

Comité Maritime International

QUESTIONNAIRE

in respect of Recognition of Foreign Judicial Sales of Ships

After the CMI Athens Conference in 2008, the CMI Executive Council has set up an International Working Group (the “IWG”) to investigate problems in relation to the judicial sale of ships, in particular:

- (i) issues in respect of international recognition of foreign judicial sales of ships; and
- (ii) the necessity and feasibility of producing an international instrument on this subject.

This Questionnaire is intended to gather as much information as possible about the judicial sale of ships in your jurisdiction and your views on certain related issues. The questions contained in this Questionnaire are divided into 5 groups, each of which has a heading that indicates the core issue of the questions of this group. It would be greatly appreciated if the questions could be answered with not only a “yes” or “no”, but also with as many comments and/or explanations as possible. If more information about this subject is required, reference may be made to a paper which can be found at pages 342-356 of CMI Yearbook 2009 Athens II, or downloaded at the website, i.e. <http://www.cmi2008athens.gr/sub9.1.pdf>.

We would be most grateful if you could provide your responses to this Questionnaire as soon as possible, preferably before the end of July 2010, so that the IWG has sufficient time to make necessary preparations for the discussion to be conducted at the forthcoming CMI colloquium at Buenos Aires in this October. If you have any queries regarding this Questionnaire, please feel free to contact the Chair of the IWG, Dr. & Prof. Henry Hai Li at henryhaili@yahoo.com.cn.

1 . The concept of judicial sales of ships

Note:

The IWG is aware that in many jurisdictions judicial sale is termed differently, such as forced sale or court sale, etc. and that judicial sales of ships may be initiated or conducted for various purposes, such as to enforce a maritime lien or

mortgage on a ship, to enforce an effective judgment or arbitral award, or to preserve a maritime claim taking the ship as a wasting asset. It is hoped that your answers and comments to the questions within this group will help to produce a proper definition of judicial sales of ships for the purpose of this project and/or the future international instrument.

- 1.1 Is the term judicial sale or judicial sale of ship (or a similar term such as forced sale) defined in the law of your jurisdiction? If yes, please provide the definition. If not, please explain what kind of sale of ship equates to a judicial sale of ship by which all liens or charges or encumbrances attached to the ship before the sale will be extinguished?
- 1.2 For what purpose may a judicial sale of ship be initiated and conducted in your jurisdiction?
- 1.3 In what circumstances and on what conditions may a judicial sale of ship be initiated and conducted in your jurisdiction?
- 1.4 Will a judicial sale of ship in your jurisdiction necessarily be conducted by or under the control of a court?
- 1.5 Is auction the only method of judicial sale of ships in your jurisdiction? If not, please list and explain in detail all other ways, such as private treaty, which may be used for judicial sales of ships?

2. The key procedural elements of judicial sales of ships

Note:

Based on the understanding that judicial sales of ships may occur in different kind of actions (such as an action *in rem*, an action *in personam*, an action for conservation or an action for enforcement) the procedures for judicial sales of ships may vary. It is hoped that the answers and comments to the questions in this group will help to establish the most common elements or the basic characteristics of the procedures for judicial sales of ships, and to determine the necessary procedural elements of a judicial sale of ship so that it will be internationally recognised.

- 2.1 Briefly and without going into detail, what is the general procedure or the

- key procedural elements of a judicial sale of ship in your jurisdiction?
- 2.2 Is it necessary to provide written notice to the register of ships in which a ship is entered before that ship is sold by way of judicial sale?
 - 2.3 Is it necessary to provide written notice to the registered ship-owner before a ship is sold by way of judicial sale? And, is there any procedure by which the registered ship-owner may challenge the sale of the ship? If yes, please explain in detail.
 - 2.4 Is it necessary to provide written notice to the registered mortgagees, the known holders of maritime liens and/or the known holders of other charges in respect of the ship before the ship is sold? And, is there any procedure by which the mortgagees and/or the aforesaid holders may get access to the distribution of the proceeds of the sale of the ship? If yes, please explain in detail.
 - 2.5 Following the judicial sale of a ship, will a document such as an order or a certificate be issued to the purchaser by the court that conducted or controlled the judicial sale of ship, to the effect that the ship is sold free of all mortgages, liens, charges and encumbrances, or that the purchaser has acquired a clean title of the ship from the judicial sale?
 - 2.6 Is there any difference in procedure if the ship to be sold by way of judicial sale is a foreign ship? If yes, please highlight the difference in detail.

3. The effects of judicial sales of ships

Note:

It is observed that once a ship is sold by way of judicial sale, certain legal effects or consequences will follow. For example, in many jurisdictions, the ownership of the previous ship-owner will cease to exist and/or the mortgages, maritime liens and other charges attached to the ship prior to the sale will be extinguished. The questions in this group are intended to collect as much as possible information regarding your jurisdiction and to identify the most common legal effects or consequences which a judicial sale of ship may bring about. It might be worth

mentioning that the questions in this group should be understood and answered without regard for any foreign elements.

