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**A LAW TO INCORPORATE THE 1999 ARREST CONVENTION INTO THE  
LAWS OF GAMBIA AND TO PROVIDE FOR THE EFFECTIVE  
IMPLEMENTATION THEREOF**

**A Legislative Drafting Project submitted in partial fulfilment of the requirement for  
the award of the Degree of Master of Humanities in International Maritime Law at  
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## EXPLANATORY NOTE

### 1. Introduction

The purpose of this Explanatory Note is the incorporation of the 1999 Arrest Convention<sup>1</sup> into Gambian Law and provision for the Convention's effective implementation. In support thereto, first, the historical background of the 1999 Arrest Convention and its status will be discussed. Thereafter, the significance of the accession to the convention, its incorporation and implementation into the laws of The Gambia will be explained. This Explanatory Note will likewise explain how the Convention will be incorporated and implemented into the laws of the Gambia, pursuant to prevailing and applicable laws therein. The final part of this Explanatory Note will provide an overview of the proposed law.

### 2. Historical Background of the Convention

#### *The 1952 Arrest Convention, precursor of the 1999 Convention*

The *Brussels Convention of 1952 Relating to Arrest of Sea-Going Vessels (Arrest Convention)*<sup>2</sup> has become a popular international legal instrument in international maritime commerce.<sup>2</sup> Its wide acceptance is due to reasons, such as the unification of the rules and procedures of arrest, as stipulated in *Article 2*. This unification allows arrest of “ship flying the flag of one of the Contracting States in the jurisdiction of any of the Contracting States in respect of the closed list of maritime claims, but in respect of no other claim.” Also, repeated and additional arrests on the same ship in respect of the same claim by the same claimant in a Contracting State after a previous arrest was affected in the same or another member State were also prohibited by *Article 3 (3)*.<sup>3</sup>

Although the *1952 Arrest Convention* has been proven to be very popular,<sup>4</sup> it was not without its detractors. Concerns were raised on some ambiguities and uncertainties therein.

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<sup>1</sup> Hereinafter, “The Convention”.

<sup>2</sup> Francesco Berlingieri, *Berlingieri on Arrest Of Ships* (5th edition, Informa 2011)

<sup>3</sup> International Convention on Arrest of Ships (signed on 12 March 1999 and entered into force 14 September 2011) UNTS 49196

<sup>4</sup> Bob Deering and Jonathan Reese, ‘An Overview of the 1952 and 1999 Arrest Conventions’ (30 September 2011) <<http://www.incelaw.com/en/knowledge-bank/overview-of-the-1952-and-1999-arrest-conventions>> accessed 29 April 2018

For instance, some civil law courts have interpreted *Article 3(4)* as allowing a ship to be arrested for the debts of its time charterer. However, in common law jurisdictions, arrest for the debts of anyone other than the ship's owner or demise charterer is only possible, following the sale of a ship and in respect of maritime liens or other *in rem* claims which survive the sale of a ship.<sup>5</sup> These uncertainties posed impediments to the achievement of unification and were aggravated by divergent interpretations by courts, particularly in different legal systems. The need for improvement in the 1952 Arrest Convention provisions led to the adoption of the *International Convention on the Arrest of Ships 1999*.<sup>6</sup>

The General Assembly of the United Nations endorsed the convening of the Diplomatic Conference at the end of 1997, which thus culminated into the 1999 Arrest Convention. The Conference was approved on the basis of considering and adopting a new convention on the arrest of ships.<sup>7</sup> The Conference on Arrest of Ships<sup>8</sup> ( was convened in Geneva as a United Nations/IMO conference during the first two weeks of March 1999.<sup>9</sup> Representatives from States and observers from intergovernmental organizations and non-governmental organizations attended the Conference. The Conference established a Main Committee, headed by a member from Norway; A Drafting Committee, headed by a member from the United States; and a Credentials Committee headed by an Australian delegate."<sup>10</sup>

As bases for its work (which would later culminate into the 1999 Arrest Convention), the Members who participated in the conference had before it the draft articles for a convention on arrest of ships prepared by the Joint Group of Experts from the Lien Convention.<sup>11</sup> The Members who participated in the conference also deliberated on the comments and proposals submitted by the governments and inter-governmental and non-governmental

