughout the draft (A/CN.9/1007, para. 45). Paragraph 1 has been amended accordingly. Paragraph 1 has also been amended to reflect the suggestion that the certificate should contain a clear statement that the judicial sale conferred clean title (ibid., para. 49). It is worth recalling that, by virtue of article 3(1), article 5 applies only to judicial sales that confer clean title under the domestic law of the State of judicial sale. As explained in paragraph 21 of the accompanying note, paragraph 1 has further been amended to require the certificate to contain a statement that the ship was physically within the jurisdiction of the State of judicial sale at the time of the sale.

[22] *Certificate of judicial sale – port of registry*: The original Beijing Draft, as well as the first revision, calls for the certificate of judicial sale to specify the port of registry of the ship. Nowhere else is the port of registry referred to in the draft instrument. The Working Group may wish to consider whether the reference should instead be to "the registry of ships or equivalent registry in which the ship is registered", which mirrors the wording used in article 2(e).

[23] *Certificate of judicial sale – identification of ship*: The Working Group has agreed that the "default" identifier for the ship should be the IMO number and that, if not available, the certificate should specify other information capable of identifying a ship, such as the shipbuilder, time and place of the shipbuilding, licence number, and recent photographs (A/CN.9/1007, para. 93). Item (e) of paragraph 2 and the corresponding sections of the model certificate of judicial sale contained in Appendix 2 have been updated accordingly. It is assumed that the existing reference to "distinctive number or letters" includes licence number.

[24] *Certificate of judicial sale – specification of purchase price*: The suggestion that the certificate should specify the purchase price was made at the thirty-fifth session of the Working Group (A/CN.9/973, para. 44). While there was support for deleting this provision at its thirty-sixth session, the Working Group agreed to place it in square brackets for future discussion (A/CN.9/1007, para. 93).

3. The authority shall promptly communicate the certificate to the repository referred to in article 12.

4. The authority shall:

(a) Maintain a record of certificates issued, including the particulars of the judicial sale; and

(b) At the request of the registrar or court referred to in articles 7 and 8, verify whether the particulars in the certificate produced correspond with particulars included in the record.[25]

5. [Subject to articles 7(5), 8(4) and 10,] the certificate of judicial sale shall constitute conclusive evidence of the particulars therein, including the matters required to be recorded by article 5(1).[26]

6. A certificate of judicial sale shall [have no effect][cease to have effect] under this Convention if the sale has been avoided in the State of judicial sale by a court exercising jurisdiction under article 9 by a judgment that is no longer subject to appeal in that State.[27]

Article 6. International effects of a judicial sale[28]

1. A judicial sale to which this Convention applies that is conducted in one State Party shall have the effect in every other State Party of conferring clean title to the ship on the purchaser[29][, provided that:

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

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[25] *Certificate of judicial sale – verification*: The Working Group has agreed that a centralized online repository could be used to publish certificates of judicial sales (A/CN.9/973, paras. 46 and 73) (see article 12 and paragraph 10 of the accompanying note). It has been suggested that, as an alternative to establishing a centralized repository, the instrument could require the issuing authority to maintain a publicly accessible record of certificates issued, similar to the requirement in article 7 of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961) (United Nations, *Treaty Series*, vol. 527, No. 7625) ("Apostille Convention") (A/CN.9/973, para. 46). Paragraph 4 implements this alternative. If the Working Group agrees to implement a repository mechanism, paragraph 4 can be omitted.

[26] *Certificate of judicial sale – evidentiary value*: In the original Beijing Draft and its first revision, the conclusive effect of the certificate of judicial sale was subject to the grounds for refusing to give international effect to the judicial sale (as currently set out in articles 7(5), 8(4) and 10). The Working Group may wish to consider the suggestion that the conclusive effect of the certificate of judicial sale should instead be subject to the invalidation of the certificate pursuant to the avoidance of the judicial sale in the State of judicial sale, as contemplated in article 9 (A/CN.9/1007, para. 95). Alternatively, the Working Group may wish to consider deleting this qualification altogether, since in most legal systems official acts cease to have legal effect once they are invalidated by a court, so that the possibility of the eventual invalidation of the certificate of judicial sale does not need to be expressly preserved by this draft instrument.

