

# **CHALLENGING / DENYING EFFECT OF A JUDICIAL SALE**

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# Basis

Drafting process is underway —————> **Current state of play**

This analysis is based on **UNCITRAL's second revision of the Beijing Draft Instrument on the Judicial Sale of Ships**, contained in document [A/CN.9/WG.VI/WP.87](#)

## Un-breakability of the regime vs Protection of some basic interests

Efficiency → **Un-breakability** → Narrowing down the possibility to „kill” the judicial sale and its effects

**BUT**

Need to **protect some basic rights** of those who lose or potentially lose through JS (owner; mortgagees; holders of maritime liens)

**Conflict – requires a right balance**

## Purpose of presentation

### Brief analysis of:

- **Article 9** (“Jurisdiction to avoid and suspend judicial sale”)
- **Article 10** (“Circumstances in which judicial sale has no international effect”)

### but also

- **Article 7(5)** (duties of the registrar in the country of the ship’s registration)
- **Article 8(4)** (duties of arresting courts in the countries in which the vessel is arrested or sought to be arrested)

## Article 9 - “Jurisdiction to avoid and suspend judicial sale”

**ISSUE 1:** International jurisdiction re claims to avoid judicial sale or suspend its effects (paras. 1 and 2)

- Courts in the **State of judicial sale** – exclusive jurisdiction
- Extends to claims to challenge the Certificate of JS
- Does NOT extend to claims re distribution of proceeds and/or actions *in personam* against purchaser

## Article 9 - “Avoidance” / “Suspension” - Consequences and Operation

ISSUE 2: legal consequences created by avoidance of the judicial sale (**paragraph 3**) and by suspension of legal effects of the JS (**paragraph 4**)

- **JS avoided** → JS **loses its international effects** per Art. 6
- effects of JS **suspended** → international effects suspended everywhere
- **Operation:** All State Parties + *ipso iure* (?)

## Article 9 - What does is NOT regulate

- Standing
- Grounds for avoidance / suspension
- Definitions of “*avoid*” and “*suspend*”
- What needs to be done in other State Parties to bring avoidance and/or suspension into effect

## Article 10 - “Circumstances in which judicial sale has no international effect”

- Power of the courts in other States Parties (i.e. States Parties different from the State of JS) to **deprive the JS of its effects**
- **Regulates:** the grounds and the standing

## Article 10 - GROUNDS

- **NO effect** if the court determines that:
  - (a) the ship was **not physically present** within the jurisdiction of the State of JS at the time of the sale; or
  - (b) the sale was procured by **fraud** committed by the purchaser; or
  - (c) that effect would be manifestly contrary to the **public policy** of the other State Party (SP of the court's seat)

## Article 10 - STANDING

- (a) the owner of the ship immediately prior to the judicial sale
- (b) the holder of a mortgage or registered charge attached to the ship immediately prior to the judicial sale
- (c) any holder of a maritime lien entitled to notice under Article 4 (i.e. those lienors whose lien-protected claims have been notified to the court or other authority ordering the judicial sale)

## Article 10 - OPERATION

- Only in the **State Party** in which the court has rendered such decision
- Cf. Article 9 (avoidance / suspension by the court in the State of JS operates **worldwide**)

## Article 10 - Interaction with Articles 7(5) and 8(4)

- **Article 10 - general rule** on when the JS carried out in the State of JS can be deprived of its effects in other State Parties by the action of the courts in such other State Parties
- **BUT – 2 special-purpose provisions:** Article 7, paragraph 5, and Article 8, paragraph 4
- **How do they interact with Article 10?**

## Article 10 - Interaction with Article 7(5)

- Article 7 in general - duties of the **ship registrar** upon production of the certificate of JS (delete existing mortgages and registered charges; delete the ship from the register or register the ship in the name of the purchaser)
- **Those duties** - **set aside** if the court in that State Party determines existence of the same types of **GROUNDS** as those set up in Article 10 (ship not being physically present; fraud by the purchaser; public order)
- **STANDING**: same as per Article 10 (owner; mortgagees; maritime lienors)

## Article 10 - Interaction with Article 8(4)

- **Article 8 in general** - duties of the courts in a State Party in which the ship is arrested or sought to be arrested if a certificate of judicial sale is produced (release the ship from arrest; dismiss the application for arrest, as the case may be).
- **Those duties** - **set aside** if the court in that State Party determines that it would be manifestly contrary to the **public policy** of that State Party – **GROUNDS more restrictive than in Article 10**
- **STANDING**: No rule.

## Conclusion

- **Procedure** - difficult to achieve unification
- Challenging and denying legal effects of JS - other side of the coin  
– vital to have it well drafted
- **Balance** between **unbreakability** and **protection of „former”**  
**interests** – tipped in favour of unbreakability

**Thank you for your attention.**