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EXPLANATORY NOTE

Almost half a century has elapsed since the adoption of the 1952 International Convention Regarding the Arrest of Seagoing Ships (the 1952 Arrest Convention), which has had an admirable number of ratifications and is still widely used today. As a result of a long period and of the subsequent development of maritime law some of the provisions of the 1952 Arrest Convention have become outdated and some others are deemed to be ambiguous.

On 12th March 1999, at the United Nations Headquarters in Geneva, Switzerland, representatives of 93 countries attending the Diplomatic Conference on Arrest of Ships, adopted the Final Act of the 1999 Convention on Arrest of Ships¹. The 1999 Convention will enter into force six months following the date on which ten States have expressed their consent to be bound by it. Upon entering into force it will establish a uniform set of rules regarding the arrest of ships.

The 1999 Convention is still based on the basic principles of the 1952 Convention, although it makes a number of important and far reaching changes. It still retains a closed list of maritime claims but, nonetheless, there is some flexibility. Especially subparagraph 1 (d), dealing with environmental claims is a “mini” open list, due to the fact that reference is made to “**damage, costs or loss of similar nature**”. Beside this the new “document” substantially increases the numbers and types of claims in respect of which a ship can be arrested.

IMPROVEMENTS OF THE 1999 CONVENTION

- The 1999 Convention makes it clear that the ship may be arrested for the purpose of obtaining security notwithstanding a jurisdiction or arbitration clause.

¹ Hereafter referred as the 1999 Convention.

- The personal liability is the main criterion to indicate whether a ship can be arrested or not.
- The 1999 Convention also provides for a maximum amount of security to be provided in order to release the ship from arrest. This amount cannot exceed the value of the ship.
- The general rule remains that the ship can be arrested only once in respect of a particular claim. Nonetheless, the re arrest is allowed, but only in the case if the security provided is inadequate, if the person who provides the security is unlikely to be able to fulfil his obligations under that security, or if the ship is released without security being provided.
- The 1999 Convention contains detailed provisions regarding the right of the court granting the arrest to order the provision of counter security in return for the arrest in the case the arrest is wrongful or if the claimant requested an excessive amount of security. Whether an arrest is wrongful or the security inadequate has to be determined by the law of the State where the arrest was obtained.
- The 1999 Convention automatically gives jurisdiction to the State where the arrest is obtained for all claims unless the courts of that State decline to accept jurisdiction or the parties have validly agreed to some other jurisdiction.
- It makes clear that it applies to the ships of all States whether they are parties of the mentioned Convention or not.

SLOVENIA:

The Republic of Slovenia is a contracting State to the 1952 Arrest Convention. According to Article 8 of the Constitution of the Republic of Slovenia, international conventions, which have been proclaimed and to which Slovenia adheres, shall take immediate effect in the wording, which has been ratified and published. Thus, the 1952 Arrest Convention is used in its original text whenever the vessel to be arrested is flying the flag of a contracting State

On the other hand, if the 1952 Convention is not applicable, the provisions of the Maritime Code will be applied. The new Slovene Maritime Code, which was enacted recently, deals with the arrest of ships in Part VIII. (Execution process and the securing of claims on ships), Chapter IV., Section IV. The Maritime Code has almost entirely adopted the provisions of the 1952 Arrest Convention.

The aim of the drafting project is to provide two possibilities for the implementation of the 1999 Convention into the legal system of the Republic of Slovenia. The first is the ratification of the mentioned Convention, while the second is the amendment and enlargement of the section of the Maritime Code, which deals with the arrest of ships. The second option seems to be more appropriate at the moment as the 1999 Convention is still not in force, and it is unlikely that will enter into force in the near future.

The arrest of ships is regulated in Slovenia by two Acts: the Maritime Code and the Enforcement and Security Act². The Maritime Code is “lex specialis” which governs maritime matters, whereas the Enforcement and Security Act applies in proceedings, which are not specifically concerned with ships but may be applied to ships under the general law. Both acts use the same name for their proceedings, called “temporary provisions”.

² Zakon o izvršbi in zavarovanju (ZIZ).

In this regard, it would be, in my opinion, necessary to amend the Maritime Code and to draft a new comprehensive chapter dealing with the arrest of ships, in which all the improvements of the “new” 1999 Convention would be encompassed. That chapter should also contain all the provisions related to the “arrest of ships” which can now be found in the Enforcement and Security Act. These provisions would be “lex specialis” applicable only for the arrest of vessel, while the rules of procedure will be still regulated by the Civil Procedure Act³.

The Maritime Code should expressly define that the competent court regarding all matters connected with the arrest of ships is the District Court of Koper⁴.