[27] *Certificate of judicial sale – no effect*: Paragraph 6 is new and mirrors article 9(3). It is based on the premise that, if a judicial sale is avoided in the State of judicial sale, the certificate of judicial sale will cease to be valid under the law of that State and should therefore cease to produce effects under the instrument, namely the triggering of the obligation to register/deregister (article 7) and the obligation not to arrest (article 8). The current provision is drafted on the assumption that, as the avoidance of the sale and non-appealability of the avoidance decisions are questions of fact, it is not necessary for a court to determine their existence. The same assumption underlies existing article 9(3). If the Working Group agrees to retain this provision, it may wish to consider stating in articles 7 and 8 that the obligation to register/deregister and the obligation not to arrest (respectively) are "subject to article 5(6)".

[28] *International effects of judicial sale – general*: The international effect of a judicial sale is subject to the application of the grounds for refusal in article 10. The Working Group may wish to consider stating that article 6 is "subject to article 10".

[29] *International effects of judicial sale – conditions*: Subparagraphs (a) and (b) of article 6(1) reflect the agreement of the Working Group to incorporate the former conditions for conferring clean title, which were contained in article 4 of the first revision (A/CN.9/1007, para. 46). This effectively leaves it to the State in which the international effect of the judicial sale is asserted to

(b) The judicial sale was conducted in accordance with the law of the State of judicial sale and the notice requirements in article 4.]

2. 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.[30]

Article 7. Action by registrar[31]

1. The competent registrar [or registrars][32] of a State Party shall, upon production of the certificate of judicial sale referred to in article 5 and in accordance with its regulations and procedures:

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

(b) At the direction of the purchaser or subsequent purchaser:

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

(ii) Register the ship in the name of the purchaser or subsequent purchaser.

2. If the ship was granted bareboat charter registration in a State Party, the competent registrar of that State shall, upon production of the certificate of judicial sale referred to in article 5, delete the ship from the register and issue a certificate of deletion.[33]

3. If the certificate of judicial sale is not issued in an official language of the registrar, the registrar may request the person producing the certificate to produce a [certified] translation into such an official language.

4. The registrar may also request the production of a [certified] copy of the certificate for its records.

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scrutinize whether these conditions have been satisfied. As noted in paragraph 19 of the accompanying note, the Working Group may wish to consider whether it is more effective for these conditions to be scrutinized by the State of judicial sale, through amendments to the process of issuing the certificate of judicial sale in article 5, and thus whether subparagraphs (a) and (b) should be omitted.

[30] *Effects of judicial sale – preservation of* in personam *claims*: Some support has been expressed for the view that, because the draft instrument no longer regulates the effects of the judicial sale in the State of judicial sale, the preservation of *in personam* claims against a former shipowner no longer has any substantive effect. The prevailing view, however, is that it could be useful to retain the provision (A/CN.9/1007, para. 52). The Working Group may wish to consider further the suggestion that this provision should be moved to article 3 (on scope of application) (ibid.).

[31] *Action by registrar – title of provision*: In the first revision, article 7 was entitled "deregistration of the ship". The Working Group has agreed that the title should be revised to better reflect its scope (A/CN.9/1007, para. 96).

[32] *Action by registrar – identification of registrar*: Article 7(1) is addressed to the registrar in both the State of judicial sale (e.g., if the ship is registered there) and any other State Party to the Convention. The Working Group has noted that the registry of ships may be separate from the registry of ship mortgages and charges (A/CN.9/1007, para. 97; see also A/CN.9/WG.VI/WP.84, para. 8(i)). The word "competent" has been inserted before "registrar" to clarify that there may be more than one relevant registrar in a particular State. The Working Group may wish to consider whether this could be further clarified by inserting the words "or registrars".

[33] *Action by registrar – bareboat charter registration*: The Working Group has agreed that bareboat charter registration should be dealt with in a separate paragraph with more appropriate terminology (A/CN.9/1007, para. 96). With regard to terminology, article 12(5) of the United Nations Convention on Conditions for Registration of Ships refers to the "deletion" of the bareboat charter-in registration. Article 7(2) is addressed solely to the bareboat charter-in registrar (i.e., the registrar in the State of bareboat charter registration). The bareboat charter-out registrar is addressed by article 7(1). The Working Group may wish to consider whether any additional action by the bareboat charter-out registrar should be prescribed.

