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Law of Maritime Property Act

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Amended by the following acts

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| 05.06.2002 | RT I 2002, 53, 336 | 01.07.2002 |
| 15.06.2005 | RT I 2005, 39, 308 | 01.01.2006 |
| 26.01.2006 | RT I 2006, 7, 42 | 04.02.2006 |
| 10.12.2008 | RT I 2008, 59, 330 | 01.01.2009 |
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Part I GENERAL PART

§ 1. Scope of application of Act

(1) This Act applies to ships and ships under construction which are entered in the ship registry maintained by courts of Estonia (registered ships), unless otherwise provided by law.

(2) Real rights in registered ships are created, amended and extinguished pursuant to this Act.

(3) Maritime liens are created and extinguished pursuant to this Act and international conventions to which Estonia has acceded, regardless of whether the claims secured by maritime liens are against registered or unregistered ships.

(4) Both registered and unregistered ships are arrested, in order to secure a maritime claim or an action, pursuant to this Act and international conventions to which Estonia has acceded.

§ 2. Ship and accessory of ship

(1) A ship is a vessel of sufficient size used for a specific purpose, which is designed and is able to move in or on water and carry people or things or serve other purposes.

(2) Accessories of ships are determined pursuant to the provisions concerning accessories provided for in the Act on the General Part of the Civil Code. In the case of doubt, a thing is deemed to be an accessory if it is entered in the inventory list of a ship.

(3) The accessories of a ship include the technical documentation of the ship and other documents necessary for use of the ship.

[RT I 2002, 53, 336 - entry into force 01.07.2002]

§ 3. Encumbrance of ship with restricted real rights

Ships may be encumbered with usufructs and maritime mortgages.

§ 4. Ship registry

(1) The ship registry is comprised of the ship register and the register of ships under construction, and is maintained concerning registered ships and the real rights related thereto.

(2) The ship registry is maintained pursuant to this Act and the Law of Ship Flag and Ship Registers Act (RT I 1998, 23, 321).

§ 5. Access to ship registry

The ship registry is public. No one may be excused by ignorance of information in the ship registry.

§ 6. Presumption of correctness of ship registry

(1) A person for whose benefit a real right or a right to a real right is entered in the ship registry is presumed to have the right thereto. If a registered real right is deleted, it is presumed that the real right has ceased to exist.

(2) In proving a claim, a creditor cannot rely on the fact that a maritime mortgage is entered in the creditor's name in the ship registry.

§ 7. Public reliability of ship registry

(1) With respect to a person who has, by a legal act, acquired a ship, maritime mortgage, right to a maritime mortgage or a usufruct on a ship in good faith, the content of the ship registry, in so far as it affects such rights, is deemed to be correct.

(2) If a restriction on the disposal of a right of an entitled person is entered in the ship registry, such restriction is binding on the acquirer of such right if the restriction is entered in the ship registry or is known to the acquirer.

(3) If an entry must be made in the ship registry for acquisition of a right, the acquirer of the right is deemed to become aware of the restriction at the time the application for the entry is submitted or, if an agreement is reached later, at the time the agreement is reached.

(4) Subsection 1 of this section applies depending on whether a legal act is performed for the benefit of the person with respect to whom an entry is made in the ship registry or a transaction is concluded between such person and a third person by which a right of disposal over the registered right is transferred, but which does not fall under the provisions of subsection 1 of this section.

§ 8. Validity of real right

(1) If entry in the ship registry is required for the creation of a real right, the right is valid as a real right on the condition that it is entered in the ship registry.

(2) Within an entry, the content of a real right may be defined more precisely by referring to the documents which are the basis for registration.

Part II CREATION AND EXTINGUISHMENT OF SHIP OWNERSHIP

§ 9. Creation of ship ownership

A notarised agreement concerning transfer of ownership and an entry in the ship registry are required for creation of ownership of a ship. The agreement concerning transfer of ownership may be unattested if the ship loses the right to fly the national flag of Estonia due to the transfer of ownership.

§ 10. Benefits and damage upon transfer of ownership

If the ownership of a ship or ownership of a part of a ship is transferred during a voyage, the acquirer bears the losses or gains the benefits of the voyage, unless the parties agree otherwise.

§ 11. Accessory upon acquisition of ship

(1) Upon acquisition of a ship, the acquirer also becomes the owner of an accessory if the accessory belonged to the transferor. A transfer does not extend to the accessories of a ship in respect of which the parties agree otherwise.

(2) If the acquirer of a ship obtains possession of an accessory which does not belong to the transferor, § 95 of the Law of Property Act applies. In determining good faith, the time at which the acquirer obtained possession of the ship is decisive.

§ 12. Acquisition of ship by prescription of entry in ship registry

(1) If a person is entered in the ship registry as a shipowner without legal basis, the person becomes the owner if the person possesses the ship as a thing which belongs to the person without interruption and in good faith for ten years.

(2) The provisions concerning prescription of movables apply to the calculation of the term specified in subsection 1 of this section.

§ 13. Acquisition of ship by prescription

(1) If a person has possessed a ship without interruption and in good faith for ten years, he or she may demand to be entered in the ship registry as the shipowner by a court proceeding.

