

“An Act to implement the 1999 UN Convention on Arrest of Ships and to regulate all matters related to the arrest of ships.”

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"The one thing in life which is truly yours and which no one can ever take away from you is what you study, what you learn, - your knowledge!"

My Grandfather, sometime during my childhood.

*This Project is dedicated with love to my late grandparents,
Anthony and Imelda Farrugia*

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Section 370

❖ **Historical Background**

The Maltese system is a mixed legal system in that its sources are both Continental and British. This hybrid between Civil law and Common law stems from the fact that when the British took over Malta in 1800 as a colonial power, they found that there already was a deeply rooted highly developed legal system based on Roman Law, which they soon realised cannot be changed radically, but rather, only modified in certain limited sectors. The rule of precedent in Common law was completely alien to the Maltese legal system, and the British soon perceived that it cannot be introduced, thus they resorted to statutory interventions. One field of law which was extensively supplemented by such English statutory law is that concerning Maritime law, particularly the field of arrest of ships where there is a great Common law influence.

At that time, the English law was contained in the **Vice-Admiralty Court Act 1840** and in the **Admiralty Court Act 1861**. In order to introduce these acts in colonies, the UK Parliament passed the Act known as the **Vice-Admiralty Courts Act 1863**. This piece of imperial legislation confirmed the Vice-Admiralty court in overseas possessions where such already existed, and listed the matters in respect of which the Court enjoyed jurisdiction. More importantly, it enabled the King, by Order in Council, to set up in the colonies courts which were delegates of the British Admiralty Courts. These courts, referred to as Vice- Admiralty Courts exercised the judicial functions of the Lord High Admiral by whom they were established in the United Kingdom and its dependencies. This Act had clauses spelling out jurisdiction and providing for the framing of rules of procedure. The jurisdiction exercised by the Vice-Admiralty Courts was analogous to that of the High Court of Admiralty, which court in fact exercised concurrent jurisdiction with the Vice-Admiralty Courts abroad. The Vice-Admiralty Courts so set up were authorised to exercise jurisdiction irrespective of whether the cause of action had arisen in the colony or outside it. All Admiralty Courts administered English Admiralty law.

Hence, it was through the medium of the Vice-Admiralty Courts that the tradition of English Admiralty law was injected into the colonies. Through the promulgation of the Vice-Admiralty Court Act 1863, the 1840 and 1861 Acts became directly applicable in the colonies thereby providing the legislative jurisdictional framework for workings of the Vice-Admiralty Courts.

These Vice-Admiralty Courts which came into existence in the colonies did not supersede or exclude the jurisdiction of the ordinary courts administering the law of the colonies.

Consequently, it was possible for a litigant to bring his action either in the Vice-Admiralty Court, or in the Commercial Court which was also competent to take cognisance of all controversies relating to acts of trade between any persons, including all transactions relating to vessels and navigation. There existed in Malta therefore two courts having jurisdiction over maritime matters, but with a fundamental difference. The jurisdiction of the Commercial Court was established by a local law and was exercised in accordance with the provisions contained in the Code of Organisation and Civil Procedure (COCP). The Vice-Admiralty Court possessed the jurisdiction established by the Vice-Admiralty Courts Act 1863, which was in part special and in part concurrent with the ordinary jurisdiction of the Commercial Court.

This situation remained until 1890. In 1890, a new Imperial Act of Parliament entitled the **Colonial Courts of Admiralty Act 1890**, empowered the Colonial legislatures to declare any court of unlimited civil jurisdiction to be a colonial court of Admiralty, with the same or lesser jurisdiction as the High Court in England, and any inferior Court in the same possession may, in a like manner, have limited Admiralty jurisdiction conferred on it. In other words, an Imperial Act of Parliament was entitling the lower Parliaments in the colonies themselves to declare that their own local courts could exercise an admiralty jurisdiction, rather than having a separate Vice-Admiralty Court.

In fact, in Malta the **Vice-Admiralty Court (Transfer of Jurisdiction) Ordinance¹** was promulgated whereby it was enacted that the jurisdiction hitherto exercised by the Vice-Admiralty Court was to be exercised by the commercial Court, as part of its ordinary jurisdiction, and the mode of procedure is to be the same as that in force in this court under the COCP. Consequently, the original jurisdiction previously exercised by the Commercial Court over maritime causes was extended, but the mode of procedure concerning issues such as how and what warrants are served, how evidence is heard and when witnesses are summoned, was to be regulated by the COCP.

