

Allanando el camino para el reconocimiento de las ventas judiciales de buques celebradas en el extranjero. Análisis comparado de los procedimientos de venta judicial en jurisdicciones seleccionadas

Paving the way to recognising foreign judicial sales of ships. A comparative analysis of judicial sale proceedings in selected jurisdictions

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Recibido: 21.09.2022 / Aceptado: 21.12.2022

DOI: 10.20318/cdt.2023.7536

**Resumen:** El reconocimiento de la venta judicial de buque en el extranjero depende de las normas de derecho internacional privado del país donde se pretende su reconocimiento que, como es sabido, suele examinar diversos requisitos. Como quiera que los mismos están influenciados por las normas que rigen los procedimientos internos, este artículo realiza un análisis de derecho comparado en diversas jurisdicciones para comprender mejor cómo funcionan los mecanismos de reconocimiento de este tipo de ventas. De él se depende que, al menos, seis aspectos reciben un tratamiento diferente dependiendo de la jurisdicción examinada. De ellos, cuatro son susceptibles de reaparecer en el momento del reconocimiento poniendo en peligro la libre circulación del título de comprador del buque, esto es, la localización del buque en el momento de la venta, en qué condiciones se notifica, las divergencias en la venta estándar y la protección adicional otorgada a los acreedores privilegiados en la distribución del producto. En cambio, cuestiones como en qué momento iniciar una venta y cómo conseguir el mejor precio posible, aunque sustancialmente divergentes, no suelen ser obstáculo al reconocimiento.

**Palabras clave:** Buques, ventas judiciales, normas de procedimientos de venta judicial, reconocimiento de la venta judicial de un buque en el extranjero

**Abstract:** The extent to which a state will recognise the effects of a foreign judicial sale of a ship is subject to its private international law rules, which consist of various conditions for recognition. The application of these conditions may be mediated by the principles informing domestic sales. Thus, to understand better how national recognition mechanisms work, this article undertakes a comparative legal analysis of sale proceedings in selected jurisdictions to examine whether these principles fundamentally diverge and may impair the recognition. Varying principles exist as regards six aspects of the sale proceeding. In light of the prevailing conditions for recognition of foreign judicial sales, it is inferred that the principles concerning four sale aspects may resurface at the recognition stage, putting in danger the free circulation of the ship purchaser's title. These four sale aspects include the ship's location, the notification of sale, the variance in the standard sale, and the extra protection given to high-ranking creditors in the distribution of proceeds. In contrast, the principles in respect of the remaining two sale aspects, viz., the time to initiate a sale and the approach to obtaining the best possible price, though substantially divergent, may not impede the recognition.

**Keywords:** Ships, judicial sales, principles informing sale proceedings, recognition of foreign judicial sales

**Sumario:** I. Introduction. II. Divergences and convergences in sale proceedings across jurisdictions. 1. Conditions for initiating a judicial sale. A) What is a ship for judicial sale purposes. B) Who can initiate a sale before which public authority. C) Ship arrest before the sale. 2. Preparations for the sale. A) Service of the documents concerning the sale. B) Appraisal, publication and notification. 3. Concluding the sale. A) Sale by a public authority. B) Court-approved private sale. C) Stopping the sale. 4. After the sale: priority and payout. III. Discussion: relevance to the recognition of foreign judicial sales. IV. Conclusion.

## I. Introduction

1. “Recognition of foreign judicial sales is an essential part of the theory, practice and integrity of maritime liens, mortgages and other charges against a ship.”<sup>1</sup> Absent recognition of the validity and effects of judicial sales, maritime privileges on ships cannot function properly. On the one hand, lacking confidence that the title conferred by sale in one state will be recognised wherever the ship goes, potential bidders would not offer a market price for the ship, reducing the possibilities of creditors being sufficiently paid out of the sale proceeds.<sup>2</sup> On the other hand, one legal system might resurrect the privileges on the ship, which were purged by sale in another, bringing legal uncertainty to the parties engaging in maritime ventures.<sup>3</sup>

2. Considering the importance of recognition of judicial sales, the United Nations Commission on International Trade Law (UNCITRAL) has been deliberating over a future international convention governing the international effects of judicial sales since 2019.<sup>4</sup> The UNCITRAL wishes that a uniform and simple solution could be established to facilitate the free circulation of the purchaser's title to the ship obtained from a judicial sale.

<sup>1</sup> W. TETLEY / R.C. WILKINS, *Maritime Liens and Claims*, International Shipping Publications, 1998, p. 1119.

<sup>2</sup> Comité Maritime International (CMI), *Yearbook 1985 Lisboa I*, p. 46.

<sup>3</sup> W. TETLEY / R.C. WILKINS, *Maritime Liens and Claims*, International Shipping Publications, 1998, pp. 1098-1100; Y. SHAO / L. CARBALLO PIÑEIRO, “Towards a Harmonised Approach to the Recognition of Foreign Judicial Sales of Ships Through Conventions Addressing Maritime Liens and Mortgages”, *Il diritto marittimo*, 2021, pp. 736-761.

<sup>4</sup> Documents about the progression of this draft can be found on the website of the UNCITRAL: main page – working documents – Working Group VI <[https://uncitral.un.org/en/working\\_groups/6/sale\\_ships](https://uncitral.un.org/en/working_groups/6/sale_ships)> accessed 28 October 2021.

3. The extent to which a state will recognise foreign judicial sales is subject to its private international law rules.<sup>5</sup> Since these rules intend to further the considerations and aims upon which domestic maritime law rules are built,<sup>6</sup> their application may be mediated by the legal principles embedded in the sale procedural rules under domestic law. Accordingly, recognition will be denied, if a foreign sale is not in line with what the requested state considers fundamental legal values.

4. Notice requirements provide an example. English law follows the principle that ship arrest constitutes constructive notice to the world. Thus no notification of sale will be given to the creditors on the ship unless they have intervened or entered cautions.<sup>7</sup> In contrast, Dutch law follows the principle that an advertisement cannot replace the actual notification to interested parties. Hence, a forthcoming sale must be notified to the creditors known.<sup>8</sup> These divergences might be referred to by an English or Dutch court when recognising a foreign sale, for instance, being employed as criteria for deciding whether or not natural justice or fair proceedings have been breached.<sup>9</sup>

5. Do sale proceedings and their underlying principles differ greatly in other essential matters, such as whether a ship arrest shall precede the sale, or when can a sale be initiated? More importantly, whether and how will those differences affect the recognition of foreign judicial sales? To answer such, an exploration of sale proceedings seems entailed.

6. This article hence examines the legal divergences and convergences of sale proceedings in four legal systems: English, Dutch, Maltese, and Chinese law. In this way, jurisdictions rooted in common and civil law traditions, and representing mixed and Asian legal systems, are all probed, enabling a comprehensive comparative legal study regarding judicial sales of ships. The following section examines the national procedural rules on judicial sales, followed by a section identifying and comparing the legal principles underlying these rules. The relevance of the identified principles to the recognition of foreign judicial sales is also discussed. This article finalises with some conclusions. Maritime claims are excluded from this research which only concerns the sale procedure. No private international law rules regarding the existence and ranking of maritime claims are referred to either. Besides, only sea-going ships are concerned.

## II. Divergences and convergences in sale proceedings across jurisdictions

7. The judicial sale of a ship is an enforcement measure that realises the value of the defendant's asset to satisfy a claim in relation to the ship or the shipowner. As averred by David C Jackson, judicial sales are a remedy determinative of substantive issues, as opposed to an interim remedy, such as ship arrest.<sup>10</sup> This section chronologically outlines the procedural stages of a sale, *i.e.*, from initiating the sale to distributing the sale proceeds.

### 1. Conditions for initiating a judicial sale

8. Three basic conditions must be met before a sale can be commenced: (i) there is a ship subject to a sale; (ii) the applicant is entitled to commence a sale; (iii) and the ship is arrested prior to the sale.

<sup>5</sup> For a synopsis of the recognition of foreign judicial sales, see Y. SHAO / L. CARBALLO PIÑEIRO / M. Q. MEJIA, JR., "Recognition of Foreign Judicial Sales of Ships and Private International Law", *JIML*, vol. 28, 2022, pp. 166-186.

<sup>6</sup> S. BRÆKHUS, «Choice of Law Problems in International Shipping (Recent Developments)», *Collected Courses of the Hague Academy of International Law*, vol. 164, pp. 259-260.

<sup>7</sup> See Section 2.

<sup>8</sup> *ibid.*

<sup>9</sup> Y. SHAO / L. CARBALLO PIÑEIRO / M. Q. MEJIA, JR., "Recognition of Foreign Judicial Sales of Ships and Private International Law", *JIML*, vol. 28, 2022, pp. 166-186.

<sup>10</sup> D. C. JACKSON, *Enforcement of Maritime Claims*, Informa Law from Routledge, 2005, ch. 25.

## A) What is a ship for judicial sale purposes

9. Ships are a transportation mode known to all. However, the asset that constitutes a ship for enforcement purposes varies from state to state.

10. English law does not have a definition of a ship for the purpose of arrest and sale, but a general definition of a ship can be found in the precedents and legislation concerning admiralty jurisdiction. “Used in navigation” is employed as the criterion for deciding whether or not a craft is a ship.<sup>11</sup> “Used in navigation” embodies two aspects: first, the water where the craft is used, is navigable;<sup>12</sup> second, the craft is capable of making ordered progression on the water from one point to another for discharging people or cargoes at the destination.<sup>13</sup> Meeson and Kimbell emphasise the importance of Section 1(1) of the Merchant Shipping Act 1921, whereby “a lighter, barge or like vessel used exclusively in non-tidal waters, other than harbours, shall not for the purpose of this Act, be deemed to be used in navigation.”<sup>14</sup> In other words, boats exclusively used on inland waters are not ships for the purpose of arrest and sale.

11. The Netherlands sets out a sweeping definition of ships, which applies to judicial sales.<sup>15</sup> All things, except for aircraft, that according to their construction are intended for floating, and do float or have floated, are ships.<sup>16</sup> Thus, vessels under construction,<sup>17</sup> floating hulks (shipwrecks),<sup>18</sup> jet skis<sup>19</sup> and boats used in inland navigation, all of which may be denied as ships in English law, constitute ships under Dutch law. Note that a foreign sea-going ship, of which the gross volume is less than 20, or the gross tonnage is less than 6, or in the case of a ship under construction, which is not registered in the public register, shall otherwise be sold in the manner for general movables.<sup>20</sup>

12. Maltese law does not define ships for judicial sales<sup>21</sup> but has a definition for general purposes. Article 2 of the Merchant Shipping Act (Maltese MSA)<sup>22</sup> employs “used in navigation” as the criterion for deciding whether or not a thing is a ship.<sup>23</sup> This provision, however, goes on to say that floating establishments or structures, and ships under construction, are also ships.<sup>24</sup> Thus, despite the identical words, “used in navigation” has different connotations in Maltese and English laws. It is unclear whether ships used in inland waterways are “used in navigation”. Given that the Maltese MSA is “based originally on the English merchant shipping legislation,”<sup>25</sup> it seems reasonable to infer that they may not be ships, provided that no explicit clarification exists in Maltese law for the time being.

<sup>11</sup> The Senior Court Act 1981, s 24(1); the Merchant Shipping Act 1995, s 313. See N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, paras 2.6 & 2.9.

<sup>12</sup> *The Mayor & Corporation of Southport v Morriss* [1893] 1 QB 359 (A sheet of water half a mile long could not be considered navigable); *Weeks v Ross* [1913] 2 KB 229 (Although the water on which the ship was used was short in the mile, the canal itself which included the concerned water was not enclosed but communicated to the sea via locks).

<sup>13</sup> *R v Goodwin* [2006] 1 WLR 546; [2006] 1 Lloyd’s Rep 432. *Steedman v Scofield* [1992] 2 Lloyd’s Rep 163 (In these two cases, a jet ski was considered not to be a ship); *Polpen Shipping Company Ltd v Commercial Union Assurance Company Ltd* [1943] KB 161 (A flying boat was not a ship); *Curtis v Wild* [1991] 4 All ER 172 (Navigation referred to proceeding from one point to another for the purpose of discharging people or cargo at the destination. If the ship was used for mere pleasure purposes in a reservoir, it was not used in navigation).