5. Notwithstanding article 6, paragraphs 1 and 2 do not apply to a registrar of a State Party other than the State of judicial sale if a competent court in that other State determines[, on application by a person specified in article 10, paragraph 2,] that:[34]

[(a) The ship was not physically within the jurisdiction of the State of judicial sale at the time of the sale;][35]

[(b) The sale was procured by fraud committed by the purchaser; or][36]

(c) The action by the registrar would be manifestly contrary to the public policy of that other State.

Article 8. No arrest of the ship[37]

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[38] 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 the 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. Notwithstanding article 6, paragraphs 1 and 2 do not apply to a court of a Party to the Convention other than the State of judicial sale 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.[39]

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[34] *Action by registrar – grounds for refusal to take action*: A proposal has been made to link and adapt the grounds for refusal to the obligations imposed on States other than the State of judicial sale, namely the obligation to register/deregister (article 7) and the obligation not to arrest (article 8). Specifically, it has been proposed that only the public policy ground should apply to the obligation not to arrest, while the full "suite" of grounds – whatever they may be – should apply to the obligation to register/deregister (A/CN.9/1007, para. 89). Broad support has been given to exploring this proposal further, and the Secretariat has been asked to formulate those options, bearing in mind that registrars are not in a position to apply the public policy ground. It has also been noted that making findings of fact to support the other grounds for refusal imposes a considerable burden on registrars (ibid.). Paragraph 5 has been inserted to give effect to this proposal with respect to the obligation to register/deregister. It reproduces the grounds for refusal in article 10(1) and is formulated on the assumption that a determination on the existence of grounds for refusal should ultimately be made by a court having competence over the acts of the registrar. It is also formulated on the assumption that standing to bring an action before the competent court will be limited to the same classes of persons with standing to bring an action under article 10. The accompanying note (para. 25) invites the Working Group to pay particular attention to the interaction between articles 7(5), 8(4) and 10 in its consideration of the present draft. The Working Group may also wish to consider whether article 10 should be placed immediately after article 6.

[35] See footnote 46 below.

[36] See footnote 47 below.

[37] *No arrest – general*: Article 8 is a recast of article 7(2) of the Beijing Draft. The Working Group has so far not considered this provision in detail. Article 7(2) of the Beijing Draft deals both with applications to arrest and with applications to release from arrest. The current version splits these two provisions into separate paragraphs. The Working Group may wish to consider whether article 8 would apply, in all cases, to the arrest of the ship as a protective measure pending determination of the existence of a ground for refusal under article 10.

[38] *No arrest – meaning of "arrest"*: Paragraphs 1 and 2 of Article 8 has been modified to refer to arrest and any other "similar measure". This wording is found in the definition of "ship" in article 2(i) and acknowledges – like in the definition of "charge" – that a measure to detain or restrict the removal a ship may not be referred to as an "arrest" in the State seized.

[39] *No arrest – grounds for refusal to take action*: Paragraph 4 has been inserted to give effect to the proposal outlined in footnote 46 above with respect to the obligation not to arrest. Unlike

Article 9. Jurisdiction to avoid and suspend judicial sale[40,41]

1. The courts[42] 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.[43]

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,[44] the effects of the sale are suspended in the State of judicial sale by a court exercising jurisdiction under paragraph 1.

article 7(5), it does not limit standing to raise the public policy ground on the basis that the proceedings before the court in which such a ground would be raised will have already commenced. If the Working Group wishes to apply the full "suite" of grounds to the obligation not to arrest, paragraph 4 could be replaced by a provision similar to article 7(5).

[40] *Avoidance and suspension of judicial sale – international jurisdiction*: Article 9 is addressed to the State of judicial sale. Widespread support has been expressed for the view that article 9 "should function only as an exclusive jurisdiction provision, and that the instrument should leave all other matters to the domestic law of the State of judicial sale" (A/CN.9/1007, para. 70). Article 9 is focussed on exclusive jurisdiction to avoid or suspend the judicial sale. The Working Group has agreed that the scope of exclusive jurisdiction should also cover "challenges to the validity of the certificate of judicial sale" (ibid., para. 78). As has been observed (A/CN.9/973, para. 55), article 9 does not affect jurisdiction with respect to the distribution of proceeds from the judicial sale, or jurisdiction with respect to *in personam* actions against the purchaser, such as actions in tort. The heading to article 9 has been amended to better reflect this focus, as has been suggested (A/CN.9/1007, para. 72). The wording has also been updated to clarify that the provision is concerned with the avoidance of the judicial sale, as understood by the Working Group (ibid., para. 68) and not the avoidance of the effects of the judicial sale. Mindful of not distracting the focus of article 9 from exclusive jurisdiction, the Working Group may wish to consider whether it is appropriate to relocate the provisions on the effects of avoidance and suspension on the international effect of the judicial sale from article 10 (as reflected in the first revision) to article 9 (as reflected in the present draft).

