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**ARUBA:
A FAVORABLE JURISDICTION FOR
ENFORCING CLAIMS AGAINST SEA GOING
VESSELS**

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Aruba is a favorable jurisdiction for enforcing claims against sea going vessels. Vessels are sold before the Court of First Instance of Aruba (the “Court”) on a regular basis. The entire process need in principle only take a few months and costs are lower than in most other jurisdictions.

In principle any creditor may decide to auction a vessel. In order to do so, the creditor must have an enforceable legal title against the ship owner. Enforcing a claim against a vessel is in principle done by means of a public auction. However, if the entity that has requested for the vessel to be auctioned (such as a bank) has a right of mortgage, said entity may also request the court to approve a private sale. Aruba is party to the Convention on the Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (the

“Convention”), as a result of which a right of mortgage pursuant to the law of any of the European states party to the Convention constitutes an enforceable legal title.

If approved, the public sale, if already commenced, is cancelled. Most but not all auctions are a result of a bank exercising a right of mortgage.

Prior to the public auction or private sale, the vessel can be arrested by a creditor. Aruba is party to the International Convention relating to the arrest of Sea-Going Ships. This so as to ensure that the vessel does not leave the territorial waters of Aruba while the auction process is ongoing.

Vessels at auction are sold on an "as is where is" basis.

In order to be able to participate in the auction, potential buyers have to either put up a bank guarantee or deposit a certain amount into an account designated by the execution creditor's attorney or the account of a local attorney appointed by the potential buyer.

The auction itself consists of two parts, whereby the so-called Dutch Auction system is applied. This system is geared towards obtaining the highest possible proceeds for the creditor(s).

The first part of the auction is where parties interested in acquiring the vessel may bid as per a schedule provided by the attorney of the execution creditor. The highest bidder in this first part of the auction, however, does not win the vessel, at least not at that time. The highest bidder receives a bid premium as determined in the conditions of sale. The bid premium is usually a half percent of the highest bid. In the second part of the auction, again as per a schedule provided by the execution creditor's attorney, the Court will call out amounts that are higher than the highest bid, every amount being lower than the previous amount. The bidder that calls out 'mine' wins the bid and is thereby obligated to pay the amount called out by Court before the bidder called out 'mine'. If nobody calls out 'mine' in the second part of the auction, the highest bidder in the first part of the auction wins the bid.

The winner of the auction has to pay, in addition to the amount bid, the costs of the auction. These costs are established by the Court before the auction and include the legal fees of the creditor that has requested the auction. Furthermore, the winner of the auction, unless the winner of the auction was the highest bidder in the first part of the auction, has to pay the bid premium.



The purchase price plus costs and bid premium are in general payable within eight days after the auction. Only upon payment will the purchaser receive the adjudication report and the judgment confirming the acquisition of the vessel, which documents are required to take possession of the vessel and to register the vessel.

If you require assistance with arresting a vessel, auctioning a vessel or simply participating in the bidding on a vessel in Aruba, please contact Mr. Misha Bemer, attorney at law – partner at HBN Law Aruba.

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