<sup>14</sup> N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para 2.28.

<sup>15</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 74.

<sup>16</sup> Book 8 of the Dutch Civil Code, effective 1 April 1991, a 1 (1). Hereinafter referred to as Dutch book 8.

<sup>17</sup> The Dutch Code of Civil Procedure, effective 29 March 1828, a 562a. Hereinafter referred to as Dutch CCP. Compare N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para 2.27.

<sup>18</sup> *European and Australasian Royal Mail v P. & O.* (1866) 14 LT 704.

<sup>19</sup> *R v Goodwin* [2006] 1 WLR 546; [2006] 1 Lloyd’s Rep 432. *Steedman v Scofield* [1992] 2 Lloyd’s Rep 163.

<sup>20</sup> Dutch CCP, a 576.

<sup>21</sup> J. SCERRI-DIACONO / others, “The Meaning of ‘Ship’ in Judicial Sales in Malta”, *JIML*, vol. 25, 2019, pp. 156-160.

<sup>22</sup> Chapter 234 of the Laws of Malta, effective 6 April 1973. Hereinafter referred to as Maltese MSA.

<sup>23</sup> Maltese MSA, s 2.

<sup>24</sup> *ibid.*

<sup>25</sup> R. COLES and E. WATT, *Ship Registration: Law and Practice*, 2<sup>nd</sup> ed, Informa, 2009, para. 19.2.

13. Chinese law defines ships in the Maritime Law of the People's Republic of China (Chinese ML),<sup>26</sup> whereby vessels no less than 20 gross tonnage and mobile at sea constitute ships.<sup>27</sup> Namely, vessels under construction which are not mobile, vessels used in inland navigation, and fixed establishments floating on water, cannot be categorised as ships. This definition is partly in line with the pertinent provisions in the Special Maritime Procedure Law of the People's Republic of China (Chinese SMPL)<sup>28</sup> and its interpretation (Interpretation of Chinese SMPL)<sup>29</sup> that crafts under 20 gross tonnage are not ships for maritime sale purposes. They shall be sold following the procedures for general movables.<sup>30</sup>

14. Based on the above, one may say that any craft used at sea and able to discharge people or cargoes at the destination constitutes a sea-going ship susceptible to a judicial sale. Additionally, it is to note that ships used in public service will usually be granted immunity from arrest or judicial sale.<sup>31</sup>

## B) Who can initiate a sale before which public authority

15. To commence a judicial sale, some legal systems require the creditor to obtain an enforceable title. Other states, however, do not regard an executive title as an indispensable precondition. Instead, a sale before judgment, *i.e.*, a sale *pendente lite*, is viable.

16. In English law and those following English maritime legislation,<sup>32</sup> a sale may be petitioned by any party at any stage<sup>33</sup> in an action *in rem*,<sup>34</sup> which is against the ship and initiated by issue of a claim form.<sup>35</sup> Under English law, actions *in rem* must be brought before the Admiralty Court of the Queen's Bench Division of the High Court.<sup>36</sup> Admittedly, it is common for the court to sell the arrested ship after a judgment on the merits is rendered,<sup>37</sup> but by virtue of the inherent jurisdiction of the Admiralty Court,<sup>38</sup> a sale *pendente lite* may also be approved by the court. When a creditor petitions a sale before judgment, a certificate proving proper service of the claim form and an affidavit setting out the grounds for the application must be submitted.<sup>39</sup>

<sup>26</sup> Effective 1 July 1993. Hereinafter referred to as Chinese ML.

<sup>27</sup> Chinese ML, a 3.

<sup>28</sup> Effective 1 July 2000. Hereinafter referred to as Chinese SMPL.

<sup>29</sup> Fa Shi [2003] 3. Hereinafter referred to as Interpretation of Chinese SMPL.

<sup>30</sup> Interpretation of Chinese SMPL, a 39.

<sup>31</sup> What constitutes public service varies between states and deserves a detailed discussion in its right; however, this falls outside the inquiry concerned here, so no further will be discussed. For details, see as follows: for English law, the State Immunity Act 1978, a 10; for Dutch law, Dutch CCP, a 436; for Maltese law, the Code of Organization and Civil Procedure, a 863; for Chinese law, Chinese ML, a 3. Besides, both the Netherlands and the UK are member states to the International Convention for the Unification of Certain Rules Relating to the Immunity of State-owned Vessels, signed at Brussels, April 10th 1926, and Additional Protocol, signed at Brussels, May 24, 1934 (176 LNTS 199). Article 3 of this convention sets out what ships are entitled to immunity from seizure, arrest or detention.

<sup>32</sup> Such as Singapore, Malaysia, Brunei and India. They all allow sales *pendente lite* in actions *in rem*, see L. TEC, "Judicial Sale of Vessels in Asia-Pacific Common Law Jurisdiction", in CMI, *Yearbook 2013*, pp. 150-166.

<sup>33</sup> The Civil Procedure Rules 1998, r 61.10. Hereinafter referred to as English CPR.

<sup>34</sup> The Senior Court Act 1981, s 20.

<sup>35</sup> English CPR, r 61.3.

<sup>36</sup> English CPR, r 61.2(1).

<sup>37</sup> Note that English CPR, r 61.5(1) allows an arrest both before and after judgment. This rule reverses the leading precedent *The Alletta* ([1974] 1 Lloyd's Rep 40), which mandated that the creditor's right of arrest was lost once the claim was merged into the judgment. At present, English law follows the decision of the Singapore High Court in *The Daien Maru* ([1986] 1 Lloyd's Rep 387), which held that if no bail had been provided for the ship in the action, the creditor would be entitled to arrest the ship in the same action after obtaining the judgment.

<sup>38</sup> The power of the court in this matter is supplemented by Rule 25.1 of the English CPR, which governs the interim remedy by sale with respect to the perishable property. See N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.125.

<sup>39</sup> A. MANDARAKA-SHEPPARD, *Modern Admiralty Law*, Cavendish Publishing, 2001, p. 139.

“Good reason” for sale must be substantiated in order for the court to order a sale pending action. In deciding on “good reason”, the admiralty judge seized<sup>40</sup> would consider the following matters. First, is there a claim to the satisfaction of the court?<sup>41</sup> Second, will the value of a ship be diminished by continuous arrest over a long period to the detriment of all parties, if a sale is not ordered?<sup>42</sup> Third, whether a judgment in default can be obtained, *i.e.*, whether or not at the date on which the judgment is entered an acknowledgement of service or defence has been filed.<sup>43</sup> If an action is defended, the court should review the application for sale more critically than it normally would in a default action.<sup>44</sup>

17. Dutch law, like most civilian jurisdictions,<sup>45</sup> provides that a judicial sale shall be initiated in virtue of an enforceable title.<sup>46</sup> The bailiff of the district court within whose competence the ship is situated<sup>47</sup> has the power to arrest the ship for enforcement purposes,<sup>48</sup> *i.e.*, executive arrest.<sup>49</sup> Then, in principle, the civil law notary will conduct the sale. Alternatively, in the case of a foreign-flagged ship, the district court which arrested the ship can conduct the sale upon the application by a creditor.<sup>50</sup>

Since a debtor is liable for a claim against it with all its assets,<sup>51</sup> the enforceable title must be against the shipowner or secured by a privilege in relation to the ship. Instruments that constitute enforceable titles include judicial decisions rendered by courts, authentic acts with enforceability clauses, and other documents designated by law as enforceable titles.<sup>52</sup> Notably, a mortgage established according to Dutch law, *i.e.*, in the form of a notarial deed that is inscribed in the public register, is an enforceable title.<sup>53</sup>

18. Maltese law requires an enforceable title for initiating a judicial sale<sup>54</sup> but permits sales *pendente lite* in exceptional cases.<sup>55</sup> A judicial sale as an enforcement measure<sup>56</sup> is ordered and carried out by the court which delivered the judgment, or by the court competent to take cognisance of the ship when other executive titles are enforced.<sup>57</sup>

Article 253 of the Code of Organization and Civil Procedure (Maltese COCP) sets out the instruments that can be enforced, including court decisions, notarial deeds, promissory notes and others. In addi-

<sup>40</sup> English PD, r 61.9.3. A sale prior to a judgment may only be ordered by the admiralty judge. It implies that a sale after a judgment may be ordered by either the admiralty judge or the admiralty registrar. The respective responsibilities of the admiralty judge and the admiralty registrar can be found on the website of the Admiralty Court, <<https://www.gov.uk/courts-tribunals/admiralty-court>> accessed 23 May 2022.

<sup>41</sup> *The Hercules* (1885) LR 11 PD 10.

<sup>42</sup> *The Myrto* [1977] 2 Lloyd’s Rep 243.

<sup>43</sup> English CPR, r 61.9 (1).

<sup>44</sup> *The Myrto* (n 42).

<sup>45</sup> For example, Germany, Italy and Belgium. For German law, see J. ERIK PÖTSCHKE, «Judicial Sale of Ships in Germany as an Example for a Civil Law concept», in CMI, *Yearbook 2013*, pp. 143-150. For Italian law, see G. BERLINGIERI, «Italy Part III. Judicial Sales of Vessels and Priority of Claims’», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019. For Belgian law, see L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, pp. 44-47.

<sup>46</sup> Dutch CCP, a 430.

<sup>47</sup> The competence of a district court in relation to an executive arrest is not clear under Dutch law. Nevertheless, the court within whose competence the ship is expected to enter or is located is competent to order a conservatory arrest, and a conservatory arrest may be followed by execution. In this vein, in practice, the court within whose competence a ship sits is competent to order the executive arrest of that ship. See L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p 71.

<sup>48</sup> Dutch CCP, a 563.

<sup>49</sup> As opposed to precautionary arrest.

<sup>50</sup> Dutch CCP, aa 570 & 575.

<sup>51</sup> Dutch Book 3, s 3.9.4 (Mortgage).

<sup>52</sup> Dutch CCP, a 430.

<sup>53</sup> Dutch Book 3, a 268.

<sup>54</sup> The Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta), effective 1 August 1855, aa 252, 260. Hereinafter referred to as Maltese COCP.

<sup>55</sup> Note that although Malta has the concept of *in rem* jurisdiction under which a ship may be arrested as security for a claim *in rem*, a precautionary arrest is also viable *in personam* proceedings. See K. DINGLI / T. GRECH, “Ship Arrest in Malta”, <<https://shiparrested.com/wp-content/uploads/2016/04/MaltaSAP.pdf>> accessed 23 May 2022.

<sup>56</sup> As opposed to a precautionary measure.

<sup>57</sup> Maltese COCP, a 264.

tion, registered mortgages established according to the Maltese MSA constitute enforceable titles.<sup>58</sup> When the court is satisfied that the debtor is insolvent or otherwise unlikely to be able to continue trading and maintaining the asset, it may, upon the application of a creditor, order the sale of the arrested ship *pendente lite*.<sup>59</sup> Apart from financial status, other factors that must be considered include the nature of the claim, the defence raised against the claim, and steps taken by the debtor to secure the claim or preserve the asset.<sup>60</sup>

**19.** In Chinese law, any creditor of an enforceable title can apply for an order of sale;<sup>61</sup> in tandem with it, a sale *pendente lite* can be petitioned in any maritime claim<sup>62</sup> before a maritime court.<sup>63</sup> The maritime court that arrested the ship shall order and conduct a judicial sale.<sup>64</sup> If the creditor of a judgment rendered by a district court applies for a judicial sale before that court,<sup>65</sup> that court must entrust the maritime court, within whose competence the ship registration port sits, or the ship is situated, to carry out the arrest and sale.<sup>66</sup> District courts are not competent to levy execution upon ships.