[41] *Avoidance and suspension of judicial sale – grounds for avoidance and suspension*: The Working Group may wish to confirm that the grounds for avoiding or suspending the effects of the judicial sale are a matter of the applicable domestic law, as has been suggested (A/CN.9/1007, paras. 59 and 70).

[42] *Avoidance and suspension of judicial sale – internal competence*: It has been observed that, in some States, competence to hear challenges to a judicial sale is vested not in courts but in other authorities (A/CN.9/973, para. 51). The Working Group may wish to consider whether this can be addressed by replacing the term "courts" with "authorities". The Working Group may also wish to confirm that article 9 does not affect the internal allocation of jurisdiction among the courts of the State Party, which remains a matter of its domestic law.

[43] *Avoidance and suspension of judicial sale – standing*: The first revision of the Beijing Draft limited standing to bring an action to avoid or suspend a judicial sale. Widespread support has been expressed for the view that article 9 should leave questions of standing to the domestic law of the State of judicial sale (A/CN.9/1007, para. 70).

[44] *Grounds for refusal – international effect of judicial sale ceased*: The word "and for as long as" have been inserted as has been suggested (A/CN.9/1007, para. 87).

Article 10. Circumstances in which judicial sale has no international effect[45]

1. A judicial sale of a ship shall not have the effect provided in article 6 in a State Party other than State of judicial sale if [, on application by a person specified in paragraph 2,] a court in that other State Party determines that:

[(a) The ship was not physically within the jurisdiction of the State of judicial sale at the time of the sale;][46]

[(b) The sale was procured by fraud committed by the purchaser; or][47]

(c) That effect would be manifestly contrary to the public policy of that other State Party.[48]

[2. The persons which may make a claim or application referred to paragraph 1 and article 7, paragraph 5 are:

(a) The owner of the ship immediately prior to the judicial sale;

(b) The holder of a mortgage or registered charge attached to the ship immediately prior to the judicial sale; and

(c) Any holder of a maritime lien entitled to notice under article 4.][49]

Article 11. Additional provisions relating to the certificate of judicial sale

1. The certificate of judicial sale referred to in article 5 shall be exempt from legalization or similar formality.[50]

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[45] *Grounds for refusal – general*: Article 10 is addressed to States other than the State of judicial sale (A/CN.9/1007, para. 79). The view has been expressed that the res judicata effect of a decision in one State that a ground for refusal applied would not, by virtue of the instrument, extend to any other State (including the State of judicial sale) (ibid.), and that the procedure for applying the grounds for refusal would be a matter for the domestic law of the State addressed (ibid., para. 89).

[46] *Grounds for refusal – physical presence of ship*: While it has already been questioned whether the requirement of physical presence should serve as a ground for refusal, general support was expressed at the thirty-sixth session for retaining it as such (A/CN.9/1007, para. 83). In light of the explanations in paragraph 16 and consequential amendment to articles 3(1) and 5(1) in the present draft, the Working Group may wish to consider whether it is still desirable to retain this ground for refusal.

[47] *Grounds for refusal – fraud committed by the purchaser*: It has been suggested that there is merit in retaining fraud as a separate ground for refusal. In this regard, there is general support for requiring the fraud to be committed by the purchaser (A/CN.9/1007, para. 86). At the same time, it has been observed that the State of judicial sale would be better placed to determine whether fraud was committed by the purchaser in exercising its exclusive jurisdiction under article 9 (ibid., para. 81). The Working Group may wish to consider whether it is desirable to retain this ground for refusal.

[48] *Grounds for refusal – public policy*: There is general agreement to retain a ground for refusal based on public policy (A/CN.9/1007, para. 84).

