~~Draft~~ Instrument on ~~the~~ Recognition of Foreign Judicial Sales of Ships

(Second Working Draft)

[Preamble: …]

Article 1 Definitions

For the purposes of this Instrument:

1. "Certificate" means the original duly authorized certificate, or a certified copy thereof, provided in terms of Article 5.

2. "Charge" means any registerable charge of the same nature as a mortgage or "hypothèque" effected on a ship and recognized as such by the law applicable in accordance with the private international law rules of the State in which the ship is sold by way of Judicial Sale.

3. "Court" means any competent judicial body defined as a court by the law of the S~~s~~tate in which the J~~j~~udicial S~~s~~ale takes place which is empowered under the laws of the State to sell or order the sale of a ship free and clear of any and all ~~liens, charges and~~ mortgages, ~~and~~ "hypotheques", or charges, and all maritime and other liens and other encumbrances of whatsoever nature, and to deal with all issues in relation to recognition of Judicial Sales of Ships accomplished in any other State.

4. "Day" means any calendar day.

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4.5. “Deficiency Amount” means any amount of a creditor’s claim against any person personally liable on an obligation which is secured by a mortgage, or “hypothèque” or charge, which remains unpaid after application of such creditor’s share of proceeds actually received following and as a result of a Jjudicial Ssale of a ship.

5.“Flag State” means a State whose flag a ship flies and is entitled to fly.

6.“Good-faith purchaser for value” shall mean any Purchaser or Subsequent Purchaser of a ship at a Judicial Sale for payment or in satisfaction of an obligation in a public auction or court-sanctioned private sale, where no wrongful conduct is chargeable to such Purchaser in connection with the Judicial Sale.

7.6. “Interested person” means the shipowner of a ship prior to itsa Judicial Sale or the holder of a mortgage, “hypothèque”, charge, or maritime lien and any other encumbrance of whatsoever nature attached to the ship prior to its a Judicial Sale.

8.7. “Judicial sale of a ship” or “judicial sale” or “sale” means any sale of a ship accomplished by or under the control of a Court in a State by way of public auction or private treaty or any other appropriate ways provided for by the law of the State in which the sale by which clean title to the ship is given to the Purchaser and the proceeds of sale are made available to the creditors is to takes place for the purposes of (1) execution or satisfaction of a judgment or other enforceable instrument, (2) enforcement of a maritime lien or mortgage or “hypothèque” or charge on the ship, or (3) preservation of maritime claims in respect of the ship or her sister ship.

9.8. “Maritime lien” means any claim lien recognized as a maritime lien on a ship by the law applicable in accordance with the private international law rules of the State in which the ship is sold by way of Judicial Sale.

~~10.~~9. “Mortgage” or “hypothèque” means any mortgage or “hypothèque” effected on a ship and recognized as such by the law applicable in accordance with the private international law rules of the State in which the ship is sold by way of Judicial Sale.

~~11.~~10. “Owner” or “Shipowner” means any person registered ~~recorded~~ in the register of ships of the State of Registration as the owner of the ship.

~~12.~~11. “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

~~13.~~12. “Purchaser” means any person who has acquired title ~~ownership of~~to a ship pursuant to ~~from~~ a Judicial Sale.

~~14.~~13. “Ship” means any ~~sea-going~~ ship ~~used in commercial trade and~~ capable of being an object of a Judicial Sale under the law of the State in which the Sale takes place.

~~15.~~14. “State” means any member state of the United Nations.

~~16.~~15. “State of registration” means the State in whose register of ships a ship is permanently registered at the time of its Judicial Sale~~has been entered~~.

~~17.~~16. “Subsequent purchaser” means any person who has acquired ~~ownership~~ from a Purchaser or its sub-purchaser title to ~~of~~ a ship which was sold by way of Judicial Sale.

Article 2 Scope of Application

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Mis en forme : Espace Avant : 2 ligne

This Instrument shall apply to the recognition of a Judicial Sale taking place in the territory of ~~a~~any State~~ other than the State in which its recognition is sought~~.

Article 3 Notice of Judicial Sale

1. Prior to a Judicial Sale in a State, the Court in such State shall ensure that notice in accordance with this Article is provided to :

   (a) T~~t~~he registered owner of the ship;

   (b) A~~a~~ll holders of registered mortgages, “hypothèques” or charges~~ which have not been issued to bearer~~;

   (c) A~~a~~ll holders of ~~registered mortgages, “hypothèques” or charges issued to bearer and all holders of~~ maritime liens, provided that the Court conducting the Judicial Sale has received~~s~~ notice of their respective claims; and

   ~~(d)~~T~~t~~he authority in charge of the ship’s register in the State of Registration~~; and~~

   ~~(e)~~(d) ~~the Embassy or Consulate of the ship’s Flag State to the State in which the Judicial Sale takes place, unless no such Embassy or Consulate is established in such State.~~

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

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(a) The name, the IMO number, the registered ~~ship~~owner of the ship;

(b) The time and place of the Judicial Sale; or if the time and place of the Judicial Sale cannot be determined with certainty, the approximate time and anticipated place of the Judicial Sale which shall be followed by additional notice of the actual time and place of the Judicial Sale when known but, in any event, not less than seven days prior to the J~~j~~udicial S~~s~~ale; and

(c) Such particulars concerning the Judicial Sale or the proceedings leading to the Judicial Sale as the Court conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

3. The notice specified in paragraph 2 of this Article shall be in writing, and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State in which the Judicial Sale is conducted and if deemed appropriate by the Court conducting the Judicial Sale, in other publication.

