

*IMO*  
*INTERNATIONAL MARITIME LAW INSTITUTE (IMLI)*  
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*ADMIRALTY COURT ACT,*  
*2003*

*An Act proposing the establishment of a superior court, to be styled the Admiralty Court, to take cognizance of and determine maritime claims against ships present in Maltese territorial waters as well as to authorize the ratification of and the incorporation into Maltese law of the International Convention on the Arrest of Ships signed in Geneva on 12<sup>th</sup> March 1999.*

*LEGISLATIVE DRAFTING PROJECT SUBMITTED BY*

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*(MALTA)*

*IN PART FULFILLMENT OF THE DEGREE OF*  
*MASTER OF LAWS IN INTERNATIONAL MARITIME LAW*

**Dedicated To**

*MY PARENTS*

*FOR*

*THE LIFE THEY HAVE DONATED ME;*

*THEIR UNFAILING ENCOURAGEMENT AND INDISPENSABLE*

*SUPPORT,*

Both moral and financial, throughout all these years;

*And their constant endeavour to furnish me with the skills  
Necessary to improve myself as a person and the tools required*

*To receive a good education.*

*Words*

*Will never be enough to express*

*My profound gratitude.*

*Dedicated To*  
*My Dearest of Friends*

**Claudette Magro**

*For*

*Illuminating the IMLI premises with*  
*Her radiant smile every morning*

*For*

*Giving IMLI an essential breath of life*  
*Without her it's gloomy and boring!*

*Words*

*will never be enough to express*  
*My profound gratitude*

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Stefan Patrick Gauci

April 14, 2003

*CHAPTER 500 – ACT I OF 2003*  
*ADMIRALTY COURT ACT, 2003*

An Act proposing the establishment of a superior court, to be styled the Admiralty Court, to take cognizance of and determine maritime claims against ships present in Maltese territorial waters as well as to authorize the ratification of and the incorporation into Maltese law of the International Convention on the Arrest of Ships which was signed in Geneva on 12<sup>th</sup> March 1999.

***Explanatory Note***

*Introduction*

Owing to their strategic geographical position at the heart of the Mediterranean Sea and to their deep natural harbours, the Maltese Islands have evoked the interest of the various maritime powers that have dominated Europe and the Mediterranean both on the political and on the

commercial level. Malta was occupied by the Phoenicians, Romans, Arabs, Normans, Spanish and later by the Sovereign Military Order of St. John of Jerusalem, the French and the British till independence was achieved in 1964. Throughout these centuries Malta has played a very important role in the manner in which the history of maritime law and trade within the Mediterranean region has been fashioned. In the modern world, Malta's position astride one of the major arteries of shipping as well as the multitude of international maritime services and facilities which its ports offer have transformed Malta into a haven for international shipping.

Malta's rich history is not only reflected in its language, its people, and its culture but also ingrained in its laws and judicial system. Prior to the arrival of the British in the

early nineteenth century, Malta already had a fully-fledged legal system based on the civil law tradition. However, throughout Malta's colonial period, the Maltese system had been imbued by various Anglo-Saxon influences, especially in relation to the corporate, banking, insurance and maritime law sectors, amongst other branches of Maltese law. Hence, Malta's juridical heritage may nowadays be described as a hybrid system made up of a combination of civil and common law traditions prevalent in Europe.

### **Maltese Admiralty Law**

Admiralty jurisdiction in Malta, the foundations of which lie in the 1840 and 1861 Admiralty Court Acts of the Imperial Parliament, was conferred by Statute to the Maltese courts in the late nineteenth century. This form of jurisdiction, initially exercised by the Vice-Admiralty Courts, was assigned to the Commercial Court by means of the Vice-Admiralty Court (Transfer of Jurisdiction) Ordinance of 1892, and eventually transferred

to the Civil Court by means of Act XXIV of 1995, effecting substantial amendments to the Code of Organization and Civil Procedure, as a result of which the Commercial and the Civil Courts were merged into one Court.

Maltese Admiralty jurisdiction has acquired significant importance, both on the domestic and the international fronts as a consequence of the Maltese Government's strategic plan to develop the Island into an international maritime trade centre throughout the 1990s.