(2) If the owner is entered in the ship registry, the making of an entry is possible if the owner is deceased or missing and no entry which requires the consent of the owner has been made in the ship registry in the past ten years.

(3) The provisions concerning prescription of movables apply to the calculation of the term specified in subsection 1 of this section.

(4) After submission of a demand for an entry, the court shall determine the term for filing objections in a calling proceeding and shall publish a corresponding announcement in the official publication *Ametlikud Teadaanded*. If no objections are submitted within the specified term or the objections are denied, the court shall make a ruling on the basis of which the person submitting the demand is entered in the ship registry as the owner.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

§ 14. Relinquishment of ship ownership

(1) A person may relinquish ownership of a ship.

(2) In order to relinquish ownership the owner shall submit a notarised application to the court, on the basis of which the relinquishment is entered in the ship registry.

(3) Ships which are relinquished transfer into the ownership of the state. The state becomes the owner through entry in the ship registry as the owner.

(4) The state may establish as a prerequisite for making an entry specified in subsection 3 of this section that the person who relinquishes ownership of a ship take responsibility for the liabilities which have arisen from ownership of the relinquished ship.

Part III ENCUMBRANCE OF SHIP WITH RESTRICTED REAL RIGHTS

Chapter 1 MARITIME MORTGAGE

Subchapter 1

Definition and Creation of Maritime Mortgage

§ 15. Definition of maritime mortgage

(1) A ship may be encumbered with a maritime mortgage in such manner that the person for whose benefit the maritime mortgage is established (mortgagee) has the right to satisfaction of the claim secured by the maritime mortgage against the pledged ship.

(2) A part of a ship may be encumbered separately with a maritime mortgage if it is the share of a co-owner. A part of the share of a co-owner cannot be encumbered with a maritime mortgage.

(3) A maritime mortgage does not presume the existence of a claim to be secured.

§ 16. Combined mortgage

(1) If a claim is secured by a maritime mortgage on several ships or several parts of a ship, the claim may be satisfied against each ship or each part of a ship (combined mortgage).

(2) A mortgagee may divide the sum of the claim between separate ships or separate parts of a ship in such manner that each ship or each part of a ship is liable only for part assigned to it. A mortgagee's notarised application and an entry in the ship registry are required for division.

(3) If a combined mortgage is encumbered with the right of a third person, the notarised consent of the person is required for division.

§ 17. Partial mortgage

(1) A maritime mortgage may be divided into parts.

(2) An entry in the ship registry is required for the division of a maritime mortgage into parts. An entry shall be made on the basis of a notarised application of a mortgagee, unless otherwise provided by law.

(3) If a maritime mortgage is encumbered with the right of a third person, the notarised consent of the person is required for division of the maritime mortgage.

(4) Partial mortgages have the ranking of a divided maritime mortgage.

(5) Partial mortgages are equal between themselves and have the same ranking, unless otherwise provided by law or an entry.

§ 18. Owner mortgage

A shipowner may establish a maritime mortgage for the owner's benefit.

§ 19. Creation of maritime mortgage

(1) A maritime mortgage is created by the making of an entry in the ship registry.

(2) A notarised agreement between the owner and mortgagee concerning the establishment of a mortgage is required for entry of the mortgage in the ship registry.

§ 20. Entry of maritime mortgage

An entry concerning a maritime mortgage shall include the following information:

- 1) the mortgagee;
- 2) the monetary amount of the maritime mortgage;
- 3) – 4) [Repealed – RT I 2005, 39, 308 – entry into force 01.01.2006]
- 5) the category of maritime mortgage if the mortgage is a combined mortgage.

Subchapter 2 Ranking

§ 21. Ranking of maritime mortgage

If a ship is encumbered with several maritime mortgages, the ranking of the mortgages is determined by the time the entries are made on the principle that a maritime mortgage entered earlier ranks higher.

§ 22. Change of ranking

(1) Ranking may be changed upon the notarised agreement of the mortgagees of lowered and elevated maritime mortgages. A corresponding entry shall be made in the ship registry for a change of ranking.

(2) If a lowered maritime mortgage is encumbered with the right of a third person, the notarised consent of the person is also required for a change of ranking.

(3) A change of ranking shall not damage the rights of the owner or the rights which are ranked between the rights which are lowered and elevated.

Subchapter 3 Rights of Shipowner and Mortgagee

§ 23. Rights of owner of encumbered ship

The owner of a ship encumbered with a maritime mortgage has the right to freely possess, use and dispose of the encumbered ship if the owner does not thereby decrease the value of the encumbered ship or damage the rights of the mortgagee in any other manner, except if this occurs as a result of regular management.

§ 24. Right of mortgagee to prevent decrease in value of ship

(1) If the value of an encumbered ship decreases as a result of the activities of the owner, the mortgagee has the right to demand that the shipowner terminate further harmful activity.

(2) A mortgagee may take measures necessary to prevent a decrease in the value of an encumbered ship pursuant to a court judgment. The mortgagee may also take such measures without a court judgment if a delay would significantly reduce the value of the encumbered ship.

(3) The mortgagee has the right to demand reimbursement of expenses relating to the measures specified in subsection 2 of this section.

§ 25. Rights of mortgagee upon decrease in value of ship

(1) If a decrease in the value of an encumbered ship is presumed or if it has already occurred, the mortgagee may demand restoration of the former state or additional security from the shipowner.

