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**United Nations Commission on  
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## **Draft Instrument on the Judicial Sale of Ships: Annotated Third Revision of the Beijing Draft**

### **Note by the Secretariat**

1. The annex to this document contains an annotated third revision of the Beijing Draft (“third revision” or “present draft”), which the Secretariat has prepared to incorporate the deliberations and decisions of the Working Group at its thirty-seventh session ([A/CN.9/1047/Rev.1](#), paras. 13–109). The Working Group may wish to use the third revision as a basis for its deliberations at its thirty-eighth session.
2. The annotations make reference to the “second revision” of the Beijing Draft ([A/CN.9/WG.VI/WP.87](#)) and the “original” Beijing Draft ([A/CN.9/WG.VI/WP.82](#)).



## Annex

### Third Revision of the Beijing Draft

*The State Parties to this Convention,*

*Recognizing* that the needs of the maritime industry and ship finance require that the judicial sale of ships is maintained as an effective way of securing and enforcing maritime claims and the enforcement of judgments or arbitral awards or other enforceable documents against the owners of ships,

*Concerned* that any uncertainty for the prospective purchaser regarding the international recognition of a judicial sale of a ship and the deletion or transfer of registry may have an adverse effect upon the price realized by a ship sold at a judicial sale to the detriment of interested parties,

*Convinced* that necessary and sufficient protection should be provided to purchasers of ships at judicial sales by limiting the remedies available to interested parties to challenge the validity of the judicial sale and the subsequent transfers of the ownership in the ship,

*Considering* that once a ship is sold by way of a judicial sale, the ship should in principle no longer be subject to arrest for any claim arising prior to its judicial sale,

*Considering further* that the objective of recognition of the judicial sale of ships requires that, to the extent possible, uniform rules are adopted with regard to the notice to be given of the judicial sale, the legal effects of that sale and the deregistration or registration of the ship,

*Have agreed* as follows:<sup>1</sup>

#### *Article 1. Purpose*

This Convention governs the effects, in a State Party, of the judicial sale of a ship conducted in another State Party.<sup>2</sup>

#### *Article 2. Definitions*

For the purposes of this Convention:

(a) “Charge” means any right whatsoever and howsoever arising which may be asserted against a ship, whether by means of arrest, attachment or otherwise, and includes a maritime lien, lien, encumbrance, right of use or right of retention but does not include a mortgage;<sup>3</sup>

<sup>1</sup> *Preamble*: The preamble was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. The preamble reproduces the preamble contained in the original Beijing Draft.

<sup>2</sup> *Purpose provision*: Article 1 has been revised to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 20).

<sup>3</sup> *Definitions – “charge”*: The definition of “charge” was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. Although the Working Group had agreed at its thirty-fifth session to delete “arrest” from the definition on the grounds that it was a remedy and not a right (A/CN.9/973, para. 79), at the thirty-sixth session there was support for including reference to a “right to arrest” in the definition, noting that such a right should be understood in many jurisdictions since both the International Convention Relating to the Arrest of Seagoing Ships (1952) (United Nations, *Treaty Series*, vol. 439, No. 6330) and the International Convention on Arrest of Ships (1999) (*ibid.*, vol. 2797, No. 49196) referred to the arrest of ships in respect of maritime claims. However, concerns were expressed as to the need to distinguish between a charge and the rights and obligations that may arise from it. In response, it was suggested that the definition should focus on rights that gave rise to the right to arrest or right of attachment (A/CN.9/1007, para. 12). The Working Group also agreed to proceed on the understanding that the term “charge”, as used in the instrument, did not include mortgages (*ibid.*, para. 14). At its thirty-seventh session, the Working Group agreed that further adjustments to the definition might need to be considered in view of comments made

- (b) “Clean title” means title free and clear of any mortgage or charge;<sup>4</sup>
- (c) “Judicial sale” of a ship means any sale of a ship:
  - (i) Which is ordered, approved or confirmed by a court or other public authority<sup>5</sup> either by way of public auction or by private treaty carried out under the supervision and with the approval of a court; and
  - (ii) For which the proceeds of sale are made available to the creditors;<sup>6</sup>
- (d) “Maritime lien” means any claim recognized as a maritime lien or *privilège maritime* on a ship under applicable law;<sup>7</sup>
- (e) “Mortgage” means any mortgage or *hypothèque* that is:<sup>8</sup>

during the session in connection with the definition of “clean title” (A/CN.9/1047/Rev.1, paras. 37 and 38). The Working Group may also wish to consider the meaning of the term “registered charge”, which is used to define the persons to be notified under article 4(1)(b) and to denote the competent registrars under article 7. In the original Beijing Draft, a “registered charge” was limited to charges entered in the relevant ship registry (article 1(o)), whereas the corresponding provisions of the International Convention on Maritime Liens and Mortgages (1993) (United Nations, *Treaty Series*, vol. 2276, No. 40538) (“MLMC 1993”) apply to registrable charges of the same nature as mortgages and *hypothèques* (articles 1, 11(1)(b) and (c), and 12(5)). See also A/CN.9/WG.VI/WP.88, paragraphs 22 to 23.

<sup>4</sup> *Definitions – “clean title”*: The definition of “clean title” has been revised to reflect the preference expressed at the thirty-seventh session of the Working Group for the second option presented in the second revision (A/CN.9/1047/Rev.1, para. 38).