Core to such development were:

- the setting up of the Malta Maritime Authority, and its incessant endeavour to establish Malta as a convenient flag of confidence, therefore enhancing and improving Malta's ranking as the world's fifth largest fleet;
- the establishment of modern facilities for transshipment and distribution at the Malta Freeport in Marsaxlokk Bay, which has developed into one of the most successful of the Mediterranean;
- the initiative of promoting Malta as an international arbitration centre;
- the revitalization of the Malta Drydocks and Malta Shipbuilding by enhancing both yards' reputation as competitive facilities at the heart of the Mediterranean, even by diversifying their operation into the super yacht sector; and



- the ambitious project of building a cruise liner passenger terminal aiming at attracting the cruise liner industry to Malta.

Every one of these initiatives is specifically intended to attract and generate more shipping activity towards Maltese shores. However, while all these initiatives altogether certainly have a tremendously positive effect on the Maltese economy, a rise in maritime litigation and arbitration is definitely inevitable. In fact, in the early 1990s the Council of Judges has worked in conjunction with the Malta Maritime Lawyers Association on the preparation of the framework necessary for the establishment of a Maritime Law Court – a project long overdue that, no matter how strongly desired and recommended by members of the legal profession and persons directly involved in the maritime industry, never came to fruition.

Hence, while various legislative enactments were promulgated to regulate the modern maritime law regime, especially in the form of a comprehensive reform of the Merchant Shipping Act in 2000, the Maltese legal machinery in relation to maritime affairs lay dormant and untouched throughout the past one hundred years.

As a consequence Maltese admiralty jurisdiction is still exercised in accordance with the legal position obtaining prior to 1892 and Parliament's idleness in this regard has had a very counter-productive effect on the development of Maltese admiralty law. This is because applying laws that do not reflect modern trends in the maritime industry may

lead to misconceived interpretations and a number of erroneous judgments may ensue. This is precisely the Maltese case, where owing also to the sparse lawsuits instituted before the Maltese courts in the past, admiralty law in Malta has been characterized by a number of ambiguous judgments and a lack of consistency in the approach to certain maritime doctrines. The lack of a specialized Court presided by judges specialized in maritime affairs has also contributed to this lack of expertise in Maltese admiralty jurisprudence.

### *The Admiralty Court Act, 2003*

Over the past few decades the establishment of a court that would be specifically designed to exercise exclusive jurisdiction in taking cognizance of and determining claims involving a maritime element has been repeatedly recommended by persons involved in the maritime industry. This proposal, the Admiralty Court Act, seeks to provide the framework necessary for the implementation of these recommendations. Although an *ad hoc* Court might not solve all the problems that litigants in the field of maritime law encounter before our courts at present, it is believed that the establishment of the Admiralty Court would be conducive to a body of jurisprudence and hence greater certainty which the Admiralty Court itself, legal practitioners and persons involved in maritime trade would be able to rely on.

## *ESTABLISHMENT OF THE ADMIRALTY COURT*

The proposed legislation seeks to establish this court in accordance with the civil law principles embodied in the Constitution and the Code of Organization and Civil Procedure. The Admiralty Court's procedure shall be regulated by the rules laid down in the Code of Organization and Civil Procedure, in harmony with the original intention expressed in the Vice-Admiralty Courts (Transfer of Jurisdiction) Ordinance, 1892.

A feature that carries invaluable significance concerns the composition of the Admiralty Court. In the quest of enhancing its expertise in maritime law, it is proposed that the Admiralty Court should be presided by a judge who, in his practice as advocate at the Maltese bar, has been involved in maritime litigation or consultancy, or both, or else served authorities or organizations, whether domestic or international, having a direct interest in maritime affairs. The minimum period of practice that the Admiralty Court Act requires is of five years.

## *RATIFICATION AND INCORPORATION OF THE ARREST*

### *CONVENTION*

Among the novel ideas that the Admiralty Court Act seeks to introduce into Maltese law, it is proposed that the grounds establishing the Civil Court's admiralty jurisdiction as emanating from article 370 of the Merchant Shipping Act should be repealed. Hence, the Admiralty Court Acts of 1840 and 1861 together with the grounds of jurisdiction contained therein should be repealed and substituted by the causes giving rise to a

maritime claim as propounded in the International Convention on the Arrest of Ships, 1999, which was signed in Geneva on March 12, 1999.