(2) If a shipowner does not restore the former state or give additional security on the demand of the mortgagee, the mortgagee may demand satisfaction of the claim secured by the maritime mortgage to the extent by which the value of the encumbered ship has decreased. The mortgagee shall provide a term of at least one month for satisfaction of the claim.

(3) If the owner is not at fault for the decrease in the value of the encumbered ship, the mortgagee may demand additional security or partial payment of the debt to the extent that the shipowner is compensated for the decrease in value.

§ 26. Reduction in value of accessories

Reduction in the value of the accessories of an encumbered ship or severance of accessories from an encumbered ship in breach of the requirements for regular management grants a mortgagee the same rights as upon decrease in the value of the ship.

§ 27. Right of mortgagee to hinder activities of third person

If a ship encumbered with a maritime mortgage is endangered as a result of any activities of a third person that deteriorate the ship, the mortgagee has the right to demand that the third person terminate such activities.

§ 28. Disposal of encumbered ship

(1) A waiver by a shipowner of the right to transfer or further encumber a ship encumbered with a maritime mortgage is invalid.

(2) If, after establishment of a maritime mortgage, a usufruct is established on the same ship without the consent of the entitled mortgagee, the maritime mortgage is preferred to the usufruct established later. A usufruct shall be deleted to the extent it damages realisation of the maritime mortgage.

Subchapter 4

Extent of Maritime Mortgage

§ 29. Extension of maritime mortgage to accessories

(1) A maritime mortgage extends to the accessories of a ship, except if the accessories are not owned by the shipowner.

(2) An accessory which has lost the characteristic qualities of an accessory in the course of regular management before seizure of the accessory for compulsory execution shall be relieved of the maritime mortgage.

(3) A thing does not cease to be an accessory of a ship upon temporary severance from the ship which is the principal thing.

§ 30. Extension of maritime mortgage to insurance indemnity

(1) If a shipowner or any other policyholder has insured the ship at the expense of the shipowner, the maritime mortgage also extends to claims for the insurance indemnity.

(2) The insurer may pay the insurance indemnity to the policyholder with the written consent of the mortgagees.

(3) The insurer may also pay the insurance indemnity to the policyholder if the policyholder or insurer has promptly notified the mortgagee of the insured event and two weeks have passed from the date of notification and the mortgagee has not given notice of the intention to exercise the rights arising from the maritime mortgage.

(4) An insurer cannot rely on the fact that the insurer was not aware of a maritime mortgage entered in the ship registry.

(5) An insurer is relieved of obligations to the mortgagee if the insurance indemnity is paid in compliance with the requirements provided for in this section.

§ 31. Payment of insurance indemnity independent of mortgagee

(1) A mortgagee cannot prevent the payment of an insurance indemnity if the policyholder undertakes to use the insurance indemnity for restoration of the ship and proves that restoration of the ship is possible and purposeful.

(2) The obligations of the insurer are deemed to be fulfilled upon restoration of the ship.

§ 32. Notification obligation of insurer

(1) The provisions of this section apply to an insurer only if the mortgagee has notified the insurer of the maritime mortgage.

(2) An insurer shall promptly notify a mortgagee of failure to pay an insurance premium and of the additional term for payment of the insurance premium imposed on the policyholder.

(3) Premature termination or amendment on any basis of an insurance contract does not enter into force with respect to a mortgagee before two weeks have passed from the date the mortgagee is notified thereof, taking into account the usual time for delivery of letters. The parties may agree otherwise.

(4) The provisions of subsection 3 of this section do not apply upon the termination of an insurance relationship due to failure to pay an insurance premium if the insurer has fulfilled the notification obligation provided for in subsection 2 of this section and has therewith given the mortgagee the opportunity to pay the insurance premium in lieu of the policyholder.

§ 33. Notification procedure

(1) Notifications between an insurer and mortgagee shall be forwarded by registered letter or delivered against signature.

(2) If the seat or residence of a mortgagee is not known, the notification obligation of an insurer is deemed to be fulfilled by sending a registered letter to the address last indicated by the mortgagee.

§ 34. Additional obligations of insurer

(1) If an insurer is relieved of the obligation to pay an insurance indemnity to a policyholder due to the conduct of the latter, the obligation to pay the insurance indemnity to a mortgagee continues independently. The obligation to pay an insurance indemnity to a mortgagee also continues if the insurer discontinues an insurance contract after an insured event.

- (2) An insurer is relieved in full of the obligation to pay an insurance indemnity if:
- 1) the insurance premium is not paid within the specified term;
 - 2) the ship started its voyage when it was not seaworthy or was equipped or manned inadequately;
 - 3) the ship deviated from a determined navigation area.

§ 35. Transfer of maritime mortgage to insurer

(1) An insurer has the right to demand entry of a maritime mortgage in the insurer's name in so far as the insurer satisfies the claim of the mortgagee.

(2) An insurer has the right to demand documents from a mortgagee for entry of the maritime mortgage in the insurer's name.

(3) An insurer shall not exercise the rights arising from a maritime mortgage which has been transferred to the insurer in a way damaging the interests of a mortgagee whose claim has been partially satisfied or the interests of mortgagees before whom the insurer continues to be obligated.