<sup>5</sup> *Definitions – “authority” and “public authority”*: The present draft refers to a “public authority” conducting a judicial sale (article 2(c)(i)) or issuing a certificate of judicial sale (article 5(1)), as well as to an “authority” taking action on the register (article 7) and an “authority” of one State party corresponding directly with that of another State (article 13). It has been suggested that the term “public authority” in article 2(c)(i) should be defined (A/CN.9/1047/Rev.1, para. 32). It has also been suggested that the term “authority” should be defined for the purposes of article 13 (A/CN.9/WG.VI/WP.88, para. 36).

<sup>6</sup> *Definitions – “judicial sale”*: The definition of “judicial sale” has been amended to reflect the decision of the Working Group at its thirty-seventh session to omit the words “or any other way provided for by the law of the State of judicial sale” in subparagraph (i) (A/CN.9/1047/Rev.1, para. 33). The definition has been further amended: (a) to omit reference to sales “carried out” by a court (as opposed to private treaties that are “carried out”); (b) to insert reference to sales that are “confirmed” by the court (*ibid.*, para. 31); and (c) to clarify that the requirement for court supervision and approval applies only to sale by private treaty (A/CN.9/1007, para. 18). These further amendments are designed to reflect more accurately the practice of conducting judicial sales in the various jurisdictions.

<sup>7</sup> *Definitions – “maritime lien”*: The definition of “maritime lien” was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. At the thirty-sixth session of the Working Group, it was suggested that the term “maritime lien” should not always be limited to those maritime liens that are recognized “by the law applicable in accordance with the private international law rules of the State of judicial sale”, as provided in the original Beijing Draft (A/CN.9/1007, para. 19, *emphasis added*). It was suggested that, while such a limitation should be retained for the purposes of defining the persons entitled to notice (article 4(1)(c) of the present draft), it was neither necessary nor desirable to do so for the purposes of defining the “clean title” conferred by a judicial sale (which might be the subject of enquiry in a State other than the State of judicial sale by virtue of article 6). The Secretariat suggests that this “dual use” might be addressed in all instances of the draft instrument by defining the term “maritime lien” by reference to those maritime liens that are recognized “under applicable law”, and invites the Working Group to consider the revised definition as drafted in the present draft. See also A/CN.9/WG.VI/WP.88, paragraphs 29 to 30.

<sup>8</sup> *Definitions – “mortgage”*: The definition of “mortgage” was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. At its thirty-sixth session, the Working Group agreed to include the words “and registered or recorded” after the words “effected on a ship” and to defer further discussion of the definition to the substantive provisions in which the term “mortgage” is used (A/CN.9/1007, para. 21). The term is used in the present draft to define “charge” (article 2(a)), “clean title” (article 2(b)), the persons entitled to notice (article 4(1)(b)), and the obligations of the registrar (article 7(1)(a)). The Working Group may wish to consider whether, for each of these uses, it is appropriate to limit the term “mortgage” to those “recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale”, particularly when the term is

- (i) Effected on a ship and registered or recorded in the State in whose registry of ships or equivalent registry the ship is registered; and
- (ii) Recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale;
- (f) “Owner” of a ship means any person registered as the owner of the ship in the registry of ships or an equivalent registry in which the ship is registered;<sup>9</sup>
- (g) “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions;
- [(h) “Purchaser” means any person to whom the ship is sold in the judicial sale];<sup>10</sup>
- (i) “Ship” means any ship or other vessel [registered in a registry that is open to public inspection] that may be the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale;<sup>11</sup>
- (j) “State of judicial sale” means the State in which the judicial sale of a ship is conducted;
- (k) “Subsequent purchaser” means any person who purchases the ship previously sold to a purchaser in the judicial sale.<sup>12</sup>

### *Article 3. Scope of application*

1. This Convention applies only to a judicial sale of a ship if:
- (a) The ship was physically within the territory of the State of judicial sale at the time of the sale;<sup>13</sup> and

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used to define an obligation that is addressed to States other than the State of judicial sale. See also [A/CN.9/WG.VI/WP.88](#), paragraphs 31 to 32.

<sup>9</sup> *Definitions – “owner”*: The definition of “owner” was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. The Working Group may wish to consider aligning the definition with the definition of “ship” in article 2(i), which has been revised to include a requirement of registration. See also [A/CN.9/WG.VI/WP.88](#), paragraph 33.

<sup>10</sup> *Definitions – “purchaser”*: The definition of “purchaser” was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. At its thirty-sixth session, the Working Group agreed to put the definition in square brackets to indicate its possible deletion and asked the Secretariat to propose text for a definition for future consideration that did not refer to ownership ([A/CN.9/1007](#), para. 27). The present draft of the definition responds to that request.

<sup>11</sup> *Definitions – “ship”*: At its thirty-seventh session, the Working Group agreed to insert the words in square brackets to address a concern that the draft convention should only apply to vessels that are registered ([A/CN.9/1047/Rev.1](#), para. 28). The Working Group agreed to revert to the matter at a later stage. As signalled during the session, references to registration in other provisions of the present draft, such as articles 4, 5 and 7, might be relevant in that regard (*ibid.*).

<sup>12</sup> *Definitions – “subsequent purchaser”*: The definition of “subsequent purchaser” was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. The definition has been aligned with the definition of “purchaser”, as requested by the Working Group, and is designed to cover not only the first subsequent purchaser but also later purchasers ([A/CN.9/1007](#), para. 27).