❖ **The Current Regime**

¹ Ordinance III of 1892

Since then the position in Malta had not suffered any change. In fact, the enactment of the **Merchant Shipping Act (MSA)** by **Act XXVII of 1973** which repealed the Vice-Admiralty Court (Transfer of Jurisdiction) Ordinance confirmed the Commercial Court's jurisdiction as hitherto obtaining. Notwithstanding this, Sec.370(1) thereof provides that

“the Commercial Code shall continue to exercise as part of its ordinary jurisdiction and in accordance with the mode of procedure in force in that court, the jurisdiction hitherto exercised by it in virtue of the Vice-Admiralty Court (Transfer of Jurisdiction) Ordinance.”

Moreover, as may be seen in a copy of the current Sec.370 MSA reproduced in Annex II of this legislative drafting project, the situation is further complicated by the proviso to subsection (2) whereby it is established that until amendment are made, the provisions of sections 3, 4 and 5 of the Vice-Admiralty Court (Transfer of Jurisdiction) Ordinance shall continue to have effect notwithstanding the repeal of the said Ordinance.

The effect of this current provision is to maintain a vague and abrogated legislation in life. In fact the jurisdiction which the Courts are seized with in this field is exercised by reference to an abrogated Ordinance which in turn conferred jurisdiction to the Commercial Court merely by further indirect reference to the jurisdiction previously exercised by the Vice-Admiralty Court in accordance with the 1840 and 1861 Admiralty Court Acts which are now long repealed. Indeed, the heads of jurisdiction laid down by these Acts are not reproduced in any provision of Maltese law, and this further adds to the uncertainty dominating this important field.

This shocking interim measure in Sec.370 MSA is rendered even more ghastly when one realises that almost thirty years after, still no rules to rectify this undesirable state of affairs have been introduced. This legislative drafting project is precisely intended at adjusting this situation by implementing the **Arrest of Ships Convention, 1999**.

This British influence resulted in an *ad hoc* situation where a prevalently Civil law based system has been revolutionised beyond recognition by Common law. In fact, not only is the field of Maritime law the only one where the Common law institute of Mortgages finds place in Maltese law, but it also recognises the exercise of an *action in rem* which is otherwise completely unheard of in other fields of Maltese Law.

All the above developments in the regulation of arrest of ships escalated in a confusing status quo which though protracted by the courts and transcended to generations of lawyers with great dexterity and apparent ease is in fact rather unfortunate and indeed very complicated to explain to foreign observers and above all, to actors in the international shipping industry of which Malta is a hub by virtue of its location and its large fleet.

Yet a further complication lies in the issuing of warrants tantamount to a warrant of 'arrest' of ship, since the notion of 'arrest of ships' *per se* is unknown in Malta. Thus there is no such warrant for ships. For this reason, in order to arrest a ship, the most effective method is to request the court to issue a **warrant of impediment of departure of a ship** concurrently with a **warrant of seizure**, and not to request the issue of just one of them, although either would effectively hinder the vessel from leaving Malta. The reason is that neither one of the two above mentioned warrants has all the elements which a creditor would wish for and which are normally inherent in a warrant of arrest.

In fact, the warrant of impediment of departure is an order to the Comptroller of Customs and the Officer responsible for Ports to enjoin them not to grant clearance to the ship to leave. However, it does not remove the vessel from the exclusive control of the master. On the other hand, the warrant of seizure has the effect of dispossessing the master of the vessel, but it is not directed at the relevant local port authorities. Thus in order to achieve the effect inherent in a 'warrant of arrest of ships', both warrants are normally requested and issued conjointly. This state of affairs thus calls for the introduction of a 'warrant of arrest of ships'.

This is rendered more desirable in the light of the fact that now the warrant of impediment of departure established under the COCP can only be issued in regard to ships or vessels, and no longer in regard to persons. The introduction of a 'warrant of arrest of ships' would render the warrant of impediment of departure of ships redundant. Thus the provisions relating to the latter may be amended in order to apply to the former, in the same time removing all references to the warrant of impediment of departure of ships, and effectively repealing it.

Prior to proceeding further, it is interesting to note that with the abolition of the institute of civil arrest in commercial matters, it was felt that there was no further purpose for the distinction between the commercial and civil jurisdiction of the courts. Consequently, Act XIV

of 1995 which has radically amended the COCP abolished Sec.36 of the COCP which essentially means that there is no longer a commercial court, since this has been merged into the Civil Court First Hall. Though it was quite an important abrogation, it does not effect the notion under review in any relevant way.

