

SHIP ARREST IN GIBRALTAR

Christian C. Hernandez*
ISOLAS
christian.hernandez@isolas.gi
www.gibraltarlawyers.com
Portland House, Glacis Road PO Box 204 Gibraltar
Tel: +350 20078363
Fax: +350 20078990



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

Arresting a ship in Gibraltar is a relatively simple and straightforward process. In the first instance a Claim Form should be prepared with either brief particulars (which is just a brief summary) or Particulars of Claim together with a request for service of the Claim Form in rem, a declaration in support of the claim and a solicitor's undertaking to pay the Admiralty Marshal's costs and expenses.

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

The Supreme Court of Gibraltar has jurisdiction to try admiralty matters by virtue of the Colonial Courts of Admiralty Act 1890 and the Admiralty Jurisdiction (Gibraltar) Order 1997. The same provide the Supreme Court of Gibraltar which is a Colonial Court of Admiralty, shall have the like admiralty jurisdiction as that of the high court of England as defined by section 20 of the Supreme Court Act 1981. Give effect to the convention relating to the arrest of sea going ships, Brussels 1952.

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

No.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

It is possible to obtain a Freezing order over a defendant's assets where the Gibraltar Court has in personam jurisdiction. In such cases if the Defendant has a vessel within Gibraltar territorial waters, the freezing order can be enforced against the vessel thus preventing her departure from the jurisdiction.

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

In Gibraltar ships can only be arrested pursuant to a claim which gives rise to a right of action in rem. These are:

- (a) any claim to the possession or ownership of a ship or the ownership of any share therein.
- (b) any question arising between the co-owners of a ship as to the possession, employment or earning of that ship.
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein.
- (e) any claim for damage done by a ship. (maritime lien)
- (f) any claim for loss of life or personal injury in respect of a defect in a ship, neglect or default in navigation, management of the ship, loading, carriage or discharge of goods, embarkation, carriage or disembarkation of passengers,
- (g) any claim for loss or for damage to goods carried in a ship.
- (h) any claim arising out of an agreement relating to the carriage of goods in a ship or the use or hire of a ship.
- (i) any claim in the nature of salvage (including aircraft). (maritime lien)
- (j) any claim in the nature of towage in respect of a ship or an aircraft.
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft.
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance.
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues.
- (n) any claim by the master or a member of the crew of a ship for wages. (maritime lien)
- (o) any claim by a master, shipper, or charterer or agent in respect of disbursements made on account of a ship.
- (p) any claim arising out of an act which is or is claimed to be a general average act.
- (q) any claim arising out of bottomry. (maritime lien)
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure or for droits of admiralty."

6. Can you arrest a ship irrespectively of her flag?

Yes.

7. Can you arrest a ship irrespectively of the debtor?

Save for claims which give rise to a maritime lien where the ship can be arrested irrespectively of the debtor all other actions in all other actions that give rise to an in rem a ship can only be arrested if when the cause of action arose the person who would be liable on a claim in an action in personam was other the owner or the Charterer or in possession or in control of the ship.

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

True sister ships can be arrested in Gibraltar. For vessels to be deemed to be sister ships they must be owned by the same entity be it a company or a physical person. With the increasing use of one ship owning companies it is increasingly rare to encounter sister ships. It is not possible to arrest associated ships in Gibraltar.

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

Bareboat chartered vessels can be arrested. Time-chartered vessels cannot be arrested.

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

No counter-security is needed in order to arrest a vessel in Gibraltar. However a deposit of between £10,000 and £20,000 must be placed with the Admiralty Marshal at the time of the arrest in order to cover the expenses of the arrest together with a solicitor's undertaking in respect of the cost of the arrest. If the arrest is successful all costs are normally recovered from the owners of the vessel or in default from the process of sale of the vessel.