<sup>13</sup> *Substantive scope – physical presence of ship*: Article 3(1)(a) has been revised to replace “jurisdiction” with “territory” to align the different language versions as well as to stress the need for presence of the ship within the territorial waters of the State of judicial sale and to avoid possible confusion with the exercise of extraterritorial “jurisdiction” by the flag State under the United Nations Convention on the Law of the Sea (1982) (United Nations, *Treaty Series*, vol. 1833, No. 31363) (see [A/CN.9/1047/Rev.1](#), para. 25). Article 5(1)(b) and Appendix II have been revised accordingly.

(b) Under the law of that State, the judicial sale confers clean title to the ship on the purchaser.<sup>14</sup>

2. This Convention shall not apply to warships or naval auxiliaries, or other vessels owned or operated by a State and used, at the time of judicial sale, only on government non-commercial service.<sup>15</sup>

*Article 4. Notice of judicial sale*<sup>16</sup>

1. Prior to a judicial sale of a ship, a notice of the sale shall be given to:

(a) The registrar of the registry of ships or equivalent registry in which the ship is registered;

(b) All holders of any mortgage or registered charge, provided that the registry in which it is registered, and any instrument required to be registered with the registrar under the law of the State of the registry, are open to public inspection, and that extracts from the registry and copies of such instruments are obtainable from the registrar;<sup>17</sup>

(c) All holders of any maritime lien, provided that they have notified the court or other authority conducting the judicial sale of the claim secured by the maritime lien [in accordance with its regulations and procedures];<sup>18</sup>

<sup>14</sup> *Substantive scope – clean title sales*: Wide agreement has been expressed in the Working Group to limit the scope of the convention to judicial sales that (already) provide clean title under the domestic law of the State of judicial sale (A/CN.9/1007, para. 43). It was agreed at the thirty-seventh session to retain article 3(1)(b) but to revisit its drafting at a later stage (A/CN.9/1047/Rev.1, para. 44).

<sup>15</sup> *Substantive scope – exclusions from scope*: Article 3(2) of the second revision provided for two exclusions from scope – sales following seizure by tax, customs and other law enforcement authorities (article 3(2)(a)) and State-owned ships (article 3(2)(b)). At the thirty-seventh session, there was broad agreement within the Working Group that the first exclusion should be omitted (A/CN.9/1047/Rev.1, para. 30). Article 3(2) of the present draft has been amended accordingly, and thus provides only for the second exclusion. The exclusion has been amended to reflect the agreement of the Working Group to replace the words “for the time being” with “at the time of judicial sale” (ibid., para. 46). The words “at the time of [judicial] sale” are also used in article 3(1)(a). The draft convention does not govern arrest of the ship prior to its judicial sale or the conduct of the judicial sale itself. The immunity of State-owned ships from those measures may be provided for in other treaties or rules of international law.

<sup>16</sup> *Notice requirements – function*: At the thirty-seventh session, different views were expressed as to the function of the notice requirements in article 4. One view was that the notice requirements should serve only as a condition for issuing the certificate of judicial sale, while another view was that the notice requirements should serve as a condition for giving international effect (A/CN.9/1047/Rev.1, para. 49). It was also noted that applying the notice requirements as a stand-alone requirement (as opposed to a condition for issuing the certificate of judicial sale or for giving international effect) might pose difficulties if the convention only applied to “clean title” sales by virtue of article 3(1)(b) (ibid., para. 39).

<sup>17</sup> *Notice requirements – notifying holders of mortgages and registered charges*: Subparagraph (b) remains unchanged from the second revision, reflecting the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 55).

<sup>18</sup> *Notice requirements – notifying holders of maritime liens*: Subparagraph (c) has been revised to reflect the deliberations of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 54). The word “notified” have been used instead of “made their claims known”. The words “in accordance with its regulations and procedures” have been inserted for consideration by the Working Group. Those words acknowledge that (a) in some States, procedures are not in place to receive ad hoc notices from holders of maritime liens (ibid., para. 54), and (b) subparagraph (c) does not require the State of judicial sale to amend its regulations and procedures for conducting judicial sales to accommodate the notification of claims before the judicial sale. A brief survey of procedural rules under domestic law reveals a variety of procedures by which a claim may be notified. For instance, the party requesting the judicial sale may be required to inform the court of any maritime lien that is known to the party. In several common law jurisdictions, the procedure for filing a caveat (or caution) with the court against release of the ship after its arrest allows a holder of a maritime lien to notify the court of particulars of its claim. In other jurisdictions, a special procedure exists for a holder (among other holders of unregistered charges) to intervene in the judicial sale proceedings. To accommodate those various procedures,

- (d) The owner of the ship for the time being;
- (e) The person registered as the bareboat charterer of the ship in the registry of ships in which the ship is registered; and
- (f) The registrar of the registry of ships in any State in which the ship is granted bareboat charter registration.
2. The notice required by paragraph 1 shall be given in accordance with the law of the State of judicial Sale, and shall contain, as a minimum, the information mentioned in the model contained in Appendix I to this Convention.<sup>19</sup>
3. The notice shall also be:
- (a) Published by press announcement in the State of judicial sale [and, if required by the law of the State of judicial sale, in other publications published or circulated elsewhere]; and<sup>20</sup>
- (b) Transmitted to the repository referred to in article 12 for publication.
4. In determining the identity or address of any person to whom the notice is to be given, reliance may be placed exclusively on:
- (a) Information set forth in the registry of ships or equivalent registry in which the ship is registered or the registry of ships in which it is granted bareboat charter registration;
- (b) Information set forth in the registry in which the mortgage or charge referred to in paragraph 1, subparagraph (b) is registered or recorded, if different to the registry of ships or equivalent registry; and
- (c) Information contained in the notice referred to in paragraph 1, subparagraph (c).