Enforceable titles under Chinese law comprise judgments, court rulings, arbitral awards, and other legal documents,<sup>67</sup> such as a notarial deed that contains enforceability clauses.<sup>68</sup> If the shipowner or other interested parties fails to provide security for release within the fixed period for arrest, which is 30 days,<sup>69</sup> and the ship is not suitable for continuously being under arrest, the arrestor can apply to the court that arrested the ship for the ship to be sold *pendente lite*.<sup>70</sup> Or, if the arrestor does not petition such, the debtor can apply for a sale *pendente lite* after commencement of an action.<sup>71</sup> The court will examine with caution the grounds for the application.<sup>72</sup> Only if the ship may cause a hazard to the safe navigation, the defendant disappears or evades the action or cannot repay the debt, or the diminishing of the value of the ship under arrest is substantial, the court may render the arrest improper and thus order a sale.<sup>73</sup>

**20.** As a general insight, it seems not easy for a creditor to obtain a *sale pendente lite*. Before acceding to the sale application, the court will examine all facts relevant to the sale application, particularly the claim's merits and the ship's status. A sale pending judgment may be ordered only in cases where a purportedly valid claim is not defended, the debtor's solvency is in doubt, and the value of the ship under arrest keeps decreasing considerably. A sale pending action is more like an exception than a routine. As a corollary, a sale *pendente lite* may not necessarily make the jurisdictions which allow it more advantageous than those denying it, as a strict and lengthy review will take place.<sup>74</sup>

<sup>58</sup> Maltese COCP, a 253; Maltese MSA, a 42(2).

<sup>59</sup> Maltese COCP, a 864.

<sup>60</sup> *ibid*, a 864.

<sup>61</sup> The Supreme People's Court's Interpretation on the Application of the Civil Procedure Code of the People's Republic of China, amended 10 April 2022, a 484, hereinafter referred to as Interpretation of Chinese CCP.

<sup>62</sup> Chinese SMPL, s 21; Interpretation of Chinese SMPL, a 15. There are twenty-two maritime claims that must be filed before a maritime court. They are identical to those listed in Article 1 of the International Convention on Arrest of Ships, 1999 (2797 UNTS 3).

<sup>63</sup> In China, there are eleven maritime courts separately located in different provinces.

<sup>64</sup> Regarding an arrest prior to an action, the competent maritime court for arrest is that within whose competence the ship is situated. In contrast, an arrest after an action has no geographical restrictions over the maritime court. Chinese SMPL, ss 13, 29.

<sup>65</sup> In general enforcement, a judgment or ruling shall be enforced by the court of first instance, which rendered it, or the court of first instance, within whose governance the property is situated. The Code of Civil Procedure of the People's Republic of China, amended 1 January 2022, a 231. Hereinafter referred to as Chinese CCP.

<sup>66</sup> Interpretation of Chinese SMPL, a 15.

<sup>67</sup> Chinese SMPL, s 22.

<sup>68</sup> Chinese CCP, a 238; the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Enforcement Objection and Review Cases by the People's Courts (Fa Shi [2015] 10), a 22.

<sup>69</sup> Chinese SMPL, s 28.

<sup>70</sup> *ibid*, s 29.

<sup>71</sup> Interpretation of Chinese SMPL, a 30.

<sup>72</sup> Chinese SMPL, s 30.

<sup>73</sup> L. ZHANG, *Ship Arrest and Relevant Issues*, Law Press China, 2009, pp. 151-153. See also the Guidance of Auction Work of the Nan-jin Maritime Court, s 2. <南京海事法院\_《南京海事法院船舶拍卖工作指南》(njhsfy.gov.cn)> accessed 4 July 2022. Hereinafter referred to as the Nan-jin Maritime Court Guidance.

<sup>74</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 130.

### C) Ship arrest before the sale

**21.** The ship shall be in the hands of the authority which is to conduct the sale. To this end, typically, the sale is preceded by a ship arrest.

**22.** In English law, to obtain an order of sale, the ship must be under arrest in the action in which the sale petition is filed. If the ship has been arrested in another action, it has to be arrested again in this action.<sup>75</sup> Once an action *in rem* is instituted, the claimant may apply for a warrant of arrest.

The warrant is executed by service of the warrant on the property, and the service must be effected by the admiralty marshal or its substitute.<sup>76</sup> If service of the warrant is not reasonably practicable, the arrest may also be effected by service of a notice of the issue of the warrant in the same manner, or giving notice of the arrest to those in charge of the property.<sup>77</sup>

The marshal is responsible for the custody of a ship. As the custodian, the marshal is expected to keep the ship safely under arrest and unable to depart unlawfully, meanwhile incurring the least possible expenditure in performing its duty.<sup>78</sup> Note that the marshal's custody does not replace the shipowner's duty of control of the ship. Where the case seems appropriate, the marshal may remove vital components of the ship, notify the port authority, or employ watchmen for an uncrewed ship.<sup>79</sup> Expenses incurred in doing such must be advanced by the arrestor through its solicitors.<sup>80</sup> Where the cost has not yet been recovered from the arrestor, the marshal may directly claim it from the sale proceeds upon application to the court.<sup>81</sup>

**23.** Under Dutch law, the ship to be judicially sold shall be under executive arrest.<sup>82</sup> The arrest is effected by means of a warrant of arrest,<sup>83</sup> which states, among others, details of the ship, the enforceable title, and information of the executor.<sup>84</sup> The warrant shall be inscribed in the Dutch public registry if the ship is registered there.<sup>85</sup>

The arrest is completed by the bailiff on board the ship.<sup>86</sup> Two particular situations deserve mentioning. First, if the ship is already under precautionary arrest, from the moment the creditor obtains an enforceable title, the precautionary arrest converts into executive arrest.<sup>87</sup> Second, when there is a link between the Netherlands and the claim, the ship can be placed under executive arrest when it is not within the territorial jurisdiction of the Netherlands.<sup>88</sup> Accordingly, in the context of a Dutch mortgage, the ship may be held under executive arrest by execution of a leave provided by a Dutch court. That leave is granted upon a petition to take control of the ship on account of a taking control clause, as stipulated in the mortgage notarial deed.<sup>89</sup>

<sup>75</sup> *The Wexford* (1883) 13 PD 10.

<sup>76</sup> English CPR, r 61.5.8.

<sup>77</sup> English PD, r 61.5.5.

<sup>78</sup> *The Westport (No.2)* [1965] WLR 871. Otherwise, the marshal may be accused of depleting the proceeds.

<sup>79</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, pp. 5-6.

<sup>80</sup> In applying for arrest, the claimant must give an undertaking as to advance any expenditure in the arrest, custody and sale. English PD, r 61.5.1.

<sup>81</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, p. 6.

<sup>82</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 79.

<sup>83</sup> Dutch CCP, a 565.

<sup>84</sup> *ibid*, a 565 para 1.

<sup>85</sup> *ibid*, a 566. Any encumbrance or administration effected after the registration of the warrant cannot be invoked against the arrestor.

<sup>86</sup> *ibid*, a 564.

<sup>87</sup> *ibid*, a 704.

<sup>88</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 77.

<sup>89</sup> D. V. BEMMEL, «The Enforced Sale of Sea-going Vessels in the Netherlands», < <https://langelaarklinkhamer.com/en/the-enforced-sale-sea-going-vessels-the-netherlands/> > assessed 21 June 2022



The master is responsible for the ship under arrest unless the bailiff appoints a custodian.<sup>90</sup> The custodian may be liable for negligence in its custody, although the custodian is not obliged to stay on board the ship.<sup>91</sup> The bailiff may take necessary measures to prevent the ship from fleeing or to preserve the ship, such as repairs, removal of an essential part of the engine, or sending notice of the arrest to the port authority.<sup>92</sup> The costs resulting from these measures can be claimed from the sale proceeds with a high priority.<sup>93</sup>

**24.** In Maltese law, a ship to be arrested and sold shall physically be located within the territory of Malta.<sup>94</sup> To keep the ship within the territory throughout the enforcement proceeding, an executive arrest will usually be ordered upon the application by the executor. When a petition is made for such issue of an executive warrant of arrest, the court will either order the sale or fix a time limit within which the debtor shall pay the amount due.<sup>95</sup>

The executive warrant is executed by serving it on the executive officer of the authority which has the ship in its hands or under its control.<sup>96</sup> If the ship is already under precautionary arrest, the precautionary warrant remains in force for 15 years after the cause becomes *res judicata*.<sup>97</sup> In that case, the court may directly issue an order of sale upon the application by the executor.<sup>98</sup>

The shipowner is responsible for the ship under arrest. Where appropriate, the transport authority in whose hands the ship is attached may intervene and take necessary measures to preserve the arrested ship.<sup>99</sup> For example, if a ship is uncrewed, the transport authority may supply crew members to assist the ship.<sup>100</sup> The arrestor will advance the costs incurred and then recover from the sale proceeds.<sup>101</sup>

**25.** Under Chinese law, in order for a maritime court to sell a ship in enforcement proceedings, the ship must be under executive arrest.<sup>102</sup> The arrest is effected by means of a warrant of arrest.<sup>103</sup> The warrant usually states the enforceable title, the parties' information, and the ship's particulars. Normally, the court will send notice of the warrant to the ship registry, requesting assistance from the latter.<sup>104</sup>

The warrant is executed by the bailiff, who will complete the arrest on board the ship.<sup>105</sup> If the ship is already under precautionary arrest, the precautionary arrest converts into executive arrest from the moment the enforcement proceedings are commenced.<sup>106</sup>

The shipowner or bareboat charter is responsible for the custody of the ship under arrest. If they refuse to fulfil their obligations, the court may appoint the arrestor or a third party as the custodian. The

<sup>90</sup> Dutch CCP, a 564 (2). In practice, the custodian appointed is usually the master.

<sup>91</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 81.

<sup>92</sup> *ibid*; Dutch CCP, a 564 (3).

<sup>93</sup> *ibid*; Dutch book 8, a 211.

<sup>94</sup> F. BERLINGIERI, «Synopsis of the Replies from the Maritime Law Associations of Argentina, Australia, Belgium, Brazil, Canada, China, Croatia, Denmark, Dominican Republic, France, Germany, Italy, Japan, Malta, Nigeria, Norway, Singapore, Slovenia, South Africa, Spain, Sweden, America, Venezuela to the Questionnaire in Respect of Recognition of Foreign Judicial Sales of Ships», in CMI, *Year Book 2010*, pp. 247-384, question 2.1 (Malta). Hereinafter referred to as Malta's Reply to the Questionnaire of CMI.

<sup>95</sup> Maltese COCP, a 388 D.

<sup>96</sup> *ibid*, a 856 (2).

<sup>97</sup> *ibid*, a 838B (1).

<sup>98</sup> *ibid*, a 313.

<sup>99</sup> *ibid*, a 857 (4).

<sup>100</sup> "Ship Arrest For Seafarers' Wages in Malta", < [https://seafarersrights.org/legal\\_database/ship-arrest-for-seafarers-wages-in-malta/](https://seafarersrights.org/legal_database/ship-arrest-for-seafarers-wages-in-malta/) > accessed 6 June 2022.

<sup>101</sup> Maltese COCP, a 857 (4).

<sup>102</sup> Chinese SMPL, s 29; Interpretation of Chinese CCP, a 484.

<sup>103</sup> Interpretation of Chinese CCP, a 484.

<sup>104</sup> Upon receiving such a notice, the ship registry will thereafter refuse to change the records of the ship arrested. The Provisions of the Supreme People's Court on Several Issues Concerning the Application of Laws to the Arrest and Auction of Ships (Fa Shi [2015] 6), a 1. Hereinafter referred to as Chinese Provisions on Arrest and Sale.

<sup>105</sup> On grounds of difficulty, the court may resort to the port authority, the police or the border control for assistance.

<sup>106</sup> The Provisions of the Supreme People's Court on Several Issues Concerning the Property Preservation by the People's Courts (Fa Shi [2016] 22), a 17, hereinafter referred to as Chinese Provisions on Property Preservation.

expenditures incurred thereof shall be borne by the shipowner or bareboat charterer, or claimed from the sale proceeds.<sup>107</sup>

26. This enquiry shows that, generally, a ship shall be under arrest before a judicial sale. One notable difference among jurisdictions, however, exists on what action constitutes an arrest for enforcement purposes. English, Maltese and Chinese laws concur that the arrest of a ship means that the ship is physically in the hands of the court. Namely, the arrested ship must stay within the territory of the state arresting it. Dutch law, on the other hand, provides that when a Dutch mortgage is to be enforced, the ship can be held under executive arrest even if the ship's presence is not within the Dutch territory. It indicates that a Dutch court may assert jurisdiction to dispose of a ship based on its artificial *situs*, rather than physical *situs*.<sup>108</sup>

## 2. Preparations for the sale

27. The authority conducting the sale, whether a court or any other competent authority, must make some preparations for the sale. This section examines three vital ones: service of the documents concerning the sale, appraisalment of the ship's value, and publication and notification of the sale.

