

## **SHIP ARREST IN ESTONIA (QUESTIONS 1 TO 9)**

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### **1. Please give an overview of ship arrest practice in your country.**

Ship arrest in Estonia is normally handled speedily and by a judge who specializes in maritime matters. Normally a ship will be arrested in Estonia within 1-2 working days as of submitting an application to arrest the ship, provided that the application is well grounded and the necessary fees have been paid.

In case of urgency, it may be possible to arrest the ship even on the same day when the application was submitted. Pohla & Hallmägi has successfully arrested a ship in the morning and managed to release the ship from the arrest in the evening after the outstanding payment has been made.

### **2. Which International Convention applies to arrest of ships in your country?**

Estonia is a party to the following conventions, which regulate the arrest of ships and their possible sale:

- a. International Convention on the Arrest of Ships (1999) that specifies maritime claims;
- b. International Convention on Maritime Liens and Mortgages (1993) that specifies maritime liens;
- c. International Convention on Civil Liability for Oil Pollution Damage (1969) and amendments;
- d. Convention on Limitation of Liability for Maritime Claims (1976).

### **3. Is there any other way to arrest a ship in your jurisdiction?**

If the ship owner is an Estonian company, the court may arrest the ship under Estonian Code of Civil Procedure.

### **4. Are there alternatives e.g. saisie conservatoire or freezing order?**

No.

### **5. For which types of claims can you arrest a ship?**

Maritime claims in Estonia can arise from the following:

- 1) loss of or damage to property caused by the operation of the ship;
- 2) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- 3) salvage operations or any salvage agreement, including, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- 4) damage or threat of damage caused by the ship to the environment, coastline or related interests, also:
  - costs of measures taken to prevent, minimise, 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 other damage, costs, or loss of a similar nature to those identified in this clause;
- 5) 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;
- 6) any agreement relating to the use or hire of the ship, whether contained in the corresponding agreement or otherwise;
- 7) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

- 8) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- 9) general average;
- 10) towage, pilotage;
- 11) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
- 12) construction, reconstruction, repair, converting or equipping of the ship;
- 13) port, canal, dock and other waterway dues and charges;
- 14) 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;
- 15) disbursements incurred on behalf of the ship or its owners;
- 16) insurance premiums (including mutual insurance claims) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
- 17) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
- 18) any dispute as to ownership or possession of the ship;
- 19) any dispute between co-owners of the ship as to the use of the ship;
- 20) restricted real rights established on the ship;
- 21) any dispute arising out of a contract for the sale of the ship.

The following claims in Estonia are secured by a maritime lien:

- 1) claims for wages and other sums due to the master, officers and other members of the crew in respect of their employment on the ship, including costs of repatriation and social security contributions payable on their behalf;
- 2) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- 3) claims for reward for the salvage of the ship;
- 4) claims for port, canal, and other waterway dues and pilotage dues;
- 5) claims which arise out of direct damage caused by the operation of the ship other than damage to cargo, containers and passengers' effects carried on the ship.

#### 6. Can you arrest a ship irrespective of her flag?

Yes.

#### 7. Can you arrest a ship irrespective of the debtor?

Yes.

#### 8. What is the position as regards sister ships and ships in associated ownership?

Arrest is also permissible of any other ship or ships which is or are owned by the person who is owner of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

Arrest is also permissible of bareboat charterer, time charterer or voyage charterer of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

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Law Firm Pohla & Hallmägi has a long history of ship arrests, being one of the first law firms engaged in ship arrests in Estonia. Martin Männik is responsible for all questions relating to maritime matters. He consults Estonian credit institutions on a daily basis involving arrest and enforcement proceedings of mortgaged vessels in Estonia and elsewhere in the world.

He represents clients in litigations concerning ship arrest in Estonia and has represented both creditors, owners of arrested vessels, mortgagees and ports as interested parties in the ship arrest procedure and in civil cases concerning collision of vessels and maritime insurance. He also assists various shipbuilders on a daily basis and is responsible for vessel transactions.

## **SHIP ARREST IN ESTONIA (QUESTIONS 10 TO 17)**

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### **10. Do your Courts require counter-security in order to arrest a ship?**

Yes. Usually Estonian Court appoints shiparrest counter-security in the amount of 15% of the claim or higher. In case of small claims counter-security is often appointed higher than 15% at the discretion of the judge. Payment of counter-security can be scheduled.

It is possible to apply that court will not appoint counter-security, but only claims of crew have so far been accepted without counter-security.

### **11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?**

Yes. Concept of proceedings "in rem" is not accepted in Estonian law, but nevertheless for a maritime lien one can arrest a ship irrespective of her owner during the validity lien period, which is one year. To arrest a ship for maritime claim, 1999 Convention Article 3 (2-1) shall apply.

Due to mistakes in incorporating provisions of Article 3 (2) into the domestic law, aspects of arrest under Article 3(2) (sistership arrest) are sometimes interpreted wider than allowed by article 3 (2-1), but this should be avoided since 1999 Convention is applicable also directly.