#### *Article 5. Certificate of judicial sale*

1. At the request of the purchaser [<sup>A</sup>and upon production of any documents necessary to establish the completion of the sale][<sup>B</sup>and upon expiry of any time limit for seeking ordinary review of the conduct of the sale],<sup>21</sup> the public authority designated by the State of judicial sale shall, in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser recording that:
- (a) The ship was sold in accordance with the law of the State of judicial sale and the notice requirements in article 4;

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the Working Group may wish to consider whether subparagraph (c) should require the court to have “been notified” without specifying which person is to notify the court.

<sup>19</sup> *Notice requirements – model form*: The model form contained in Appendix I was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision.

<sup>20</sup> *Notice requirements – publication of notice*: Paragraph 3(a) has been amended to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 63). The Working Group may wish to consider whether the words in square brackets are redundant and may thus be omitted.

<sup>21</sup> *Certificate of judicial sale – conditions for issuance*: The chapeau of article 5(1) has been revised to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 68). It presents two options, reflecting the different proposals put forward during the session (*ibid.*, paras. 66 and 67). The wording of option A is based on article 12(1)(c) of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019) (“Judgments Convention”). This wording has been adapted to reflect that article 5 is concerned with the finality of a sale and not the *res judicata* effect of any judgment connected with the sale. The wording of option B is based on article 4(4) of the Judgments Convention. It refers to a review of the “conduct” of the sale as opposed to the avoidance of the “sale” (as referred to in articles 5(6) and 9) in an attempt to limit the forms of redress the availability of which would delay the issuance of the certificate. The chapeau of article 5(1) has also been restructured to reflect the structure of the chapeau of article 7(1).



(b) The ship was physically within the territory of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship.<sup>22</sup>

2. The certificate of judicial sale shall be issued substantially in the form of the model contained in Appendix II and shall contain the following minimum additional particulars:<sup>23</sup>

(a) The name of the State of judicial sale;

(b) The name, address and the contact details of the authority issuing the certificate;

(c) The name of the court or other public authority that conducted the judicial sale and the date on which the sale was completed;

(d) The name of the ship and registry of ships or equivalent registry in which the ship is registered;

(e) The IMO number of the ship or, if not available, other information capable of identifying the ship, such as the shipbuilder, time and place of shipbuilding, distinctive number or letters, and recent photographs;

(f) The name, address or residence or principal place of business and contact details, if available, of the owner(s) of the ship immediately prior to the judicial sale;

(g) The name, address or residence or principal place of business and contact details of the purchaser;

(h) The place and date of issuance of the certificate; and

(i) The signature, stamp or other confirmation of authenticity of the certificate.

3. The authority shall promptly transmit the certificate to the repository referred to in article 12.

[4. The authority shall:

(a) Maintain a record of certificates issued, including the particulars of the judicial sale; and

(b) At the request of the registrar or court referred to in articles 7 and 8, verify whether the particulars in the certificate produced correspond with particulars included in the record.<sup>24</sup>]

<sup>22</sup> *Certificate of judicial sale – matters being certified*: At its thirty-seventh session, the Working Group agreed in principle with matching the matters being certified – as listed in subparagraphs (a) to (c) of article 5(1) – to the conditions for issuing the certificate, and asked the Secretariat to propose text to give effect to that approach (A/CN.9/1047/Rev.1, para. 68). As a matter of drafting, presenting the matters being certified also as conditions for issuance in the chapeau of article 5(1) poses some difficulty, particularly in view of the other revisions to the chapeau of article 5(1). As a matter of interpretation, the Working Group may wish to consider whether it is necessary to do so (i.e., whether article 5(1) would require a court to certify legal and factual findings that it was unable to make in the first place). As an alternative, it may wish to consider whether matching the matters being certified to the conditions for issuance can be established by inserting the words “as appropriate” after the word “recording” in the chapeau.

<sup>23</sup> *Certificate of judicial sale – additional particulars*: Article 5(2) has been revised to reflect the deliberations of the Working Group at its thirty-seventh session. Subparagraph (c) has been revised to reflect the prevailing view as to how the place and date of judicial sale should be recorded (A/CN.9/1047/Rev.1, para. 71). The model certificate of judicial sale contained in Appendix has been revised accordingly. Subparagraph (d) has been revised to replace the reference to “port of registry” (ibid., para. 72) and the requirement to specify the purchase price (subparagraph (h) of the second revision) has been removed (ibid.).

<sup>24</sup> *Certificate of judicial sale – verification*: The Working Group may wish to consider omitting paragraph 4. For background to the provision, see footnote 25 of the second revision.

5. The certificate of judicial sale shall constitute conclusive evidence of the particulars therein, including the matters required to be recorded by article 5(1).<sup>25</sup>

6. A certificate of judicial sale shall have effect under this Convention unless the sale is avoided in the State of judicial sale by a court exercising jurisdiction under article 9 by a judgment that is no longer the subject of review in that State.<sup>26</sup>

[7. At the request of the purchaser, subsequent purchaser, or any person to whom the notice of judicial sale was to be given, the authority shall transmit to the repository referred to in article 12 the particulars of any decision referred to in paragraph 6.]<sup>27</sup>

*Article 6. International effects of a judicial sale*

A judicial sale to which this Convention applies that is conducted in one State Party shall have the effect in every other State Party of conferring clean title to the ship on the purchaser, provided that the judicial sale was conducted in accordance with the notice requirements in article 4.<sup>28</sup>

*Alternative formulation for article 6*

[A State Party shall recognize a certificate of judicial sale issued in another State Party by:

(a) giving effect to the clean title conferred on the purchaser as recorded in the certificate; and

(b) accepting the certificate as conclusive evidence of the additional particulars therein that are required to be recorded by article 5(2).]<sup>29</sup>

*Article 7. Action by registrar*

1. At the request of the purchaser [or subsequent purchaser]<sup>30</sup> and upon production of the certificate of judicial sale referred to in article 5, the competent registrar or other competent authority<sup>31</sup> of a State Party shall, in accordance with the law of that State [, but without prejudice to article 6]:<sup>32</sup>

<sup>25</sup> *Certificate of judicial sale – evidentiary value*: Article 5(5) has been revised to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 73).