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<sup>5</sup> Francesco Berlingieri (n 2)

<sup>6</sup> Hereinafter, "1999 Arrest Convention". See Jonathan R Bob Deering, 'An Overview of the 1952 and 1999 Arrest Conventions' [2011] <<http://www.incelaw.com/en/knowledge-bank/overview-of-the-1952-and-1999-arrest-conventions>> accessed 27 January 2018

<sup>7</sup> CMI NEWS LETTER, 'REPORT OF THE SECRETARY GENERAL ON THE 42ND CMI INTERNATIONAL CONFERENCE' (2016) <<http://www.comitemaritime.org/Uploads/Newsletters/CMI%20News%202016-1-2.pdf>> accessed 29 April 2018

<sup>8</sup> Hereinafter, "Conference".

<sup>9</sup> *ibid*

<sup>10</sup> Francesco Berlingieri (n 2)

<sup>11</sup> CMI NEWS LETTER (n 7)

groups.<sup>12</sup> By March 12th, 1999 the Members who participated in the conference had adopted the text for the new Convention.<sup>13</sup> The Convention was opened for signature at the United Nations headquarters in New York from September 1999 until August 31, 2000. The Convention is in Arabic, Chinese, English, French, Russian and Spanish,<sup>14</sup> as original, and authentic texts.<sup>15</sup>

### 3 General Overview of the 1999 Convention

#### 3.1 Maritime claims: Article 1

The 1999 Arrest Convention contains a list of maritime claims under which a ship can be arrested while there are 17 categories of maritime claims in 1952 Convention that can give rise to a right of arrest. Some of the claims in the 1952 Convention were extended while new claims were introduced to the 1999 Convention. Only *bottomry* was removed from the 1952 list. Article 1(d) provides for environmental damage. This subparagraph lists examples of the type of damage which it envisages and concludes "*...and damage, costs, or loss of a similar nature...*"<sup>16</sup>

Some of the most significant new maritime claims included the following:

Damage or threat of damage to the environment;

Clean-up costs and reasonable steps taken to avoid environmental damage;

Wreck removal;

Port, canal and pilotage dues;

Vessel sale and purchase contract disputes;

Insurance premiums including mutual insurance calls payable on behalf of shipowners or demise charterers, and

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<sup>12</sup> Robert W. Lynn, 'A Comment on the New International Convention on Arrest of Ships, 1999' (2001) <<https://repository.law.miami.edu/cgi/viewcontent.cgi?referer=https://www.google.com.mt/&httpsredir=1&article=1577&context=umlr>> accessed 29 April 2018

<sup>13</sup> International Convention on Arrest of Ships (n 3)

<sup>14</sup> Ibid Article 6

<sup>15</sup> ibid

<sup>16</sup> ibid art 1 (d)

Commissions, brokerages, agency fees payable in respect of the ship.<sup>17</sup>

### *3.2 Definition of Arrest: Article 1 (2)*

Arrest is defined as ‘any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.’<sup>18</sup>

The Convention regards arrest as a judicial remedy and as a provisional measure,<sup>19</sup> and thus the above provision ensures that a ship can only be arrested when a Court makes such orders. The provision excludes arrest for criminal and administrative purposes.

### *3.3 Powers and exercise of the right of arrest: Article 3*

A ship may be arrested to obtain security even when a jurisdiction or arbitration clause in the applicable contract relates to a different State to the state wherein a vessel is arrested.

The Convention also allows a claimant to arrest a vessel whether or not it is flying the flag of a convention State. In practice though, local law will often have a bearing on the ability of a claimant to arrest.

To determine the merits of the claim, the 1999 Arrest Convention makes it clear that the court where an arrest is effected, or security provided to obtain its release has the jurisdiction to determine the merits of the case. However, the parties may “*validly agree or have agreed to submit the dispute to*” another court or arbitration.<sup>20</sup>

The 1999 Arrest Convention amended the rules on the exercise of the right to arrest a vessel involving a maritime lien. The new Arrest Convention only permits arrest for a maritime lien which is "granted or arises" under the law of the State where the arrest is applied for rather than for any maritime lien "recognised" under that law.