§ 36. Payment of insurance premium by mortgagee

An insurer is required to accept insurance premiums subject to payment and other amounts subject to payment pursuant to an insurance contract from a mortgagee.

Subchapter 5 Satisfaction of Claims from Maritime Mortgage

§ 37. Extent of claims

A maritime mortgage secures to the extent of the mortgage amount a claim, the interest unpaid on the claim for three years before the sale of the ship by compulsory auction or declaration of bankruptcy, fines for delay and expenses for the collection of debts, insurance premiums paid by the mortgagee for the ship, other amounts paid pursuant to the insurance contract and other collateral claims.
[RT I 2008, 59, 330 - entry into force 01.01.2009]

§ 38. Satisfaction of claim secured by maritime mortgage

(1) A mortgagee may demand satisfaction of the claim secured by a maritime mortgage and the owner of the encumbered ship may pay the debt after the due date of the claim.

(2) In the case of a claim with an unspecified term secured by a maritime mortgage, the mortgagee may demand payment of the debt and the owner may pay the debt after the term provided by law for advance notice to a shipowner or to a mortgagee has passed. Advance notice may be given by either the shipowner or the mortgagee. The parties may agree otherwise with respect to the term for advance notice. Such agreement shall be entered in the ship registry.

§ 39. Rights of owner upon satisfaction of claim of mortgagee

(1) An owner may present the same objections to the claims of a mortgagee which may be presented by the debtor.

(2) An owner may refuse to satisfy the claim of a mortgagee as long as the debtor has the right to contest the transaction which is the basis for the debt relationship. An owner has such right also as long as the mortgagee has the right to satisfy the mortgagee's claim against the debtor by settlement of accounts.

(3) The right of an owner to present objections does not extinguish if the debtor waives the right to present objections.

§ 40. Transfer of maritime mortgage to owner

(1) If a claim secured by a maritime mortgage is satisfied or no claim has been created, the actual owner of the encumbered ship may demand deletion of the maritime mortgage or entry of the maritime mortgage in the actual owner's name.

(2) If a claim secured by a maritime mortgage is partially satisfied, the actual owner of the encumbered ship may demand deletion of the maritime mortgage or entry of the maritime mortgage in the actual owner's name to the extent the claim was satisfied. Exercise of the rights which arise from a transferred maritime mortgage shall not damage the interests of the original mortgagee.

(3) If the owner satisfies the claim of a mortgagee in lieu of the debtor, the claim is transferred to the owner to the extent the claim was satisfied, unless the legal relationship between the owner and debtor determines otherwise.

(4) Upon satisfaction of the claim of a mortgagee, the owner may demand the documents necessary for entry of the maritime mortgage in the owner's name from the mortgagee.

§ 41. Presumed owner

Upon the exercise of rights arising from a maritime mortgage, the person who is entered in the ship registry as the owner is deemed to be the owner with respect to the mortgagee. An owner who is not entered in the ship registry retains the right to present objections against a maritime mortgage.

§ 42. Satisfaction of claim of mortgagee by third person

(1) If a mortgagee wishes to satisfy a claim against the ship, every person who is in danger of losing the right to the ship or things covered by the maritime mortgage in the case of compulsory execution has the right to satisfy the claim of the mortgagee including by the deposit of money as security or by settlement of accounts. The possessor of the ship or of an accessory has such right if the possessor is in danger of losing possession due to compulsory execution.

(2) A claim is transferred to a third person to the extent that the third person satisfies the claim of a mortgagee in lieu of the debtor. A third person may also demand entry of the maritime mortgage to the same extent in the third person's name. A third person shall not damage the interests of the original mortgagee while exercising the rights arising from the transferred claim and maritime mortgage or parts thereof.

(3) Upon satisfaction of the claim of a mortgagee, a third person may demand the documents necessary for entry of the maritime mortgage in the third person's name from the mortgagee.

§ 43. Satisfaction of claim from maritime mortgage

(1) If a claim secured by a maritime mortgage is not paid, the mortgagee has the right to satisfy the claim from the maritime mortgage.

(2) In the case of a combined maritime mortgage, the mortgagee may satisfy the claim against each ship as a whole or against each part of a ship as a whole.

(3) A mortgagee may satisfy a claim only by compulsory auction.

(4) An agreement according to which a mortgagee acquires an encumbered ship for satisfaction of a claim secured by a maritime mortgage is invalid.

§ 44. Order of satisfaction of claims of mortgagees

(1) Claims secured by a maritime mortgage are satisfied according to the ranking thereof.

(2) A claim of a subsequent ranking secured by a maritime mortgage is satisfied after satisfaction of a claim of the preceding ranking.

(3) Claims secured by a maritime mortgage of one and the same ranking are satisfied concurrently and in proportion to the amount of the claims, unless otherwise provided by this Act.

Subchapter 6 Transfer and Extinguishment of Maritime Mortgage

§ 45. Disposal of maritime mortgage

A maritime mortgage may be disposed of, including pledged or transferred, only by the mortgagee who has been entered in the ship registry.

§ 46. Transfer of maritime mortgage

The notarised consent of the owner and an entry in the ship registry are required for transfer of a maritime mortgage.

