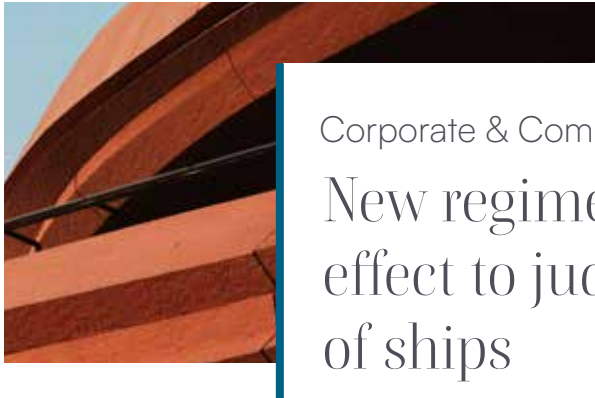


ANALYSIS



Corporate & Commercial

New regime for giving international effect to judicial sales of ships

UN Convention on the International Effects of Judicial Sales of Ships establishes a mechanism to ensure that judicial sales of ships which confer clean title in the State Party in which they are conducted produce the same effect in other State Parties without bureaucratic obstacles that hinder trade in this sector.

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On 2 July, the Instrument of Ratification by Spain of the United Nations Convention on the International Effects of Judicial Sales of Ships, done at New York on 7 December 2022 (the Convention), which had already been signed on 19 June 2024, was published in the Official Journal of Spain (BOE, No. 160). This Convention applies to judicial sales of ships conducted in a State Party where the ship is physically within the territory of the State of judicial sale at the time of the sale. Sales of warships, their auxiliary vessels and other ships owned or operated by a State which, immediately prior to the time of judicial sale, were used only on government non-commercial service, are excluded (article 3).

The Convention's regime is 'closed' in the sense that it applies only between States Parties, but it is not exclusive, since, in accordance with Article 14, it does not preclude other bases for giving international effect to a judicial sale. To date, although it has been signed by thirty-three States, it has only been ratified by Spain, Barbados, El Salvador, Panama and the European Union (the latter because some of its provisions relate to matters in respect of which jurisdiction has been transferred to it by the Member States; specifically, the criteria for jurisdiction to avoid and suspend judicial sales, which affect the content of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the Convention's provisions relating to 'notice of judicial sale', which affect the rules on the service of judicial and extrajudicial documents in civil or commercial matters under Regulation (EU) 2020/1784).

The Convention regulates the international effects of judicial sales of ships which, in accordance with the law of the State in which they are conducted, confer clean title (free and clear of any mortgage or charge) on the purchaser,

and aims to ensure that when such sales are carried out in a State Party, they have the same effect in every other State Party (Art. 6), with the sole exception of public policy (Art. 10). It does not conflict with Articles 480 to 486 of the Maritime Navigation Act (LNM), concerning the compulsory sale of ships, as it preserves the rules of the State in which the sale is conducted, which govern both the procedure to be followed and the means of challenging the sale prior to its completion, as well as the determination of the time of the sale for the purposes of the Convention.

With a view to facilitating the recognition of such sales amongst the States Parties, the Convention establishes how the effects of a judicial sale — which has conferred clean title to the ship under the law of the State of judicial sale and which has been conducted in accordance with the requirements of that law and of the Convention — are to be recognised in other States Parties. The central element of the system is the certificate provided for in Article 5, which has evidentiary value and must be recognised in all States Parties, without the need for legalisation or similar formality. For the certificate to be issued, the sale must have been notified, prior to its taking place, to: a) the registry of ships or equivalent registry with which the ship is registered; b) all holders of any mortgage or *hypothèque* and any registered charge, provided that the register in which it is registered and any instrument required to be registered under the law of the State of registration are open to public inspection, and provided that extracts from the register and copies of such instruments are obtainable from the registry; c) all holders of any maritime lien, provided that they have notified the court or other public authority conducting the judicial sale of the claim secured by the maritime lien in accordance with the regulations and procedures of the

State of judicial sale; (d) the owner of the ship for the time being; and (e) if the ship is granted bareboat charter registration: (i) the person registered as the bareboat charterer of the ship in the bareboat charter register; and (ii) the bareboat charter registry. The notice of judicial sale must be given in accordance with the law of the State of judicial sale, and must contain, as a minimum, the information mentioned in annex I. The notice must also be published by announcement in the press or other publication available in the State of judicial sale, and transmitted to the repository referred to in Article 11 for publication. These notice requirements do not replace or exclude those provided for under domestic law (in Spain, Arts. 481 and 482 LNM).