### A) Service of the documents concerning the sale

28. Certain documents are served before the sale takes place, to guarantee that the parties with interests on the ship are given access to justice. Depending on the law of the state conducting the sale, these documents may be the *in rem* claim form, the enforceable title, the command of payment, the warrant of arrest, and the order of sale.

29. Under English law, two documents must be served prior to a judicial sale, *viz.*, the *in rem* claim form that initiates the action *in rem* in which the ship can be arrested and sold, and the notice of an application to the court for sale. The claim form may be served by anyone, as long as service is effected in the correct manner; however, it may not be served out of the jurisdiction.<sup>109</sup> Anyone may accomplish the service: by fixing a copy of the claim form on the outside of the property in a conspicuous position that may be seen; where there is a notice against arrest, on the person stated in the notice as being entitled to receive service; in any other manner as the court may direct if the property to be arrested is within the territory.<sup>110</sup> The sale application notice shall be served on the parties to the claim,<sup>111</sup> persons who lodged cautions against release, and the admiralty marshal.<sup>112</sup>

30. In Dutch law, there are two documents that the bailiff must serve before a judicial sale – a command of payment and, if the ship is not under precautionary arrest, a warrant of arrest. The creditor with an enforceable title shall first instruct the bailiff to serve the command of payment, which demands the debtor to fulfil its obligation within 24 hours, on the shipowner, or in the case of a shipping company,

<sup>107</sup> Chinese Provisions on Arrest and Sale, a 7.

<sup>108</sup> For a discussion on the relationship between movable dispositions and the *res situs*, see A. V. DICEY / others, *Dicey, Morris & Collins on the Conflict of Laws*, 15<sup>th</sup> ed., Sweet and Maxwell, 2015, para. 22-058.

<sup>109</sup> *The Good Herald* [1987] 1 Lloyd's Rep 236. N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.16.

<sup>110</sup> English PD, r 61.3.6.

<sup>111</sup> Includes those who intervene in the claim to protect their interests in the *res*, see N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.71.

<sup>112</sup> English PD, r 61.9.1.

on the accountant.<sup>113</sup> If the debt is not satisfied in time, the arrest warrant will be issued.<sup>114</sup> The warrant shall be served on the shipowner or its accountant, and the debtor if different from the shipowner.<sup>115</sup> When the shipowner or its accountant is unknown, service can be effected by giving the warrant to the master, skipper, or deputy. Where these persons are also unknown, service can be achieved by leaving a copy of the warrant on the ship.<sup>116</sup> Additionally, after the warrant is inscribed in the Dutch public registry,<sup>117</sup> the warrant shall be served on the registered mortgagees within four days after registration.<sup>118</sup>

**31.** In Maltese law, three documents may be served before a judicial sale: a command of payment (intimation of payment), the notice of a sale application, and an executive warrant of arrest, or in the case of the ship under precautionary arrest, an order of sale. Judgments can be enforced two days from delivery; no commands of payment are in need.<sup>119</sup> Other enforceable titles, however, cannot be enforced until the lapse of at least two days from the service of command of payment on the debtor.<sup>120</sup> Although no legislation provides such, the sale application notice will normally be served on the shipowner and other arrestors. In addition, the debtor is expected to send notice of the sale application to the registered mortgage.<sup>121</sup> After issuing the executive warrant of arrest, a copy of the warrant shall be served on the debtor,<sup>122</sup> the shipowner if it is not the debtor, the master or other person in charge of the ship, or the agent of the ship.<sup>123</sup> In the case of an order of sale, a copy of the order will be served on the debtor or its lawful representative.<sup>124</sup> In principle, service is effected by the court officer. Nevertheless, in the context of ship arrest, the person indicated by the arrestor may be designated by the court to effect service.<sup>125</sup>

**32.** Under Chinese law, three documents will be served prior to a judicial sale, *viz.*, a command of payment (a notification of enforcement), a warrant of arrest if the ship is not under precautionary arrest, and an order of sale. If the debtor does not perform its obligations under an enforceable title, the creditor can apply to the court for enforcement of the title.<sup>126</sup> Upon receipt of such an application, the court shall issue and serve the command of payment on the debtor, demanding the debtor to pay the debt within a fixed period.<sup>127</sup> If the debt is not paid on time, the arrest warrant,<sup>128</sup> followed by the sale order, will be served on the debtor,<sup>129</sup> or the master if different from the claimant.<sup>130</sup>

**33.** This enquiry finds both divergences and convergences between jurisdictions as regards ser-

<sup>113</sup> Dutch CCP, a 563; Dutch Book 8, a 178. If the competency of the accountant of the shipping company (the administrator of the shipowners society) is explicitly limited in the Dutch Trade Registry, the command of payment cannot be served on the accountant. See L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, pp. 79-80.

<sup>114</sup> Dutch CCP, a 565.

<sup>115</sup> *ibid*, a 565 para 3.

<sup>116</sup> *ibid*, a 565 para 4.

<sup>117</sup> *ibid*, a 566.

<sup>118</sup> *ibid*, a 67 (1).

<sup>119</sup> Maltese COCP, a 256 (1). On grounds of urgency, the court may abridge these periods of time, Maltese COCP, a 257.

<sup>120</sup> The creditor will file an intimation, known as a judicial letter, against the debtor, before the competent court, demanding satisfaction in accordance with the enforceable title. The judicial letter will be served by the court on the debtor. Maltese COCP, a 256 (2).

<sup>121</sup> Malta's Reply to the Questionnaire of CMI, question 2.4.

<sup>122</sup> Maltese COCP, a 278 (1).

<sup>123</sup> *ibid*, a 856 (3).

<sup>124</sup> *ibid*, a 278 (1).

<sup>125</sup> The Maltese Act No. XXXI of 2019, a 9; Maltese COCP, a 856 (3).

<sup>126</sup> Chinese CCP, a 243.

<sup>127</sup> Interpretation of Chinese CCP, a 480.

<sup>128</sup> In practice, the court has the power to order only the arrest of a ship, and then with the consent of the creditor, direct the debtor to fulfil its obligations within a fixed time. Thus, an executive arrest is not always followed by a judicial sale. Interpretation of Chinese CCP, a 484.

<sup>129</sup> The Provisions of the Supreme People's Court on Several Issues Concerning the Enforcement by the People's Courts (Trial Implementation) (Fa Shi [1998] 15), r 24.

<sup>130</sup> Interpretation of Chinese SMPL, a 54.

vice. Regarding convergences, it is a shared rule that the shipowner, and the debtor if different from the shipowner, shall always be alerted to the upcoming sale. They are thus given a chance to stop the sale, for instance, by meeting the debt, if they wish so.

**34.** Two divergences are observed. First, the person responsible for the service duty varies. English law allows any party to effect service, whereas the Netherlands and China permit only court officers. Maltese law is flexible to the extent that both court officers and the persons designated by the parties can effect service in the context of ship arrest. Second, apart from the executor, the creditors who are entitled to receive service diverge. In a Maltese sale, all arrestors will be, and registered mortgagees might be served with a notice of the sale application. In Dutch law, the arrest warrant will be served on registered mortgagees. Under English law, the sale application notice will be served on the persons who entered caveats. Chinese law does not require any creditors to be served with any document at this stage. That said, they will otherwise be notified of the sale at the later notification stage, as stated below.

**35.** One may wonder what will happen if the creditors who have received official documents do not immediately intervene in the sale proceeding. Two scenarios may come up. First, the sale goes on, and then these creditors participate in the distribution process. Second, these creditors await until the notification stage and oppose the sale if they find the conditions, time, place, *etc.* of the sale inappropriate, as discussed below. In short, these creditors will not lose their right to obtain payment out of the proceeds nor the opportunity to oppose the sale.

## **B) Appraisal, publication and notification**

**36.** The upcoming sale shall be advertised to the public and divulged to the relevant parties. In some states, this entails an appraisal of the value of the ship.

**37.** In English law, an appraisal, usually by the shipbroker appointed by the marshal, must be made to prevent the ship from being sold at an unreasonably low price. The appraised value shall not be disclosed to anyone other than the marshal at the preparation stage.<sup>131</sup> After appraisal, the shipbroker immediately drafts and publishes an advertisement for the sale, which is about to take place in 3 or 4 weeks.<sup>132</sup>

The advertisement of sale will, in principle, be repeated after its first appearance and include what follows: the ship's main characteristics; the marshal's conditions of sale, including that the ship is to be sold "as is where is"; the form of sale, usually by private treaty; and, information concerning the inspection of the ship.<sup>133</sup> Commercial ships are at all times advertised in "Lloyd's List".<sup>134</sup> A copy of the sale conditions is available at the shipbroker.

The shipbroker will notify the plaintiff and cautioners against release of the ship by sending a copy of the advertisement.<sup>135</sup> The other creditors shall assume the responsibility to keep themselves informed of what happens to the ship. Hence no notification will be given to them.<sup>136</sup>

**38.** Dutch law does not mandate the ship to be appraised. In the conditions of sale, drafted by the executor's lawyer and approved by the authority for sale, what follows will be stated: whether there

<sup>131</sup> N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para 4.105.

<sup>132</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, p. 10.

<sup>133</sup> *ibid*, p. 8

<sup>134</sup> *ibid*, p. 11.

<sup>135</sup> Explanation of the concept of caution against release, can be found in N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, paras. 4.93-96.

<sup>136</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, p. 11.

is a minimum price, whether the ship is sold free from encumbrances, the security to be provided by potential bidders, the risk in the transfer of ship, and that the sale is “as is where is”.<sup>137</sup> A copy of the sale conditions can be obtained from the sale authority.<sup>138</sup>

If the sale is before a notary, the notary shall determine the place and time for sale within fourteen days of its appointment,<sup>139</sup> and the advertisement will be made per the customs of the place where the ship is under arrest, at least fourteen days before the sale takes place.<sup>140</sup> If the ship is foreign-flagged, upon an application of the notary or the executor, the provisional measures judge can designate one or more newspapers of that foreign country in which the advertisement is to be published, and increase the fourteen days.<sup>141</sup> Apart from newspapers, the advertisement shall also be posted at the places where the ship is under arrest and where the sale will happen.<sup>142</sup> If the executor can apply to the district court for the ship to be sold before a judge, the judge will determine the time and date for sale.<sup>143</sup> The sale cannot take place before thirty days have elapsed since: (i) the executor files to the court the sale conditions, (ii) the validity of advertisement and notification is declared by the bailiff or the executor’s lawyer, and (iii) a list of known creditors and arrestors is submitted by the executor’s lawyer to the court.<sup>144</sup>

The advertisement of sale will include the following matters: the name of the notary or judge who is in charge of the sale, the name and address of the executor, the enforceable title, the underlying claim, the names of the shipowner and the debtor, the particulars of the ship, and the time and place of sale.<sup>145</sup>

Notification of the sale will be made. In the context of a notary sale, the notary shall inform the shipowner, arrestors and other known creditors by sending a copy of the sale conditions, at least thirty days before the sale takes place.<sup>146</sup> In the case of a judge sale, the executor shall immediately inform the rightful claimants and arrestors in writing of the time and place of the sale.<sup>147</sup>

**39.** Under Maltese law, in the auction of movables,<sup>148</sup> including ships, an appraisal may be made if required by the creditor or the debtor,<sup>149</sup> and no minimum price is required for ship auctions.<sup>150</sup> A ship auction cannot be held in public; the court shall give such directions as it may deem proper for disposal of the ship in the manner most advantageous to the interested parties.<sup>151</sup>

The court registrar regularly publishes the list of judicial auctions in two newspapers, one being in Maltese and the other in the language of English. The advertisement usually includes the date and place of sale, the ship’s particulars, and the enforceable title.<sup>152</sup> Additionally, the debtor, creditor or any other interested person may publish and inform, at their own expense, any particular sale in any newspaper or broadcast the same over any other broadcasting medium.<sup>153</sup>

The court is not bound to inform any known creditors of the time and place for the auction. That said, the executor has served the sale application on all arrestors, and the debtor possibly has informed

<sup>137</sup> Dutch CCP, aa 570 & 517 (2).

