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LAW ON ARREST OF SHIPS OF THE REPUBLIC OF LITHUANIA



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PREFACE

This legislation drafting project is submitted in partial fulfilment of the Requirements for the award of the Degree of Master of Laws (L.L.M) at the IMO International Maritime Law Institute (Malta). It gives a proposal to Lithuanian Government as to how International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952 could be implemented under the Code of Civil Procedure of the Republic of Lithuania.

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EXPLANATORY NOTE

Since Lithuania gained its independence in 1991 its legal system has constantly been in the process of reorganization. On the 12th of September 1996 the Law of Merchant Shipping was adopted. The new Civil Code came into force on 1st of July 2001 and the new Code of Civil Procedure has been drafted and is in the process of being approved by the Seimas (The Lithuanian Parliament). However there are no special laws presently in force exclusively related to arrest of ships.

Arrest of ships usually has three important functions. Firstly it is usually a form of a provisional remedy. Secondly, sometimes it establishes jurisdiction on the merits. Thirdly, it provides security for the claim.

Today ships in Lithuania are arrested under the same grounds on which any other property is arrested. The claimant can arrest any assets, any ships belonging to the debtor for any type of claim he has. The main burden for the claimant to reach courts decree on the arrest of a ship is the issue on determination of ownership. Property that does not have an owner cannot be arrested. The burden of proof lies on the claimant and collection of evidence is time-consuming.

The laws presently in force on Court's Jurisdiction over a civil case do not make it possible to commence a suit and arrest a ship if none of the parties involved reside in Lithuania. The Treaty for legal assistance between Russia and Lithuania provides that their Nationals can be sued at the Courts of the State where the Defendant has residence. An exception to this rule is when the parties to a Contract have agreed to subject themselves to the Courts of a particular State. In the cases where Lithuanian Courts have no jurisdiction over the case it is often meaningless to arrest a ship in a Lithuanian Court for the reason of obtaining security.

In many maritime cases a lawsuit on the merits is time-consuming and final judgement can become unenforceable if at the time it is delivered the debtor has no assets. Therefore, before starting legal proceedings to obtain a final judgement, the claimant must consider whether it would be possible for him to execute it in the future. A solution is to obtain some sort of security from the debtor before or during legal proceedings. The arrest of ships is the most usual way, therefore to obtain such security.

The International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952 and the International Convention on Arrest of Ships, 1999 were created with the aims to "establish international uniformity in the field of arrest of ships". Lithuania has decided to join the Arrest Convention of 1952.

The reason for choosing the 1952 Convention, not the 1999 Convention, is because the 1999 Convention has not entered into force, and it is not clear how long it will take before it comes into force. Because Lithuania presently does not have an effective legal mechanism for enforcement of maritime claims, it cannot afford to wait until the 1999 Convention will enter into force. Lithuania needs an effective instrument that works from the day of ratification! By ratifying the 1952 Arrest Convention and adopting the suggested Law on Arrest of Ships Lithuania will have a flexible mechanism for pursuing claims against foreign-registered ships, which for instance have not paid invoices for services provided in Lithuania, or ships, which have damaged Klaipeda state seaport infrastructure. An arrest of the debtor's assets and in particular the ship with which the claim is associated may be the only practical way of securing the payment. In order to prevent situations where enforceability of the claim becomes difficult, rules helping to secure maritime claims by the way of arrest procedure should be implemented in Lithuania.

The main aim of this legal draft project is to create general rules governing the arrest of ships proper in accordance with the principles contained in the 1952 International Arrest Convention.

Implementation of the 1952 Arrest Convention is only one of the logical steps towards creating a complete system for enforcing maritime claims in Lithuania. Other important changes that have to be done is as follows:

Firstly, even before adoption of the Law on Arrest of Ships the Code of Civil Procedure must be amended. The concept of the maritime claim must be introduced and the grounds for arresting the ships clearly defined in the Code.