[49] *Grounds for refusal – standing*: It has been suggested that the list of the persons with standing to bring an action to avoid or suspend a judicial sale in the State of judicial sale, which appeared in article 9(4) of the first revision, should be incorporated into article 10 (A/CN.9/1007, para. 87). In the present draft, this list applies to limit standing to bring an action under article 10(1) but also under article 7(5) by virtue of a cross-reference to article 10(2) in each of those provisions. The Working group may wish to consider whether this outcome is appropriate considering that paragraph 1(a) refers to a condition necessary for the judicial sale to have international effects pursuant to article 6, whereas in some legal systems courts may be able to apply the grounds in subparagraphs 1(a) or 1(b) without an application to that effect by an interested party. A possible scenario could be, for instance, where a purchaser seeks an injunction against a registrar who declined to act upon a certificate and the court dismisses the application on the basis of article 10(1).

[50] *Certificate of judicial sale – no legalization*: As already has been foreshadowed (A/CN.9/973, para. 45), the certificate of judicial sale would ordinarily be a public document within the meaning of the Apostille Convention and would thus be exempt from legalization under article 2 of the Convention among the over 100 States that are party to that Convention (see further analysis in A/CN.9/WG.VI/WP.84, footnote 48). It has been suggested that the Working Group should consider including a provision that removes any requirement of legalization or similar requirement (such as the issuance of an Apostille) for the certificate of judicial sale (ibid.).

2. The certificate of judicial sale may be in the form of an electronic communication 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 to indicate its intention in respect of the information contained therein;

(c) A method is used to detect any alteration to the electronic communication 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; and

(d) The method referred to in subparagraphs (b) and (c) is:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances;

(ii) Proven in fact to have fulfilled the functions described in those subparagraphs, by itself or together with further evidence.[51]

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

Article 12. Repository[52]

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 11(1) reflects this suggestion and has not yet been considered by the Working Group. The drafting of this provision is based on similar provisions found in instruments concluded by the Hague Conference on Private International Law, such as article 18 of the Convention on Choice of Court Agreements (United Nations, *Treaty Series*, No. 53483). Nothing in the Apostille Convention precludes a State Party from agreeing to dispense with all requirements for certifying the authenticity of certain public documents, a scenario expressly contemplated in article 3(2) of that Convention. The present provision would not preclude the authority addressed from determining that a document purporting to be a certificate of judicial sale is not authentic.

[51] *Certificate of judicial sale – issuance in electronic form*: The Working Group has asked the Secretariat to consider the implications of allowing a certificate of judicial sale to be issued in electronic form (A/CN.9/1007, para. 92). UNCITRAL has developed a number of legislative texts that enable the legal recognition of documents issued in electronic form, most relevantly the Model Law on Electronic Commerce (1996) (United Nations publication, Sales No. E.99.V.4) and the United Nations Convention of the Use of Electronic Communications in International Contracts (2005) (United Nations, *Treaty Series*, vol. 2898, No. 50525) (“ECC”). While these texts are predominantly addressed to business-to-business communications, the functional equivalence rules that they establish could equally be applied to communications involving public authorities. Article 11(2) has been drafted by the Secretariat for consideration by the Working Group. It is a combination of the functional equivalence provisions for the requirement of a document or communication to be in writing (cf. ECC article 9(2)), the requirement that a document or communication be signed (cf. ECC article 9(3)) and the requirement that a document or communication be available in original form (cf. ECC article 9(4)(a)). Article 11(2) establishes minimum requirements for the legal recognition of certificates of judicial sale issued in electronic form; it does not prevent the law or procedures of the issuing authority from specifying additional requirements for the certificates it issues.

[52] *Publication of notices and certificates in a centralized repository*: See paragraphs 10 to 16 of the accompanying note.

Article 13. Communication between Parties[53]

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.

Article 14. Relations with other international instruments

1. Nothing in this Convention shall derogate from any other basis for the recognition of a judicial sale of a ship under any other bilateral or multilateral convention, instrument or agreement or principle of comity.[54]

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.][55]

Article 15. Depositary[56]

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.

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[53] *Cooperation between authorities*: It has been suggested that the draft instrument contain a provision similar to article 14 of the International Convention on Maritime Liens and Mortgages (1993) (United Nations, *Treaty* Series, vol. 2276, No. 40538) (“MLMC 1993”), which provides for cooperation between authorities (A/CN.9/973, para. 24). This article reflects that suggestion and supplements the communication contemplated in article 5(4)(b).