It is also proposed that the said Convention should be incorporated into Maltese law in terms of article 375 of the Merchant Shipping Act and indeed the Admiralty Court Act contains a provision granting the Maltese Government the authorization necessary to ratify the Convention.

#### Arrest of Ships to Constitute a Mere Procedural Mechanism in Admiralty

The proposed legislation is fashioned in a manner intended to put an end to the debate on whether a ship, whenever detained and in a subsequent lawsuit in admiralty, should be conferred a quasi-juridical personality, in terms of the 'personification theory', for the purposes of defending itself in the suit brought against it, or whether the arrested *res* merely serves as a means of forcing the owner of the ship to appear in the lawsuit to defend himself against the claim proposed, in terms of the 'procedural theory'. The proponent argues that the 'personification theory' is in itself, not only fallacious, but also unnecessary under Maltese law as the representation of the shipowner, in case the latter fails or refuses to appear in court, is sufficiently provided for by the appointment of curators pursuant to article 929 of the Code of Organization and Civil Procedure. Therefore the proposed legislation abolishes the action *in rem* and confirms that the detention of the ship merely serves as a procedural mechanism intended to provide the

required pre-judgment security on which the plaintiff's interest will eventually be executed in the event of a favourable judgment.

## *INTRODUCTION OF THE WARRANT OF ARREST OF A SHIP*

The Act also seeks to introduce the warrant of arrest of ships under Maltese law. The warrant of arrest would, in so far as detention of a ship in respect of a maritime claim is concerned, substitute the precautionary warrants of seizure and impediment of departure of a vessel. These two warrants, which emanate from the Maltese civil law foundations, have served, in the absence of a warrant of arrest *ad hoc*, as a substitute for the arrest of vessels as known to and applicable under English law. Under Maltese jurisprudence, the two warrants issued together are interpreted as having an effect akin to the warrant of arrest in that a ship would be prevented from leaving the Maltese territorial waters against the Court's authorization. This, however, does not mean that the existing warrants may not raise difficulties and problems owing to the very fact that they are not specifically intended as a means of arresting ships.

Under the current system, the two warrants are different from each other both in nature and effect. On the one hand the warrant of impediment of departure consists in a court decree ordering the detention of the ship and enjoining the port authorities not to grant clearance to the ship to proceed to sea, and if already granted, to withdraw it. This notwithstanding, this warrant does not have the effect of removing the ship from the exclusive control of its master. On the other hand, the warrant of seizure has the reverse effect in that it removes the ship from the exclusive control of the master, but is not also

directed to the port authorities. It is quite evident that the prudent claimant's security rights would not be adequately protected unless he seeks and obtains the issue of both warrants together.

To a certain degree the issue of both warrants together leads to lack of clarity from a procedural point of view. This is because the law of procedure in Malta lays down that proceedings on the merits must be instituted within a specified period of time from the issue of a precautionary warrant, on the lapse of which the effects of the warrant shall cease. In the case of the warrant of impediment of departure, the proceedings on the merits must be instituted within six working days from the date on which the warrant is issued. On the other hand, where a warrant of seizure is issued, the action on the merits must be instituted within four working days from the date on which the notice of execution of the warrant is served on the claimant, or within twelve working days from the issue of the warrant, whichever is the earlier date. Although the prudent claimant would in practice seek to institute his action at the earliest opportunity, it is quite evident that the current procedure in this regard is very unclear and may lead to unnecessary problems.

The proposed Act seeks to remove these hazy procedural aspects by fusing the warrants of seizure and impediment of departure into a warrant of arrest *ad hoc*. The warrant of arrest of a ship shall contain a court order enjoining the Executive Director of Ports and the Comptroller of Customs (i) to detain the ship's papers as well as all other documents and certificates required for navigation; (ii) to refuse outward clearance to the ship to

proceed to sea; and (iii) not to provide the arrested ship with pilotage services if the ship happens to be in any of the Maltese compulsory pilotage areas. Attention must be drawn to the fact that the order not to provide pilotage services to a detained ship is already implemented by the Malta Maritime Authority, notwithstanding the absence of any legal provision to that effect. Its inclusion in the Admiralty Court Act merely serves as a means of codifying this practice.