§ 47. Maintenance of objections

An objection which a shipowner has against a maritime mortgage arising from a legal relationship between the shipowner and the current mortgagee may also be used against the new mortgagee, including objections arising from the principle of public reliability of the ship registry.

§ 48. Extinguishment of maritime mortgage

A maritime mortgage is extinguished by deletion of the entry from the ship registry.

§ 49. Extinguishment of maritime mortgage upon compulsory execution

A maritime mortgage is deleted if the claim of the mortgagee is wholly or partially satisfied by way of a compulsory auction.

§ 50. Discharge of maritime mortgage

(1) If a mortgagee discharges a maritime mortgage, the shipowner acquires the maritime mortgage. For discharge of a maritime mortgage, the mortgagee shall submit a notarised application to the court on the basis of which an entry shall be made in the ship registry.

(2) If a mortgagee partly discharges a maritime mortgage, the owner acquires the corresponding part of the maritime mortgage. Exercise of the rights which arise from the partial mortgage transferred to the owner shall not damage the interests of the mortgagee.

(3) If a maritime mortgage is encumbered with the right of a third person, the notarised consent of the third person is required for discharge.

§ 51. Consequences of extinguishment of maritime mortgage

After deletion of a maritime mortgage, the maritime mortgages with subsequent ranking are elevated, unless otherwise provided by law or an entry in the ship registry.

§ 52. Consequences of discharge of maritime mortgage

If a mortgagee discharges a maritime mortgage or assigns the privilege arising from a maritime mortgage to another maritime mortgage, the debtor is relieved of the obligation to the extent that the debtor could have claimed compensation from the maritime mortgage pursuant to § 54 of this Act if the mortgagee had not disposed of the maritime mortgage in such manner.

§ 53. Securing of claim for deletion

A notation may be entered in the ship registry which secures the obligation of a shipowner to a third person to delete a maritime mortgage if the owner acquires the maritime mortgage.

§ 54. Transfer of maritime mortgage to debtor

(1) If a debtor satisfies the claim of a mortgagee and therefore the debtor has the right to demand compensation from the shipowner or a former shipowner, the debtor also has the right to demand entry of the maritime mortgage in the debtor's name to the same extent to secure a claim for compensation.

(2) If a debtor may demand only partial compensation and the debtor has acquired a partial mortgage arising therefrom, the maritime mortgage which is transferred to the debtor has a privilege over the partial mortgage which is transferred to the shipowner.

(3) If a debtor satisfies the claim of a mortgagee partially and the debtor has acquired a partial mortgage, the partial mortgage which is retained by the mortgagee has a privilege.

(4) The claim of a mortgagee is also deemed to be satisfied if both parties to the debt obligation are consolidated in one and the same person.

(5) If a debtor satisfies the claim of a mortgagee, the debtor may demand that the mortgagee issue to the debtor the documents which are necessary for entry of the maritime mortgage in the debtor's name.

§ 55. Consequences of failure to notify debtor of compulsory execution

If a mortgagee commences compulsory execution proceedings for satisfaction of a claim against a ship without notifying the debtor and the debtor has the right to demand compensation from the owner upon satisfaction of the claim, the debtor has the right, due to exclusion of the debtor from such enforcement procedure, to refuse to satisfy the claim of the mortgagee to the extent that the debtor has sustained losses due to the failure to notify.

§ 56. Right of owner to demand discharge of maritime mortgage

If an owner has a permanent objection due to which a mortgagee cannot satisfy a claim secured by a maritime mortgage against the ship, the owner may demand that the mortgagee discharge the maritime mortgage.

§ 57. Deletion of owner mortgage on demand of mortgagee

(1) If one and the same person becomes the owner of a maritime mortgage and the encumbered ship, the same or a lower ranking mortgagee may demand deletion of such maritime mortgage.

(2) The provisions of subsection 1 of this section do not apply to a maritime mortgage created pursuant to § 18 of this Act.

§ 58. [Repealed – RT I 2008, 59, 330 – entry into force 01.01.2009]

§ 59. Extinguishment of maritime mortgage on demand of shipowner with deposit of amount of mortgage

(1) The owner of an encumbered ship may demand the extinguishment of a maritime mortgage by a calling proceeding of a court, if the location of the mortgagee is not known and the owner has the right to satisfaction of the claim and the owner deposits the entire amount of the mortgage.

(2) [Repealed – RT I 2005, 39, 308 – entry into force 01.01.2006]

(3) Upon entry into force of a court ruling concerning extinguishment of a maritime mortgage, the claims of the mortgagee are deemed to be satisfied to the extent of the amount of the mortgage and the maritime mortgage is deleted.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

(4) A mortgagee has the right to receive the deposited money within five years after the date of announcement of the extinguishment of the maritime mortgage. If a mortgagee fails to withdraw the money within this term, the shipowner has the right to have the money returned.

[RT I 2008, 59, 330 - entry into force 01.01.2009]

§ 60. Transfer of combined mortgage to debtor

(1) If a claim secured by a combined mortgage is not created or is satisfied wholly or partially, or the mortgagee discharges a combined mortgage, the owners have the right to demand entry of the maritime mortgage in the names of the owners jointly. Each owner separately has the right to demand entry of the corresponding part of the maritime mortgage in the owner's name.