<sup>138</sup> *ibid*, aa 570 & 517 (2).

<sup>139</sup> *ibid*, a 570.

<sup>140</sup> *ibid*, a 571.

<sup>141</sup> *ibid*, a 571.

<sup>142</sup> *ibid*, a 572.

<sup>143</sup> *ibid*, a 575.

<sup>144</sup> *ibid*, a 571.

<sup>145</sup> *ibid*, a 572.

<sup>146</sup> *ibid*, aa 570, 517 (1) & 515 (2).

<sup>147</sup> *ibid*, a 575.

<sup>148</sup> Except for those consisting of gold or silver articles, pearls or precious stones or of other precious articles. Maltese COCP, a 315 (1).

<sup>149</sup> Maltese COCP, a 315 (2).

<sup>150</sup> This rule shall apply to ships and other vessels exceeding 10 meters in length. Small ships which have been appraised will have a minimum price, which is not less than 60% of the value appraised, in an auction. Maltese COCP, a 319 (5).

<sup>151</sup> Maltese COCP, a 314 (2).

<sup>152</sup> Malta’s Reply to the Questionnaire of CMI, question 2.1.

<sup>153</sup> Maltese COCP, a 313.

registered mortgagees of the sale underway.<sup>154</sup> As such, at least these parties could track down the sale's time and place in the newspaper.

**40.** In Chinese law, the temporary auction committee, formed by the maritime court which arrested the ship,<sup>155</sup> shall make an appraisal to establish the minimum price.<sup>156</sup> At present, almost all judicial auctions take place online. According to the Supreme People's Court's Provisions on Several Issues Concerning Online Judicial Auctions by People's Courts (Chinese Provisions on Online Auctions),<sup>157</sup> the minimum price will be published as the starting price for the sale.<sup>158</sup>

The sale advertisement shall be published in a newspaper or any other medium for three consecutive days, at least thirty days before the sale date. Foreign-flagged ships shall be advertised in a newspaper or any other medium that is circulated abroad.<sup>159</sup> The advertisement will include, among others, the ship's particulars, the enforceable title, the time and place of sale, and how to file notice of claims against the proceeds.<sup>160</sup> Additionally, on the internet platform where the auction is to take place, the advertisement shall be posted, together with other information designated by law, fifteen days before the auction occurs.<sup>161</sup> The said information can be categorised into two types, *viz.*, those concerning the property<sup>162</sup> and those describing the rules of the auction.<sup>163</sup>

The court will require the executor to provide information regarding the known maritime lien, the registered mortgagee<sup>164</sup> and the shipowner.<sup>165</sup> These parties and the ship registry will be notified in writing of when and where the sale will happen, as well as other facts about the sale, thirty days before the sale takes place.<sup>166</sup>

**41.** It is found that a proper advertisement is entailed worldwide, and the information incorporated in the advertisement is similar. Appraisal, however, is treated differently between jurisdictions. England and China mandate the appraisal of the ship's value, whereas Malta allows but does not

<sup>154</sup> Malta's Reply to the Questionnaire of CMI, questions 2.2-2.4.

<sup>155</sup> Chinese SMPL, s 34. Note that the minimum price may be further reduced if no bidder is offered and the first auction fails, see Subsection 2.3.1.

<sup>156</sup> Chinese Provisions on Arrest and Sale, a 11.

<sup>157</sup> (Fa Shi [2016] 18), hereinafter referred to as Chinese Provisions on Online Auctions.

<sup>158</sup> Chinese Provisions on Online Auctions, aa 10 and 14: the starting price must be published as part of the conditions of online auction, and it shall be more than 70% of the appraised price. These provisions are in conflict with Article 12 of the Chinese Provisions on Arrest and Sale, whereby the minimum price remains confidential.

<sup>159</sup> Chinese SMPL, s 32; Interpretation of Chinese SMPL, a 31.

<sup>160</sup> *ibid*, s 32.

<sup>161</sup> There are five accredited platforms for judicial auctions at present, comprising both commercial ones, such as Taobao, and judicial ones, for instance, the People's Court Litigation Property Website. <最高人民法院关于司法拍卖网络服务提供者名单库的公告 - 中华人民共和国最高人民法院 (court.gov.cn)> accessed 8 June 2022.

<sup>162</sup> Chinese Provisions on Online Auctions, a 13: (1) the advertisement, (2) the legal documents ordering the execution, except for those that cannot be made public according to the law; (3) a copy of the evaluation report; (4) the auction time, starting price and bidding rules; (5) a text description of, videos or photos of the current status of the property's ownership, possession and usufruct; (6) the right of pre-emption and the nature of the right; (7) circumstances where the parties and the known pre-emption rights holders have been notified or not; (8) the auction deposit and payment methods; (9) The taxes and fees that may arise from the transfer of the property and the way to pay them; (10) the name of the enforcement court, contact information and supervision methods, etc.; (11) other information that should be published.

<sup>163</sup> Chinese Provisions on Online Auctions, a 14: (1) the bidder shall have full capacity for civil conduct, and where laws, administrative regulations and judicial interpretations have special requirements on the qualifications or conditions of the buyer, the bidder shall meet the required qualifications or conditions; (2) if one entrusts others to bid, one shall be permitted by the people's court before the bidding procedure starts, and the network service provider shall be notified; (3) known defects and encumbrances on the auctioned property; (4) the property is subject to its actual status, and bidders may apply for on-site inspection of it; (5) if the bidder decides to participate in the bidding, it shall be deemed to have a complete understanding of the auction property and accept all known and unknown defects in the auction property; (6) the auction confirmation bill stating the true identity of the buyer is to be published on the online platform; (7) the deposit will not be refunded where the buyer regrets the auction.

<sup>164</sup> In legislation, there is no qualification upon the mortgagee entitled to notice. However, in practice, usually only the mortgage registered in China is considered.

<sup>165</sup> Interpretation of Chinese SMPL, a 34.

<sup>166</sup> Chinese SMPL, s 33.

demand appraisalment. The Netherlands permits the executor to propose the minimum price, implying that the executor shall appraise the ship (if necessary).

42. As regards notification, the creditors who are not the executor but nevertheless entitled to a notice of the sale differ from one state to another. In English law, a copy of the advertisement will be given to the persons who lodged cautions. In Chinese law, the essential information in the sale conditions must be given to registered mortgagees and known maritime lienees. Dutch law further requires all known creditors to be given the date and time of sale. Malta seems liberal in this respect, but in combination with the service requirements, as discussed previously, arrestors and registered mortgagees are probably aware of the upcoming sale. In light of these statements, it is submitted that the principle that arrest is constructive notice to the world,<sup>167</sup> as followed by English law, may be unacceptable to legal systems like China and the Netherlands, where known creditors must be given actual notice of the time and place of sale.

### 3. Concluding the sale

43. The judicial sale takes place accordingly after advertisement and notification. Where applicable, a court-approved private sale producing the same effects may be made.

#### A) Sale by a public authority

44. A judicial sale in England is usually concluded by private treaty, which means that potential buyers submit written tenders on the prescribed form to the marshal's broker by noon on the appointed day.<sup>168</sup> The tenders will not be opened until the deadline expires, and the highest tender will be accepted. Typically, per the marshal's conditions of sale, the successful bidder must pay a deposit of 10% within 48 hours and the balance in a further seven days. Upon adequate payment on schedule, the marshal issues a bill of sale certifying the transfer of a clean title. Besides, the broker delivers the documents and certificates of the ship seized onboard to the buyer. The sale is final and not subject to appeal.<sup>169</sup>

The marshal cannot conclude a sale at a price less than the appraised value unless otherwise ordered by the court.<sup>170</sup> If no tender submitted is at or higher than the appraised value, the marshal will divulge the appraised price and the highest bid to the executor and all cautioners against release, and then seek instructions from the court. In this case, the marshal may recommend re-sale or accepting the current highest tender.<sup>171</sup> If a creditor insists on a fresh sale despite that the court is unconvinced of the possibility of attaining a higher price, the court may allow so if the creditor can provide an indemnity for future losses caused by the price difference.<sup>172</sup>

45. The Netherlands conducts a judicial sale by auction in a public hearing.<sup>173</sup> The auction is done first by bidding and then by decreasing. Namely, in the first part of the auction, prospective buyers make increasingly higher bids, whereas, in the second part, the judge or notary sets a price higher than the highest bid in the first part and then gradually reduces the price until a bidder says "mine", or the

<sup>167</sup> W. TETLEY / R.C. WILKINS, *Maritime Liens and Claims*, International Shipping Publications, 1998, p. 1103.

<sup>168</sup> In rare cases the marshal may sell by public auction. N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.108.

<sup>169</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, p. 13.

<sup>170</sup> *The Halcyon the Great (No.2)* [1975] 1 Lloyd's Rep 525.

<sup>171</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, p. 12.

<sup>172</sup> *Halcyon* (n 177).

<sup>173</sup> Dutch CCP, a 570.

reduced price reaches the previous highest price. The notary or judge will notify the debtor and known creditors of the sale conclusion. The successful bidder must pay the price following the conditions of sale to the notary, judge, or appointed custodian.<sup>174</sup> After payment, a notarial deed of adjudication<sup>175</sup> or a judgment of sale with minutes of adjudication,<sup>176</sup> declaring a transfer of the ship's ownership free from encumbrances, will be issued to the purchaser.<sup>177</sup> Once adjudicated, the sale is final.<sup>178</sup> Note that if the price is not sufficiently paid, the executor can have a re-auction at the cost of the defaulting purchaser.<sup>179</sup>

Divergent statements exist on the effects of an auction. Some assert that a judicial auction gives a clean title, as according to Article 578 (2) of Dutch CCP, all preferential claims and attachments on the ship are purged by auction.<sup>180</sup> Others aver that certain rights can be invoked against the successful purchaser, accordingly, a Dutch judicial auction does not necessarily confer a clean title. These arguments against a clean title refer to the right of retention as an example.<sup>181</sup>

As far as this article is concerned, in the current Dutch law, whether a shipyard maintains its right of retention on a ship when the ship goes through a judicial auction remains in abeyance.<sup>182</sup> Regarding the usufruct on a ship, although it can be invoked irrespective of the change of ownership,<sup>183</sup> one can presume that a ship arrest will frustrate the enjoyment of the usufructuary upon the ship. As such, the usufruct cannot be maintained in a judicial sale. Anyhow, based on the positive wording of Article 578 (2) and the Dutch jurisprudence, one may expect a clean title to be conferred by auction.

**46.** In Maltese law, a ship is judicially sold by a public auctioneer in the presence of the court registrar.<sup>184</sup> The auction is not in public but takes place in a manner that is the most advantageous to the interested parties with due respect to the sacred nature of the object to be sold by auction.<sup>185</sup> The purchaser shall pay the price to the court within seven days from the day of the final adjudication for sale.<sup>186</sup> Then, a bill of sale (*procès-verbal*) will be issued declaring the completion of the sale, particularly its effects being the transfer of the ship's ownership free from encumbrances.<sup>187</sup> In default of payment, the court may make the defaulting purchaser liable to personal arrest,<sup>188</sup> and order a re-auction at his or her expense.<sup>189</sup>

**47.** Under Chinese law, a ship is usually judicially auctioned on a designated online platform. Within the time of auction, any qualified bidder<sup>190</sup> can submit tenders.<sup>191</sup> The auction shall be concluded even if there is one tender, as long as it is not less than the minimum price.<sup>192</sup> A confirmation letter of sale

<sup>174</sup> *ibid*, a 575. Note that if the ship is under 20 cubic meters gross volume and under 6 cubic meters gross tonnage, the sale has to be done in the same manner as for general property (Dutch CCP, a 576).

<sup>175</sup> *ibid*, a 570.

<sup>176</sup> *ibid*, a 577.

<sup>177</sup> *ibid*, a 578 (2).

<sup>178</sup> *ibid*, aa 570 (2) & 575 (6).