Failure to comply with the notice requirements would prevent the issuance of the certificate. Under the Convention, any claim challenging the validity of a certificate due to a failure to comply with the notice requirements is heard in the State of judicial sale in exercise of the exclusive jurisdiction conferred under Article 9 (according to which, the courts of the State of judicial sale shall have exclusive jurisdiction to hear any claim or application to avoid a judicial sale of a ship conducted in that State that confers clean title to the ship or to suspend its effects, which shall extend to any claim or application to challenge the issuance of the certificate of judicial sale. Furthermore, the courts of a State Party shall decline jurisdiction in respect of any claim or application to avoid a judicial sale of a ship conducted in another State Party that confers clean title to the ship or to suspend its effects). However, it is conceivable that a particularly egregious failure to comply with the notice requirements could give rise to an application invoking the public policy ground under Article 10 in another State in which the effect of the judicial sale is sought to be produced.

The certificate is issued, once the sale has been completed, by the court or other public authority that conducted the judicial sale, or by another competent authority of the State of judicial sale, in accordance with the procedures laid down for this purpose in each State, although Article 5 of the Convention sets out the minimum content, all substantially in the form of the model contained in annex II: a) a statement that the ship was sold in accordance with the requirements of the law of the State of judicial sale and the requirements laid down in the Convention; b) a statement that the judicial sale has conferred clean title to the ship on the purchaser; c) the name of the State of judicial sale; d) the name, address and the contact details of the authority issuing the certificate; e) the name of the court or other public authority that conducted the judicial sale and the date of the sale; f) the name of the ship and registry of ships or equivalent registry with which the ship is registered; g) the IMO number of the ship or, if not available, other information capable of identifying the ship; h) the name and address of residence or principal place of business of the owner of the ship immediately prior to the judicial sale; i) the name and address of residence or principal place of business of the purchaser; j) the place and date of issuance of the certificate; and k) the signature or stamp of the authority issuing the certificate or other confirmation of authenticity of the certificate).

This certificate, which in certain cases may be in the form of an electronic record, must be transmitted 'promptly' to the repository referred to in Article 11 for publication. Any decision by a court avoiding or suspending the effects of a judicial sale for which a certificate has been issued in accordance with Article 5 must also be published in this repository. The repository shall be the Secretary-General of the International Maritime Organization or an

institution named by the United Nations Commission on International Trade Law.

A judicial sale for which such a certificate of judicial sale has been issued shall have the effect in every other State Party of conferring clean title to the ship on the purchaser, whereby: (i) at the request of the purchaser or subsequent purchaser and upon production of the certificate of judicial sale, the registry or other competent authority of a State Party shall: a) delete from the register any mortgage or *hypothèque* and any registered charge attached to the ship that had been registered before completion of the judicial sale; b) delete the ship from the register and issue a certificate of deletion for the purpose of new registration; c) register the ship in the name of the purchaser or subsequent purchaser, provided further

that the ship and the person in whose name the ship is to be registered meet the requirements of the law of the State of registration; d) update the register with any other relevant particulars in the certificate of judicial sale; e) if the ship was granted bareboat charter registration, delete the ship from the bareboat charter register and issue a certificate of deletion; and (ii) if an application is brought to arrest a ship or to take any other similar measure against a ship for a claim arising prior to a judicial sale of the ship, the court or other judicial authority shall, upon production of the certificate of judicial sale, dismiss the application and, if the arrest has already been effected, the release of the ship shall be ordered. In all such cases, in the State where the certificate is to take effect, a certified translation into its official language may be required.