<sup>26</sup> *Certificate of judicial sale – no effect*: Article 5(6) has been revised to reflect the decision of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 74). The word “appeal” has been replaced with “review” to align with the wording of article 4(4) of the Judgments Convention.

<sup>27</sup> *Certificate of judicial sale – notification of avoidance*: Article 5(7) has been inserted for the consideration of the Working Group. It is based on a proposal put to the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 74). The word “appeal” has been replaced with “review” to align with the wording of article 4(4) of the Judgments Convention. If this provision is accepted, consequential amendments may need to be made to article 12.

<sup>28</sup> *International effects of judicial sale – conditions*: Article 6 (formerly article 6(1) of the second revision) has been amended to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 82).

<sup>29</sup> *International effects of judicial sale – alternative formulation*: At its thirty-seventh session, the Working Group requested the Secretariat to propose drafting to reflect an alternative formulation for article 6 based on linking international effect to the production of the certificate (A/CN.9/1047/Rev.1, para. 83). If the alternative formulation is accepted, article 5(5) may be omitted and consequential amendments may need to be made to articles 7(5) and 10.

<sup>30</sup> *Action by registrar – application by the purchaser*: Article 7(1) has been revised to reflect the agreement of the Working Group (A/CN.9/1047/Rev.1, para. 94). The wording and structure of the chapeau have been aligned with the chapeau of article 5(1). The Working Group may wish to consider whether article 7 should also require the registrar to take action at the request of a subsequent purchaser (cf. article 6(1) of the original Beijing Draft).

<sup>31</sup> *Action by registrar – identification of competent authority*: The chapeau of article 7(1) has been revised to insert a reference to any “other competent authority” to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 90).

<sup>32</sup> *Action by registrar – compliance with domestic law*: At its thirty-seventh session, the Working Group decided that the requirement of the registrar to take action in accordance with “its



- (a) Delete any mortgage or registered charge attached to the ship;
  - (b) Delete the ship from the register and issue a certificate of deregistration for the purpose of new registration;
  - (c) Register the ship in the name of the purchaser or subsequent purchaser; and
  - (d) Update the register with any other relevant particulars in the certificate of judicial sale.<sup>33</sup>
2. At the request of the purchaser [or subsequent purchaser] and upon production of the certificate of judicial sale referred to in article 5, the competent registrar [or other competent authority] of a State Party in which the ship was granted bareboat charter registration shall delete the ship from the register and issue a certificate of deletion.<sup>34</sup>
  3. If the certificate of judicial sale is not issued in an official language of the registrar, the registrar or other competent authority may request the purchaser [or subsequent purchaser] to produce a [certified] translation into such an official language.<sup>35</sup>
  4. The registrar may also request the purchaser [or subsequent purchaser] to produce a [certified] copy of the certificate of judicial sale for its records.
  5. Paragraphs 1 and 2 do not apply if a court in the State of the registrar or other authority determines under article 10 that the effect of the judicial sale under article 6 would be [manifestly] contrary to the public policy of that State.<sup>36</sup>

*Article 8. No arrest of the ship*

1. If an application is brought before a court in a State Party to arrest a ship or to take any other similar measure against a ship for a claim arising prior to an earlier judicial sale of the ship, the court shall, upon production of the certificate of judicial sale referred to in article 5, dismiss the application.
2. If a ship is arrested or a similar measure is taken against a ship by order of a court in a State Party for a claim arising prior to an earlier judicial sale of the ship, the court shall, upon production of the certificate of judicial sale referred to in article 5, order the release of the ship.
3. If the certificate is not issued in an official language of the court, the court may request the person producing the certificate to produce a [certified] translation into such an official language.

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regulations and procedures” should be revised to refer more generally to domestic law requirements (A/CN.9/1047/Rev.1, para. 93). The Working Group agreed that it could consider at a later stage the desirability of an additional provision to the effect that observance of the registration requirements under domestic law would not affect the conferral of clean title on the purchaser (ibid.). The words in square brackets have been inserted to assist the Working Group in that regard.

<sup>33</sup> *Action by registrar – updating the register*: Subparagraph (d) has been inserted to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 96).

<sup>34</sup> *Action by registrar – bareboat charter registration*: Article 7(2) has been revised to align its wording and structure with article 7(1). The Working Group may wish to confirm whether article 7(2), like article 7(1), should also be addressed to “other competent authorities”.

<sup>35</sup> *Action by registrar – certification of copies and translations*: At its thirty-seventh session, the Working Group agreed to consider copies and translations in conjunction with article 11. For background to provisions dealing with copies and translations, see A/CN.9/WG.VI/WP.87/Add.1, paragraphs 17 and 18. In the meantime, article 7(3) has been revised to reflect the agreement of the Working Group at its thirty-seventh session that the registrar should act on the application of the purchaser (see footnote 29 above) and that the application of the purchaser and the production of the certificate of judicial sale are not two separate procedures (A/CN.9/1047/Rev.1, para. 94). Similar revisions have been made to article 7(4).