<sup>179</sup> *ibid*, a 577.

<sup>180</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 90; D. V. BEMMEL, "The Enforced Sale of Sea-going Vessels in the Netherlands", < <https://langelaarklinkhamer.com/en/the-enforced-sale-sea-going-vessels-the-netherlands/> > assessed 21 June 2022.

<sup>181</sup> Van Steenderen Mainport Lawyers, "First-step Analysis: Shipping Law and Practice in Netherlands", *Lexology* (1 August 2019) <<https://www.lexology.com/library/detail.aspx?g=4f4aa193-b949-4e88-878c-fdcdd2a13523>> assessed 22 June 2022.

<sup>182</sup> H. V. D. H. V. OORDT / others, "Appeal Court Partially Restores Retention Rights for Dutch Shipyards", *Lexology* (7 October 2015) <<https://www.lexology.com/commentary/shipping-transport/netherlands/akd/appeal-court-partially-restores-retention-rights-for-dutch-shipyards>> assessed 22 June 2022.

<sup>183</sup> "Limited Real Rights" < <http://www.dutchcivillaw.com/content/dutchcivillaw022.htm> > assessed 22 June 2022.

<sup>184</sup> Maltese COCP, a 315 (2).

<sup>185</sup> *ibid*, a 314 (2).

<sup>186</sup> *ibid*, a 328.

<sup>187</sup> *ibid*, a 347; Maltese MSA, s 37D.

<sup>188</sup> *ibid*, a 329 (1).

<sup>189</sup> *ibid*, a 329 (2).

<sup>190</sup> Any bidder shall pay a deposit, which is between 5% and 20% of the starting price as decided by the court, to the account of the court, or to the payment system of the online service provider. After the sale is concluded, the successful bidder's deposit automatically becomes part of the price, while others' deposits will be refunded. Chinese Provisions on Online Auctions, aa 17 & 23.

<sup>191</sup> Chinese Provisions on Online Auctions, a 18.

<sup>192</sup> *ibid*, a 11.



conclusion will automatically be produced and posted online.<sup>193</sup> The successful purchaser shall pay the price to the court within the days as specified in the sale advertisement, usually seven days from the date of the sale conclusion.<sup>194</sup> After that, the court will arrange the ship's delivery and announces the auction and delivery in the newspaper.<sup>195</sup> A court ruling affirming the auction will be given to the purchaser within ten days of sufficient payment. Upon receipt of this ruling, the purchaser obtains the ship's clean title, and the sale becomes final.<sup>196</sup>

If the first auction fails, the court will conduct two more auctions consecutively on the same platform.<sup>197</sup> In the second auction, the court may reduce the starting price to the extent that the reduction is less than 20% of the starting price. If it fails, a third auction can be made with a starting price which is not less than 50% of the appraised price. Should the third auction continue to fail, the ship can be sold by the court to a designated person at a fixed price more than 50% of the appraised price. If such a sale still cannot be achieved, with the consent of the creditors whose collective interests are more than 2/3 of the total interests of the claims filed to the court, the ship can be sold at any price. If, eventually, no one wants to buy the ship, that ship will be released from arrest.<sup>198</sup>

**48.** The above inquiry finds that the effects of a judicial sale are similar between states. All the relevant claims cease to attach to the ship, passing onto the sale proceeds, and the successful purchaser obtains clean title to the ship. After sufficient payment is made, a judicial document certifying the transfer of title will be issued and given to the purchaser. From that moment, the sale becomes final.

**49.** Conflicting methods are used to guarantee the best possible price. Chinese and English laws require the reserve price to be met, failing which a sale may not be concluded, although they follow different principles in this regard. English law believes that price secrecy can avoid collusion between bidders, resulting in higher bids.<sup>199</sup> Chinese law, however, counts on transparency in enforcement, particularly the value of the property, to prevent bidders and court officials from manipulating auctions.<sup>200</sup> The other two states invoke other solutions to achieve a reasonable price. Maltese law offers general guidance, directing a sale to be conducted in the most advantageous manner to the interested parties. On the other hand, Dutch law establishes a detailed two-part auction process consisting of bidding and decreasing.

## **B) Court-approved private sale**

**50.** As a variation on the standard judicial sale procedure, a court-approved private sale is viable in many states. Its operation in English, Dutch and Maltese laws is examined below.

**51.** Before a judicial sale is ordered,<sup>201</sup> English law may, under "special circumstances", approve a court-approved sale in favour of a named buyer at a defined price, upon the application by an inter-

<sup>193</sup> *ibid*, a 22.

<sup>194</sup> *cf.* the Nan-jin Maritime Court Guidance, s 11 and Chinese SMPL, s 37. The payment process of an online auction is different from that of a traditional offline auction. In the offline auction, payment is made after signing a confirmation of letter before a judge.

<sup>195</sup> Chinese SMPL, s 39.

<sup>196</sup> *ibid*, ss 38, 40; the Provisions of the Supreme People's Court on Auction and Sale of Property in Civil Enforcement by the People's Court (Fa Shi [2004] 16, amended 23 December 2020), aa 20 & 26, hereinafter referred to Chinese Provisions on Civil Enforcement.

<sup>197</sup> Chinese Provisions on Online Auctions, a 26.

<sup>198</sup> Chinese Provisions on Arrest and Sale, aa 12-14.

<sup>199</sup> E. C. JIANKAI, "Judicial Sale of Arrested Vessels: The Suitability of Taobao as a Platform for Singapore Judicial Sale", *SAC LJ*, 2019, vol. 31, pp. 72-94.

<sup>200</sup> X. BAI, "Defining the Legal Relationship between Parties in the Reform of Judicial Auction", *China Trial* (Beijing, 5 March 2012). The original title in Chinese: 司法拍卖改革中各方参与主体法律关系的界定.

<sup>201</sup> Once a sale order is rendered by the court, any attempt to sell the ship privately constitutes a contempt of court. *The Ruth Kayser* (1925) 23 Ll L Rep 95. See also N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, paras. 4.116-118.

ested person.<sup>202</sup> Such a sale process has not met a friendly reception in common law jurisdictions but is regarded as dubious and unattractive.<sup>203</sup> General concerns about the state of the market,<sup>204</sup> the substantial costs of maintaining the ship,<sup>205</sup> or that there is only one claim attaching to the ship,<sup>206</sup> probably cannot pass the strict scrutiny by an English court as to whether or not “special circumstances” exist.<sup>207</sup>

**52.** Dutch law allows a court-approved private sale in the context of a domestic mortgage.<sup>208</sup> A mortgagee can petition the court for a private sale, a week before the planned sale.<sup>209</sup> The agreement between the seller and buyer, a list of interested parties, and any further bids received must be submitted to the court.<sup>210</sup> The court may request an additional appraisal before approving the petition.<sup>211</sup> If the petition is denied after due consideration, for instance, a better price is possible, the court will decide the date for a fresh auction.<sup>212</sup>

**53.** Malta greets a court-approved private sale.<sup>213</sup> The procedure of a court-approved sale is triggered with the filing of an application by a creditor with an enforceable title to the court. The application shall be accompanied by two independent appraisals of the ship provided by well-established valuers in the market; additionally, the applicant must submit evidence that a private sale is to the benefit of all known creditors and the price proposed is realistic in light of the circumstances *ad hoc*.<sup>214</sup> Besides, the applicant must serve the application on those who are deemed by the court, in this context and upon the information given by the applicant, as appropriate to call upon to make their submissions.<sup>215</sup> The court shall appoint a hearing for the application within ten days of its filing.<sup>216</sup> If the application is approved, the court will appoint a representative for the shipowner to transfer the ship.<sup>217</sup> This representative shall deposit the price in the court within seven days from completion of the sale.<sup>218</sup>

**54.** In conclusion, differing attitudes towards a court-approved private sale are adopted. In English law, this form of sale has met a hostile reception, as it is allowed only in exceptional circumstances. Expediency and efficiency associated with a private sale cannot compensate for the loss of judicial impartiality and a possible higher price.<sup>219</sup> Maltese law, however, admires the procedural efficiency brought by the private sale of a well-appraised ship.<sup>220</sup> One may say that the straightforward mechanism for private sales leaves little room for a Maltese court to refuse them. As to Dutch law, a private sale can only be initiated by a Dutch mortgagee. Other enforceable titles are not eligible.

<sup>202</sup> *The Union Gold* [2014] 1 Lloyd’s Rep 53.

<sup>203</sup> P. MYBURGH, “‘Satisfactory for its Own Purposes’: Private Direct Arrangements and Judicial Vessel Sales”, *JIML*, 2016, vol. 22, pp. 355-369.

<sup>204</sup> But the fact that there is no ready market for the ship to be sold may suffice as an argument for a court-approved private sale. *Offshore Interiors Inc v Worldspan Marine Inc* [2014] FC 655.

<sup>205</sup> *The Turtle Bay* [2013] 4 SLR 615 (Singapore HC).

<sup>206</sup> P. MYBURGH, “‘Satisfactory for its Own Purposes’: Private Direct Arrangements and Judicial Vessel Sales”, *JIML*, 2016, vol. 22, pp. 355-369.

<sup>207</sup> *Sea-Tec Fabricators Ltd v Offshore Fishing Co* [1985] FCJ 236.

<sup>208</sup> Dutch Book 3, a 268. See Bleyen (n 15) 136.

<sup>209</sup> Dutch CCP, a 548 (2).

<sup>210</sup> *ibid*, a 548 (3).

<sup>211</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 136.

<sup>212</sup> Dutch CCP, a 548 (4).

<sup>213</sup> Maltese COCP, a 363. For a synopsis regarding court-approved private sales in Malta, see J. SCERRI-DIACONO, “Private, Court-Approved Sales of Vessels and Aircraft in Malta”, *LMCLQ*, 2012, pp. 356-358.

<sup>214</sup> Maltese COCP, a 359.

<sup>215</sup> *ibid*, a 360.

<sup>216</sup> *ibid*, a 361.

<sup>217</sup> *ibid*, a 362.

<sup>218</sup> *ibid*, a 363.

<sup>219</sup> *The Union Gold* [2014] 1 Lloyd’s Rep 53.

<sup>220</sup> J. SCERRI-DIACONO, “Private, Court-Approved Sales of Vessels and Aircraft in Malta”, *LMCLQ*, 2012, pp. 356-358.

**55.** The discussed private sale in this subsection shall be distinguished from the sale to a designated person at a fixed price in Chinese law. Although both are judicial sales, the latter is the subsequent step following the failure of consecutive auctions rather than a substitution for them.

### C) Stopping the sale

**56.** Interested persons may oppose a judicial sale and request it to stop.<sup>221</sup> Specifically, the persons who should have been notified of the sale, whether were or were not notified in fact, could intervene in this manner.

**57.** In English law, the marshal may stop a judicial sale upon a written notice asserting that the claim has been satisfied. The marshal will recover all the expenses incurred relating to the discontinued sale from the claimant who promised such in its undertaking when petitioning the sale. If the sale is too advanced at that moment, the marshal will refuse the stopping application. The claimant may then file a motion to the judge for an order to stop the sale.<sup>222</sup> In that case, the sale may be stopped if sufficient security can be provided to satisfy all the claims on the ship.<sup>223</sup>

**58.** In Dutch law, an interested party may file a dispute about the conditions, date, place, etc. of a judicial sale before the provisional measures judge.<sup>224</sup> Presumably, a party may apply for the sale to stop on the ground of the debt having been met. Besides, any third party who owns wholly or partly the asset, or a right that the executor must respect, is entitled to oppose a sale before it takes place.<sup>225</sup> Moreover, the sale as an enforcement measure may be stopped based on valid grounds with regard to the enforceable title. Such as, the judgment to be enforced is based on a factual or law error. The court will suspend the sale pending an appeal.<sup>226</sup> Presumably, the liable party will be responsible for the costs incurred by the halted sale.