[54] *Relationship with other treaties and national law*: Article 14 reproduces article 10 of the Beijing Draft with minor amendments. The provision was not considered by the Working Group at its thirty-sixth session. At the thirty-fifth session, there was some discussion about the relationship between the Beijing Draft and the Judgments Convention (A/CN.9/973, para. 24). This issue is considered in document A/CN.9/WG.VI/WP.85. The Working Group may wish to consider simplifying this provision by replacing the words “bilateral or multilateral convention, instrument or agreement or principle of comity” with “treaty”, as well as expanding the provision to preserve the application of national law that is more favourable to the recognition of foreign judicial sales (which may well be based on the principle of comity).

[55] *Relationship with the Geneva Convention*: See paragraphs 7 to 9 of the accompanying note.

[56] *Final clauses*: The final clauses in articles 15 to 20 are drawn from the United Nations Convention on International Settlement Agreements Resulting from Mediation (2018), the most recent treaty prepared by UNCITRAL.

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 settlement agreements concluded 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[57]

Issued in accordance with the provisions of article 4 of the [draft instrument on the judicial sale of ships]

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]*

on …… *[date/month/year]*, **at** …… *[hour]* **at** …… *[place][If the time and place of the judicial sale cannot be determined with certainty, the approximate time and anticipated place of the judicial sale, provided that an additional notice of the actual time and place of the judicial sale shall be provided when known but, in any event, not less than seven days prior to the judicial sale.]*[58]

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 and charges [to the highest bidder at or above the amount as set by the *[court or other authority conducting the sale]* subject to the terms and conditions set out below.]

Terms of the sale: *[such terms and conditions as apply to judicial sales conducted in the Party to the Convention, 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*

[57] *Notice of judicial sale – notice period*: 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, as provided for in article 11(2) of the MLMC 1993, would generally constitute an adequate period, the court or other authority conducting the judicial sale may have the discretion to provide a shorter notice period (for instance where the ship faces deterioration). The notice shall be in writing 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; or (c) any other manner agreed to by the person to whom the notice is to be given.

[58] *Notice of judicial sale – time and place of judicial sale unknown*: This alternative was provided in article 3(3)(b) of the original Beijing Draft, which is based on article 11(2) of the MLMC 1993. A concern has been raised that the proviso for a seven-day notice period in the event that the time and place of the judicial sale cannot be determined with certainty might, in practice, supersede the default 30-day notice period (A/CN.9/973, para. 75). This proviso is contained in the MLMC 1993. The Working Group may wish to consider whether the proviso should be contained in a separate provision in line with the drafting of the MLMC 1993.

failure to pay; persons excluded from bidding (e.g. under anticorruption, anti-money-laundering or similar regulations)].[59]

[59] *Notice of judicial sale – terms of sale*: The present draft leaves these matters, which include modalities for payment, to the domestic law of the State of judicial sale. Failure to comply with these terms may give rise to legal challenge in the State of judicial sale before a court exercising jurisdiction under article 9. In certain circumstances, it may also give rise to the ground for refusal in article 10(1)(b) by which the international effects of the judicial sale may be denied if the sale was procured by fraud committed by the purchaser.

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 jurisdiction of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship [and any title to and all rights and interests in the ship existing prior to the judicial sale were extinguished and all pre-existing mortgages and charges ceased to attach to the ship].[60]

1.	**State of judicial sale**	.....
2.	**Authority issuing this certificate**	
2.1	Name	.....
2.2	Address	.....
2.3	Telephone/fax/email, if available	.....
2.4	Place and date of judicial sale	.....
3.	**Ship**	
3.1	Name	.....
3.2	IMO number	.....
3.4	Port of registry	.....
3.5	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*) .....
4.	**Owner(s) immediately prior to the judicial sale**	
4.1	Name	.....
4.2	Address or residence or principal place of business	.....
4.3	Telephone/fax/email	.....

[60] See article 2(b) and accompanying footnote.

5. Purchaser

5.1 Name .....

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

5.3 Telephone/fax/email .....

[**6. Purchase price**][61] .....

At..... (place) **On** ..... (date)

.....
Signature and/or stamp

[61] See article 5(2)(h) and accompanying footnote.