<sup>36</sup> *Action by registrar – grounds for refusal to take action*: Article 7(5) has been revised to reflect the agreement of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 99).

4. Paragraphs 1 and 2 do not apply if the court determines that dismissing the application or ordering the release of the ship, as the case may be, would be manifestly contrary to the public policy of that State.<sup>37</sup>

*Article 9. Jurisdiction to avoid and suspend judicial sale*

1. The courts of the State of judicial sale shall have exclusive jurisdiction to hear any claim or application to avoid a judicial sale of a ship conducted in that State or to suspend its effects, which shall extend to any claim or application to challenge the issuance of the certificate of judicial sale referred to in article 5.

2. The courts of a State Party shall decline jurisdiction in respect of any claim or application to avoid a judicial sale of a ship conducted in another State Party or to suspend its effects.

3. A judicial sale of a ship shall [not have][cease to have] the effect provided in article 6 in a State Party if the sale is avoided in the State of judicial sale by a court exercising jurisdiction under paragraph 1 by a judgment that is no longer subject to appeal in that State.<sup>38</sup>

4. The effects of a judicial sale of a ship provided in this Convention shall be suspended in a State Party if, and for as long as, the effects of the sale are suspended in the State of judicial sale by a court exercising jurisdiction under paragraph 1.

*Article 10. Circumstances in which judicial sale has no international effect*<sup>39</sup>

A judicial sale of a ship shall not have the effect provided in article 6 in a State Party other than the State of judicial sale if a court in the other State Party determines that the effect would be [manifestly] contrary to the public policy of that other State Party.<sup>40</sup>

*Article 11. Additional provisions relating to the certificate of judicial sale*

1. The certificate of judicial sale referred to in article 5 shall be exempt from legalization or similar formality.<sup>41</sup>

<sup>37</sup> *No arrest – grounds for refusal to take action*: Article 8(4) has been revised to reflect the decision of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 106).

<sup>38</sup> *Avoidance of judicial sale – international effect*: Article 9(3) remains unchanged from the second revision. The provision was considered by the Working Group at its thirty-seventh session, where it was agreed that the issue of the effect of avoidance could be revisited at a later stage (A/CN.9/1047/Rev.1, para. 108). In doing so, the Working Group may wish to consider the revisions made to article 5(6).

<sup>39</sup> *Grounds for refusal – general*: Article 10 has been revised to reflect the decision of the Working Group at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 85).

<sup>40</sup> *Grounds for refusal – public policy*: At its thirty-seventh session, the Working Group considered a proposal to delete the word “manifestly” and decided to retain the wording of the public policy ground for the time being (A/CN.9/1047/Rev.1, para. 86).

<sup>41</sup> *Certificate of judicial sale – no legalization*: Article 11(1) has not been considered by the Working Group and remains unchanged from the second revision. It has been noted in the Working Group that the certificate of judicial sale would ordinarily be a public document within the meaning of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961) (United Nations, *Treaty Series*, vol. 527, No. 7625) (“Apostille Convention”) and would thus be exempt from legalization under article 2 of that Convention among the over 100 States that are party to it (A/CN.9/973, para. 45; see further analysis in A/CN.9/WG.VI/WP.84, footnote 48). It has been suggested that the Working Group should consider including a provision that removes any requirement of legalization or similar requirement (such as the issuance of an Apostille) for the certificate of judicial sale (*ibid.*). Article 11(1) reflects that suggestion. It is based on similar provisions found in instruments concluded by the Hague Conference on Private International Law, such as article 18 of the Convention on Choice of Court Agreements (United Nations, *Treaty Series*, No. 53483). Nothing in the Apostille Convention precludes a State Party from agreeing to dispense with all requirements for certifying the authenticity of certain public documents, a scenario expressly contemplated in article 3(2) of that Convention. The present provision would not preclude the authority addressed from determining that a document purporting to be a certificate of judicial sale was not authentic. See also A/CN.9/WG.VI/WP.88, paragraph 85.

2. The certificate of judicial sale may be in the form of an electronic communication provided that:

(a) The information contained therein is accessible so as to be usable for subsequent reference;

(b) A method is used to identify the authority issuing the certificate and to indicate its intention in respect of the information contained therein;

(c) A method is used to detect any alteration to the electronic communication after the time it was generated, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(d) The method referred to in subparagraphs (b) and (c) is:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances;

(ii) Proven in fact to have fulfilled the functions described in those subparagraphs, by itself or together with further evidence.<sup>42</sup>

3. A certificate of judicial sale shall not be rejected on the sole ground that it is in electronic form.

*Article 12. Repository*<sup>43</sup>

1. The repository of notices given under article 4 and certificates issued under article 5 shall be [the Secretary-General of the United Nations or an institution named by UNCITRAL].

2. Upon receipt of a notice or certificate under this Convention, the repository shall promptly make it available to the public.

*Article 13. Communication between Parties*<sup>44</sup>

For the purposes of articles 7 and 8, the authorities of a State Party shall be authorized to correspond directly with the authorities of any other State Party.