- 3.1 What legal effects or consequences would a judicial sale of ship bring about?
- 3.2 Will a judicial sale of ship extinguish the previous ownership?
- 3.3 Will a judicial sale of ship extinguish all mortgages, liens, charges or encumbrances attached to the ship before the sale?
- 3.4 Will the purchaser acquire a clean title over the ship, good against the whole world, through the judicial sale of ship?
- 3.5 Will a judicial sale of ship automatically annul the previous registration of the ship (including the registration of the ship's nationality, ownership, mortgage, bareboat charter, etc.) ?
- 3.6 On production of a document such as an order or a certificate issued by the court that conducted or controlled the judicial sale of the ship, will the register of ships delete the previous registration of or deregister the ship (including the registration of the ship's nationality, ownership, mortgage, bareboat charter, etc)?
- 3.7 On production of a document such as an order or a certificate issued by the court that conducted or controlled the judicial sale of the ship, will the register of ships register the ship in its registration or enrolment regardless of whether the previous registration of the ship is deleted or not ?

4. Recognition of legal effects of foreign judicial sales of ships

Note:

It is observed that ships may be sold by way of judicial sale in one jurisdiction, while recognition of such sale may be required in another jurisdiction. Non-recognition of foreign judicial sales of ships may result in a number of problems or conflicts of laws. In addition, it is observed that in many jurisdictions, no ready provisions of law are available as to when and/or on what

conditions a foreign judicial sale of ship will be recognized as having the same legal effects as a domestically accomplished judicial sale of ship. In view of the above, it is hoped that the answers and/or comments to the questions in this group will help to gather as much information as possible about the real situation and the prevailing practices in your jurisdiction with respect to recognition of foreign judicial sales of ships.

- 4.1 Will a judicial sale of a ship accomplished in a foreign jurisdiction be recognized in your jurisdiction as having the same legal effects as the judicial sale of a ship accomplished in your jurisdiction? If yes, please list the circumstance and explain the conditions for such recognition.
- 4.2 Would a court in your country have jurisdiction over a case brought by the previous ship-owner and challenging the foreign judicial sale of a ship?
- 4.3 Would a court in your country have jurisdiction over a case brought by the holder of a maritime lien, mortgage or other charge attached to the ship prior to the foreign judicial sale of a ship and challenging the foreign judicial sale of a ship?
- 4.4. If the court in your country would have jurisdiction over the cases mentioned in Question 4.2 and/ or Question 4.3, which country's law would apply with regard to the substantive issues of the dispute?
- 4.5 If a ship which is entered in a register of ships in your jurisdiction is sold in a foreign jurisdiction by way of judicial sale, will the register of ships in your jurisdiction delete the registration of that ship upon notice of the foreign judicial sale or upon production by the purchaser of a document such as an order or a certificate issued by the foreign court that conducted and controlled the sale? If yes, please explain the circumstances and conditions in detail.
- 4.6 If a foreign ship were sold in a foreign jurisdiction by way of judicial sale, will a register of ships in your jurisdiction enter that ship in its registration regardless of whether the previous foreign registration has been deleted?

5. The necessity and feasibility to have an international instrument on recognition of foreign judicial sales of ships

Note:

The IWG is aware of a few cases regarding the recognition of foreign judicial sales of ships. It is believed that the reported cases represent just a small part of the whole picture. On the other hand, since the International Convention on Maritime Liens and Mortgages 1993 came into force on 5 September 2004, and provisions concerning notice and effects of forced sale are contained therein, it might be sensible to consider whether it is necessary and feasible to work out an international instrument, before further resources are put into this project. For this purpose, the questions in this group are designed to gather as much information as possible on the whole picture and to identify as many real problems that have been encountered by the international shipping industry as possible.

- 5.1 Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale and that sale has been challenged by the previous ship-owner or another interested person in a foreign jurisdiction? If yes, please list the cases and highlight the issues involved in detail.
- 5.2 Have there been any cases in your jurisdiction in which a ship has been sold by way of judicial sale in a foreign jurisdiction and that sale has been challenged by the previous ship-owner or another interested person in your jurisdiction? If yes, please list the cases and highlight the issues involved in detail.
- 5.3 Article 11 of the International Convention on Maritime Liens and Mortgages 1993 provides that notice of a forced sale must be given to various parties. Do you think that those provisions are appropriate and should they be accepted as the basic requirements for recognition of a foreign judicial sale of ship?
- 5.4 Article 12.1 of the International Convention on Maritime Liens and Mortgages 1993 sets down two conditions that must be satisfied so that the registered mortgages or charges, liens and other

encumbrances attached to a ship shall be extinguished after its forced sale. Do you think that those provisions are appropriate and should also be followed in recognition of a foreign judicial sale of ship?

5.5 Article 12.5 of the International Convention on Maritime Liens and Mortgages 1993 regulates the issuance of a certificate by the court that conducted the sale and the deregistration and registration of the ship that has been sold. Do you think that those provisions are appropriate and should they be made of general application in recognition of a foreign judicial sale of ship?

5.6 Bearing in mind that the International Convention on Maritime Liens and Mortgages 1993 has come into force and that provisions concerning notice and the effects of forced sale are contained therein, is it still necessary and feasible to have a separate international instrument, such as a convention, to deal with issues regarding the recognition of foreign judicial sales of ships?
