

22 September 2021

JUDICIAL SALE OF SHIPS

Notes for the 39th Session of

UNCITRAL Working Group VI Judicial Sales of Ships

Vienna, 18 to 22 October 2021

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| <p><i>Article 4. Procedure and notice of judicial sale</i></p> <p>3. The authorities of the State of judicial sale shall transmitted the notice to the repository referred to in article 11 for publication, and thereafter check whether the repository has duly publish it.</p> | <p>The proposal makes clear that (i) the authorities of the State of judicial sale have obligation to transmit the notice to the repository and (ii) check, thereafter, whether the notice has been duly published by the repository, which implies a duty to ask the repository to remedy the omission.</p> <p>(This would relieve the repository of liability for the omission, as the burden of the notification via repository will remain on the authorities of the State of judicial sale.)</p> |
| <p><i>Article 10. Circumstances in which judicial sale has no international effect</i></p> <p>A judicial sale of a ship shall not have the effect provided in article 6 in a State Party other than the State of judicial sale if a court in the other State Party determines that</p> <p>(a) paragraph 3 of article 4 has been violated, and therefore the notice has not been made available to the public according to article 11.</p> <p>(b) the effect would be <i>otherwise</i> [manifestly] contrary to the public policy of that other State Party</p> | <p>It will be very simple, easy and speedy to find out (by a look on the screen) for any party, including the Court or other authorities in <i>the State Party</i> whether or not a <i>notice</i> has been posted on GISIS.</p> <p>The proposed solution provides some comfort to <i>the Stat Parties</i>. On one hand, <i>the State Parties</i> leave the whole process of (classical) notification and its control to the law and jurisdiction of <i>the State of Sale</i>, but, on the other hand, they retain control over the digital notification via GISIS. Therefore, at least they could be sure that a notice has been widely available to the notifying parties on the Internet.</p> |

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| <p><i>Article 9. Jurisdiction to avoid and suspend judicial sale</i></p> <p>[5. The effects of avoidance or suspension of a judicial sale shall be determined by a court in the State of judicial sale or any other State Party, provided such court according to <i>lex fori</i> has jurisdiction to hear the case.]</p> <p>[5. The effects of avoidance of a judicial sale shall be determined by applicable law].</p> | <p>As the judicial sale is governed by the law of <i>the State of sale</i>, and the courts of that state have exclusive jurisdiction for the claims for avoidance / suspension of the judicial sale, it seems that the proper question is not which law should govern the effects of the avoidance, but which court shall have jurisdiction to determine effects (or consequences) of the avoidance or suspension? There is no need to say that the court which accepted jurisdiction would choose the applicable law in accordance with <i>lex fori</i> (choice of law rules).</p> <p>This might be an exercise in the procedure for recognition of the avoidance judgement. Two question might be at stake: (i) Whether the avoidance as such violates the public order?, and (ii) Whether the remedies ordered by the judgement (which rightfully avoided the sale) are against the public policy? For example, the order to give a ship back to the original owner, which might be detrimental to the interests of the innocent purchaser.</p> <p>In reality the courts of <i>the State Parties</i> concerned will have to decide whether or not (i) they will recognise the verdict of judgement for avoidance / suspension of the sale, and (ii) accept the consequences which such judgement produces in <i>the State of sale</i>.</p> <p>Additional problem might be a declaratory judgement for avoidance of sale, without setting up any remedies. To which court an interested party will apply, say for deletion of the ship from the register? To the court in <i>the State of sale</i> or to the court in the State were the ship has been registered (upon the Certificate)?</p> |
| <p><i>Article 10. Circumstances in which judicial sale has no international effect</i></p> | |

A judicial sale of a ship **or its avoidance or the consequences of avoidance** shall not have the effect provided in article 6 in a State Party other than the State of judicial sale if a court in the other State Party determines that

(c) paragraph 3 of article 4 has been violated, and therefore the notice has not been made available to the public according to article 11.

(d) the effect would be *otherwise* [manifestly] contrary to the public policy of that other State Party