It is relevant to note that the introduction of the warrant of arrest of ships is not intended to affect in any manner whatsoever the competence of the Civil Court First Hall to issue a warrant of seizure against a ship present in Maltese territorial waters in respect of any claim other than the maritime claims laid down in article 4 of the Admiralty Court Act. At the same time, attention must be drawn to the fact that a claimant would be able to demand and obtain a warrant of seizure only in those instances where the Civil Court, First Hall enjoys jurisdiction in respect of a claim that falls under the grounds of jurisdiction contemplated by article 742 of the Code of Organization and Civil Procedure.

### *ALTERNATIVE SHIP ARREST*

The proponent also believes that since arrest is intended as a procedural mechanism to force the shipowner to appear and defend the claim, the plaintiff's right to safeguard his rights and claims should also be extended to the arrest of alternative ships. The *nexus* between alternative ships should be the ownership or beneficial ownership of such ships by the same person who is liable for the claim. Beneficial ownership is used as a *nexus* between ships so as to curtail the shipowners' temptation to bypass the arrest of

alternative ships by creating a number of single-ship companies. Maltese jurisprudence amply provides for the piercing of the corporate veil should such an extreme remedy become necessary provided the conditions for such course of action are satisfied.

### Admiralty Experts

The proposed legislation also envisages the need for the appointment of a body of experts, the Admiralty Experts, whose role would be to assist the Admiralty Court in determining the complexities that characterize the maritime claims brought before it. It is proposed that the experts should be appointed by the Minister responsible for Justice acting on the advice of the Malta Maritime Authority. The Authority's role in identifying the persons possessing the required expertise and advising the Minister accordingly would be of crucial significance.

## **CONCLUSION**

It is strongly believed that the proposed establishment of the Admiralty Court has become an absolute necessity not only in the interest of local maritime trade but also in the interest of international trade reaching Maltese shores in general. The Maltese authorities are therefore urged to take this proposed legislation into consideration and take all the measures necessary for its implementation. Malta's strategic geographical position at the heart of the Mediterranean Sea should therefore be exploited to promote Malta not only as a centre offering a multitude of international maritime services and arbitration facilities



to international shipping, but also as an international shipping law hub specialized in the determination of claims containing a maritime law element.

Stefan Patrick Gauci

April 14, 2003.

*CHAPTER 500 – ACT I OF 2003*

**ADMIRALTY COURT ACT, 2003**

**AN ACT to establish a superior court to be styled the Admiralty Court to take cognizance of and determine maritime claims against ships present in Maltese territorial waters as well as to authorize the ratification of and the incorporation into Maltese law of the International Convention on the Arrest of Ships signed in Geneva on March 12, 1999.**

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*ENACTED BY ACT I OF 2003*

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2. Interpretation

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#### SCHEDULE

## *PART I*

### *PRELIMINARY*

- |                |  |
|----------------|--|
| Short-title    | 1. This Act shall be cited as the Admiralty Court Act, 2003  |
| Interpretation | 2. Save as otherwise expressly provided in this Act or in any other law, and unless the context otherwise requires:<br><br>“Admiralty Court” shall mean the Superior Court, established under article 3 of this Act, vested with the exercise of the admiralty jurisdiction in Malta;<br><br>“aircraft” means any machine which can derive support in the atmosphere from reactions of the air, including balloons, whether captive or free, airships, gliders, kites and flying machines;<br><br>“alternative ship” shall mean a ship as defined in article 10 of this Act;<br><br>“arrest” shall mean any detention or restriction on removal of a ship under a warrant of arrest issued by the Admiralty Court to secure a maritime claim, but does not |

include the seizure of a ship in execution or satisfaction of a judgment;

“charterer” shall mean the voyage charterer, time charterer and the bareboat or demise charterer;

“claimant” shall mean any person, asserting a maritime claim before the Admiralty Court in terms of this Act;

“compulsory pilotage ports” shall, for the purposes of this Act be those port as from time to time are specified in Part III of the First Schedule of Malta Maritime Authority Act;

“Contracting State”, in relation to the Convention, and for the purposes of the Convention as having the force of law in Malta, means those States, other than Malta, as shall from time to time be specified by the Minister responsible for Justice by an order made under article 26 of this Act;