<sup>42</sup> *Certificate of judicial sale – issuance in electronic form*: Article 11(2) was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. The Working Group has asked the Secretariat to consider the implications of allowing a certificate of judicial sale to be issued in electronic form (A/CN.9/1007, para. 92). UNCITRAL has developed a number of legislative texts that enable the legal recognition of documents issued in electronic form, most relevantly the Model Law on Electronic Commerce (1996) (United Nations publication, Sales No. E.99.V.4) and the United Nations Convention of the Use of Electronic Communications in International Contracts (2005) (United Nations, *Treaty Series*, vol. 2898, No. 50525) (“ECC”). While those texts are predominantly addressed to business-to-business communications, the functional equivalence rules that they establish could equally be applied to communications involving public authorities. Article 11(2) has been drafted by the Secretariat for consideration by the Working Group. It is a combination of the functional equivalence provisions for the requirement of a document or communication to be in writing (cf. ECC article 9(2)), the requirement that a document or communication be signed (cf. ECC article 9(3)) and the requirement that a document or communication be available in original form (cf. ECC article 9(4)(a)). Article 11(2) establishes minimum requirements for the legal recognition of certificates of judicial sale issued in electronic form; it does not prevent the law or procedures of the issuing authority from specifying additional requirements for the certificates it issues.

<sup>43</sup> *Centralized online repository*: While the Working Group discussed the establishment of a centralized online repository at its thirty-seventh session (A/CN.9/1047/Rev.1, paras. 76–81), it did not consider article 12, which therefore remains unchanged from the second revision.

<sup>44</sup> *Cooperation between authorities*: Article 13 was not considered by the Working Group at its thirty-seventh session, and therefore remains unchanged from the second revision. It reflects a suggestion that the draft instrument contain a provision similar to article 14 of the MLMC 1993, which provides for cooperation between authorities (A/CN.9/973, para. 74). See also A/CN.9/WG.VI/WP.88, paragraphs 36 and 87.

*Article 14. Relations with other international instruments*

1. Nothing in this Convention shall derogate from any other basis for the recognition of a judicial sale of a ship under any other bilateral or multilateral convention, instrument or agreement or principle of comity.<sup>45</sup>
2. Nothing in this Convention shall affect the application of the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No. 2 Concerning Attachment and Forced Sale of Inland Navigation Vessels, including any future amendment to that Convention or Protocol.<sup>46</sup>

*[Article 14bis. Matters not governed by this Convention<sup>47</sup>*

Nothing in this Convention shall affect:

- (a) The procedure for or priority in the distribution of proceeds of a judicial sale; or
- (b) Any personal claim against a person who owned the ship prior to the judicial sale.]

*Article 15. Depositary<sup>48</sup>*

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

*Article 16. Signature, ratification, acceptance, approval, accession*

1. This Convention is open for signature by all States in [*city*], [on][from] [*date/date range*], and thereafter at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval by the signatories.

<sup>45</sup> *Relationship with other treaties and national law*: Article 14(1) reproduces article 10 of the Beijing Draft with minor amendments. The provision was not considered by the Working Group at its thirty-sixth or thirty-seventh sessions, although the Working Group did discuss the relationship between the draft convention and the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (United Nations, *Treaty Series*, vol. 658, No. 9432) at the latter session (A/CN.9/1047/Rev.1, para. 60). At the thirty-fifth session, there was some discussion about the relationship between the Beijing Draft and the Judgments Convention (A/CN.9/973, para. 24). That issue is considered in document A/CN.9/WG.VI/WP.85. The Working Group may wish to consider simplifying this provision by replacing the words “bilateral or multilateral convention, instrument or agreement or principle of comity” with “treaty”, as well as expanding the provision to preserve the application of national law that is more favourable to the recognition of foreign judicial sales (which may well be based on the principle of comity). See also A/CN.9/WG.VI/WP.88, paragraphs 88 to 89.

<sup>46</sup> *Relationship with the Geneva Convention*: The Working Group agreed to retain article 14(2) at its thirty-seventh session (A/CN.9/1047/Rev.1, para. 29). For background to the provision, see A/CN.9/WG.VI/WP.87/Add.1, paragraphs 7 to 9.

<sup>47</sup> *Matters not governed by the Convention*: Article 14bis reproduces article 6(2) of the second revision. At the thirty-seventh session of the Working Group, diverging views were expressed as to the placement of this provision, with support expressed for (a) leaving it in article 6, (b) moving it to the provision on scope of application (article 3), or (c) moving it to a new provision that identifies matters that are not governed by the draft convention (A/CN.9/1047/Rev.1, para. 47). The present draft implements option (c). The placement of the provision reflects the approach taken in the Rotterdam Rules (see chapter 17 of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, A/Res/63/122, Annex), which lists a broad range of matters. The provision is placed in square brackets to indicate that no decision has been taken on its placement. If no further matters are added, it may be preferable for the provision to be located alongside the provision whose operation it clarifies, namely article 6.

<sup>48</sup> *Final clauses*: The final clauses in articles 15 to 20 were not considered by the Working Group at its thirty-seventh session, and therefore remain unchanged from the second revision. They are drawn from the United Nations Convention on International Settlement Agreements Resulting from Mediation (2018), the most recent treaty prepared by UNCITRAL.

3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

*Article 17. Participation by regional economic integration organizations*

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of States Parties is relevant in this Convention, the regional economic integration organization shall not count as a State Party in addition to its member States that are Parties to the Convention.
2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a "State" or "States" in this Convention applies equally to a regional economic integration organization where the context so requires.