### **12. Does your country recognise maritime liens? Under which International Convention, if any?**

Estonia is party to 1993 Geneva Convention on Maritime Liens and Mortgages and recognises list of maritime liens set forth therein.

### **13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?**

Provided we receive the file in early morning hours, arrest is possible by afternoon or evening of the next working day. In case we receive a file in the afternoon, arrest may not be possible during the next working day, but only on the day after.

### **14. Do you need to provide a POA or any other documents of the claim to the Court?**

It is necessary to provide to the Court documents, which convince the Court that there is a valid maritime claim. POA is required, but this does not need to be notarised and apostilled.

### **15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?**

Upon applying for arrest all documents may be submitted electronically and no originals are required. Originals as well as notarisations and apostilles may be required in later stages of proceedings.

### **16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?**

In case of clear agreement between the parties on jurisdiction of foreign court or arbitration, Estonian Court will not accept jurisdiction. In case of absence of agreement on foreign court jurisdiction or when parties demonstrate that they do not object to the jurisdiction of Estonian Court, it will accept jurisdiction over the substantive claim.

### **17. What is the procedure to release a ship from arrest?**

Court has to order a release, after which bailiff will take vessel documents back on board, or captain or lawyer can collect them from bailiff's office. Bailiff's fees need to be paid before documents are released from bailiff's office. After this there are no restrictions for a vessel to sail. Should any problems with different authorities occur, court order of release can be used.

\*Advising all aspects of maritime, corporate and commercial law since 1999 Indrek mainly specialises in sale-purchase, registration and arrest of ships. He became managing partner of MALSCO (maritime law and shipping consultations) in 2006.

## **SHIP ARREST IN ESTONIA (QUESTIONS 18 TO 26)**

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### **18. What type of security needs to be placed for the release?**

Estonian courts expect to get cash deposit on Estonian bank account (of Ministry of Finance) indicated in court decree or bank guarantee usually expected from a bank located in a member state of European Union. The deposit is the fastest for the release.

### **19. Does security need to cover interest and costs?**

The security amount will be determined by the court on basis of arrest application and this can cover interests and reasonable costs.

### **20. Are P&I LOUs accepted as sufficient to lift the arrest?**

P&I LOUs have been accepted as an alternative security by court, however this has not been stipulated in the laws and this gives options to the arresting party to object the LOU.

### **21. How long does it take to release the ship?**

The aim is to release the ship urgently once sufficient alternative security is provided and court makes respective decree within the same day. Thereafter the arrest can be lifted by enforcement officer who arrested the ship and obtained the originals of ship's documents when imposing the arrest. This may cause some delay in release, because the same enforcement officer (or her/his official substitute) should be available for release and redeliver ships documents. The release takes usually 1-2 days unless the arresting party have disputed the court's release decree.

### **22. Is there a procedure to contest the arrest?**

It is possible to contest the arrest, however this does not abolish ship arrest unless there are obvious facts of wrongful arrest proved. It is very difficult to succeed in contesting the arrest, because arrest procedure is quick and preliminary procedures to obtain security to the claim. The claim on merits of the case will be passed later in main proceedings, where all aspects of the arrest and the claim can be discussed.

### **23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?**

Maximum 1 month can be granted for legal action on merits, but it can be shorter period depending on how complicated judge sees the case and the jurisdiction where claim on its merits is filed. If arresting party stipulates in arrest application to the court that this dispute belongs for resolving by foreign court or arbitration, then in such case 1 month time for filing main claim is usually granted.

### **24. Do the Courts of your country acknowledge wrongful arrest?**

Wrongful arrest cases can be possible, however there is little practice. There is 1 judgement against arresting party, which did not defend the case when claim for wrongful arrest was brought before the court.

### **25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?**

There have been cases of piercing and lifting of the corporate veil in first and second court instances, however this is still uneven and developing sphere of law and practice. There is no good profound precedence in this respect yet.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes, it is possible, but according to present practices it takes more than 1 year.

**\*Indra Kaunis** has gained a vast experience in shipping cases and practical knowledge of industry at working in Estonian Shipping Co.(ESCO) and in Tschudi Shipping Co.(TSC) in 1993-2006. He was chief lawyer and a member of the board of directors of ESCO since 1997 and later in TSC. Indra established law firm Consolato del Mare(CdM) in 2006, when he left TSC. CdM specializes in maritime and transport law and is advising regarding full range of shipping cases, shipbuilding, ship finance and other shipping related matters under leadership of Indra. Indra was member of Estonian delegation in Geneva in 1999, when was discussed and adopted International Convention on the Arrest of Ships under auspices of IMO. He has participated as an expert at adoption of other international maritime conventions (MLC). Indra is head of expert group established for revision of Estonian maritime laws. Languages spoken: Estonian, Russian and English.