Article 4 Effect of Judicial Sale

Subject to:

(a) the ship being in the area of the jurisdiction of the State in which the Sale is accomplished, at the time of the Sale and

(b) the Sale having been conducted in accordance with the law of the State in which the

Sale is accomplished and the provisions of this Instrument

all rights and interests in the ship existing the ownership of the shipowner prior to itsthe Judicial Sale shall be extinguished and all mortgages, “hypothèques” or charges, except those assumed by the Purchaser, and all maritime and other kinds of liens (including Maritime liens) and all other encumbrances of whatsoever nature, shall cease to attach to the ship and title to the ship shall be transferred to the Purchaser in accordance with the law applicable.

Notwithstanding the preceding provisions of this article, no Judicial Sale shall extinguish any in personam claim for any Deficiency Amount.

Article 5 Issuance of a Certificate of Judicial Sale

When a ship is sold by way of Judicial Sale and the conditions required by the law of the State where the sale is made and by this Instrument have been met, the Court or court officer conducting the Sale shall, at the request of the Purchaser, issue a Certificate to the Purchaser containing the date of the Jjudicial Ssale and recording that (1) the ship has been sold in accordance with the law of the said State and the provisions of this Instrument free of all registered mortgages, “hypothèques” or charges, except those assumed by the Purchaser, and of all maritime and other kinds of liens (including Maritime liens) and of all other encumbrances of whatsoever nature, and (2) that all the rights and interests existing in the ship ownership of the shipowner prior to its Judicialthe Sale are is extinguished.

Article 6 Deregistration and Registration of the Ship

1. Subject to the provisions of Paragraph 4 of this Article, upon production by the Purchaser of athe Certificate provided for in Article 5 of this Instrument or a duly certified copy thereof

duly certified in accordance with the law of the State in which the Sale has taken place, the R~~r~~egistrar of the ~~ship's~~ Registry where the ship was registered prior to its ~~the~~ J~~j~~udicial S~~s~~ale ~~and which is a State Party~~ shall be bound to delete ~~the ownership registered prior to the Judicial Sale and~~ all registered mortgages, “hypothèques” or charges except those assumed by the Purchaser, and either to register the ship in the name of the Purchaser or to delete the ship from the Register and to issue a certificate of deregistration for the purpose of new registration, as the case may be.

2. If the ~~said~~ Certificate as provided for in Article 5 is not made in an official language of the State in which the abovementioned R~~r~~egistrar is located, the R~~r~~egistrar may request the Purchaser to submit a duly certified translation of the Certificate into such language. ~~The translation shall be certified by an official or qualified translator or by a diplomatic or consular agent.~~

3. The R~~r~~egistrar may also request the Purchaser to submit a duly certified copy of the said Certificate for its files.

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4. If, before the deletion of any registered mortgages, “hypothèques” and charges and the registration of the ship in the name of the Purchaser or the issuance of a certificate of deregistration as the case may be, the Registrar receives an objection raised by an Interested Person to the deletion or the registration or the issuance and supported by evidence proving that an action challenging the sale has been brought before a court the State in which the Judicial Sale took place, the registration of the ship in the name of the Purchaser will be suspended until a final judicial decision is rendered over the challenge, or the objection is withdrawn .

~~4.Before the process of deregistration or subsequent registration provided for in Paragraph 1 of this Article in respect of a ship is completed, if the registrar is put on notice with~~

~~necessary supporting document(s) by an Interested Person that one or more of the circumstances set out in Article 8 below has arisen and therefore a legal action challenging or nullifying a Judicial Sale has been entertained by a Court in the State where the recognition is sought in respect of the ship registered with the registrar, the said registrar will not entertain any request for or if commenced, suspend the process of deregistration or subsequent registration of the ship and shall act in accordance with the following provisions:~~

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~~(a)where the legal action by the Interested Person challenging or nullifying the Judicial Sale is finally rejected by the Court, the registrar shall again be free to entertain the request for or be bound to resume and complete the suspended process of deregistration or registration of the ship; or~~

~~(b)where the legal action challenging or nullifying the Judicial Sale is finally upheld by the Court, the registrar shall not entertain any request for deregistration or subsequent registration of the ship by the Purchaser or cancel the suspended deregistration or registration process, as the case may be.~~

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~~5.In the event a deregistration or subsequent registration as provided for in Paragraph 1 of this Article is completed, but an Interested Person produces to the registrar a duly authenticated original court document (or a certified copy) evidencing that his legal action challenging or nullifying the Judicial Sale, as per paragraph 4 above, has been finally upheld by the Court in respect of the ship which has been deregistered or registered by the registrar, the said registrar shall, at the request of the Interested Person, be bound to~~

