

CONDITION OF SALE

The terms and conditions for auction sale of the ship are finalised by the marshal/sheriff and are made available to intended bidders. Advertisements/Notice for auction sale of the ship are published globally, normally in two international shipping newspaper and two newspaper in India.

Under the terms and conditions of the sale, the successful bidder is required to pay a percentage, usually 15 per cent, of the purchase price forthwith and the balance of the price within a period fixed in the conditions of sale, usually 15 days from the date of the sale. The payment is to be made by means of bankers' draft or a certified cheque. Under the Rules, the sale is subject to sanction of the court. The sale is free and clear of all maritime or other liens and encumbrances.

Section 8 of the Admiralty Act (2017) deals with vesting of rights on sale of vessels. Upon the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.

The judicial sale of a vessel arrested by an admiralty court is a complex process governed by statutory provisions, rules, and established case law. The sale is typically conducted under the supervision of the court, ensuring that the vessel is sold free and clear of all encumbrances, liens, and charges, thus conferring good title to the purchaser. The conditions governing such sales are meticulously outlined in the terms and conditions of sale, which are finalized by the Marshal or Sheriff and made available to potential bidders.

These terms include the requirement for an immediate deposit, followed by the balance payment within a specified timeframe.

The governing law in India for judicial sale of vessels falls under Section 8 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"). This section specifically deals with the vesting of rights upon the sale of vessels under the court's admiralty jurisdiction. According to Section 8(1):

"On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages, and charges of the same nature on the vessel."

This statutory provision underscores the principle that the purchaser acquires the vessel free of any existing maritime claims, thereby obtaining a clean title. This principle has been upheld in various jurisdictions, ensuring that the sale provides finality and protects the purchaser from any future claims against the vessel.

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Deposit and Payment Schedule: The successful bidder is generally required to deposit a percentage of the purchase price immediately, typically 15%, which serves as security for the performance of the bidder's obligation. The remaining balance is usually required to be paid within 15 days from the date of the sale. Payment is generally made by a banker's draft or certified cheque, ensuring that the court and the creditors are assured of the availability of funds.

Notice of Sale and Advertisement: Notices for the sale are published globally to attract a wide range of potential bidders, thus maximizing the value obtained from the sale. This practice is crucial for ensuring a fair market price

and preventing any allegation of collusion or underpricing. Typically, advertisements are placed in at least two international shipping newspapers and two leading newspapers in India.

Court Approval and Confirmation: The sale is subject to the approval of the Admiralty Court, and until the court sanctions the sale, it remains conditional. This judicial oversight serves as a check against any irregularities in the sale process. Once the sale is confirmed by the court, the vessel is sold "free and clear" of all liens and encumbrances, in accordance with Section 8 of the Admiralty Act, 2017. This principle was reinforced in the case of *Bank of Tokyo Ltd v Karageorgis* [1987] 1 Lloyd's Rep 7, where the court emphasized the importance of selling the vessel free from all claims to secure the highest possible price.

Case Law Perspectives

The principle that a judicial sale should confer good title to the purchaser, free from any claims, was notably discussed in *The Monica S* [1968] 1 Lloyd's Rep 93. In this case, the court highlighted that the buyer should receive the vessel free from maritime liens and encumbrances to promote confidence in judicial sales, which is crucial for ensuring that bidders are willing to pay fair market prices.

Similarly, in *Dimitris L* [1989] 2 Lloyd's Rep 60, the court held that the judicial sale of a vessel extinguishes all prior maritime liens, mortgages, and other claims. The rationale behind this rule is to ensure that purchasers are protected from the risk of claims that could diminish the value of the asset they are acquiring. This case reaffirmed that the vessel sale price is distributed to the claimants in accordance with their priority under admiralty law, and the vessel itself is freed from those claims.

Further, in *Banco Nacional Ultramarino v Owners of the Ship Olympia Voyager* [2006] EWHC 1541 (Admlty), the court underscored that the process of judicial sale in admiralty courts is not merely a procedural step but a substantive means of achieving finality in litigation, thereby ensuring that the vessel, once sold, cannot be subject to any further claims.

The judicial sale of a vessel arrested by an admiralty court, under the Admiralty Act, 2017, is a vital mechanism for enforcing maritime claims. The process is designed to protect both the creditors and the purchaser by ensuring that the sale is conducted fairly and transparently, and that the vessel is sold free from any encumbrances. The statutory provisions and judicial precedents emphasize that the purchaser obtains a good and unencumbered title, ensuring finality and security in the transaction. These principles promote confidence in the judicial sale process, which is essential for the smooth functioning of maritime commerce and the enforcement of maritime claims.