❖ **The Provisions of the Legislative Draft**

The Act focuses on the amendments which must be made to the COCP and to the MSA for the introduction of the notion of ‘arrest of ships’ and the implementation of the Arrest Convention 1999 in Maltese law. It is divided in two Parts, Part I dealing with amendments to the COCP and Part II dealing with amendments to the MSA required for the introduction and implementation of the Arrest Convention 1999.

The amendments to be introduced are rather self explanatory, especially in view of the reproduction of a copy of the current sections to be amended by virtue of this legislative draft in annexes to the drafting project. Namely, Annex I which contains the provisions to be amended in the COCP, and Annex II which contains the sections to be reviewed in the MSA. In addition, throughout this section I shall explain what is sought to be achieved by the proposed amendments wherever necessary.

The format chosen for this legislation drafting project follows the same pattern normally used by the legislature when enacting an Act. Since the Act shall be amending two distinct Chapters of the Laws of Malta I have decided to present it in two parts, each one corresponding to one of the Chapters.

- **Part I - *Amendments to the Code of Organisation and Civil Procedure (COCP)***

As explained above, the introduction of a ‘warrant of arrest of ships’ would render the warrant of impediment of departure of ships redundant. However, since the latter pertains exclusively to the detention of ships, most of its provisions as easily rendered equally applicable to a warrant of arrest of ships. Thus, I have opted to retain and amend the existing provisions

relating to procedure. This in view of the requirement laid down by Art.2(4) of the Arrest Convention which provides that the procedure relating to the arrest of a ship or its release is to be governed by the law of the State in which the arrest was effected or applied for - in this case, Maltese procedural law found in the COCP.

As may be seen in Annex I, the Warrant of Impediment of Departure is found under **Sub-title IV** of “**Title VI - Of Precautionary Acts**”. Though found under the general heading of *precautionary acts*, in terms of Sec.862, it can also be issued to enforce an *executive title*.² For this reason, many sections in Part I of the Act are aimed at substituting the words “arrest of any ship or vessel” for the words “impediment of departure of any ship or vessel.”

The first six clauses in the draft deal with amendments to be made to the “General Provisions” of Precautionary Warrants. In Clause 4 of the Act, I have added subsection(10) to Sec.836 which deals with the issue of counter warrants. This renders this section applicable also in the case of arrest of ships where the ship alone is the defendant in the action. This addition was especially important in view of the provision found in Sec.181A(3) COCP which reads as follows,

“Where a written pleading is to be filed by or against a ship or other vessel, it shall be sufficient if there is designated the name of such ship or other vessel, as the case may be, and it shall not be necessary to mention the name of any person to represent such ship or other vessel.”

In this way, it is hoped that it is made absolutely clear that there need not be any representative of the ship mentioned in the warrant, since the ship *per se* is the defendant, and as such, is entitled to defend itself and exercise all the applicable provisions in the COCP.

The above reason was also the scope of Clause 6 of the Act which adds a paragraph to Sec.838A, thus extending to the arrested ship the right to demand security for payment of any penalty, damages and interest which may be imposed on the plaintiff issuing the warrant of arrest.

² This is also confirmed by Sec.868(1) COCP

Clauses 7 to 12 of Part I are aimed at amending Sub-title IV of Title VI which currently deals specifically with the warrant of impediment of departure, in order to substitute the warrant of impediment of departure of a ship or vessel with the warrant of arrest of a ship or vessel in.

Clause 8 amends Sec.855, which is the first section in Sub-title IV. Furthermore, it does not only effect the substitution between the two warrants, but it also amends this section to introduce a direct reference to Sec.376 of the Merchant Shipping Act, thereby tying Sub-Title IV to the section whereby, by means of Clause 15 of this draft I have introduced and implemented the Arrest Convention 1999 in the MSA.

The new subsections added to Sec.856, which describes the “Contents and service of the warrant”, by Clause 9(c) of the Act will extend the effect of the warrant of seizure³ described above to the effect which Sub-Title IV presently confers to the warrant of impediment of departure. In this way, the warrant of arrest will not only have the effect of preventing departure of the vessel, but it shall also have the effect of dispossessing the master of the vessel. This should fulfil all the elements which are normally inherent in a warrant of arrest of a ship or vessel. In fact, the proposed subsection (3) precisely aims at adding the effect of the provisions regulating the warrant of seizure to the warrant of arrest, thus making them applicable thereto in so far as they are consistent with the provisions of Sub-Title IV.