(2) Each owner may demand such part of a maritime mortgage which corresponds to the value of the owner's ship or part of a ship unless the relationship between the owners determines otherwise.

(3) If a claim secured by a combined mortgage is satisfied partially, the partial mortgage which is retained by the mortgagee has a privilege over the partial mortgage entered in the name of the shipowner.

(4) An owner has the right to demand that a mortgagee issue the documents necessary for entry of a maritime mortgage in the name of the owner or owners.

§ 61. Satisfaction of claim of mortgagee by one owner in case of combined mortgage

(1) If one owner of a ship or a part of a ship encumbered with a combined mortgage satisfies the claim of a mortgagee and the claim is therefore deleted, such owner has the right to demand entry of the combined mortgage which encumbers the owner's ship or part of a ship in the owner's name.

(2) If an owner who satisfies the claim of a mortgagee may demand compensation from other owners or former owners, such owner has the right to demand entry of the maritime mortgage incumbent on the ship or part of the ship of the owner in the owner's name to the extent of the compensation claim.

(3) If the claim of a mortgagee is satisfied partially, the maritime mortgage retained by the mortgagee has a privilege over the partial mortgage transferred to the owner and over the partial mortgage transferred pursuant to subsection 2 of this section.

(4) A claim is also deemed to be satisfied by the owner if the mortgagee and the owner are one and the same person.

(5) If the claim of a mortgagee is satisfied by way of a compulsory auction from one ship or part of a ship encumbered with a combined mortgage, the provisions of subsection 2 of this section apply correspondingly.

(6) The owner of a ship or part of a ship has the right to demand that the mortgagee issue the documents necessary for entry of the maritime mortgage in the owner's name.

§ 62. Transfer of combined mortgage to debtor

If a combined mortgage is established on a ship or a part of a ship, and if the circumstances provided for in § 54 of this Act arise and the debtor may demand compensation from the owner or a former owner of the encumbered ship or part of a ship, the debtor may demand entry of the maritime mortgage in the debtor's name only on such ship or part of a ship. The combined mortgage on the remainder of the ships is deleted and the owners of such ships or parts of ships do not have the right to demand entry of the partial mortgage in the names of such owners.

§ 63. Restriction on transfer of combined mortgage

If a mortgagee discharges a maritime mortgage only in respect of one ship or part of a ship in the case of ships encumbered with a combined mortgage, the owner of such ship or part of a ship does not have the right to demand entry of the maritime mortgage in the owner's name.

Subchapter 7 Maritime Mortgage Established on Ship under Construction

§ 64. Extent of maritime mortgage established on ship under construction

(1) A maritime mortgage extends to a ship under construction in each stage of construction.

(2) A maritime mortgage established on a ship under construction extends, in addition to the accessories specified in § 29 of this Act, also to constructional goods on the construction site which are meant for construction of the ship and are marked accordingly, except goods which do not belong to the owner of the ship under construction.

§ 65. Extension of maritime mortgage established on ship under construction to insurance indemnity

A maritime mortgage established on a ship under construction extends to a claim for an insurance indemnity only if the owner has insured the ship under construction separately.

§ 66. Ranking of maritime mortgage established on ship under construction

(1) A maritime mortgage established on a ship under construction retains its current ranking after completion of the ship.

(2) If a ship is entered in a ship register after completion of the ship, the maritime mortgage is also transferred to the same ranking it had in the register of ships under construction.

Chapter 2 JUDICIAL MARITIME MORTGAGE

§ 67. Judicial maritime mortgage

(1) To secure an action, a court may establish a maritime mortgage to the extent of the claim of the action, which shall be entered in the ship registry as a judicial maritime mortgage.

(2) If the court which maintains the ship registry does not hear the claim of an action, the court that maintains the ship registry shall establish a maritime mortgage on the basis of a request of the court that hears the matter.

(3) A judicial maritime mortgage secures a claim satisfied pursuant to a court decision.
[RT I 2008, 59, 330 - entry into force 01.01.2009]

§ 68. Application of maritime mortgage provisions

In addition to the provisions of § 67 of this Act, the provisions concerning maritime mortgages apply to judicial maritime mortgages.

Chapter 3

USUFRUCT

§ 69. Usufruct established on ship

The provisions of the Law of Property Act concerning usufructs apply with respect to a usufruct established on a ship.

§ 70. Ranking of usufruct

(1) The ranking between a usufruct and a maritime mortgage is determined by the date the entries are made. A right entered on an earlier date has a privilege, and rights entered on the same date have equal ranking. A different determination of ranking shall be entered in the ship registry.

(2) § 22 of this Act applies upon a change of the ranking of a usufruct.

§ 71. Restriction on establishment of usufruct on seagoing vessel

The usufructuary of a seagoing vessel shall meet at least one of the requirements prescribed in §§ 1 and 2 of the Law of Ship Flag and Ship Registers Act.

Part IV MARITIME LIEN

Chapter 1 DEFINITION, CREATION AND EXTINGUISHMENT OF MARITIME LIEN

§ 72. Definition of maritime lien

(1) A maritime lien is a pledge created by law on a ship to secure claims provided by law.

(2) A maritime lien is created with the creation of a claim connected with the use of a ship against a shipowner, operator of a ship (a person who operates the ship in the person's own name) or master of a ship.

