

QUESTIONNAIRE ON JUDICIAL SALE
QUESTION 5

in respect of Recognition of Foreign Judicial Sales of Ships

COUNTRY	QUESTION 5.1	QUESTION 5.2	QUESTION 5.3
	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.	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.	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?
Argentina	No records	Yes – challenges defeated	Limited notice available
Belgium	Not aware	Not aware	No comment
Brazil	Further research needed	Yes – challenge defeated	Yes
Canada	No	No	Qualified. Yes
China	Yes – judicial sale accepted	Yes – challenge failed	Yes
Denmark	No	Yes – challenge failed	Yes – requirements minimum
Dominica	No	No	Yes – minimum requirement
France	No	No	Yes
Germany	No	No	Yes
Italy	No	No	Yes

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Malta	No	No	Qualified. Yes
Nigeria	No	No	Qualified. Yes
Norway	No	No	Yes
Singapore	No	No	No
South Africa	Yes	Yes – challenge failed	Yes
Spain	No	No	Yes
Sweden			
USA	Yes	Under review	Under review
Venezuela	No	No	Qualified. Yes

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in respect of Recognition of Foreign Judicial Sales of Ships

COUNTRY	QUESTION 5.4	QUESTION 5.5	QUESTION 5.6
Argentina	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?	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?	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?
Belgium	Yes	Yes	No
Brazil	No view	Probably not	Possibly
Canada	Yes	Yes	No
China	Yes and No	Yes	Yes
Denmark	Yes	Yes	Yes
Dominica	Yes	Yes – more detail required	Yes
France	Yes	Yes	Yes
France	Yes	Yes	Yes

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Germany	Yes	Yes	No support CMLM
Italy	Yes	Yes	Wait outcome of IWG Report
Malta	Qualified. Yes	Qualified. Yes	No – amend CMLM
Nigeria	Qualified. Yes	Qualified. Yes	No – amend CMLM
Norway	Qualified. Yes	Yes	No
Singapore	No	Yes	Yes
South Africa	Yes	Yes	Yes
Spain	Yes	Yes	No – amend CMLM
Sweden			
USA	Under review	Under review	Under review
Venezuela	Yes	Yes	Yes

1. Article 11 - Notice of forced sale

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:
 - (a) the authority in charge of the register in the State of registration;
 - (b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;
 - (c) all holders of registered mortgages. "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and
 - (d) the registered owner of the vessel
2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:
 - (a) the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or,
 - (b) if the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.

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 interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

2. Article 12 - Effects of forced sale

1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:
 - (a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; and
 - (b) the sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.
2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.
3. A State Party may provide in its law that in the event of the forced, sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sales, before all other claims secured by a maritime lien on the vessel.
4. If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.
5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages,

"hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.