The deletion of the words “*amounting to not less than three thousand Maltese liri*” in Sec.861, by means of Clause 10 was rendered necessary in view of the fact that the Arrest Convention does not establish a minimum value of the claim required in order to arrest a ship. For the same reason, Clause 11 deletes the words “*in an amount not less than three thousand Maltese liri,*” in Sec.866 which are presently rendered necessary due to the minimum value of the claim required in Sec.861.

The minimum value laid down in Sec.861, is currently established in Maltese law in order to avoid the issuing of a warrant impediment of departure of vessels for a minor claim. The justification for this requirement is based on the principle “*De minimis non curat praetor*”, which means that the Court is not to be troubled for minor claims.

³ Sub-title II of Title VI of the COCP

The fear that the removal of this minimum value requirement might lead to the arrest of a vessel for a minor or insignificant claim, is somewhat already countermanded by Sec.836(8)(e)⁴ which condemns the plaintiff to the payment of a penalty in favour of the person against whom the precautionary act was issued if the circumstances of the debtor (in this case, the ship) were notoriously such as not to give rise to any reasonable doubt as to his solvency to meet the plaintiff's claims. Furthermore, such a situation is also precluded by Art.6(2)(a) of the Arrest Convention 1999 whereby the Court is empowered to condemn the plaintiff to pay any loss or damages caused to the ship owner or demise charterer of the arrested ship as a consequence of the arrest having been wrongful or unjustified. It seems that the Courts can definitely extend the concept of unjustifiability to include liability for claims held to be minor or insignificant. Consequently, this should be enough to deter a plaintiff from bringing a minor or insignificant claim.

- **Part II - Amendments to the Merchant Shipping Act (MSA)**

Part II contains four clauses, 13 to 16 which introduce important amendments to the MSA and effectively add the Arrest Convention 1999 thereto, thus implementing it in Maltese law.

The situation obtaining as a consequence of the current provisions of Sec.370⁵ of the MSA has been clearly illustrated above⁶. For this reason Clause 14 squarely deals with the amendments required to this provision. Clause 14(a) deletes subsection (1) of Sec.370 reproduced above⁷ and substitutes it with a provision granting the Civil Court the power to exercise jurisdiction conferred by a new section, namely Sec.376 whereby the Arrest Convention is, in fact being implemented.

Clause 14(b) in turn deletes the proviso to subsection (2) of Sec.370, also referred to above. This proviso keeps the provisions of sections 3, 4 and 5 of the Vice-Admiralty Court (Transfer

⁴ Reproduced in Annex I

⁵ Reproduced in Annex II

⁶ *vide supra* pg.viii

⁷ *ibid.*

of Jurisdiction) Ordinance⁸ applicable since it states that these sections shall continue to have effect notwithstanding the repeal of the said Ordinance.

The intention behind the amendments contained in Clause 14 is to remove all reference to the Vice-Admiralty Court (Transfer of Jurisdiction) Ordinance from Sec.370. Thus finally abrogating such Ordinance and the confusing jurisdiction which it conveys, in favour of the jurisdiction now granted to the Court by virtue of Sec.376.

Clause 15 actually introduces and implements the Arrest Convention into Maltese law, and it does so by adding a fundamental new section, namely Sec.376. Sec.376(1) starts by referring to Sec.375⁹. This is a new section added to the MSA by Act XXII of 2000. It is an enabling provision which provides for the ratification of certain treaties relating to Merchant Shipping, amongst which the International Convention on Arrest of Ships, 1999.¹⁰ Furthermore, Sec.375 (1) also provides that

“...the Minister may upon ratification or accession of any of the said treaties or conventions make regulations giving effect to the provisions thereof, and such power shall include the power to provide that any provision of this Act inconsistent with the provisions of any such treaty or convention shall no longer apply.”

The International Convention on Arrest of Ships, 1999 is one of the Conventions specifically included in Sec.375. In fact, it is precisely contained in paragraph (n) of subsection (2) of Sec.375 as the *“International Convention on Arrest of Ships, 1999 signed in Geneva on the 12th March 1999”*. It is important to note this in view of the fact that Sec.376(1) actually implements the Arrest Convention by direct reference to the above mentioned paragraph.

