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Explanatory Note

The Republic of Estonia was proclaimed in 1918. In 1920's and 1930's Estonia ratified or acceded to most of the maritime conventions of that time. After the reestablishment of independence in 1991 Estonia became a member of International Maritime Organisation in January 1992. In the first place Estonia acceded to conventions that deal with maritime safety and with prevention of pollution from ships.¹

Estonian legislation is based on the civil-law system. Legislative power rests with the parliament² called the Riigikogu (State Assembly). The President proclaims the laws adopted by the parliament. The President has the right to reject a law³ and he has used his right more than once.

Only laws which have been published in the State Gazette have obligatory force.⁴ A law enters into force on the tenth day after its publication, unless the law itself establishes otherwise.⁵

Estonian maritime legislation is embodied in different acts, such as Merchant Shipping Code, Maritime Safety Act, Harbour Act, Act for

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Lindpere, H., *Interests and Policies of Estonia in the Baltic Sea:- The Baltic Sea: New Developments in National Policies and International Cooperation*; Platzöder, R.; Verlaan, P. (Editors), Martinus Nijhoff Publishers, 1996.

² Eesti Vabariigi Põhiseadus, art. 59 [Constitution of Republic of Estonia]

³ Ibid., art. 107.

⁴ Ibid., art. 3.

⁵ Ibid., art. 108.

the Registration of Vessels and for the Right to Fly the National Flag, Law of Property relating to Vessels Act, etc.

The Law of Property relating to Vessels Act consists of five parts. The first four parts regulate ownership, hypothecs and maritime claims. The fifth part regulates the implementation of the Act.

The drafting project is aimed to supplement the fifth part of the Act with provisions dealing with arrest of vessels.

Estonia has not adhered to the International Convention for the Unification of certain rules relating to the Arrest of Sea-going Ships, 1952.

The aim of the drafting project is to determine: -

- (1) what is meant under “Arrest of ships” and in respect of which maritime claims a ship can be arrested;
- (2) that not only the particular ship in respect of which a maritime claim arose can be arrested, but also a sister-ship, that is a ship belonging to the owner at the time the arrest is effected, provided that the owner is liable for the claim;
- (3) that a state-owned ship can not be arrested because Estonia is a contracting party to the 1926 Convention Concerning the Immunity of State-Owned Ships;
- (4) that arrest of a ship does not extend to cargo and freight;
- (5) in which form a claimant has to apply to a court to arrest a ship and that documentary evidence has to be enclosed with an application;
- (6) that the court has to issue an order of arrest without delay and that the order has to be executed without delay;
- (7) that the arrest may be granted without the shipowner being summoned to attend;

- (8) that a court may in its discretion oblige a claimant to provide a counter security;
- (9) a fourteen-day limitation period for a claimant to bring proceedings on the merits of the claim before a court;
- (10) that an arrested ship is placed in the custody of a person appointed by a court and that he is obliged to follow the directions of the court;
- (11) who has to bear the costs of an arrested ship's maintenance;
- (12) under which conditions a ship may be released from arrest;
- (13) that once arrested and then released ship cannot be rearrested in respect of the same maritime claim, except in some cases.

An Act to Amend and Supplement the Law of Property Relating to Vessels Act

§ 1. The Law of Property Relating to Vessels Act (RT I 1998, 30, 409; 59, 941), Chapter 1 of Part V, is amended and supplemented by §§ 78¹ - 78¹⁶ as follows:

“ § 78¹ Arrest of Ships.

(1) Arrest means the detention of a ship by order of a Court to secure a maritime claim when at the time of such detention that ship is within the jurisdiction of that court.

(2) Arrest of any ship is permissible if the maritime claim arises out of one or more of the following:

- 1) damage caused by the ship, whether in collision or otherwise;
- 2) loss of life or personal injury caused by the ship or occurring in connection with the operation or management of the ship;
- 3) salvage;
- 4) agreements relating to the use or hire of the ship, whether by charter party or otherwise;
- 5) agreements relating to the carriage of goods or passengers in the ship, whether by charter party or otherwise;
- 6) loss of or damage to goods including baggage carried in the ship;
- 7) general average;
- 8) towage;
- 9) pilotage;
- 10) goods, materials or services supplied to the ship for her operation

or maintenance;

11) construction, repair or equipment of the ship;

12) port, canal and other waterway dues and dock charges;

13) wages and other sums, including social insurance contributions, due to the master, officers and other members of the ship's complement in respect of their employment on the ship;

14) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of the ship or the shipowner;

15) disputes as to the title to or ownership of the ship;

16) disputes between co-owners of the ship as to the employment or earnings of the ship;

17) the hypothecation of the ship.

§ 78² Ships subject to Arrest.

(1) A claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the ship and who is liable for the claim.

(2) Only the particular ship in respect of which the maritime claim arose may be arrested in respect of any of the claims enumerated in clauses 15), 16), and 17) of subparagraph (2) of paragraph 78¹.

(3) If a person other than the registered owner of the particular ship is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship in the ownership of that person, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims.

§ 78₃ State-Owned Ships.