Second, the Law on Court Jurisdiction should be amended so that the competent court will have the right to decide the dispute on its merits and set a time limit for the commencement of a suit on the claim irrespectively if the defendant has habitual residence in Lithuania or not.

Third, failure to sue within the time limit fixed will permit the defendant to apply for release of the ship and the question of the claimant's liability for damages or wrongful arrest is introduced in this draft project.

By having separate law dealing with arrest of ships Lithuania will admit its intentions to support and respect international maritime practice. The suggested Law is presumed to fulfil all the obligations Lithuania will undertake by ratifying the 1952 Convention on Arrest of Ships. The Government of Lithuania hereby suggests that the Seimas pass the Law.

Law on the Arrest of Ships of the Republic of Lithuania Vilnius-----No.

Chapter 1. General Principles

Article 1. Scope of the Law

- 1.1. This Law determines the order on arresting the ships in the jurisdiction of the Lithuanian Republic.
- 1.2. Ships excluded from the provisions of this Law are:
 - a) those registered in foreign States and navigating within the territorial sea of the Lithuanian Republic under the right of innocent passage;
 - b) warships and naval auxiliary vessels;
 - c) coast guard ships.

Article 2. Definitions:

- 2.1. "*Person*" includes physical or juridical persons.
- 2.2. "*Ship*" is a construction of any type intended to be used or used for navigation on the sea.
- 2.3. "*Arrest*" means any detention, or restriction on removal of a ship under the authority of a Court to secure a maritime claim.
- 2.4. "*Agent*" is a person or company acting on behalf of a principal (ship owner, charterer, manager) for the purpose of management, equipment and outfit of the ship while she is in her home harbor.
- 2.5. "*Owner*" is a person to whom a ship belongs by virtue of proprietary right.
- 2.6. "*Manager*" is a person operating or legally using a ship, irrespective if he is owner of a ship or not.
- 2.7. "*Master*" is a seaman, having proper navigation degree, in charge of managing the crew and operating the ship.
- 2.8. "*Crew*" includes the master of a ship and other seamen, whose names are entered in the crew list, and who carry out tasks on board a ship related with operating the ship or providing services on board the ship.
- 2.9. "*Coast guard ship*" is a ship, used for non-commercial purposes, having specific, clearly identifiable marks belonging by virtue of property right to the State, and protecting the State's border.

2.10. "*Warship*" is any vessel owned and employed by the Lithuanian Republic Government for military purposes, including armed coast guard patrol boats and naval training vessels. Auxiliary vessels such as tankers, ammunition vessels, foreign warships, refrigerator vessels, repair vessels, tenders, or vessels used to transport general military supplies, are included into this definition.

2.11. "*Port*" is the place, allocated for ships anchorage, arrival and departure and for the supply thereof economic and commercial activities related with shipping.

2.12. "*Berth*" is the hydro technical equipment with standard length, width and tonnage, which is used for anchorage of ships, loading and unloading of cargo, embarkation and re-embarkation of passengers.

2.13. "*Harbormaster*" is an official executing supervision of shipping and ensuring the order in port and berths of the Lithuanian Republic.

2.14. "*Collision*" takes place when two floating objects physically attach into each other, or when one crashes into another.

2.15. "*Hypothec*" is a security right of present or future debt obligation by mortgaging a ship, when mortgaged ship is not transferred to creditor.

2.16. "*Claimant*" means a person who alleges that a maritime claim exists in his favor.

2.17. "*Charterparty agreement*" is a contract for the carriage of goods by the sea agreed between parties for a specific voyage, specific time or hire of a vessel.

2.18. "*General average*" is a mode of apportioning extraordinary sacrifices and expenditure, which are incurred on a voyage for the benefit of shipowner, cargo owner and charterers.

2.19. "*Damage*" is a harm done to an object protected by law, appearing in the form of losing inherent quality or total destruction of object.

2.20. "*Maritime claim*" is a claim arising out of one or more of grounds set up in the provisions of this law.

2.21. "*Salvage operation*" means any act or activity undertaken to assist a ship or any other property in danger in navigable waters.