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<sup>17</sup> *ibid* art 1

<sup>18</sup> *ibid* art 1 (2)

<sup>19</sup> These are temporal orders granted before the final judgement of the court. Provisional measures do not in any way form part of the judgment.

<sup>20</sup> *ibid* art 3

### *The Right of re-arrest and multiple arrests: Article 5*

The Convention allows claimants multiple opportunities to secure their claims. Under Article 5, a claimant can re-arrest a ship after it has been released, and has the option of arresting multiple ships, to top up the security for his claim. The right to re-arrest or to arrest multiple vessels arises in the following circumstances:

When the security already provided is inadequate (in the case of re-arrests, the security can never exceed the value of the vessel in question); or

the person who provides the security is not, or is unlikely to be able to fulfil his/her obligations; or

the ship or its original security was released either with the consent of the claimant acting on reasonable grounds or because he/she could not by taking reasonable steps prevent the release.

### *3.5 Liability for wrongful or unjustified arrest or excessive security: Article 6*

Convention provides additional protection for the owners and demise charterers of arrested ships with regards to the wrongful arrest of a ship and goes further by allowing damages to be assessed and counter security to be imposed in respect of "unjustified" (erroneous) arrest.

Under Article 6 (1) of the Convention, the arresting court is empowered to impose on the claimant the obligation to give counter security for losses that may be incurred by the shipowner as a result of the arrest if the claimant is found liable. The Convention also allows the owner, as well as the provider of security to apply at any time to the local court to have the security "reduced, modified or cancelled".<sup>21</sup>

### *3.6 Scope of Application: Article 8*

Article 8 provides that the Convention shall apply to any ship within the jurisdiction of a signatory State. Therefore, ships flying the flag of a State which has not ratified the 1999

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<sup>21</sup> *ibid*

Convention will be subject to the Convention when in the waters of a State which has (unless that State has made specific reservations to the contrary). This will be the case irrespective of the nationalities of the parties in dispute and any law and jurisdiction provision they may have agreed between them.

### *3.7 Reservations: Article 10*

States are allowed to make certain reservations when ratifying the Convention.<sup>22</sup> The only notable reservation so far has been made by Spain which has reserved the right not to apply the rules of the Convention to ships which do not fly the flag of another 1999 Convention State.<sup>23</sup>

## 4 The Need for the Gambia to Incorporate the 1999 Arrest Convention into its Laws

The nature of shipping is international, and therefore, it is deemed necessary for the laws of the Gambia to reflect international standards. Doing the same will promote international trade because of a showing of a firm rule of law which could redound in the increase the number of ships visiting and those on its registry.

The High Court of the Gambia has Admiralty jurisdiction and mostly relies on the Courts Act, subsidiary legislation which provides for detention of ships, as follows:

#### Detention of ships

##### 1. In what cases

**When the extreme urgency or other peculiar circumstances of the case appear to the Court so to require.** It shall be lawful upon the application of any plaintiff, by warrant under the seal of the court, **to stop the clearance or order the arrest and detention by the Sheriff of any ship about to leave the jurisdiction** (other than a ship enjoying immunity from civil process), and such clearance shall be stopped, or the ship arrested and detained accordingly.

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<sup>22</sup> *ibid* art 10

<sup>23</sup> *ibid*



Provided always that the warrant shall not be issued at the instance of the plaintiff unless the application shall be supported by an affidavit of the facts.

2. Release of ships detained

The Court may at any time release a ship detained under this order on such terms as it deems reasonable.<sup>24</sup>

Reparation for Needless Arrests

1. Court may require security or impose other terms on making orders.

The Court on making any order to hold bail, or of sale, injunction, or attachment, or any warrant to stop the clearance of, or to arrest any ship as aforesaid, may impose such terms and conditions as the Court shall deem just, and in particular it may require the person applying for any such order to enter into such security as the Court considers requisite for his or her being answerable in any damages that may accrue through such order or warrant.