Most of the subsections drafted in Sec.376 are self explanatory, and are aimed at implementing the provisions of the Convention wherever such intervention is required of the State Party or is otherwise apparently necessary. Still, I would like to spare a few words to explain a few of them.

⁸ also reproduced as a footnote to the original text of Sec.370 in the current version of the MSA within the Laws of Malta. [*vide* Annex II]

⁹ At present, Sec.375 is the last section of the MSA.

¹⁰ Sec.375(2)(n)

Sec.376(2) has been rendered necessary by virtue of the fact that the practice to serve a warrant of impediment of departure and warrant of seizure conjointly on a vessel will be abrogated by this legal draft in favour of the issuing of a single warrant of arrest. Thus, due to the consequent abolition of this practice, the warrant of arrest must *also* be available to creditors wishing to seize and secure a vessel in the fulfilment of an executive title as per Sec.862 and Sec.868(1) of the COCP.

Sec.376(5) is aimed at supplementing Article 4(2) of the Convention which provides that,

“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.”

It is submitted that there is an omission in this provision since it does not provide that the amount of security to be given by the ‘ship’ need not exceed the value of the claim for which the ship has been arrested, even though this might be substantially less than the value of the ship. The fact that this is an omission is further enunciated by Article 4(5) of the Convention which provides that additional security provided in a State Party shall be released to the extent that the total amount of security provided exceeds the value of the ship or the claim for which the ship has been arrested, whichever is the lower. Thus, Sec.376(5) has been included in order to make good for this apparent omission and provide clarity to a clause which may otherwise give rise to some complications.

Sec.376(6) in turn is aimed at obliging the Court to exercise a greater degree of care and diligence when determining whether the party issuing the warrant is obliged to provide security for payment of any penalty or damages which may be imposed. Sec.866 exhorts the Court to impose such an obligation upon the plaintiff only “on good cause being shown”. This is particularly relevant in view of the fact that a plaintiff might be justified in bringing a claim, but would then see his claim being prejudiced by the rescission of the warrant of arrest of the ship, as a consequence of his not being in a position to furnish any security required in terms of Article 6(1). Unfortunately, an often encountered example of this situation is the case with wages due to the master and crew, whose claim is recognised as constituting a ‘Maritime Claim’ by paragraph (o) in subsection (1) of Article 1 of the Convention.

Thus Sec.376(6) has been included to require the Court to exercise the aforementioned discretion in accordance with Sec.866, in order to afford a certain degree of protection to such claimants and others who would otherwise see their claim prejudiced.

Finally, Clause 16 incorporates the first ten Articles of the Arrest Convention 1999 in a schedule to the MSA. The reason behind limiting incorporation of the provisions of the Convention only to the first ten Articles is because the other Articles are not aimed at regulating the arrest of ships, but rather pertain strictly to the adoption and entry into force of the Convention. Hence, their incorporation in the schedule is not required. Once again, this is in line with the pattern normally used for the implementation of international conventions in Maltese Law.



I assent.

President

st , 2001

ACT No. of 2001

AN Act to amend the Code of Organisation and Civil Procedure, Cap. 12 and the Merchant Shipping Act, Cap. 234 for the purpose of implementing the provisions of the International Convention on Arrest of Ships, 1999.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled and by the authority of the same, as follows:-

Part I

Amendments to the Code of Organisation and Civil Procedure, Cap. 12.

1. This Part shall be read and construed as one with the Code of Organisation and Civil Procedure, hereinafter referred to as “the principal Code”.

2. Paragraph (d) of subsection (1) of section 830 of the principal Code shall be deleted and substituted by the following new paragraph:

“(d) warrant of arrest of a ship or vessel;”

3. For the words “or a warrant of impediment of departure cannot be obtained” in the proviso to subsection (4) of Section 831 of the principal Code, there shall be substituted the words “or a warrant of arrest of a ship or vessel cannot be obtained”.

4. Immediately after subsection (9) of section 836 of the principal Code there shall be added the following new subsection:

“(10) Provided that any reference in this section to “the person against whom any precautionary act is issued” shall be construed as including a reference to any ship or vessel against whom a warrant of arrest is issued, and the application referred to in subsection (1) may be made on behalf of the ship or vessel by the person vested with the lawful representation thereof.”

5. For the words “impediment of departure of any ship or vessel.” in subsection (1) of section 837 of the principal Code there shall be substituted the words “arrest of any ship or vessel.”.