**59.** Under Maltese law, if the debt is met and the auction's costs are obtained, the court registrar may discontinue a sale and return the ship to the debtor upon a verbal demand.<sup>227</sup> The sale may also be suspended upon the debtor's demand with the creditor's consent<sup>228</sup> or any other lawful impediment.<sup>229</sup> Absent consent, the demand will not be entertained unless the expenses occasioned by the suspension have been deposited in the court.<sup>230</sup> The court shall hear the parties about the demand, and no decree will be given before the expenses incurred by the halted sale have been deposited in the court.<sup>231</sup> A fresh advertisement shall be published for the continuance of the auction.<sup>232</sup>

**60.** Chinese law establishes various grounds for stopping a sale. According to the general civil procedural rules, the court may rescind an enforcement measure, such as a judicial sale, upon the objection filed by an interested party against the asset or illegal enforcement actions,<sup>233</sup> before the measure

<sup>221</sup> Stopping is adopted as a general term in this article, meaning that the sale cannot proceed. It includes suspension, discontinuance and rescission.

<sup>222</sup> N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.115.

<sup>223</sup> *The Acrux* [1961] 1 Lloyd's Rep 471.

<sup>224</sup> Dutch CCP, a 518. Decisions for such matters cannot be appealed.

<sup>225</sup> *ibid*, a 538. The unsuccessful opposer may be ordered to pay compensations at the executor's request.

<sup>226</sup> HR 22 April 1983, NJ 1984, 145. See L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 84.

<sup>227</sup> Maltese COCP, a 343. The discontinuance does not bar the exercise of the right of other arrestors.

<sup>228</sup> Or upon the creditor's demand with the debtor's consent.

<sup>229</sup> Maltese COCP, a 326 (1).

<sup>230</sup> *ibid*, a 326 (2).

<sup>231</sup> *ibid*, a 326 (4).

<sup>232</sup> *ibid*, a 326 (1).

<sup>233</sup> Such as the successful purchaser has no qualification to submit tenders, or there is malicious collusion between the court official and bidders.

becomes final.<sup>234</sup> Besides, before a sale takes place, it may be discontinued by the court if enforcement is no longer entailed, for instance, viz., the enforceable document having been revoked, the debt having been met, or an agreement of repayment having been reached between the litigants.<sup>235</sup> Under Chinese SMPL, similar but more specific grounds for stopping a sale are provided for. The maritime court may, at discretion, approve the withdrawal application by the sale applicant, if such is petitioned seven days before the sale date.<sup>236</sup> After approval, the court will recover the expenses incurred by the stopped sale from the applicant.<sup>237</sup> In the context of malicious collusion between bidders, a sale concluded may be set aside before it becomes final.<sup>238</sup> The party suffering losses with the sale's stopping may recover compensations from the court<sup>239</sup> or any other liable party.<sup>240</sup> Pending a decision as to whether the sale shall be stopped, the court, in principle, will not suspend the sale.<sup>241</sup>

**61.** Each studied national legal system has established its respective grounds for stopping a ship sale. Chinese law bases the stopping grounds on what the parties to the claim would like to do and the illegitimacies in the sale. English law pays attention to the satisfaction of the debt. As regards Maltese laws, importance is attached to the judicial costs and the parties' consensus. Dutch law, as opposed to the other jurisdictions, leaves the stopping grounds to the general procedural rules governing enforcement.

#### 4. After the sale: priority and payout

**62.** Once the sale proceeds are deposited in the court, the court usually will not make payment out of the sale proceeds until the order of the priorities of the claims filed against the proceeds is determined. Depending on the type of sale and the state conducting it, the court that approved (a private sale), ordered (a public auction or private treaty),<sup>242</sup> or within whose cognisance the ship was located when sold (Dutch law),<sup>243</sup> will determine the order of priorities and make payments out.

**63.** When an English court orders a ship to be sold, it may also fix a period during which notice of claims against the sale proceeds shall be filed and the time and manner in which that time limit must be advertised.<sup>244</sup> Any judgment creditor may then apply for the determination of the priorities of the competing claims against the proceeds.<sup>245</sup> The application shall be served on all cautioners and all persons who have filed a judgment against the property.<sup>246</sup> After the admiralty judge determines the order of

<sup>234</sup> Chinese CCP, aa 225, 227; the Provisions of the Supreme People's Court on Several Issues Concerning the Enforcement Objections and Reviews by the People's Courts (Fa Shi [2015] 10), a 6.

<sup>235</sup> Chinese Provisions on Civil Enforcement, a 17; Chinese Provisions on Online Auctions, a 31.

<sup>236</sup> If a sale is far advanced, the withdrawal may be rejected.

<sup>237</sup> Chinese SMPL, s 31.

<sup>238</sup> *ibid*, s 41. This provision does not address the timeframe for such a dispute, however, in light of the fact that an objection grounded on the collusion between the court official and bidders shall be filed before the sale becomes final, it seems reasonable that the same time limit shall apply as well.

<sup>239</sup> National compensations can be applied in this case. Chinese Provisions on Online Auctions, a 32.

<sup>240</sup> A fresh proceeding shall be commenced in this case. Chinese Provisions on Online Auctions, aa 32, 33; Chinese SMPL, s 41.

<sup>241</sup> Chinese CCP, aa 225, 227; The Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Enforcement Procedures of the Civil Procedure Law of the People's Republic of China (Fa Shi [2008] 13), a 10. If security can be provided by the opposer to the satisfaction of the court, the court may suspend the enforcement. On the other hand, the stopped enforcement may also be resumed given sufficient security by the executor. Thus, no straightforward answer can be given in this matter.

<sup>242</sup> English, Maltese and Chinese law. See Section 2.3.

<sup>243</sup> L. BLEYEN, *Judicial Sales of Ships: A Comparative Study*, Springer, 2016, p. 86.

<sup>244</sup> English CPR, r 61.10.2.

<sup>245</sup> Unless the court has fixed a day before which an application for determining order cannot be made. In that case, the application shall be filed after that date. English CPR, r 61.10.3.

<sup>246</sup> English CPR, r 61.10.4; English PD, r 61.9.1. See N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.132.

priorities,<sup>247</sup> the proceeds will be divided accordingly. Theoretically, if a lower-ranking claimant makes a payment application, the court may defer the application until the higher-ranking creditors have had the chance to pursue their claims to judgment.<sup>248</sup>

In practice, however, this procedure is hardly ever adopted. Most times, the court does not prescribe a time for determining priorities and obtaining payment out. Nor will potential claimants be reminded by an advertisement that they shall take measures to safeguard their interests. It is also rare practice to make an application for determining priorities or for there to be a hearing, to the extent that parties will generally agree upon the order of priorities pursuant to the well-established principles in this regard.<sup>249</sup> As a result, unless potential claimants have entered a caution, in which case the payment application by a judgment creditor must be served on them,<sup>250</sup> they might become aware of the matter until too late after all the proceeds have been paid out.<sup>251</sup>

**64.** In a Dutch sale, the court-appointed liquidator shall notify all known creditors of the liquidation process<sup>252</sup> and invite them to file both the claims and the alleged priority thereof within fourteen days.<sup>253</sup> After the lapse of this period, the liquidator will make an order for distribution in accordance with the fixed order of priorities.<sup>254</sup> Any persons who want to oppose this order can do so before the date specified therein.<sup>255</sup> Should no opposition be made, the proceeds will be divided accordingly. In the case of an objection, the dispute will be settled in a separate proceeding if no agreement can be reached.<sup>256</sup> When there are no pending objections, the liquidator will distribute the fund according to the decided order of precedence.<sup>257</sup> The liquidation process cannot be ended until that moment.

**65.** Under Maltese law, if there is deposited money in respect of which more than two parties allege claims, the court shall cause a notice to be published in one or more periodical newspapers, upon the application of a competing claimant. The advertised notice shall call upon all persons interested therein to put in their claims within one month, state that the said money is in the court and there are claims upon such money, and publish the date on which all the parties who have put in claims shall appear in the trial of the claims.<sup>258</sup> This notice will be served on the person making the deposit, the execution creditors and any other creditor at whose suit any garnishee orders have been issued.<sup>259</sup> At the trial, all interested persons, filed competing claims, and objections against those claims will be heard.<sup>260</sup> The proceeds will be divided according to the decision on the competition proceeding. Note that additional proceedings and other orders may take place or be made if the court deems necessary.<sup>261</sup>

It is a crucial feature of Maltese law that the expiration of the prescribed time does not bar the exercise of any right on the part of any party who failed to put in its claim on time (*jus advocandi*).<sup>262</sup> Admittedly, the decision on the competition proceeding cannot be hindered,<sup>263</sup> nevertheless, if in sepa-

<sup>247</sup> English PD, r 61.9.4.

<sup>248</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, p. 25.

<sup>249</sup> *ibid*, p. 15; N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.133.

<sup>250</sup> English PD, r 61.9.1.

<sup>251</sup> R. HEWARD, «England and Wales Part III. Judicial Sales of Vessels and Priority of Claims», in C. BREITZKE / J. LUX (eds.), *Maritime Law Handbook*, Kluwer Law International BV, 2019, p. 27.

<sup>252</sup> Dutch CCP, a 552 para 2.

<sup>253</sup> *ibid*, a 482 para 2.

<sup>254</sup> *ibid*, a 483.

<sup>255</sup> *ibid*, a 484 para 1.

<sup>256</sup> *ibid*, a 486.

<sup>257</sup> *ibid*, a 485.

<sup>258</sup> Maltese COCP, a 416 (1). The one month may be abridged as the court may deem adequate, Maltese COCP, a 416 (3).

<sup>259</sup> *ibid*, a 416 (4).

<sup>260</sup> *ibid*, a 420 (2).

<sup>261</sup> *ibid*, a 421.

<sup>262</sup> *ibid*, a 417.

<sup>263</sup> *ibid*, a 416 (1).

rate proceedings, the claim of the defaulting party is proved to be prior to or equal to that of the ranked creditor, the defaulting party can subsequently recover from any ranked creditors the money they received. The default may only be considered with regard to adjudging the costs.<sup>264</sup> This rule extends the liquidation process. Put in another way, unlike English and Dutch laws, Maltese law does not end the liquidation process the moment the fund is divided according to the determined order of priorities. Instead, it ends when all privileged rights *vis-à-vis* the ship are satisfied.

**66.** When a Chinese judicial sale is ordered, the court will publish the time and manner in which the claims against the sale proceeds shall be registered in the court, in the advertisement and notification of sale.<sup>265</sup> Any potential claimant shall make a written application for registering the claim, accompanied by the supporting evidence, within sixty days of the last time that the sale advertisement appears.<sup>266</sup> Otherwise, the claimant is deemed to give up its right to be paid out in this sale.<sup>267</sup> The applicant for sale can participate in the distribution without registering its claim.<sup>268</sup>

After the sale is concluded, the court will examine the registered claims, one by one and in separate proceedings.<sup>269</sup> If the claimant has obtained a judgment, an arbitral award, or other enforceable titles, the court will verify the title's authenticity and then recognise the claim.<sup>270</sup> Lacking an enforceable title, the claimant shall, after registering the claim, commence an action for recognising the claim before the court. In that action, the court will make a non-appealable decision.<sup>271</sup> When all registered claims are examined, the court shall call upon creditors to a meeting, in which the execution judge will publish the amount of the proceeds, the costs incurred by sale, and the nature and ranking of the claims complied.<sup>272</sup> If an agreement in respect of the distribution of the proceeds can be reached, the judge will divide the proceeds accordingly. In the case of disagreements, the judge shall determine the order of priorities instead.<sup>273</sup> The determined order is not subject to appeal.<sup>274</sup> Note that if the competing creditors cannot altogether attend the meeting, the court can approach them separately and take notes of their respective pleas.<sup>275</sup>

**67.** It is a widely considered rule that before filed competing claims are contested, the court may order payment out on account of a particularly vulnerable claimant or where the court deems appropriate.

In English law, if all the interested parties consent or it is admitted that a certain claimant will have precedence against the sale proceeds, the court may order payment absent the determination of priorities.<sup>276</sup> A typical example is wage claims. The court may immediately order payment upon the seafarers' application for judgment.<sup>277</sup> Maltese law has similar provisions.<sup>278</sup> The only difference lies in the precondition that, except for wage claims, any other party who wishes to withdraw money during the compilation of competing claims shall provide a surety for the period of one year.<sup>279</sup>

**68.** Two observations are made from the above investigation. First, the provisions on calling upon creditors to protect their interests align with those governing notification of sale. English law continues to follow its principle underlying notification rules that ship arrest is constructive notice to the world. Hence, the creditors are expected to keep themselves informed of what happens to the sale

<sup>264</sup> *ibid*, a 417.