The first draft of the Slovene Maritime Code contained a provision, which would introduce an “action in rem” in the proceedings for the arrest of ships, in cases when the ship would be directly charged with a maritime claim or with a claim which derives from pollution of the sea. Although, it is quite unusual to introduce an action, which is typical to the countries of the so called “common law world” into a Maritime Code of a Civil law country, this is not unheard off. This solution, which was adopted also in some other maritime codes, could be useful in cases where the owner or the carrier of the ship is not known. However, this provision was subsequently (unfortunately) amended and it has lost most of its meaning.⁵

It seems that, according to the 1999 Convention, a ship can be arrested for claims against a charterer, only in States where an “action in rem” can be undertaken.⁶ Nowadays, where most of the carriage of goods by sea is effected on the basis of a charter party agreement, it would be very inconvenient not to have a possibility to arrest a ship for a claim against a charterer. This is probably one of the reasons why the 1999 Convention, although more than two years have already elapsed since its adoption, has not achieved any ratification.

³ Zakon o pravdnem postopku (ZPP).

⁴ Okrožno sodišče v Kopru.

⁵ See Article 951 of the Maritime Code.

⁶ Article 3 (3) of the 1999 Convention.

1. Law on the ratification of the International Convention on Arrest of Ships, Arrest Convention 1999,

Article 1

By virtue of this law, the International Convention on Arrest of Ships, which was adopted in Geneva, on the 12th March 1999, in Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic, is hereby ratified.

Article 2

This Convention will replace, on the day of its entry into force, the 1952 International Convention on the Arrest of Sea Going Ships, which will not be in force in the Republic of Slovenia.

Article 3

The text of the Convention in the English language is set out hereunder followed by the translation thereof in the Slovenian language:

The States Parties to this Convention,

Recognizing the desirability of facilitating the harmonious and orderly development of world sea borne trade,

Convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Convention:

1. "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.

2. "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.

3. "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.

4. "Claimant" means any person asserting a maritime claim.

5. "Court" means any competent judicial authority of a State.

Article 2

Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.

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 State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

Article 3

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; or

(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; or

(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

(d) the claim relates to the ownership or possession of the ship; or

(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.

This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Article 4

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 article 1, paragraphs 1 (s) and (t). In such cases, 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.

2. 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.

3. 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.

4. 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 a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:

(a) the claim for which the ship 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 the non-party State will actually be available to the claimant and will be freely transferable.

6. Where, pursuant to paragraph 1 of this article, 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.

Article 5

Right of rearrest and multiple arrest

1. Where in any State 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.

Article 6

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 Courts of the State in which an arrest has been effected 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 article shall be determined by application of the law of the State where the arrest was effected.*

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 article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.*

5. *Where pursuant to paragraph 1 of this article 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.*

Article 7

Jurisdiction on the merits of the case

1. *The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship 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 paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.*

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

(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 paragraph 2 of this article, such 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 paragraph 3 of this article 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 paragraph 3 of this article, 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 (ordre public).

6. Nothing contained in the provisions of paragraph 5 of this article 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.

Article 8

Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

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

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

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

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

Article 9

Non-creation of maritime liens

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

Article 10

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

- (a) ships which are not seagoing;*
- (b) ships not flying the flag of a State Party;*
- (c) claims under article 1, paragraph 1 (s).*

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

Article 11

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 12

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or*
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or*
- (c) accession.*

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 13

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

Article 14

Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

Article 15

Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 16

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 17

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

Article 4

This law shall enter into force on the day immediately following its publication in the Official Gazette of the Republic of Slovenia – International Agreements.

The President of the Republic of Slovenia

2. Bill to Amend the Maritime Code of the Republic of Slovenia

Article 1

In the Maritime Code of the Republic of Slovenia (OG RS 26/2001), in part VIII. (Execution Process and the Securing of Claims on Ships), Chapter IV, Section IV., is hereby replaced by the following articles:

Arrest of Ships

Article 938

The arrest of a ship shall be a temporary measure, meaning any detention or restriction on removal of the ship from a Slovenian port or from the Slovenian territorial sea, by order of a Court, to secure a claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

Upon the motion of the creditor, the Court may grant an order for the arrest of a ship and for the custody of a ship as a security for the claim of the creditor, if the latter proves the probability of the existence of the claim and the danger that the debtor can otherwise transfer title of the ship, hide it, move it to another place outside the jurisdiction or in any other manner prevent or endanger the repayment of the claim.

The ship can be arrested or released from arrest in the Republic of Slovenia by the District Court of Koper.

Article 939

1. An arrest order may be granted for claims 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 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.

Article 940

A ship may only be arrested in respect of maritime claims listed in Article 939 but in respect of no other claim, provided that the country of the flag of the arrested vessel applies reciprocity to ships flying the Slovene flag.

A ship may be arrested in the Republic of Slovenia, for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, the maritime claim in respect of which the arrest is effected is to be adjudicated in another state, or is to be arbitrated, or is to be adjudicated subject to the law of another state.

Article 941

The arrest is permissible of any ship in respect of which one or more maritime claims listed in Article 939 are asserted, if 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; or if the person, who was legitimately in possession or in control of the ship at the time when the maritime claim arose, is liable for the claim and is a demise charterer or owner of the ship when the arrest is effected.

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 the owner of the ship in respect of which the maritime claim arose or a demise charterer, time charterer or voyage charterer of that ship. This provision does not apply to claims related to the ownership or possession of a ship.

