

## SHIP ARREST IN IRELAND

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

Arrest procedure in Ireland is straightforward, quick and requires no security from the arresting party. Similar to most maritime jurisdictions, there are only certain types of claims where a Claimant can bring an action in rem, giving a right to arrest a vessel. However, the lack of any consolidating legislation has resulted in Admiralty jurisdiction which is rather disjointed. Therefore, it is important in Ireland to consider the jurisdictional basis of each claim to ensure there is a right of arrest and to avoid any potential liability for wrongful arrest.

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

The 1952 Convention applies in Ireland.

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

A ship can only be arrested by an application to Court. The two principal jurisdictional sources which provide a right to arrest a vessel in Ireland are:

- (a) The Court of Admiralty (Ireland) Act 1867; and
- (b) The Jurisdiction of the Courts (Maritime Convention) Act 1989

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

No.

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

- (a) Damage caused by any ship either in collision or otherwise;
- (b) Loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- (c) Salvage;
- (d) Agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) Agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) Loss of or damage to goods including baggage carried in any ship;
- (g) General average;
- (h) Bottomry;
- (i) Towage;
- (j) Pilotage;
- (k) Goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) Construction, repair or equipment or any ship or dock charges and dues;
- (m) Wages of masters, officers or crew;
- (n) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- (o) Disputes as to the title to or ownership of any ship; This shall be construed as including disputes as to possession of a ship;
- (p) Disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
- (q) The mortgage or hypothecation of any ship. This shall be construed as including the mortgage or hypothecation of any share in the ship.

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

Yes.

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

Providing the claim is a "maritime claim" there is a right to arrest the vessel. A ship can be arrested irrespective as to the debtor, for example, bunkers supplied to the vessel on the orders of the time charter, even if that time charter has come to an end. Importantly, the in rem proceedings must be issued before there is a change of ownership or, if the vessel has been demise chartered, before that demise charter has terminated.

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

Perhaps the most significant effect of the Arrest Convention is the possibility to arrest a sister ship. Article 3(1) of the Arrest Convention expressly permits the arrest of sister ships. It is possible to arrest a sister ship providing that:

- (a) The claim is a "maritime claim".
- (b) The ship flies the flag of a contracting country to the arrest convention.
- (c) That the claim arose in respect of another ship which, at the time that when the maritime claim arose, was also owned by the same person.

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

A vessel can be arrested for maritime claims arising during the demise charter and a time charter. Issuing in rem proceedings creates the right to arrest the "res" being the ship. If prior to the proceedings being issued, ownership of the vessel has changed (or a demise charter has been terminated) then the new owner of the vessel is not liable and there is no right to arrest the vessel. Time charterers are distinct from Demise Charterers who are regarded as the temporary owners of the ship.

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

No, counter-security is not required in Ireland.

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

Yes. Issuing in rem proceedings creates the right to arrest. Certain maritime claims do not survive a change of ownership and, if proceedings are not issued before the change of ownership, the right to arrest the vessel terminates upon that change of ownership. Certain claims, however, for example unpaid crew wages, establish maritime liens which are not dependent on proceedings having been issued. However, for all other claims, the arresting party's right to arrest vessel only arises upon the proceedings being instituted.

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

Yes. Ireland recognises maritime liens. Ireland has not enacted any International Convention on maritime liens.

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

Arrest procedure in Ireland is straight forward and quick. We can normally arrest within a few hours of being instructed.

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

No Power of Attorney is required, however, copies of supporting documentation will need to be provided at the arrest application in Court, for example, Bills of Lading, Charterparties, commercial Invoices etc. Copies by fax or email are sufficient for the initial arrest application.

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

Original documentation is not required for the initial arrest application but originals may need to be filed with the Court if the arrest is contested by the ship owners. Documentation does not need to be notarised or apostilled.

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

Yes arresting the vessel establishes jurisdiction for the substantive claim but Irish Jurisdiction could be contested if the substantive claim is subject to a valid jurisdiction clause in favour of another country.

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

An application is made before the Admiralty Judge. The application is normally made on consent, immediately following the provision of security. The Admiralty Marshal immediately releases the vessel.

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

The type of security is normally agreed between the parties. If there is no agreement as to the type of security proffered, then the ship-owners must pay money into court and apply for a release.

19. Does security need to cover interest and costs?

Yes, security should cover interest and costs. The arresting party is entitled to an amount of security to cover their "best arguable case".

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

In practice a P&I LOU is often acceptable, subject to the arresting party being satisfied as to the particular entity proffering the undertaking. However, there is no decided case in Ireland compelling an arresting party to accept a P&I LOU as security.

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

A ship is released very swiftly on receipt of security, normally within 2 hours.

22. Is there a procedure to contest the arrest?

Yes. An application is brought by the ship interests to contest the arrest.

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

There is no specified time but the Courts will require the Claimant to progress the proceedings on the merits within a reasonable period.