(3) Maritime liens are not entered in the ship registry.

§ 73. Connection of maritime lien to ship

A maritime lien transfers together with a ship upon transfer of the ship regardless of whether the acquirer of the ship knew of the encumbrance of the ship with a maritime lien; a maritime lien also transfers with a ship upon a change of the place of registration of the ship or change of the flag of the ship.

§ 74. Claims secured by maritime lien

(1) The following claims are secured by a maritime lien:

- 1) claims for wages and other sums due to the master, ratings 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 fairway 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.

(2) No maritime lien shall attach to a ship to secure claims specified in clauses 2 or 5 of subsection 1 of this section if:

- 1) damage has arisen in connection with the carriage of oil or other hazardous or toxic substances by sea for which compensation is payable to the claimants pursuant to international conventions or Acts providing for strict liability or compulsory insurance or other means of securing the claims;
- 2) damage has arisen in connection with the radioactive properties or a combination of the radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive waste.

§ 75. Extinguishment of maritime lien

(1) A maritime lien securing a claim specified in § 74 of this Act extinguishes after one year has passed from the due date specified in subsection 2 of this section.

(2) The term provided for in this section shall be calculated from:
1) the pay-off of the owners of claims secured by the maritime lien in the cases provided for in clause 1 of subsection 1 of § 74 of this Act;
2) the creation of the claim secured by the maritime lien in the cases provided for in clauses 2–5 of subsection 1 of § 74 of this Act.

(3) The running of the term specified in this section shall not be interrupted.

(4) The term is suspended only for the period during which, pursuant to law, it is prohibited to seize the ship.

§ 76. Transfer of claim secured by maritime lien

(1) The transfer of a claim secured by a maritime lien results in the transfer of the maritime lien to the acquirer of the claim.

(2) The owner of a claim secured by a maritime lien does not have the right to claim indemnity on the basis of an insurance contract.

Chapter 2 SATISFACTION OF CLAIMS

§ 77. Ranking of claim secured by maritime lien

(1) A claim specified in § 74 of this Act shall be satisfied before other claims, including claims secured by a maritime mortgage.

(2) In addition to the claims specified in § 74 of this Act, other claims secured by a maritime lien may be established by law. Such claims are ranked lower than a maritime mortgage, but they have a privilege over all other claims.

§ 78. Order of satisfaction of claims secured by maritime lien

(1) Claims secured by a maritime lien shall be satisfied in the order specified in subsection 1 of § 74 of this Act, except the claims specified in clause 3 of subsection 1 of § 74 of this Act which have a privilege over all claims secured by a maritime lien which have arisen before the salvaging specified in clause 3 of subsection 1 of § 74 of this Act.

(2) Claims specified in clauses 1, 2, 4 and 5 of subsection 1 of § 74 of this Act of the same ranking are equal and such claims are satisfied proportionally.

(3) The claims specified in clause 3 of subsection 1 of § 74 of this Act are satisfied in inverse order according to the time the claims were created. Such claims are deemed to be created as of the date the respective salvaging was completed.

Part IV¹ MARITIME CLAIM AND SECURING ACTION BY ARREST OF SHIP

§ 78¹. Definition of maritime claim

Maritime claim means a claim arising from:

- 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) salvaging or any salvage agreement, including special compensation relating to salvage operations in respect of a ship which by herself or her 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 caused or likely to be caused by third parties in connection with such damage; 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, bunker fuel, equipment (including containers) supplied or services provided 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 fairway dues and charges;
- 14) wages and other sums due to the master, officers and other members of the crew of a ship 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 bareboat charterer;
- 17) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or bareboat 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.

§ 78². Arrest of ship

(1) A ship is arrested on the basis of a maritime claim specified in § 78¹ of this Act. Provisions of civil procedure concerning the securing of actions apply to the arrest of ships for the purpose of securing an action, taking into consideration the specifications established in this Act.

(2) Arrest is permissible of any ship in respect of which an application is filed with a court for securing a maritime claim if:

- 1) 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;
- 2) the bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or owner of the ship when the arrest is effected;
- 3) the claim is based on the restricted real rights incumbent on the ship;
- 4) the claim relates to the ownership or possession of the ship;
- 5) the claim is against the owner or operator of the ship and is secured by a maritime lien.

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

(4) If a ship has been arrested or released from arrest upon the provision of security or for another reason, such ship shall not thereafter be arrested to secure the same action unless:

- 1) the nature or amount of the security provided is inadequate, on the condition that the aggregate amount of security shall not exceed the value of the ship;
- 2) it has appeared that the person who has assumed liability as surety is not able to perform the obligations assumed;
- 3) the claimant could not, with good reason, prevent the release of the ship from arrest or from other measures of securing the action.

(5) Any other ship which is otherwise liable for the same maritime claim shall not be arrested, unless the nature or amount of the security already provided is inadequate or the ship is arrested on the basis specified in clauses 2 or 3 of § 78¹ of this Act.

§ 78³. Substitution of arrest with other form of security

(1) A court may release a ship from arrest when sufficient security has been provided in a satisfactory form. A ship shall not be released from arrest if the ship has been arrested in order to secure maritime claims listed in clauses 18 or 19 of § 78¹ of this Act. In such case, the court may permit the person in possession of the ship to continue commercial activities or otherwise using 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 the sufficiency and form of the security, not exceeding the value of the arrested ship.