2.22. "*Pilotage*" is a navigation service provided by harbor authorities.

2.23. "*Towage service*" is the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating of her progress.

Chapter 2. Arrest of Ships

Article 3. Notion and Purpose of the Arrest of Ships

3.1. A ship may be arrested for the purpose of obtaining security for a maritime claim determined by a court.

3.2. A maritime claim will be a sufficient ground for arresting any ship, which is in the Lithuanian Republic jurisdiction and to which this law shall apply.

3.3. Arrest is permissible of any ship in respect of which a maritime claim is asserted for:

- 1) damage caused by any ship in collision;
- 2) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- 3) salvage;
- 4) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- 5) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- 6) loss of or damage to goods including baggage carried in any ship;
- 7) general average;
- 8) towage;
- 9) pilotage;
- 10) goods or materials wherever supplied to a ship for her operation or maintenance;
- 11) construction, repair or equipment of any ship or dock charges and dues;
- 12) wages of masters, officers or crew;
- 13) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- 14) disputes as to the title to or ownership of any ship;
- 15) disputes between co-owners of any ship as to the ownership, possession employment or earnings of that ship;
- 16) the hypothecation of any ship;
- 17) port duties and any other payments for the use of port or services provided in the port.

Article 4. Form of Application

4.1. The application for leave to arrest a ship must be made in writing. This can be done before proceedings on the merits of maritime claim are commenced in the court. Application to arrest a ship must be provided to the court, which under the applicable provisions of Lithuanian Republic Civil Code has jurisdiction to deliver judgment on the maritime claim.

4.2.1. The application for leave to arrest a ship must set out the following information:

- 1) the name of the court into which the application was made;
- 2) the name, identity code, address of the claimant and also the name and address of claimant's representative if he has made an application;
- 3) the name of the ship to be arrested;
- 4) the name of the master of the ship;
- 5) a brief description of the claim ;
- 6) the place where the ship is to be found.;
- 7) the list of documents under which application to arrest the ship is based.

4.2.2. The claimant must set up the reasons why the delay in delivery of application for leave to arrest was not provided to the court in advance. The claimant also has prima facie evidence of the maritime claim and the need for an arrest as security measure preventing diminishment of the assets.

Article 5. Issuing Applications

5.1. The court shall issue the arrest decree based on the claimant's application.

5.2. The arrest decree may be granted without notifying the owner or the manager, the master of the ship, or the claimant.

5.3. The Court may ask the claimant to put up security in respect of the likely costs, damages and expenses, which may appear as a result of the arrest.

Article 6. Arrest of Ships

6.1. The court has the right to arrest the particular ship in respect to which the maritime claim arose, or any other ship, belonging to a person, who owned such ship at the time when the maritime claim arose. Arrest shall not be granted in respect of any other ship, except for the one in respect of which maritime claim mentioned in Article 3, paragraph 3, subparagraphs 15, 16 and 17 arose.

6.2. A ship shall not be arrested, and the claimant cannot be compelled to pay security or any other guarantee more than one time in respect of the same maritime claim.

6.3. Where a ship has been arrested or a bail or other guarantee has been provided in order to release it from arrest or to avoid a threat of arrest, any subsequent arrest of such ship in the same ownership by the same claimant for the same maritime claim shall be void and the ship will be released by the court, unless the claimant can prove that bail or other security had been finally released before such second arrest or that there exists another reason for maintaining the second arrest.

6.4. When in the case of a charterer by demise the charterer is liable in respect to a maritime claim relating to that ship, the court may arrest such ship in the ownership of the charterer by demise in respect to which the maritime claim has arisen.

6.5. The claimant must, within the time (which can not be longer than 14 days) fixed by the

court, bring an action in respect of the maritime claim, if arrest is made before proceedings on the merits of the claim. The ship arrest shall be released, if proceedings are not brought within the time so fixed.