*Article 18. Non-unified legal systems*

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.
2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.
3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:
  - (a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;
  - (b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;
  - (c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.
4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

*Article 19. Entry into force*

1. This Convention shall enter into force six months after deposit of the [third] instrument of ratification, acceptance, approval or accession.
2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has

been extended in accordance with article 18 six months after the notification of the declaration referred to in that article.

*Article 20. Amendment*

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.
2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the conference.
3. An adopted amendment shall be submitted by the depositary to all States Parties for ratification, acceptance or approval.
4. An adopted amendment shall enter into force six months after the date of deposit of the [third] instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those States Parties to the Convention that have expressed consent to be bound by it.
5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

*Article 21. Denunciations*

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.
  2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. [The Convention shall continue to apply to judicial sales conducted before the denunciation takes effect.]
- DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.



## Appendix I to the [draft instrument on the judicial sale of ships]

### Notice of Judicial Sale<sup>49</sup>

*Issued in accordance with the provisions of article 4 of the [draft instrument on the judicial sale of ships]*

In accordance with ..... *[relevant provisions of the State's rules of civil procedure governing notices of judicial sales]*, notice is hereby given that by order of ..... *[name of court or other public authority conducting the sale and such particulars concerning the sale or the proceedings leading to the judicial sale as the court or other authority determines are sufficient to protect the interests of persons entitled to notice under article 4]*

**on** ..... *[date/month/year]*, **at** ..... *[hour]* **at** ..... *[place]* *[If the time and place of the judicial sale cannot be determined with certainty, the approximate time and anticipated place of the judicial sale, provided that an additional notice of the actual time and place of the judicial sale shall be provided when known but, in any event, not less than seven days prior to the judicial sale.]*<sup>50</sup>

**the ship** ..... *[description by name of the ship, the IMO number (if assigned), or, where not available other information capable of identifying the ship, such as the shipbuilder, time and place of the shipbuilding, licence number, and recent photographs]*

**physically present at** ..... *[location of the ship]*

**owned by** ..... *[names of the owner of the ship immediately prior to the judicial sale and the bareboat charterer (if any), as appearing in the registry of ships in which the ship is registered or granted bareboat charter registration]*

will be **sold by way of judicial sale** free and clear of all mortgages and charges [to the highest bidder at or above the amount as set by the *[court or other authority conducting the sale]* subject to the terms and conditions set out below.]

**Terms of the sale:** *[such terms and conditions as apply to judicial sales conducted in the Party to the Convention, for instance: disclaimers of warranties or liabilities by the court or other authority; requirements and procedures for registration or admission to bid at the sale; payment conditions; finality of sales; consequences of failure to pay; persons excluded from bidding (e.g. under anticorruption, anti-money-laundering or similar regulations)].*<sup>51</sup>

<sup>49</sup> *Notice of judicial sale – notice period:* Article 4(1) requires the notice to be given prior to the judicial sale. The time between the giving of notice and the actual sale should allow the interested parties to make the necessary arrangements to bid if they so wish. While 30 days, as provided for in article 11(2) of the MLMC 1993, would generally constitute an adequate period, the court or other authority conducting the judicial sale may have the discretion to provide a shorter notice period (for instance where the ship faces deterioration). The notice shall be in writing in the manner customarily used by the courts of the State of judicial sale for similar purposes, which may include, (a) registered mail or courier; (b) electronic means; or (c) any other manner agreed to by the person to whom the notice is to be given.

<sup>50</sup> *Notice of judicial sale – time and place of judicial sale unknown:* This alternative was provided in article 3(3)(b) of the original Beijing Draft, which is based on article 11(2) of the MLMC 1993. A concern has been raised that the proviso for a seven-day notice period in the event that the time and place of the judicial sale cannot be determined with certainty might, in practice, supersede the default 30-day notice period (A/CN.9/973, para. 75). This proviso is contained in the MLMC 1993. The Working Group may wish to consider whether the proviso should be contained in a separate provision in line with the drafting of the MLMC 1993.

<sup>51</sup> *Notice of judicial sale – terms of sale:* The present draft leaves these matters, which include modalities for payment, to the domestic law of the State of judicial sale. Failure to comply with these terms may give rise to legal challenge in the State of judicial sale before a court exercising jurisdiction under article 9.

**Appendix II to the [draft instrument on the judicial sale of ships]**

**Certificate of judicial sale**

*Issued in accordance with the provisions of article 5 of the [draft instrument on the judicial sale of ships]*

This is to certify that:

(a) The ship described below was sold by way of judicial sale in accordance with the law of the State of judicial sale and the notice requirements in article 4 of the Convention;

(b) The ship was physically within the territory of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship.

**1. State of judicial sale** .....

**2. Authority issuing this certificate**

2.1 Name .....

2.2 Address .....

2.3 Telephone/fax/email, if available .....

**3. Judicial sale**

3.1 Name of court/public authority conducting the sale .....

3.2 Date of sale (e.g., date of order confirming the sale) .....

**4. Ship**

4.1 Name .....

4.2 IMO number .....

4.4 Registry .....

4.5 Other information capable of identifying the ship, such as the shipbuilder, time and place of the shipbuilding, distinctive number or letters, and recent photographs, if available .....  
*(Please attach any photos to the certificate)*

**5. Owner(s) immediately prior to the judicial sale**

5.1 Name .....

5.2 Address or residence or principal place of business .....

5.3 Telephone/fax/email .....

**6. Purchaser**

6.1 Name .....

6.2 Address or residence or principal place of business .....

6.3 Telephone/fax/email .....

**At**.....  
(place)

**On** .....  
(date)

.....  
Signature and/or stamp

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