“Convention” shall mean the International Convention on the Arrest of Ships, signed in Geneva on the 12<sup>th</sup> March 1999;

“flag-State” shall mean the State under the laws of which a ship is registered;

“Gazette” means the Malta Government Gazette;

“goods” shall include live animals and all tangible personal property of any kind and every description of wares and merchandise;

“Malta” has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

“maritime claim” shall mean a claim in respect of which proceedings are instituted in terms of article 4 of this Act;

“master”, when used in relation to any ship, means the person having command or charge of any ship for the time being, but does not include a pilot;

“Minister” shall mean the Minister responsible for ports and shipping and includes any person acting under his authority;

“owner” in relation to a ship means the person registered or licensed as the owner of the ship, or in the absence of such registration or license, such person who owns the ship and includes master, agent, charterer, mortgagee in possession or other beneficial owner:

provided that in relation to a ship or vessel owned by a State and operated by a person registered as its operator, it means such person registered as operator;

“person” shall mean any individual or partnership or any public or private body, whether corporate or otherwise, including a State or any of its constituent subdivisions;

“pilot” shall mean a person not belonging to a ship who has the conduct thereof and who holds a license in terms of article 56 of the Malta Maritime Authority Act, ;

“port” shall mean the place declared to be a port by or under article 27 of the Malta Maritime Authority Act, and includes wherever appropriate a yachting centre unless a separate provision is made in respect of such center;

“registry of the Admiralty Court” shall mean the registry common to all the superior courts established in terms of article 27 of the Code of Organization and Civil Procedure

“ship” shall mean every description of vessel used in navigation, whether self-propelled or not, and it includes barges, pontoons, oil rigs, seaplanes and any other craft or similar vessels, but shall not include ships under construction and ships

which are not seagoing;

“ship’s papers” shall mean the papers that the master of every ship is obliged to keep on board pursuant to article 102 of the Merchant Shipping Act;

“territorial waters of Malta” shall have the same meaning as is assigned to the term by article 3 of the Territorial Waters and Contiguous Zone Act;

“towage and pilotage” in relation to aircraft means towage and pilotage while the aircraft is waterborne.

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Cap 352.

Cap 352

Cap. 12

Cap. 234

PART II

**The Admiralty Court**

Establishment  
of the  
Admiralty Court

**3.** (1) There is hereby established a superior court, to be styled the Admiralty Court.

(2) The Admiralty Court shall be presided by one judge appointed in terms of article 95 of the Constitution.

(3) A person shall not be qualified to be appointed a judge of the Admiralty Court unless:

(a) for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practiced as an advocate in Malta or served as a Magistrate in Malta, or has partly so practiced and partly so served; and

(b) for a period of, or periods amounting in the aggregate to, not less than five years, within the period of twelve years mentioned in the preceding paragraph, he has either regularly practiced as an advocate in Malta in maritime litigation or consultancy or both, or consistently served authorities or organizations, whether domestic or international, having a direct interest in maritime affairs, or has partly so practiced and partly so served.

Admiralty  
Jurisdiction

**4.** (1) The Admiralty Court shall have the jurisdiction to take

cognizance of and determine any of the following maritime claims:

- (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) For the purposes of paragraph (c) of sub-article (1) of this article salvage operation shall include a reference to services rendered in saving life from ship or an aircraft or in the preservation of cargo, apparel, wreck as, under any law for the time being in force, are authorized to be made in connection with a ship or aircraft.

(3) For the purposes of paragraph (t) of sub-article (1) of this article, the Admiralty Court shall have the power to settle any account outstanding or unsettled between the parties in relation to the ship, and to direct that such ship or any share thereof shall be sold and to make such other orders as the Court may deem proper.

Procedure of the Admiralty Court      **5.** (1) Proceedings before the Admiralty Court shall be brought against the owner or the demise charterer of a ship.

Cap. 12

Admiralty  
Experts

(2) Save as otherwise provided in this Act, the procedure to be applied during proceedings before the Admiralty Court as well as the enforcement of its judgments shall be subject to the provisions the Code of Organization and Civil Procedure.

**6.** (1) The Minister, acting on the recommendation of the Malta Maritime Authority, shall appoint a group of experts, to be known as the Admiralty Experts, whose duty shall be to assist the Admiralty Court in determining maritime claims by producing expert evidence in the form of a written report.