6. Immediately after the current provision of section 838A of the principal Code there shall be added the following new proviso:

“Provided that the application referred to in the preceding paragraph may also be exercised by any ship or vessel against whom a warrant of arrest is issued.”

7. The heading “*Sub-Title IV - OF THE WARRANT OF IMPEDIMENT OF DEPARTURE*” following section 854 of the principal Code shall be deleted and substituted by the heading “*Sub-Title IV - OF THE WARRANT OF ARREST OF SHIPS AND VESSELS*”.

8. For the words “A warrant of impediment of departure of any ship or vessel” in section 855 of the principal Code there shall be substituted the words “Subject to and in accordance with the provisions of section 376 of the Merchant Shipping Act, a warrant of arrest of any ship or vessel”.

9. Section 856 of the principal Code shall be amended as follows:

(a) the present provision shall be renumbered as subsection (1) thereof;

(b) for the words “By the warrant of impediment of departure the marshal” in subsection (1) thereof as renumbered there shall be substituted the words “By the warrant of arrest of a ship or vessel the marshal”.

(c) immediately after subsection (1) thereof as renumbered there shall be added the following new subsections:

(2) The warrant mentioned in the last preceding subsection shall also have the effect of a warrant of seizure.

(3) The provisions of Sub-title II of this Title shall also in so far as they are not contrary to the provisions of this subtitle apply to the warrant mentioned in subsection (1) of this section, and wherever mention of the warrant of seizure is made, it shall for the purposes of this section be construed as referring to the warrant mentioned in subsection (1) of this section.

10. The words “amounting to not less than three thousand Maltese liri” in section 861 of the principal Code shall be deleted.

11. The words “in an amount not less than three thousand Maltese liri,” in section 866 of the principal Code shall be deleted.

12. For the words “A warrant of impediment of departure of any ship or vessel” in subsection (3) of section 870 of the principal Code there shall be substituted the words “A warrant of arrest of any ship or vessel”.

Part II

Amendments to the Merchant Shipping Act, Cap. 234

13. This Part shall be read and construed as one with the Merchant Shipping Act, hereinafter referred to as “the principal Act”.

14. Section 370 of the principal Act shall be amended as follows:

(a) subsection (1) thereof shall be deleted and substituted by the following new subsection:

“(1) The Civil Court, First Hall shall exercise, as part of its ordinary jurisdiction and in accordance with the mode of procedure in force in that court, the jurisdiction granted thereto by virtue of Section 376 .

(b) The proviso to subsection (2) thereof shall be deleted.

15. Immediately after section 375 of the Principal Act there shall be added the following new section:

376 (1) Subject to and in accordance with the last preceding section and notwithstanding the provisions of any other law, the provisions of articles 1 to 10 of the Convention mentioned in paragraph (n) of subsection (2) of the last preceding section, which articles are reproduced in the Sixth Schedule to this Act, shall form part of and be enforceable as part of the Law of Malta.

(2) Notwithstanding the provisions of subsection (2) of Article 1, and subsection (2) of Article 2 reproduced in the Schedule referred to in the last preceding subsection of this section, a ship may also be arrested in execution of a judicially acknowledged debt or claim in accordance with Section 862 of the Code of Organization and Civil Procedure.

(3) Where any action is brought in Malta in terms of the provisions of the Convention referred to in subsection (1) of this section, any reference in that convention to "the Court", shall in each case be read and construed as reference to the Civil Court, First Hall.

(4) For the purposes of subsection (4) of Article 2 reproduced in the Schedule referred to in subsection (1) of this section, the procedure therein relating to the arrest of a ship or its release in Malta shall be that provided for in the Code of Organization and Civil Procedure.

(5) For the purposes of subsection (2) of Article 4 reproduced in the Schedule referred to in subsection (1) of this section, the security to be determined by the Court shall be not more than the claim for which the ship has been arrested or the value of the ship whichever is the lower.

(6) The discretion granted to the Court in subsection (1) of Article 6 reproduced in the Schedule referred to in subsection (1) of this section, shall be exercised in accordance with section 866 of the Code of Organization and Civil Procedure.

16. Immediately after the Fifth Schedule to the principal Act there shall be added the following new Schedule:

"SIXTH SCHEDULE

[Section 376]

TEXT OF ARTICLES 1 TO 10 OF THE 1999 INTERNATIONAL CONVENTION ON ARREST OF SHIPS

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.