

SHIP ARREST IN MALAYSIA

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A. Purpose of Ship Arrest

Kawasaki Kisen Kaisha Ltd v Owners of the Ship or Vessel "Able Lieutenant" [2002] 4 MLJ 433, High Court of Shah Alam held that:-

"...to obtain security for the satisfaction of any judgment which the plaintiff may obtain in such an action, or of any sum which may become payable to him under a settlement of such an agreement. Such security will ensure that the plaintiff's prospects of recovery are not hampered by any transfer of ownership in the ship or any financial impecuniosity of the shipowner."

A. Purpose Of Ship Arrest

Section 10 & Section 11 Arbitration (Amendment) Act 2011

- Security pending determination of arbitration proceedings related to admiralty or maritime disputes.
- Mandatory for the courts to order for a stay of proceedings upon security obtained so that the arrest does not replace the arbitration proceedings

B. Admiralty Court in Kuala Lumpur

Malaysia had set up an Admiralty Court in the Kuala Lumpur Court Complex in the year 2010 to serve as a platform for maritime industry players to seek legal redress in maritime-related disputes, including ship arrest. This Admiralty Court has its own Registry and trained staffs.

D. Types of Claim That Allow Ship Arrest

Shivnath Rai Harnarain (India) Ltd v The Owners of the Ship or Vessel MV “WIN MOONY” (LR8204846) of the Port of Valletta, Malta [2005] 1 MLJ 141 (High Court):-

- Section 24(b) of the Courts of Judicature Act 1964 confers upon our High Courts the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Supreme Court Act 1981.
- The admiralty jurisdiction of the English High Court is to be found in ss 20 and 21.

When:-

The claim arises in connection with a ship (“the ship”);

AND

When the cause of action arose, the person who would be liable on the claim in action in personam (“the relevant person”) was, the owner of charterer of, or in possession of or in control of the ship:

An action in rem may be brought in the Admiralty Court against the ship.

E. How to Arrest?

Writ in rem

- Form 146
- Valid for 6 months and renewable for another 6 months



Procure search on caveat book in Registry to ascertain that no caveat against arrest is in force on the ship



Warrant of arrest

- Deemed to be issued when sealed by officer in the Registry
- Valid for 12 months from date of its issuance



Warrant of arrest

- Praecipe in Form 148
- Affidavit in support containing particulars stipulated in O70, r4(6), (7) and (8).
- Affidavit must disclose material information.

E. How To Arrest

Execution of warrant of arrest:-

- Arresting party to furnish undertaking to the sheriff:-
 - to pay for sheriff's pay and expenses while the arrested ship is under his custody and care.
- Warrant of arrest can only be executed by the sheriff or his authorized officers.
 - Execution done by solicitors or any other person is deemed to be invalid.
- Warrant of arrest can only be served within Malaysia
 - any service out jurisdiction is bad; not a mere irregularity.
- Warrant of arrest has to be served on the ship which it is issued by:-
 - affixing the warrant for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure and
 - on removing the warrant, by leaving a copy of it affixed in its place.

E. How To Arrest

Once service of warrant is completed, ship is deemed to be arrested and shall be within the custody of the sheriff until court orders for judicial sale or release from arrest. It is contempt of court to remove an arrested ship from where is she lying knowing that the ship is under arrest.

F. Security To Release Ship Under Arrest

1. The arresting party's consent to release the arrested ship may be secured or obtained by having the owner of the arrested ship provides security to his satisfaction.
2. The usual forms of security are bail, payment into court, undertakings from P&I clubs and bank guarantees.

G. Release of Ship Under Arrest

Whether there's caveat against release is in force on the arrested ship?

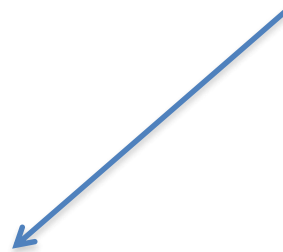
-If yes, notify the caveating party to withdraw caveat.



Issue of Release:-

-Arresting party to file in Praecipe in Form 152

-Arresting party, in pursuant to Sheriff's direction, pay for costs and charges incurred.



Court has the discretion to decide whether to grant release or otherwise or grant release subject to conditions.

H. Order For Sale Of Ship

1. An arrested ship which is not released on provision of security would have to be appraised and judicially sold, either via public auction or sale by private treaty, so that the parties with claims against it can be satisfied out of the proceeds of sale in the order of priority of their claims.
2. A claim that ranks higher on the order of priorities has greater chance of being met in full, whereas claim of lower ranks might either not be met at all or satisfied only in part.

H. Order For Sale Of Ship

The prima facie order of priorities would be as follows:-

- Statutory claimants ;
- The sheriff's costs and commission;
- The plaintiff's costs or its solicitors' costs in the action in which the order for sale is obtained;
- The holder of possessory lien who has priority over subsequent liens;
- A salvage claim;
- A collision damage claim;
- Seamen's wages;
- Mortgage priorities;
- Necessaries;
- Contractual claims.

THANK YOU

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