2. Cases in which compensation may be awarded

In any case in which the order as aforesaid is made, if it afterwards appear to the court that the arrest of any defendant, or order of attachment, sale or injunction, or any warrant to stop the clearance of, or to arrest any ship, was applied for on insufficient grounds; or if the suit in which any such application was made is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit, the court may (on the application of the defendant made at any time before the expiration of six months from the termination of the suit) award against the plaintiff, such amount not exceeding, the sum of two thousand dalasis, as it may deem a reasonable compensation to the defendant, for any loss, injury, or expense which he or she may have sustained by reason of the arrest, attachment, order of sale or injunction.<sup>25</sup>

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<sup>24</sup> Courts Act-Subsidiary Legislations, Orders XIII and XIV, Law of the Gambia 2009 , Volume 2

<sup>25</sup> *ibid*

In the case of *TAJCO LTD & TRADEX AND MASTERS OF M/V /BK ACE*,<sup>26</sup> the plaintiffs in filed an *ex parte* motion<sup>27</sup> under the above provisions seeking for the defendant (vessel) to be arrested and detained as it was about to leave the jurisdiction. The Court granted the application, and the vessel was arrested and detained, security was provided, and then the defendant paid for the amount claimed without the matter going to trial.

If the matter had gone to trial and the court found out that the arrest of the vessel was wrongful and the defendant was not found liable, the Rules of the High Court provide for compensation of not **exceeding two thousand dalasis (D2000)** which is equivalent to **fifty dollars**.<sup>28</sup> Hence a whole ship being arrested for days, if not months, in the ports of the Gambia and only to be released with two thousand dalasis is not enough compensation for wrongful arrest. This will be prejudicial to the shipowner and thus shows the need for the Gambia to incorporate the 1999 Arrest convention. (What year was this promulgated? Is it still prevailing law? Is it based on statute? Cite law the court fixed the amount)

Where these provisions do not cover the issues before the Court, the Court then resorts to English laws and rules both of procedure and substantive law.<sup>29</sup> Even though English legislation is still part of the laws of the Gambia, those laws should no longer be used with regards to maritime claims. The reason is that most of the other countries that have been colonised by the British and have wholly depended on English Admiralty Law and procedure have departed entirely from applying the same. The Gambia should consider taking this approach if a vibrant maritime industry in an independent and self-governing country is to be realised.

As seen from the provision stated above, it is not clear as to what is meant by arrest and when it can be effected on a ship. The provision only states the procedure to be taken by the Court and the parties in arresting a ship, and it thus, makes it insufficient for an arrest in a proper maritime claim.

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<sup>26</sup>Civil Suit No. HC/239/09/071/D2 (High Court of the Gambia)

<sup>27</sup> With respect to or in the interests of one side only.

<sup>28</sup> Courts Act (n19)

<sup>29</sup> The 1997 constitution of The Gambia provides the Laws of England Application Act 1921 as part of the sources of Gambian laws.

Furthermore, the Merchant Shipping Act makes provisions for the detention of ships, and section 499 thereof provides:

Where-

- a. **Any damage has been caused to property belonging to the Government** in any part of the world, a citizen or a body corporate resident in the Gambia;
- b. **A claim is made for damage by or on behalf of a citizen in respect of personal injuries including fatal injuries** against the owners of a foreign ship, and at the time thereafter the ship or any other ship wholly and beneficially owned by the same owner is found in the Gambia,

The Court upon being satisfied **that the damage or injury was probably caused by the misconduct of the master or crew of the ship, issue an order directed to detain the ship until such time as the owner, master or agent** thereof has made satisfaction in respect of the damage or injury or has security to be approved by the Court to abide by in the event of any action, suit or other legal proceedings that may be instituted in respect of the damage or injury and pay all costs and damages that may be awarded thereon.<sup>30</sup>

Even though detention is provided for as seen from the above provision, it is not subject to the provisions of the Arrest Convention, as this provision refers to the detention of a vessel where it has caused damage to government property or personal injuries by the misconduct of the master or crew. In contrast, the arrest of a ship in the Convention is with regard to actions in rem. This, therefore, makes it necessary for the Gambia to ratify the convention.