<sup>265</sup> Chinese SMPL, ss 32, 33.

<sup>266</sup> Chinese Provisions on Arrest and Sale, a 16.

<sup>267</sup> Chinese SMPL, s 111.

<sup>268</sup> Chinese Provisions on Arrest and Sale, a 18.

<sup>269</sup> *ibid*, a 17.

<sup>270</sup> Chinese SMPL, s 115.

<sup>271</sup> *ibid*, s 116. If there is an arbitration agreement between the parties, they shall commence arbitration immediately.

<sup>272</sup> *ibid*, s 117.

<sup>273</sup> Chinese Provisions on Arrest and Sale, a 22.

<sup>274</sup> Chinese SMPL, s 118

<sup>275</sup> The Nan-jin Maritime Court Guidance, s 13.

<sup>276</sup> English CPR, r 61.10.5.

<sup>277</sup> N. MEESON / J. KIMBELL, *Admiralty Jurisdiction and Practice*, 5<sup>th</sup> ed, Informa Law from Routledge, 2017, para. 4.134.

<sup>278</sup> Maltese COCP, a 422.

<sup>279</sup> *ibid*, aa 423, 426 (b).

proceeds. Chinese and Dutch laws, like what they require for the notification of sale, require notice of the time and manner in which claims against the sale proceeds shall be filed to be given to certain known creditors. Maltese law mandates notice calling upon claimants to put in claims to be published in newspapers. This approach seems in line with the practice of the Maltese court involved in a judicial sale, i.e., wishing but not requiring registered mortgagees to become aware of the sale.

69. Second, in terms of the time when a liquidation process ends, Malta conflicts with the other three states. In Maltese law, the privileged claim of any person who defaulted in putting in the claim within the fixed time can still be paid out of the sale proceeds – the defaulting claimant can recover money from the ranked creditors whose claims are either below or equal to that of the said claimant. Such can never happen in English, Dutch and Chinese laws, where once the fund is divided following the determination of priorities, the liquidation process is closed for good. No defaulting creditor is allowed to recover money received by the ranked creditors. That said, if there are remaining proceeds after distribution, the defaulting creditor may make a charge against the remaining. In light of these statements, it is submitted that Malta provides more protection to higher-ranking claims than other states in the distribution process.

### III. Discussion: relevance to the recognition of foreign judicial sales

70. Since a state may employ the principles informing domestic sales as criteria for determining whether a condition for the recognition of a foreign sale is met,<sup>280</sup> fundamental divergences in principles across jurisdictions may impair the recognition, hindering the free circulation of the purchaser's title conferred by sale. In view of this, an exploration of these principles is made below, based on the findings from Section 2. The principles that may impede the recognition are discussed before those that may not.

71. First, the divergent principles that govern the ship's location may affect the examination of a generally-accepted recognition condition – jurisdiction of a foreign court.<sup>281</sup>

Some states require the ship to remain stayed within the territory throughout the sale, whereas others do not require such. Typically, when there is a link between the Netherlands and the claim, for example, a Dutch mortgage, Dutch law allows a ship to be put under executive arrest and later sold for enforcement purposes, even when it is not situated within the territory of the Netherlands. In this vein, a Dutch court may assert jurisdiction over the ship, based on the artificial *situs* of the *res*, rather than its physical *situs*.<sup>282</sup> This approach to assuming jurisdiction is probably unacceptable to the legal systems under which a ship arrest must precede the sale, such as Maltese, English and Chinese laws. In those laws, only the ships that are and will be physically situated within their territories can be disposed of by sale. In light of these statements, if a Dutch sale in which the ship had not been situated within the Dutch territory throughout the sale invokes recognition before an English court, English law may render that the authority conducting the sale did not have jurisdiction to dispose of the ship. Accordingly, recognition will be denied.

72. Second, the contrasting principles concerning the notification of sale may cause a foreign sale to be deemed as offending fairness. More specifically, recognition may be refused for lacking proper notice.<sup>283</sup>

<sup>280</sup> Y. SHAO / L. CARBALLO PIÑEIRO / M. Q. MEJIA. JR., "Recognition of Foreign Judicial Sales of Ships and Private International Law", *JIML*, vol. 28, 2022, pp. 166-186.

<sup>281</sup> A. BRIGGS, «Recognition and enforcement of judgments (common law)», *Encyclopedia of Private International Law*, 2017, pp. 1479-1486; T. DOMEJ, «Recognition and enforcement of judgments (civil law)», *Encyclopedia of Private International Law*, 2017, pp. 1471-1480.

<sup>282</sup> For a discussion on the relation between property dispositions and the ship's *situs*, see A. V. DICEY / others, *Dicey, Morris & Collins on the Conflict of Laws*, 15<sup>th</sup> ed., Sweet and Maxwell, 2015, para. 22-058.

<sup>283</sup> Y. SHAO / L. CARBALLO PIÑEIRO / M. Q. MEJIA. JR., "Recognition of Foreign Judicial Sales of Ships and Private International Law", *JIML*, vol. 28, 2022, pp. 166-186.

Some jurisdictions, such as English law, view ship arrest as constructive notice to the world and thus place the obligations of keeping informed of the ship's status upon the creditors on the ship. Notice of the sale need not be sent to known creditors. Other states, such as China and the Netherlands, view the actual notification to known creditors as an essential part of a fair sale. Neither proper advertisement nor ship arrest can replace such notification. As it stands, if a sale pursuant to the English notification approach seeks recognition in a jurisdiction adopting the Dutch or Chinese notification approach, that sale may be denied recognition on the ground of breaching fairness.

**73.** Third, the varying attitudes to court-approved private sales may impact the review of the procedural proprieties in a foreign court-approved private sale, which seeks recognition as a foreign judicial sale.<sup>284</sup>

To petition a private sale before an English court, the applicant must prove the existence of special circumstances. English law deems a price which has not been "tested" by the market and advertisement as suspicious. Even if a private sale might have the same economic outcomes as a court sale, an English court would still be hesitant to approve it, as it may "blur the line between private commercial self-interest and public judicial administration" and thus impair judicial impartiality.<sup>285</sup> Dutch law also adopts a cautious approach to approving private sales, permitting such sales in the context of domestic mortgages only. In contrast, Maltese law greets private sales. Its relevant procedural rules imply that the integrity of sales can be maintained by the opportunity of creditors to make submissions and the reliability of prestigious valuers. Arguably, the proceedings wherein a private sale was approved might be reviewed more critically in a state which receives court-approved private sales with a hostile attitude than in one welcoming them.

**74.** Fourth, some states proffer extra protection to higher-ranking claims when dividing the sale proceeds. Such protection may tighten the recognition approaches followed by those states, making certain recognition conditions more exacting.

Unlike English, Dutch and Chinese laws, where once the fund is divided per the determined order of priorities, the liquidation process ends for good, under Maltese law, the division of the funds according to the court-ordered ranking of claims does not finish the liquidation process. Instead, the privileged creditor who defaulted in putting in the claim on schedule can obtain payment out of the proceeds by recovering money from the ranked creditors, whose claims are either below or equal to that of the defaulting creditor. Such protection to privileged claims seems to form an essential part of the reason why Malta has established a strict mechanism for recognition of foreign sales. As shown in the Maltese case concerning the recognition of a Jamaican judicial sale, the fact that a Maltese claim was not given the same importance in a foreign sale as provided for under Maltese law could lead to non-recognition of the foreign sale.<sup>286</sup>

**75.** Notably, although some principles informing domestic sales diverge substantially, they may not necessarily hinder the recognition of foreign sales. The reason is that when examining the integrity of a foreign sale, the court might not pay attention to the sale aspects governed by these principles. Two sets of such principles are identified as follows.

**76.** One set of principles governs the moment to initiate a sale. Some jurisdictions, typically those with maritime jurisdiction, permit a sale *pendente lite* when good reasons for sale can be substantiated. Others, especially those rooted in civil law tradition, allow a sale as an enforcement measure to be commenced only in virtue of an enforceable title.

<sup>284</sup> *ibid.*

<sup>285</sup> P. MYBURGH, "'Satisfactory for its Own Purposes': Private Direct Arrangements and Judicial Vessel Sales", *JIML*, 2016, vol. 22, pp. 355-369.

<sup>286</sup> The case involving the ship *Bright Star*; see M. THOMPSON, "Ship Auctioned in Jamaica Rearrested in Malta", *The Gleaner* (22 February 2019); J. P. GAUCI-MAISTRE / others, "Malta Overrides Foreign Auction", *The Arrest News* (April 2019).



The moment of initiating a sale is, more apparent than real, connected with the recognition condition concerning the competence of a foreign court to the dispositions of movables. This competence usually refers to the jurisdiction of the foreign court over ships. Sometimes, it may also refer to a specific jurisdiction only under which ships can be disposed of, such as the admiralty jurisdiction in common law countries.<sup>287</sup> One way or another, if the competence of the foreign court could be ascertained, when the sale was ordered would not be considered further.

77. The other set concerns the approaches for achieving the best possible price. English and Chinese laws follow conflicting principles in using the minimum and appraised prices. English law states that these prices must remain a secret,<sup>288</sup> as secrecy can prevent bidders from collusion and thus achieve a higher price. On the other hand, Chinese law depends on judicial transparency to avoid unlawful actions by bidders or court officials. The whole appraisal report and the reserve price shall be posted online to be accessed by the public. Malta and the Netherlands do not regard the minimum and appraised prices as necessary for obtaining the best possible price. Maltese law directs a sale to be conducted in a manner most advantageous to the interested parties, whereas Dutch law has a two-part auction process consisting of bidding and decreasing.

The price issues may be sufficient to mount to an objection against the integrity of a foreign sale, grounded in fairness or natural justice.<sup>289</sup> Where the price in question is “a grossly inadequate price” lower than its “true fair market value,” the foreign sale may be denied recognition.<sup>290</sup> In other words, what matters in an objection based on price issues is the amount of money, rather than how the money was obtained.

#### IV. Conclusion

78. As an enforcement measure, judicial sales are used across jurisdictions, though carried out in various manners under national laws. The principles informing domestic sales are in support of the procedural rules governing the sale proceeding. Some of these principles are fundamentally different from one state to another. Through the comparative analysis undertaken by this article, it is discovered that contrasting principles exist with regard to six respective aspects of the sale proceeding.

79. These conflicting principles may impair the recognition of foreign judicial sales, on the basis that a state requested to give effect to a foreign judicial sale may use the principles under its own law as the criteria for determining whether certain conditions for recognition, such as natural justice, fair trial or public policy, are met. In light of the prevailing conditions for recognition of foreign sales, it is inferred that among the discovered principles, only those regarding four sale aspects may resurface at the recognition stage and impede the cross-border circulation of the purchaser’s title. These sale aspects are the ship’s location, the notification of sale, the variance in the standard sale, and the extra protection given to high-ranking creditors in the distribution. On the other hand, the principles as regards the time to initiate a sale and the approach to obtaining the best possible price, though substantially divergent, may not impede the recognition.

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<sup>287</sup> Y. SHAO / L. CARBALLO PIÑEIRO / M. Q. MEJIA. JR., “Recognition of Foreign Judicial Sales of Ships and Private International Law”, *JIML*, vol. 28, 2022, pp. 166-186.

<sup>288</sup> If no bids are higher than the appraised price, the appraised price and the highest bid will be divulged to the bidders. See Subsection 2.3.1.

<sup>289</sup> Y. SHAO / L. CARBALLO PIÑEIRO / M. Q. MEJIA. JR., “Recognition of Foreign Judicial Sales of Ships and Private International Law”, *JIML*, vol. 28, 2022, pp. 166-186.

<sup>290</sup> *Bollinger & Boyd v Capt. Claude Bass* (1978) 576 F. 2d 595, 598 (US, 5<sup>th</sup> Cir). W. TETLEY / R.C. WILKINS, *Maritime Liens and Claims*, International Shipping Publications, 1998, pp. 1103-1104, notes 50-51 and their accompanying text.