Article 7. Arrest Decree

7.1. The arrest decree issued by the court shall contain the following:

- 1) the time and place of the arrest decree;
- 2) the name and composition of the court issuing the arrest decree;
- 3) the grounds and motivation for the arrest decree;
- 4) the basic information about the owner of a ship arrested or the manager of a ship arrested (name, surname, identity code, habitual residence if they are physical persons; name, residence address, code if they are juridical persons);
- 5) the details about the claimant (name, surname, identity code, habitual residence if he is a physical person; name, residence address, code if he is a juridical person);
- 6) the name of the ship to be arrested, its registry data, a short description thereof, the place where it is to be found and other information identifying the ship;
- 7) the details of the custodian of the ship to be arrested (name, surname, identity code, habitual residence if he is a physical person; name, residence address, code if he is a juridical person), appointed by the court;
- 8) restrictions put on the ship's right to sail from the territory of the Lithuanian Republic;
- 9) the arrest decree comes into force at the moment it was adopted by the court, but it may be appealed within 7 days.

7.2. Any information about the ship to be arrested is omitted in the arrest decree issued by the court, if on the day of issuing the arrest decree the court did not have all the information about the ship. In such circumstances the harbormaster shall be in charge to find and describe the ship to be arrested, and to put description thereof to the court.

Article 8. The Deed of the Ship Arrested

8.1. An arrest decree issued by the court shall be executed by the bailiff. In any event not later than next day after receiving the arrest decree, bailiff describes the deed of the ship arrested. The deed shall include the description and value statement of the ship arrested.

8.2. The deed shall contain the following information:

- 1) the time and place where the deed was described;
- 2) the name and surname of the bailiff describing the deed, the master of the ship arrested and other persons present at the time of describing the deed;

- 3) the name of the court issuing the arrest decree;
- 4) the details of the claimant (name, surname, identity code, habitual residence if he is a physical person; name, residence address, code if he is a juridical person);
- 5) the details of the owner or the manager of the arrested ship (name, surname, identity code, habitual residence if they are physical persons; name, residence address, code if they are juridical persons);
- 6) the details of the custodian, if appointed by the court (name, surname, identity code, habitual residence if he is a physical person; name, residence address, code if he is a juridical person);
- 7) the prohibition for the arrested ship to sail out of the territory of the Lithuanian Republic, and also another restrictions, if decided by the court;
- 8) the remark that the master of the ship or a person assisting him were informed about the right to appeal bailiff's actions, and also the term within which appeal may be brought; rights and duties and responsibilities arising out of the custody of the arrested ship must be also notified to the master and the custodian of the arrested ship or the administrator, if decided by the court.
- 9) the statements of the claimant, if he was present at the time of describing the deed, also declarations of the master of a ship or person assisting him about the deed.

8.4. The deed shall contain the information about any cargo and property on board a ship which is not arrested.

8.5. The deed shall be signed by the bailiff, the master and the custodian, if appointed by the court.

8.6. The deed and valuation document of the arrested ship shall be handed to the master of the arrested ship. The claimant shall receive copies of those documents in the form of the registered letter.

Article 9. Determination of the Value

9.1. The bailiff shall determine the value of the arrested ship in terms of current market prices.

9.2. The bailiff shall ask a surveyor to determine the value of the arrested ship, if the claimant, the master or the manager of the arrested ship disputes value of the arrested ship fixed by the bailiff. The surveyor shall fix the value of the arrested ship in respect to her age and technical capacities.

9.3. The person disputing the value of the arrested ship fixed by the bailiff shall within 10 days pay the costs for surveyor's services. Failure to pay on time means that value of the arrested ship is the one previously fixed by the bailiff.

Article 10. Appeal of the Arrest Decree

All the arrest decrees issued by the court may be appealed separately in respect to the procedure set up in the Lithuanian Republic Civil Process Code.

Article 11. Release of a Ship from Arrest

11.1. A ship may be released from arrest upon the initiative of the court which issued the arrest decree, or upon the request of the parties participating in the case.