The 1999 Arrest Convention, however, defines explicitly arrest and states in what situation an arrest can be made to a ship. Therefore, it would be in the interest of potential maritime claimants to know the specific situations in which an arrest is applicable.

Furthermore, the enforcement of maritime claims will impose in many situations the issues of national law and provisions with regards to jurisdictions. So an ideal national law would provide a set of rules and regulations promulgated to govern a group of persons within the Gambia other than the provisions provided in the Courts Act.

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<sup>30</sup> Merchant Shipping Act, 2013

International conventions provide a source of uniformity<sup>31</sup> while leaving many issues to be addressed by the respective national laws. The Gambia may consider initiating a vital exercise of updating and enacting laws in the admiralty sphere if the country is to be ranked in the class of countries with progressive laws regulating maritime activities.

The Gambia is not a party to either of the Arrest Conventions but was represented at the conference in Geneva where the 1999 Arrest Convention was adopted. The Gambia's representative was among the core members of the drafting committee,<sup>32</sup> showing the active participation and the interest the Gambia had in the adoption of the 1999 Arrest Convention.

Furthermore, since the 1999 Convention has made significant improvements to its 1952 counterpart, it is recommended that the Gambia accede to the 1999 Convention and take steps to incorporate its provisions into the laws of the Gambia. The 1999 Convention is of paramount importance to the international trading community, the establishment of up to date rules and regulations governing the arrest of ships would undoubtedly play an essential role in facilitating a smooth marine transport and world trade. (Why not state examples of previous states who ratified the Convention and improvements in their trade to strengthen your point?)

The accession and subsequent incorporation of the provisions of the 1999 Convention will constitute an essential expression of political will to update national laws to reflect the international rule of law and thus help in developing the Gambia's legal system.

*An Act to Incorporate and Effectively Implement the 1999 Arrest Convention* will help to strike a balance between the interest of the claimant and the owners of ships in obtaining security for their claims and in securing the free movement of ships within the Gambia's territorial waters.

In the process of reviewing the Admiralty laws of the Gambia, it is recommended that a comprehensive Admiralty system is established with substantive laws in the realm of

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<sup>31</sup> Francesco Berlingieri (n 2)

<sup>32</sup> United Nations/International Maritime Organisation, Diplomatic Conference (n5)

Admiralty claims since there is a need for the codification of the laws and procedures including those on arrest of vessels.

The Convention should not only be acceded to but should also be given its fair share of attention in any incorporation process.

An Arrest Act will be an effective measure in securing the claim of a maritime creditor, but the absence of an Act leaves a significant vacuum in the law, thus, creating many uncertainties. The Act would complement the global efforts towards advancing the cause of harmonisation of international maritime law.

Finally, it will provide certainty to vessels calling on Gambian Ports in relation to arrest. Reciprocity of the international instrument will be applied, and owners of vessels flying the Gambian flag will be better protected from arbitrary detention and arrests of their vessels.

#### 5 How the 1999 Arrest Convention will be incorporated into the Law of the Gambia

The arrest act will repeal orders XIII and XIV of the Courts Act-Subsidiary Legislation, 2009. It shall not form part of the courts act it but will be in a separate act on its own. The Gambia is a dualist country. Thus, the provisions of the convention can only form part of the laws of the Gambia when it is ratified and incorporated into the laws of the Gambia so as to fall under section 7 of the Constitution which states:

In addition to this constitution, the laws of The Gambia consist of:

- a. Acts of the National Assembly made under this Constitution and subsidiary legislation and under such Acts;
- b. Any Orders, Rules, Regulations or other subsidiary legislation made by a person or authority under a power conferred by this Constitution or any other law;
- c. The existing laws including all decrees passed by the Armed Forces Provisional Ruling Council;
- d. The common law and principles of equity;
- e. Customary law so far as concerns members of the communities to which it applies;

- f. The Sharia as regards matters of marriage divorce and inheritance among members of the communities to which it applies.<sup>33</sup>

Taking into account the importance of the Convention to the trading community, it is believed that the Gambia should accede to the Convention, since it was represented at the Conference in Geneva where the convention was adopted, and being part of the countries that signed the final Act of the Convention in March 1999.<sup>34</sup> Further, upon accession, it must be incorporated into the laws of the Gambia by an Act of the national assembly.