The Court may grant an order for arrest independently of the personal liability of the owner or of the charterer of the ship if the claim is based upon a mortgage or a hypothèque or a charge of the same nature, or if the claim relates to the ownership or possession of the ship, or if the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime privilege listed in Article 242.

If the state of the ship's flag does not apply reciprocity to ships flying the Slovene flag the ship may be arrested for any claim.

Article 942

The Court may, as a condition for the granting of an arrest order, or for permitting an arrest already effected to be maintained, impose upon the creditor 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 the Court, for any loss which may be incurred by the debtor as a result of a wrongful or unjustified arrest, and for which the claimant may be found liable.

The District Court of Koper shall have an exclusive jurisdiction to determine the extent of the liability, if any, of the creditor, for loss or damage caused by the wrongful arrest or unjustified arrest in the Republic of Slovenia. In the proceedings for the determination of liability of the creditor for wrongful or unjustified arrest the Slovene law shall be applied.

If the merits of the case shall be determined in accordance with Article 948, the proceedings relating to the liability of the creditor for a wrongful or unjustified arrest shall be stayed pending that decision.

Article 943

When granting an arrest order, the Court shall specify the duration of the arrest.

If the Court grants an arrest order before the beginning of a civil, executive or administrative procedure, the creditor must initiate proceedings on the merits within 15 days from the issuing of the mentioned order by the District Court of Koper or evidence must be provided to the Court that he has started proceedings before the foreign Court or arbitral tribunal in accordance with Article 951.

If the creditor fails to commence the proceedings on the merits in the time period laid down in the previous paragraph, the Court shall release the arrested ship or the security provided.

If the time period for which the arrest is granted expires before the accomplishment of the proceedings on the merits, the Court may, upon the motion of the creditor, extend the duration of the arrest until the judgment of the merits become final and enforceable.

Article 944

If the ship owner or the charterer of the ship which is charged with one or more maritime claims listed in Article 939 is not known, that ship may be, in the proceeding for the granting of an arrest order, treated as an independent party to the proceedings.

The arrest order shall be served to the master of the arrested ship. If the master refuses to accept it, the order shall be pasted on the plating of the ship, on the Maritime authority's notice board and on the notice board of the District Court of Koper.

In the case stated in the previous paragraph the arrest order is deemed to be served from the moment of its pasting to the plating of the ship.

Article 945

After receiving a complaint from a debtor, against the arrest order, the Court shall schedule a session, without delay. The Court must consider all the facts and evidences on the basis on which the arrest order was granted.

If the evidences are not submitted in Slovene language or in a form of a certified translation, a sworn in court interpreter must be engaged by the party who submitted that evidence, to do the translating at the session.

Upon the conclusion of the session, the judge shall deliberate and announce the decision without undue delay.

Article 946

The expenses for the maintenance of the ship and of the crew, during the period of arrest, shall be borne by the shipowner or by the charterer of the arrested ship.

The Court may, as a condition for the granting of an arrest order or for the maintenance of the arrest, request the creditor to give an allowance for the maintenance of the ship or of the maintenance of the crew during the period of arrest.

The provisions of the first and second paragraph of this article shall not prejudice the final award of those expenses.

Article 947

The provisional measure of the arrest of a ship shall not prejudice the rights and obligations of the parties arising from a contract of carriage of goods or passengers by sea.

Article 948

The Court may release the arrested ship if the debtor provides an adequate security for the claim, save in cases where the ship has been arrested in respect of claims related to any dispute for possession of the ship or to any dispute between co-owners of the ship as to the employment or earnings of the ship. Nonetheless, the person in possession of the ship can apply for an order of a Court to continue trading with the ship and also for an order to otherwise deal with the operation of the ship during the period of arrest.

In the absence of an agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the form thereof not exceeding the value of the arrested ship. If the creditor is entitled to limit his liability with regard to a special maritime claim, the amount of the security shall not exceed the maximum amount of the limited liability.

Article 949

Where pursuant to Article 948, 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.

Any request for the 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 its liability.

Article 950

The Court may, upon the motion of the creditor, re arrest or arrest a ship which has already been arrested by the Slovene or foreign Court and released, or if security in respect of that ship has already been provided in respect of the same maritime claim, if the nature or amount of the security 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 the amount of the limited liability.

The ship can also be re arrested, under the conditions stated in the previous paragraph, if the creditor who has already provided the security is not or is unlikely to be, able to fulfill some or all of his obligations, or if the ship arrested or the security previously provided was released either upon the application of the debtor or with the consent of the creditor acting on reasonable grounds or because the creditor could not, by taking reasonable steps prevent the release.

Any other ships, which would otherwise be subject to arrest or re arrest for the same maritime claim, shall not be arrested unless the nature or amount of the security already provided in respect of the same claim is inadequate or if the provisions of the first and second paragraph of this article are applicable.

An unlawful release or escape from arrest is not deemed to be a release for the purpose of this Article.

Article 951

The case on the merits shall be determined by the District Court of Koper, 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.

Article 2

This law shall enter into force eight days following its publication in the Official Gazette of the Republic of Slovenia – International Agreements.

The President of the Republic of Slovenia