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

An arrest for a maritime lien can be effected irrespectively of who the owner of the vessel is and in circumstances whether the vessel may have been sold after the claim arose. An arrest for a maritime claim not being in the nature of a lien can only be carried out in the circumstances set out at 7 above.

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

Gibraltar recognises maritime liens in respect of claim for crew wages, salvage, master's wages and disbursements, damage done by a vessel and bottomry and respondentia.

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

Provided full instructions with the supporting documents are received enabling us to prepare a general endorsement of the claim form together with the declaration in support, an arrest may be carried within hours of receiving instructions. The Admiralty marshal is on call 24 hours a day 365 days a year and therefore in urgent cases a ship may be arrested at almost any time.

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

No Powers of Attorney are needed in Gibraltar in order to arrest a vessel. As regards documentation in support of the claim, in order to enable the solicitor to prepare the claim form and declaration in support of the arrest, documentation should be provided setting out the nature of the claim, the name of the ship to be arrested and its port of registry.

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

For the purposes of the arrest no original documents need be sent. Provided we receive pdf copies of all documents we can prepare the original claim form and original declaration to be filed in Court. However original documents or certified copies of the same should follow as soon as reasonably practical.

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

Once the vessel has been arrested pursuant to an in rem claim, the courts will accept jurisdiction to hear the merits of that in rem claim. However it might be possible for a party to seek to stay the proceedings in Gibraltar and the hearing of the merits of the case if there is a foreign jurisdiction clause that the parties have previously agreed.

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

In order to have ship released from an arrest one must either put up security or satisfy the claim in respect of which the arrest has been made.

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

The type of security which needs to be put in place for the release is either, a cash deposit, a letter from a P&I Club or a guarantee from a first class bank.

19. Does security need to cover interest and costs?

Yes .

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

Typically they are.

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

Once security is put up or the owner of the ship is satisfied the claim, a ship can be released almost immediately.

22. Is there a procedure to contest the arrest?

If a ship owner would like to contest an arrest, then he must file an acknowledgement of service of the claim within 14 days of the claim form being served on them and file a defence to the claim within 28 days of the date of service of the particulars of claim.

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

As discussed previously a claim form setting out the details of the claim has to be filed at the time the arrest documentation is lodged. Once the claim form is lodged the Defendant will have 14 days in which to acknowledge service and a maximum of 28 days in which to file the defence.

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

Although it is possible to claim wrongful arrest in Gibraltar it is extremely rare for this to happen given that the parties would have to prove that the arrested party has acted in bad faith or has been grossly negligent in carrying out the arrest.

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

Gibraltar law as English law recognises the principle of separate legal entities. As such, instances of piercing the corporate veil are extremely rare and, in practice, will only happen in cases where there are allegations of fraud.

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

In Gibraltar ships may be sold and then pendente lite. Although in theory this can be done at any point after the arrest, given the fact that the Court will only grant such an application for very good reason and in instances where there is a real risk that the vessel will seriously diminish in value during the arrest, such applications will only be made in instances where it is clear that the Defendant does not intend to post security and the cost of arrest are significant.

*Christian is a Partner at ISOLAS, the oldest and one of the largest law firms in Gibraltar. He is acknowledged as a leading lawyer in Gibraltar in admiralty and shipping law. Christian is involved in the majority of shipping cases in Gibraltar and has been named as a leading individual by Chambers and Partners, the European Legal 500 and Global Counsel 3000 amongst others. His clients include the ITF, P&I Clubs, banks and shipowners.

What they say about Christian: "He is noted for expertise in non-contentious and disputes work in the admiralty area." CHAMBERS & PARTNERS 2007 "Hernandez is well known for his expertise in ship arrest and has a strong track record for his handling of shipping cases." THE LEGAL 500, 2007 "Isolas remains a leading player in the shipping sector under the leadership of Christian Hernandez." THE LEGAL 500, 2008 "Christian Hernandez, head of the firm's admiralty and shipping team, is 'undoubtedly one of the heavyweights in the sector THE LEGAL 500, 2009.