## 6 An Overview of the Proposed “Arrest of Ships Act 2018”

The High Court of The Gambia has jurisdiction to hear and determine any of the claims provided for in section 2 (7) of the proposed Act.

### 6.1 Maritime Claims: Section 2 (7)

The Act provides a list of 22 maritime claims under which a ship can be arrested, including damages or threat of damage to the environment, clean-up costs and reasonable steps taken to avoid environmental damage; wreck removal; port, canal and pilotage dues; vessel sale and purchase contract disputes, among others.

### 6.2 Definition of Arrest: Section 2 (1)

Arrest is defined as ‘any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.’

Arrest here is a judicial remedy and, in this provision, it is only the Court that can make an order for a ship to be arrested. This provision, however, excludes arrest of a ship for criminal and administrative purposes.

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<sup>33</sup> Constitution of the Republic of the Gambia, 1997.

<sup>34</sup> United Nations/International Maritime Organization Diplomatic Conference (n

### 6.3 Powers of Arrest: Section 3

This section provides that the Court has the power to make orders for the arrest or release of ships only in respect of maritime claims as per section 2 (7) of this Act. The rules of the High Court will govern the procedure for such an arrest. It also allows for an arrest of a ship whether or not it is flying the flag of the Gambia. It also confirms that arrest may be used to obtain security whose claims may be heard in other courts.

### 6.4 Exercise of Right of Arrest: Section 4

The Act provides that the arrest of a ship is permissible in respect of which a maritime claim is made if the owner of the ship at the time of the action is liable for the claim and remains the owner of the ship when the arrest is effected. However, this requirement will not be applicable if the claim is based on a mortgage, hypothec or a similar charge since any such securities may be granted by a person who is not the debtor and will follow the ship in case of a voluntary sale.

### 6.5 Arrest of Sister Ships

This provision allows for the arrest of a ship which is owned by the same person or entity owning the ship in respect of the claim arose. Thus an owner liable for a claim in respect of ship X may face the arrest of ship Y which is owned by the same owner.

### 6.6 Liability for Wrongful or Unjustified Arrest or Excessive Security

The section provides for additional protection for the owners and demise charterers of arrested ships with regards to the wrongful arrest of a ship and goes further by allowing damages to be assessed and counter security to be imposed in respect of unjustified erroneous arrest.

Under this section, the Court has the power to impose on the claimant the obligation to give counter security for losses that may be incurred by the shipowner as a result of the arrest if the claimant is found liable. The provision also allows the owner, as well as the provider of security to apply at any time to the Court to have the security reduced, modified or cancelled.

## 6.7 Jurisdiction on Merits of the Case

The section provides that the High Court shall have jurisdiction to determine the case upon its merits unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accept jurisdiction or to arbitration after the arrest has been effected or security provided.



# Arrest of Ships Act

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## Section 1

### Short Title

This Act shall be cited as The Arrest of Ships Act.

## Section 2

### Interpretation

In this Act-

1. "arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.
2. "Claimant" means any person asserting a maritime claim.
3. "defendant" means a person against whom a maritime claim is commenced.
4. "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.
5. "Convention" means the International *Convention on Arrest of Ships*, 1999, Geneva, Switzerland on the 12<sup>th</sup> day of March 1999 and entered into force on the 14<sup>th</sup> day of September 2011
6. "Court" means the High Court of the Gambia.

7. "Maritime Claim" means a claim arising out of one or more of the following-

(a) loss or damage caused by the operation of the ship;

(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

(c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);

(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

(m) construction, reconstruction, repair, converting or equipping of the ship;

(n) port, canal, dock, harbour and other waterway dues and charges;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements incurred on behalf of the ship or its owners;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

(s) any dispute as to ownership or possession of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;

(v) any dispute arising out of a contract for the sale of the ship.