(2) In appointing the Admiralty Experts, the Minister in liaison with the Malta Maritime Authority shall ensure that as wide a spectrum of expertise is covered so as to provide the Admiralty Court with the best service possible. A list of such Admiralty Experts shall be published by notice in the Gazette.

(3) Whenever expert evidence is required, the Admiralty Court shall nominate as many experts from the list as within its knowledge is required to offer the assistance necessary in determining maritime claims.

(4) Every Admiralty Expert shall draw up a separate report and submit it to the Admiralty Court within the time specified in the order of nomination issued by the Admiralty Court. The Admiralty Court may, of its own motion or at the request of any of the parties, request an Admiralty Expert to testify *viva voce* in open Court.

(5) The Admiralty Court shall in every case not be bound by the Admiralty Experts' evidence, whether written or *viva voce*.

Cap. 12

(6) Save as otherwise provided in this Article, the provisions of Sub-Title IV of Title I of Book Third of the Code of Organization and Civil Procedure shall apply to this article and the term Court in such provisions shall, for the purposes of this Act, be construed as a reference to the Admiralty Court.

Right of Appeal

Cap. 12

**7.** (1) An appeal shall lie from a decision of the Admiralty Court to the Court of Appeal in terms of sub-article (5) of article 41 of the Code of Organization and Civil Procedure.

(2) Such appeal shall be entered by an application to be filed in the registry of the Court of Appeal within twenty days from the date of the judgment.

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### ***PART III***

#### **Arrest of Ships**

Power of Arrest

**8.** (1) A ship may be arrested under the authority of the Admiralty Court only if:

(a) the ship is present within the territorial waters of Malta; and

(b) there is a *prima facie* maritime claim against the ship.

(2) The Admiralty Court may order the arrest of a ship only to secure a maritime claim which could be frustrated by the departure of the ship.

(3) A ship may be arrested for the purposes 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 before the courts of another State or is to be arbitrated, or is to be adjudicated subject to the law of another State.

Exercise of the  
right to arrest a  
ship

**9.** (1) A claimant may, by means of an application, request the Admiralty Court to issue a warrant of arrest against a ship, whether registered in Malta, in a Contracting State or otherwise, in respect of which a maritime claim is asserted if:

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

(b) the person liable of the claim was the demise charterer of the ship at the time when the maritime claim arose and is the 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 special maritime privilege in terms of article 50 of the Merchant Shipping Act.

Cap 234

(2) No warrant of arrest shall be issued against:

(a) any ship owned or wholly chartered in the service of the Government of Malta or employed in any postal service either

by the Government of Malta or by any other government; and

(b) any warship or other military vessel.

(3) A warrant of arrest of a ship shall also be rescinded if, on an application of the Malta Maritime Authority, the Admiralty Court is satisfied that because of the nature of its cargo, or of its length, draught, or other circumstances concerning the safety, navigation or port operation, it is advisable that the ship should leave port without delay.

Alternative ship  
arrest

**10.** (1) Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned or beneficially 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.

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

Arrest of a ship  
not owned by  
the person liable

**11.** Notwithstanding the provisions of the two preceding articles of this Act, a warrant of arrest may be issued against a ship that is not owned by the person liable for the claim only if, following proceedings on the merits before the Admiralty Court or the competent court of a Contracting State, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Warrant of  
arrest

**12.** (1) Arrest of a ship shall be effected by means of a warrant of

arrest, issued by the Admiralty Court on the request of the claimant, enjoining the Executive Director of Ports and the Comptroller of Customs:

- Cap. 352 (a) to detain the ship's papers as well as all other documents and certificates required for navigation;
- (b) to refuse outward clearance to the ship to proceed to sea pursuant to paragraph (n) of sub-article (2) of article 6 of the Malta Maritime Authority Act; and
- Cap 352 (c) not to provide the arrested ship with pilotage services if the ship is in any of the compulsory pilotage ports in terms of paragraph (o) of sub-article (2) of article 6 of the Malta Maritime Authority Act.

(2) A copy of the warrant of arrest shall be served on the owner or charterer of the ship, the master of the ship or in his absence such other officer acting on his behalf, or the agent of the ship.