11.2. The court shall release a ship from arrest if the claimant fails to raise the maritime claim within specific time period ordered by the court.

11.3. The release of a ship from arrest is decided in the court's session. The claimant, the bailiff, the owner of the ship, the harbormaster or the manager of the ship are informed about the session and if none of the parties arrive, the court proceeds without them.

11.4. The arrest shall remain valid until the competent court's decision to reject the maritime claim comes into force. The court may issue the decree to release a ship from arrest, if the claimant has not paid the security bail related to arrest of a ship.

Chapter 3. Enforcement of Arrest**Article 12. Presenting the Deed of Arrest**

12.1. The harbormaster, the Safe Shipping Administration and the custodian if appointed by the court shall receive the notice of the arrested ship deed in the form of registered letter.

12.2. The harbormaster shall prohibit the arrested ship to leave the port after receiving the notice of the arrested ship deed. The prohibition to leave the port remains in force until the court issues the decree to release the ship from arrest.

12.3. The Safe Shipping Administration shall inform the owner or the manager of the ship about the arrest of the ship after receiving the notice of the deed.

Article 13. Custody of Arrested Ship

13.1. A person appointed to be custodian of the arrested ship is responsible for custody thereof.

13.2. The court may appoint another person to act as a custodian of the arrested ship and determine his rights and obligations.

13.3. The master of the arrested ship may also be appointed by the court to act as a custodian.

Article 14. Custodians Responsibility

14.1. The custodian or the master of the arrested ship appointed by the court shall be responsible for hiding, destroying or damaging arrested ship placed into custody.

14.2. The custodian appointed by the court, who damages or fails to maintain an arrested ship shall, in each case, be held materially liable for breaching his responsibility.

Article 15. Sale of the Arrested Ship

15.1. The sale of the arrested ship shall be executed according to the provisions of the Lithuanian Republic Civil Process Code.

15.3. The bailiff of the court shall organize the sale of the arrested ship.

Article 16. Proceeds from the sale

The proceeds from the sale of arrested ship shall be divided as follows:

- 1) payment of expenses incurred in the sale of the arrested ship;
- 2) payment of expenses relating to custody and maintaining the arrested ship in the port;
- 3) payment of secured claims.

Chapter 4. Status of the Arrested Ship. Responsibility and Reward of Damages**Article 17. Status of the Arrested Ship**

17.1. The arrested ship and the crew of the ship have all the rights and obligations applicable to ships navigating in the territory of the Lithuanian Republic, except for the prohibitions imposed by this law.

17.2. The following prohibitions are applicable to the arrested ship:

- 1) the prohibition to depart from the port;
- 2) the prohibition to transfer the ship, hypothecate or in any other way provide guarantees for fulfillment of obligations in respect of the third parties.

17.3. All the transactions breaching the provisions imposed in Article 18.2. of this law shall be void from the day of their conclusion.

Article 18. Responsibility for Breach of Arrest Requirements

18.1. The persons breaching provisions of Article 18.2. of this law shall be held liable and shall have to pay the 3000 Litas fine.

18.2. The claimant has the right of recovery for expenses incurred out of the breach of the provisions imposed in Article 18.2 of this law.

Article 19. Damages Payable to Defendant in Case of Rejecting Plaintiff's Claim

19.1. The defendant has the right to recover his expenses incurred out of the claimants proceedings for the arrest of his ship, if the court dismissed the suit.

19.2. The defendant has the right to claim damages from the claimant, if they arose because of the arrest of the ship, before the proceedings on the maritime claim were commenced, and if the claimant failed in a fixed time to bring a written maritime claim to the court.

Chapter 5. Final Provisions

Article 20. Entry Into Force

This law shall enter into force after the Law on Accession to International Convention for Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952, is adopted by Seimas of the Lithuanian Republic.

I declare this law adopted by the Seimas of the Lithuanian Republic

THE PRESIDENT OF THE REPUBLIC OF LITHUANIA

VALDAS ADAMKUS