### **Section 3**                      **Power of Arrest**

(1) A ship may be arrested or released from arrest only under the authority of the Court.

(2) A ship may only be arrested in respect of a maritime claim, but in respect of no other claim.

(3) A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the Gambia, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

(4) The procedure relating to the arrest or release of a ship shall be governed by the rules of procedure of the Court.

### **Section 4**                      **Exercise of right of arrest**

(1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if-

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected;

- (b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected;
- (c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship;
- (d) the claim relates to the ownership or possession of the ship;
- (e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose-

(a) owner of the ship in respect of which the maritime claim arose;  
or

(b) demise charterer, time charterer or voyage charterer of that ship.

3. Notwithstanding the sub-section 1 and 2 of this Section, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the laws of The Gambia, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

## **Section 5**

### **Release from Arrest**

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the

maritime claims enumerated in section 2 (7) (s) and (t).  
(doublecheck if this corresponds to the Convention)

2. Cases in which a ship has been arrested in respect of any of the maritime claims enumerated in paragraphs (s) and (t) of section 2 (7), the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

3. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

4. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

5. If a ship has been arrested in a non-Party State and is not released although security in respect of that ship has been provided in the Gambia in respect of the same claim, the Court shall order the release of such security upon application to that effect being made to it.

6. If in a non-Party State, the ship is released upon satisfactory security in respect of that ship being provided, the Court shall order the release of any security provided in the Gambia in respect of the same claim to the extent that the total amount of security provided in the Gambia and the non- Party State exceeds-

(a) the claim for which the ship that has been arrested, or

(b) the value of the ship, whichever is the lower.

Such release shall, however, not be ordered unless the security provided in that State will actually be available to the claimant and will freely be transferrable.

7. Where, pursuant to subsection 1, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

## **Section 6**

### **Right of re-arrest and multiple arrest**

1. Where a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

(a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or

(b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or

(c) the ship arrested or the security previously provided was released either:

(i) upon the application or with the consent of the claimant acting on reasonable grounds, or

(ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

(a) the nature or amount of the security already provided in respect of the same claim is inadequate, or

(b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

## **Section 7**

### **Protection of owners and demise charterers of arrested ships**

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

(a) the arrest having been wrongful or unjustified, or

(b) excessive security having been demanded and provided.

2. The Court shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

(a) the arrest having been wrongful or unjustified, or



(b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this section shall be determined by application of the laws of The Gambia.

4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of section 7, then proceedings relating to the liability of the claimant in accordance with sub-section 2 of this section may be stayed pending that decision.

5. Where pursuant to sub-section 1 of this section security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

## **Section 8**

### **Jurisdiction on the merits of the case**

1. When an arrest has been effected or security provided to obtain the release of the ship, the Court shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of sub-section 1 of this section, the Court may refuse to exercise jurisdiction in accordance with the laws of the Gambia in respect of an arrest effected or security provided where another State accepts jurisdiction.

3. In cases where an arrest has been effected or security provided to obtain the release of the ship, the Court:

(a) does not have jurisdiction to determine the case upon its merits;

or

(b) has refused to exercise jurisdiction in accordance with the provisions of sub-section 2 of this section, the Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with sub-section 3 of this section then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with sub-section 3 of this section, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

(a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and

(b) such recognition is not against public policy.

6. Nothing contained in the provisions of paragraph 5 of this section shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

## **Section 9**

### **Application**

1. This Act shall apply to any ship within the jurisdiction of the Gambia, whether or not that ship is flying the flag of the Gambia.

2. This Act shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Act does not affect any rights or powers vested in Government or its departments, or in any public authority, or in any dock or harbour authority, under any international statute or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Act shall not affect the power of any Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Act shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, where an arrest is effected in the Gambia.

**Section 10                      Non-creation of Maritime Liens**

Nothing in this Act shall be construed as creating a maritime lien.

**Section 11                      Repeals**

This Act repeals orders XIII and XIV of the Courts Act-Subsidiary Legislation, 2009.

**Section 12                      Entry into force**

This Act shall enter into force after its publication in the Gazette.