Consequences  
for breach of  
warrant

**13.** The warrant of arrest of the ship shall contain a warning to all persons served that in case of failure to comply with the terms of the warrant, such person shall be guilty of contempt of court.

Counter-warrant

**14.** (1) Without any prejudice to any other right under this Act or any other law, a person whose ship has been arrested or any other person who may have a legal interest in the arrested ship may, by means of an application, request the release of the ship upon providing, to the satisfaction of the Admiralty Court, a security sufficient to safeguard the rights and claims of the claimant:

Provided that a ship shall not be released in the cases in which the

ship has been arrested in respect of any of the maritime claims mentioned in paragraphs (s) and (t) of article 4 of this Act.

(2) The Admiralty Court shall immediately issue a counter-warrant ordering the immediate release of the vessel to be served without delay to the Executive Director for Ports and the Comptroller of Customs.

(3) The Executive Director of Ports and the Comptroller of Customs shall without any delay deliver to the master the ship's register and the ship's papers together with any other documents and certificates held in their possession and immediately grant outward clearance for the vessel to proceed to sea.

(4) Any request for the release of the ship upon the provision of security shall not be construed as an acknowledgement of liability, nor as any waiver of any defence or any right to limit liability.

Security

**15.** (1) The nature and amount of the security shall be established by agreement between the parties, or where such agreement is not forthcoming, by the Admiralty Court.

(2) In any of the circumstances mentioned in sub-article (1) of this article, the security shall not exceed the value of the arrested ship.

(3) The value of the arrested ship shall in all cases be established by the Admiralty Experts nominated for this purpose by the Admiralty Court.

Expenses of  
Arrest

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

(2) Notwithstanding the provisions of the preceding sub-article, the Admiralty Court may, as a condition for the issue of a warrant of arrest demanded, request the claimant to give an allowance for the maintenance of the ship or of the maintenance of the crew during the period of arrest.

(3) The provisions of sub-articles (1) and (2) of this article shall not prejudice the final award of such expenses.

Protection of  
the owners and  
demise  
charterers of  
arrested ships  
from malicious  
warrants

**17.** (1) The Admiralty Court shall condemn the claimant at whose request the warrant of arrest was issued to pay to the person whose ship was unjustly arrested a penalty not exceeding double the amount claimed in the maritime claim, together with damages for any loss suffered and interest calculated from the date when the warrant was issued if the claimant's maritime claim is found to be malicious, frivolous or vexatious.

(2) In all cases, the penalty mentioned in sub-article (1) of this article shall not be less than three thousand Maltese liri.

(3) The Admiralty Court shall have the power, on good cause being shown, upon the request by application of the person whose ship was arrested, the master, the person in charge or the agent of the ship, to order the claimant to provide, within a reasonable time specified by it, sufficient security, in an amount not less than three thousand Maltese liri, for the payment of the penalty, and in default to issue the counter-warrant ordering the immediate release of the ship.

Right of  
rearrest and  
multiple arrest

**18.** (1) Where a ship has already been arrested and released by the Admiralty Court, 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 fulfill 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 paragraphs (b) or (c) of sub-article (1) of this article are applicable.

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

Arrest of ship  
in Non-  
Contracting  
States

**19.** (1) Where a ship has been arrested in a State other than a Contracting State, and is not released although security in respect of that ship has been deposited in respect of that same claim by means of a

schedule of deposit in the registry of the Admiralty Court, such security shall be released by the Admiralty Court upon a request to that effect by the competent court of such other State.

(2) Where a ship has been arrested under the authority of the Admiralty Court, and security is provided under the authority of the competent court in a Contracting State, the Admiralty Court shall issue a warrant ordering the immediate release of the ship as soon as the security is released by such competent court.

Jurisdiction on  
the merits of  
the case

**20.** (1) Where a warrant of arrest has been issued or security has been provided to release the ship from arrest, the Admiralty Court shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a court of another State, which accepts jurisdiction, or to arbitration.

(2) Notwithstanding sub-article (1) of this article, the Admiralty Court shall stay proceedings where a court in another State accepts such jurisdiction.

(3) Where the Admiralty Court declares that it lacks the jurisdiction necessary to determine the case upon its merits or has stayed proceedings in accordance with sub-article (2) of this article, the Admiralty Court may, and upon a request shall, order a period of time within which the claimant shall institute proceedings before a competent court or arbitral tribunal.