Ships owned or operated by the Republic of Estonia or by any other state, and exclusively dedicated to governmental non-commercial service shall be excluded from the application of Chapter 1 of Part V of the Act.

§ 78₄ Extension of Arrest.

An arrest of a ship shall not extend to cargo or freight earned by the ship.

§ 78₅ Form of Application.

(1) A claimant shall apply to a court in writing.

(2) An application shall contain the following particulars:

- 1) the name of the court;
- 2) the name, address and occupation of the applicant (in accordance with clause 2) of subparagraph (1), and subparagraph (2) of paragraph 147 of the Civil Procedure Act (RT I 1998, 43/45, 666));
- 3) the same data as referred to clause 2) of this subparagraph about the shipowner or other person liable in respect of a maritime claim relating to the ship;
- 4) ship's name, port of registration and her present location;
- 5) the nature of the claim;
- 6) the reasons supporting the application for the arrest of the ship;
- 7) the list of documentary evidence enclosed with the application.

§ 78₆ Evidence of Existence of a Claim.

(1) For an application of arrest a claimant shall state:

- 1) the particulars of any incident or transaction giving rise to the claim against the shipowner or other person liable in respect of a maritime claim relating to that ship; and
- 2) that the claim has not been satisfied.

(2) Bills of lading, contracts of sale, invoices, survey reports, correspondence in which the claim is acknowledged, and other similar documents, may serve as evidence of existence of a claim.

§ 78₇ Rules of Procedure for issuing Arrest.

(1) A court shall review an application and issue an order of arrest or deny the application without delay.

(2) A shipowner or any other person liable for a maritime claim in respect of a ship may not be summoned to attend the hearing.

§ 78₈ Counter Security by a Claimant.

(1) A court may as a condition of the arrest of a ship impose upon a claimant who seeks to arrest a ship, an obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by the 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 the defendant in consequence of: -

- 1) the arrest having been wrongful; or
- 2) excessive security having been demanded and obtained.

(2) Where pursuant to subparagraph (1) of this paragraph security has been provided, a person providing such security may at any time apply to the court to have that security reduced, modified or cancelled.

§ 78⁹ Order of Arrest.

The Minister for Justice shall establish the form for an order of arrest by a regulation.

§ 78¹⁰ Execution of Arrest.

(1) An order of arrest shall be executed without delay.

(2) A court shall submit an order of arrest to the registrar of the ship's register and to the authority of the port where the ship is located.

§ 78¹¹ Notice of Arrest.

A court shall notify by registered mail the order of arrest of a ship to the shipowner or to the master of the ship after the arrest has been executed.

§ 78¹² Limitation Period.

If a claimant has applied for issuing an arrest of a ship before he or she has brought an action against the defendant, the claimant shall bring proceedings on the merits of the claim before the competent court within fourteen days after the court has issued the order of arrest of the ship.

§ 78¹³ Custody of Ship.

(1) A court shall appoint a custodian in whose custody an arrested ship is placed.

(2) A custodian shall act under the control of a court and shall be bound to the directions of a court in respect of the ship.

(3) A custodian shall have no right to use the ship.

§ 78¹⁴ Costs of Ship's Maintenance.

(1) If the crew remains on board the ship after the arrest, the shipowner shall pay for the crew, and for the ship's maintenance.

(2) If the crew is disembarked the claimant shall bear all sums which the custodian deems necessary in order to preserve the ship.

§ 78¹⁵ Release from Arrest.

(1) A court within whose jurisdiction a ship has been arrested shall permit the release of the ship: -

- 1) upon sufficient security being furnished; or
- 2) if the claimant withdraws his application for arrest of the ship from the court; or
- 3) if the claim is settled or agreement is reached between the claimant and defendant; or
- 4) if the claimant fails to take proceedings in the court within fourteen days.

(2) In the absence of agreement between the parties as to the sufficiency and form of the security to release a ship, a court shall determine its nature and the amount thereof, not exceeding the value of the ship.

(3) Any request for a ship to be released upon security being provided shall not be construed as an acknowledgment of liability nor as a waiver of any defence or any right to limit liability.

(4) Where pursuant to clause 1) of subparagraph (1) of this paragraph security has been provided, a person providing such security may at any time apply to a court to have that security reduced, modified or cancelled.

(5) Before release of a ship from arrest is granted, a court may impose upon the party at whose instance or because of whose acts or failure to act the release is issued, a duty to pay all fees and expenses incurred in connection with the arrest.

§ 78¹⁶ Re-arrest.

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

- 1) the nature or amount of the security already obtained in respect of the same claim is inadequate, provided that the aggregate amount of security may not exceed the value of the ship; or
- 2) the person who has already given the security is not or is unlikely to be, able to fulfil some or all of his obligations.

(2) The provisions of clauses 1) and 2) of subparagraph (1) of this paragraph are applicable to any other ship which would otherwise be subject to arrest in respect of the same maritime claim.”

§2. This Act shall come into force on 1st July 1999.

IMO INTERNATIONAL MARITIME LAW INSTITUTE

**An Act to Amend and Supplement the Law of
Property Relating to Vessels Act**

**The Maritime Legislative Drafting Project
on Ship Arrest**

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1998/99**