(3) Any request for the substitution of arrest or another security shall not be construed as an acknowledgement or limitation of liability nor as a waiver of any defence.

Part V IMPLEMENTATION OF ACT

Chapter 1 ENFORCEMENT PROCEDURE PROVISIONS

§ 79. Application of Code of Enforcement Procedure

(1) A claim for payment against a registered ship or seagoing vessel subject to mandatory registration is made pursuant to the provisions for making a claim for payment against the immovables of a debtor provided for in the Code of Enforcement Procedure, taking account of the specifications established in this Act. The seizure and storage of a ship is effected pursuant to the provisions provided for seizure of movable property, except the making of a notation in the ship registry which is effected pursuant to the Code of Enforcement Procedure.

(2) The making of a claim for payment against an unregistered ship is effected pursuant to the provisions for making a claim for payment against movable property of a debtor prescribed by the Code of Enforcement Procedure.

(3) In making a claim for payment against a ship which should be registered in the ship registry, the provisions of the Code of Enforcement Procedure concerning registered ships which do not presume an entry in the ship registry shall be applied.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

§ 80. Making claim for payment against registered ship

(1) The making of a claim for payment against the things specified in subsection 1 of § 79 of this Act is possible only by way of a compulsory auction; compulsory administration is excluded.

(2) Compulsory auction with respect to a ship under construction is possible as of registration thereof. An application may be submitted before registration.

§ 81. [Repealed – RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 82. [Repealed]

§ 83. Application of enforcement procedure

Enforcement procedure may be directed against the possessor of a ship. In such case, execution also applies to the owner.

§ 84. Extent of seizure of ship

Upon seizure of a ship, the seizure does not extend to the cargo or freight of the ship.

§ 85. Statement of seizure

(1) The description of a ship in a statement of seizure shall correspond to the description of the ship in the ship registry.

(2) The format of a statement of seizure shall be established by the minister in charge of the policy sector.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014, in accordance with subsection 4 of § 107³ of the Government of the Republic Act as of 1 July 2014 the words ‘Minister of Justice’ are replaced with the words ‘minister in charge of the policy sector’.]

(3) The person who seizes a ship shall remove the ship’s papers from the ship.

§ 86. Appointment of administrator

A court appoints an administrator to a ship. The administrator is subject to judicial control and to the precepts of the court. The administrator shall not use the ship.

§ 87. Notice of compulsory auction

(1) Notice of a compulsory auction shall be given to:

- 1) the ship register in which the ship is registered;
- 2) all known pledgees;
- 3) the known owners of claims secured by a maritime lien;
- 4) the shipowner.

(2) The description of a ship in a notice or announcement of a compulsory auction shall correspond to the description of the ship in the ship registry.

(3) A proposal to inform of one's rights, included in an announcement of a compulsory auction, shall contain an express reference to rights secured by a maritime lien.

(4) An announcement of a compulsory auction shall be published according to the procedure provided for in subsection 2 of § 84 of the Code of Enforcement Procedure.

[RT I 2006, 7, 42 - entry into force 04.02.2006]

§ 88. [Repealed – RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 89. Transfer of ownership upon compulsory auction

(1) Ownership of a registered ship or a ship subject to mandatory registration is transferred upon the entry into force of the statement of a compulsory auction.

(2) Ownership of an unregistered ship is transferred upon the transfer of possession of the ship.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

§ 90. Termination of enforcement procedure

In addition to the cases provided for in the Code of Enforcement Procedure, an enforcement procedure concerning a ship may be terminated if it is apparent that a larger amount of money would be received upon the dismantling of the ship and its sale in parts than by way of a compulsory auction.

§ 91. Order of satisfaction of claims

In the case of a ship, the money received from a compulsory auction shall be distributed in the following order:

- 1) the expenses connected with the forced sale and seizure of the ship, and expenses which the state incurs for removal of the ship from the fairways in order to secure safe navigation;
- 2) claims secured by a maritime lien;
- 3) claims secured by a maritime mortgage;
- 4) other claims.

§ 92. Activities of enforcement agent after compulsory auction

After a compulsory auction, the enforcement agent shall apply for:

- 1) entry of the purchaser in the ship registry as the owner;
- 2) deletion of notations connected with the enforcement procedure;
- 3) deletion of entries in so far as such entries shall not survive pursuant to law;
- 4) entry of a maritime mortgage in the ship registry if the purchaser has not paid the purchase price immediately.

§ 93. Result of compulsory auction

(1) If a ship is sold by compulsory auction, the enforcement agent shall issue a certificate at the request of the purchaser that the ship is free of maritime liens, mortgages and other encumbrances.

(2) If a ship is sold by compulsory auction, all encumbrances shall be deleted on the basis of a certificate issued by the enforcement agent provided that all entitled persons are notified of the compulsory auction as required. Encumbrances to which the purchaser agrees are not deleted.

Chapter 2 IMPLEMENTING PROVISIONS

§ 94.–§ 97.[Omitted from this text]

§ 98. Entry into force of Act

This Act enters into force together with the Law of Ship Flag and Ship Registers Act.