(4) If the proceedings are not instituted within the period of time stipulated by the Admiralty Court in accordance with the last preceding sub-article, the arrested ship or the security provided shall, upon request, be released.

(5) If proceedings are instituted within the period of time ordered by

the Admiralty Court in accordance with sub-article (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.

Miscellaneous provisions

**21.** (1) Save as otherwise provided in the Act, the Admiralty Court's power to make orders affecting the totality of a debtor's assets shall not be affected.

(2) The provisions of this Act shall not modify or affect the rules of law in force in a Contracting State relating to the arrest of any ship physically within the jurisdiction of the ship's flag-State procured by a person habitually resident or which has its principal place of business in the arrested ship's flag-State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

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## **PART IV**

### **General Provision**

Adoption of the Convention  
Cap. 234

**22.** By virtue of this Act and in compliance with sub-article (1) of

article 375 of the Merchant Shipping Act, the Government of Malta is hereby authorized to ratify the Convention.

Reservation                    **23.** In conformity with the reservation, made by Malta, in accordance with paragraph 1 of article 10 of the Convention, the text of which is reproduced in the Schedule, this Act shall not apply to those ships which are not seagoing.

Repeal                            **24.** (1) The following provisions are hereby repealed:  
Cap. 12                            (a) Subtitle-IV of Title VI of Book Third of the Code of Organization and Civil Procedure; and

Cap 234                            (b) Article 370 of the Merchant Shipping Act;

(2) The action *in rem* is hereby abolished.

Amendment of laws  
Cap. 12                            **25.** (1) Article 3 of the Code of Organization and Civil Procedure shall be amended as follows:

“**3.** *The superior courts are:*

*(a) the Civil Court;*

*(b) the Admiralty Court;*

*(c) the Court of Appeal; and*

*(d) the Constitutional Court.”*

Cap. 12                            (2) Sub-article (5) of article 41 of the Code of Organization and Civil Procedure shall be amended as follows:

“(5) *It shall hear all appeals from judgments of –*

*the Civil Court, First Hall;*

*the Admiralty Court; and*

*the Court of Magistrates (Gozo) in its superior jurisdiction.”*

Cap. 80

(3) Point 3 of the Schedule to the Aircraft (Application of Laws) Ordinance shall be substituted by the following:

*“3. Part III of the Admiralty Court Act”*

Cap. 352

(4) The following new paragraphs, paragraphs (n) and (o), shall be added to sub-article (2) of article 6 of the Malta Maritime Authority Act:

*“(n) to detain the ship’s papers as well as refuse outward clearance to a ship in execution of a warrant of arrest issued by the Admiralty Court.*

*(o) to refuse the provision of a pilot where an arrested ship is within one of the compulsory pilotage ports until the ship is released from the arrest by a counter-warrant issued by the Admiralty Court.”*

(5) The current paragraph (n) of sub-article (2) of article 6 shall be re-lettered paragraph (p).

Power to make regulations

**26.** The Minister may by regulations, rules or orders, regulate or give instructions in relation to the procedure to be followed before the Admiralty Court in any matter falling within its jurisdiction and such other related matters, including the fees payable in connection with proceedings before the said Court, as the Minister may deem it expedient so to regulate.

Transitory provisions

Cap. 234

**27.** The Civil Court, First Hall which had jurisdiction to hear and determine maritime claims by virtue of sub-article (1) of article 370 of the Merchant Shipping Act prior to the entry into force of this Act, shall upon the said coming into force of this Act retain such jurisdiction in respect of causes commenced before it prior to the coming into force of

this Act.

Overriding  
Provisions

**28.** Notwithstanding anything contained in any other law for the time being in force in Malta, the provisions of this Act shall prevail and no superior court, save the Admiralty Court, shall take cognizance of any of the maritime claims mentioned in sub-article (1) of article 4 of this Act.

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## **SCHEDULE**

### **Reservation**

[Article 23]

***The Government of Malta declares, pursuant to Article 10 of the International Convention on the Arrest of Ships (Geneva, 1999), that it is opposed to the arrest under the authority of the Admiralty Court of ships, whether registered in a State Party or otherwise, which are not seagoing.***