~~restore the previous register of the ship as it was prior to the deregistration ; provided, however, that the requirements of this Section shall not apply once the ship has been reregistered in the name of a good faith Purchaser of the ship for value following the Judicial Sale; and, provided, further, that this Section shall not prohibit any action for damages under the applicable laws of any State brought by an Interested Person against another Person based on such Person's wrongful conduct with regard to the Judicial Sale; and, provided, further, that this Section shall not be deemed to create any new cause of action.~~

Article 7 Recognition of Judicial Sale

1. Subject to the provisions of this Instrument, the Court of each State Party at the application of a Purchaser or Subsequent Purchaser shall recognize a Judicial Sale taken place in any other State with a Certificate as provided ~~accomp~~for by Article 5 of ~~lished in accordance with the law of the said State and the provisions of~~ this Instrument issued, as having the effect:

   (i) that title to ~~ownership of~~ the ship is transferred to the P~~p~~urchaser and the rights and interests of the previous owner in ~~to~~ the ~~vessel~~ship are extinguished;

   (ii) that ~~(subject to Article 4)~~ the S~~s~~hip has been sold free of all registered mortgages, “hypothèques” or charges, except those assumed by the Purchaser, ~~and~~ of all maritime and other liens, and of all ~~other kinds of liens and other~~ encumbrances of whatsoever nature.

2. Where a ship which was sold by way of a Judicial Sale is sought to be arrested or is arrested by a Court in a State Party for a claim arising prior to the Judicial Sale, the Court shall reject the application for arrest or release the S~~s~~hip from arrest upon production by

the Purchaser or Subsequent Purchaser of a~~the~~ Certificate as provided for in Article 5 of this Instrument or a duly certified copy thereof, unless the Interested Person furnishes proof evidencing ~~the~~ existence of any of the circumstances provided for in Article 8 of this Instrument.

3. Where a ship is sold by way of Judicial Sale in a State Party, any action challenging the Judicial Sale shall be brought only before a competent court of a State Party in which the Judicial Sale took place and no~~No~~ c~~C~~ourt ~~of a State Party~~ other than a court of the State Party in which the~~of the State Party in which recognition of a~~ Judicial Sale took place ~~is sought~~ shall be a competent court as having jurisdiction to entertain any action ~~application to~~ challenging~~e or nullify~~ the Judicial Sale.

4. Where a action ~~claim to~~ challenging~~e or nullify~~ ~~the~~a Judicial Sale is taken ~~filed~~ by an Interested Person against a~~the~~ Purchaser or a~~the~~ Subsequent Purchaser or a~~the~~ ship before a~~the~~ competent c~~C~~ourt, ~~of a State Party where recognition is sought,~~ the c~~C~~ourt shall dismiss ~~refuse to entertain~~ the action~~claim~~ or reject the relevant claim upon production by the Purchaser or Subsequent Purchaser of a~~the~~ Certificate which is provided for in Article 5 of this Instrument or a duly certified copy thereof, unless the Interested Person furnishes proof evidencing ~~the~~ existence of any of the circumstances provided for in Article 8 of this Instrument.

5. No person other than an Interested Person as defined by this Instrument shall be entitled to take any action challenging a Judicial Sale before a competent court, and no competent court of a State Party shall exercise its jurisdiction over any claim challenging a Judicial Sale unless it is made by an Interested Person as defined by this Instrument.

Article 8 Circumstances in which Recognition may be Refused

1. A. Recognition of a Judicial Sale may be refused by a Court of the State Party, at the request of an Interested Person, only if that Interested Person furnishes to the Court where the recognition is sought, proof that:

(a) at the time of the Sale, the Sship was not physically in the area of the jurisdiction of the State in which the Court issuing the Certificate provided for in Article 5 is located; or

(b) an action challenging the Judicial Sale is pending before a competent court as provided for by paragraph 3 of Article 7; orthe Judicial Sale was not accomplished in accordance with the law of the State in which the Judicial Sale took place or the provisions of this Instrument; or

(c) the Certificate produced by the Purchaser or Subsequent Purchaser is not authenticissued by the Court appearing on the produced Certificate.

1B. Notwithstanding the preceding provisions of this paragraph, no Any such request by an Interested Person will only be admitted unless if it is presented within one year 12 months of the date of the Jjudicial Ssale as recorded in the Certificate. This one year period shall not be subject to any suspension, interruption or extension whatsoever.

2. Recognition of a Judicial Sale may also be refused if the Court in a State Party in which recognition is sought finds that the recognition of the Judicial Sale would be contrary to the public policy of that State Party.

Article 9 Restricted Recognition

When signing, ratifying or acceding to this Instrument, any State may ~~on the basis of reciprocity~~ declare that it will only apply the Instrument to the recognition of a Judicial Sale made ~~accomplished~~ in the territory of a State Party and the S~~s~~hip is flying the flag of a State Party. It may also declare that it will apply this Instrument to Judicial Sale made in the territory of a non-Party State on the basis of reciprocity.

[Final clauses in respect of signature, ratification, acceptance, approval, accession, denunciation, coming into force, language, etc. shall be drafted later and separately.]