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

The arresting party can be liable for all costs and expenses and damages for the detention of the vessel unless the arresting party can show that:

- (a) He could not, without such arrest have obtained bail or other security.
- (b) That he had otherwise good and sufficient reason for having issued the proceedings and arresting the vessel.

There is very little law in Ireland demonstrating an arresting party's liability for a wrongful arrest. The Court is required only to decide whether the arresting party has established "fair stateable case and that there are sufficient grounds for the arrest of the vessel".

Each case will be determined on the particular facts and an arresting party should act reasonably and in good faith. Providing the arresting party can establish both a "fair and stateable case" and that there was "good and sufficient reason" for arresting the vessel there would be no liability for a wrongful arrest.

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

It is considered difficult to pierce and lift the corporate veil in Ireland.

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

It is possible to have the vessel sold pendent lite. Given the draconian nature of a judicial sale, which would deprive the ship owner of his vessel, the Court would need to be satisfied that the sale should be ordered. Each matter would be taken on its particular circumstances and in certain situations a sale could be ordered quite swiftly.

**Hugh Kennedy** is a shipping lawyer who specialises in ship arrest in Ireland. Hugh is instructed by ship owners, prominent insurance companies, P&I Clubs, cargo and hull underwriters, and by leading International law firms who specialise in shipping, transport and insurance law. Hugh regularly advises and lectures on all aspects of Admiralty law, including ship arrest, collisions, salvage, and casualty investigations. Hugh's clients include ship-owners, P&I Clubs, charterers, cargo underwriters, shippers and receivers for all types of cargo.

## SHIP ARREST IN ISRAEL

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

#### 1.1 Sources of the Admiralty Court's Jurisdiction

The Israeli Maritime Court was established during the British Mandate over Palestine-Israel which took place formally between 1922-1948, and in-fact from the year 1917 and until 1948. By a King's-Order-in-Council dated 2 February 1937 the Supreme Court of Jerusalem was constituted as a Maritime Court under the Colonial Court Admiralty Act, 1890. On the date when the Colonial Court Admiralty Act was enacted, the relevant acts of Admiralty which were in force were the Admiralty Acts of 1840 and 1861 and also the Naval Prize Act of 1864. These continue to apply to the Israeli Haifa Maritime Court's (being a division of Haifa District Court) jurisdiction (which was granted the maritime jurisdiction formerly held by the supreme court) up to this present date.

In addition, the Israeli legislator, when enacting the Israeli Shipping Law (Sea-going Vessels), 1960, in relation to maritime lien, has chosen to follow International Convention for The Unification of Certain rules of Law Relating to Maritime Liens And Mortgages, Brussels 1926.

Accordingly, there are two set of rules governing the Israeli Maritime Court: The English Admiralty Acts of 1840 and 1861 and the Israeli Shipping Law (Sea-going Vessels), 1960, which follows the 1926 Brussels Convention. Section 41 of this law determines the Maritime Liens and their priorities as follows:

- (1) The official expenses of selling a vessel pursuant to a judicial sale,
- (2) Port and port related charges and expenses,
- (3) The costs of preserving a vessel pending Judicial sale,
- (4) Payments due to the master and crew including damages for personal injury,
- (5) Salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers.
- (6) Damages for personal injuries to passengers
- (7) Damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects,
- (8) Mortgages - no distinction is drawn between a local or foreign registered Mortgage,
- (9) Necessaries.

The question of the existence of a Maritime Lien or a Statutory Claim in Rem is determined by the "Lex Causa" and the priorities, being procedural by the "Lex Fori". If a party wants to prove the Lex Causa this is done by providing the Court with an expert opinion. If no such opinion is provided in accordance with the identity of laws principle, Israel law will be applicable.

Latest Significant Judgments have been handed down by the Haifa Maritime Court:

(i) In the matters of M/V "Marianne" and M/V Zaytouna- Oliva (2019) the Haifa Maritime Court reconfirmed its authority to act as a Prize Court according to the Naval Prize Act 1864 and ordered, at the request of the State Of Israel on the confiscation and judicial auction sale of these two vessels which was captured by the Israeli navy while attempting to breach the naval blockade imposed upon Gaza shore. These judgments follow the Haifa Maritime Court's decision in the matter of the M/V Estelle where it was held that the Haifa Maritime Court has the authority to act as a Prize court.

(ii) In the matter of M/V "HURIYE ANA" the Haifa Maritime Court held that a sister-ship arrest is not recognized under the Israeli Law as no such possibility/authority appears in neither of the Admiralty Court Acts of 1840 and 1861 which constituted the Maritime Court (as a Colonial Maritime Court) and as Israel is not a signatory party to the Brussels Convention 1952 or any other convention which allows a sister-ship arrest. This judgment is the first time that the Maritime Court has dealt in a reasoned judgement with the issue of sister ship arrest. Until then, only ex-parte decisions were given.

(iii) In the matter of M/V "Thor Horizon" the Haifa Maritime Court ordered on the stay of proceedings in a claim in rem filed on the grounds of damage done to the goods due to a law and jurisdiction