

ASSOCIATION FRANCAISE DU DROIT MARITIME

Here are comments on the second Working Draft of Instrument on Recognition of Foreign Judicial Sales of Ships.

Article 1 – Definitions.

No particular comment

Article 2 – Scope of Application

No particular comment

Article 3 – Notice of judicial sale

Here are some comments, issued from the applicable procedure under French Law.

The second draft provides for the service of a notice (§1, 2 and 3) which does not refer to any previous Court decision.

What is the legal nature of such a notice? Is it equivalent to a writ to appear before the Court? Is it itself the evidence of the creditor's will to pursue the Judicial sale of the ship?

3-1 It might be helpful to remind that under French Law, any creditor against a ship-owner, who is willing to introduce a judicial sale, has to prove an enforceable title against this one (1) .

3-2 The first part of a judicial sale, relating to the service to the shipowners of summons to pay the claim amount and of the "proces verbal" of judicial sale is conducted directly by the creditor, without any previous control of a judge (Decree n°67-967, October 27th, 1967, articles 31 to 39). This "proces verbal" is a notice of judicial sale, served to inform the shipowner that a claimant is willing to sale the ship before the competent court..This "notice" is also served to the holders of mortgages, maritime liens on the ship.

But once summons to pay the claim amount and the "proces verbal" of judicial sale are delivered to the shipowner, the claimant has to sue this one before the competent court to apply for a first judgement ordering the judicial sale. At this time, the judge controls the regularity of the procedure: evidence of an enforceable title, service of summons and "proces verbal" – or notice - of judicial sale.

(1) *There is a debate under French Law as to the nature of this enforceable title : must it be a judgment on the merits of the claim, that means an arbitration award or a judgment held by the competent court, being and provisionally enforceable on one hand, or, may it be only a provisional order or summary decision rendered by the judge of urgent matters, on the other hand ? There is no final French judicial decision as to this question. One can say that in case of arbitration clause provided for by a contract between the creditor and the ship-owner, the first one can obtain a summary decision, when the claim is not actually disputable, and enforce it by a judicial sale, because a referee decision is, under French Law, an enforceable title.*

3-3 Does the wording of article 3 mean that the Instrument will let each State (in the meaning of article 1, §14) deal with the procedure which takes place before the service of the notice the article 3 refers to? In such a case this notice is not equivalent to the writ served to obtain a first judgment ordering the sale and describing its conditions (date, minimum price, press announcement requirements...); is it only the information of the shipowner, all holders of registered mortgages, "hypothèques" or charges, all holders of maritime liens and the authority in charge of the ship's register in the State of Registration, of the scheduled Judicial Sale?.

Article 4 Effect of Judicial Sale

No particular comment

Article 5 Issuance of a Certificate of Judicial Sale

There is no provision as to the obligation of payment by the Purchaser of the price of the Sale. Will it be not careful to provide for the necessary evidence of this payment before any issuance of a certificate of judicial Sale?

Article 6 Deregistration and Registration of the ship

No particular comment

Article 7 Recognition of Judicial Sale

No particular comment

Article 8 Circumstances in which Recognition may be refused

No particular comment

Article 9 Restricted recognition

No particular comment