

## SHIP ARREST IN BAHAMAS

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

A simple arrest of a vessel would involve the commencement of proceedings providing an overview of the claim with supporting documents exhibiting any documents relevant to the claim. The application for the arrest of a vessel will usually be an ex parte application. Once the arrest warrant is executed the Admiralty Marshall will proceed with the arrest.

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

The Bahamas is party to the 1952 Arrest Convention (ratified 1979). The Convention applies to all vessels flying the flag of states which are signatory to the Convention, and (under article 8 of the convention) to vessels flying the flag of states which were not signatory to the Convention where there is a claim for which the contracting state permits a vessel arrest.

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

All ship arrests are carried out under the terms of the 1952 Arrest Convention (which is followed by the Supreme Court Act [SCA] and Rules of the Supreme Court). In order to arrest a ship, it is necessary to prove the vessel is connected to the claim, as required by s8 of the SCA.

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

(Not applicable; see above)

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

There is a huge range of claims for which a vessel might be arrested. These include:

- Claims for possession or ownership of a vessel, including disputes between co-owners and charterers;
- Claims for damages either suffered by the ship, or caused by it;
- Claims for injury (including fatal injury) caused by negligent behaviour of owners or crew, or defects in the vessel;
- Claims for loss of or damage to cargo;
- Claims relating to an outstanding mortgage or debt secured against the ship;
- Payment of outstanding wages to crew members and others employed on the vessel;
- Payment for repair, equipment, construction and dock charges;
- General costs such as towage and pilotage;
- Claims relating to salvage; and
- Claims for payment relating to use of the ship, such as chartering the vessel.

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

Yes. It is not necessary for the vessel to be flying the flag of a state which is party to the 1952 Arrest Convention.

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

Yes, with the possible exception of ships which are under the ownership of another State. Under these circumstances, the vessel may be considered immune from arrest. It will be for the Bahamian courts to make a decision in these cases.

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

Under the 1952 Arrest Convention, sister ships (i.e. vessels which are deemed to be in the same ownership as an arrested vessel) may also be arrested, until a satisfactory outcome is achieved. Sister ships constitute a significant financial asset, and are often very important to the settlement of a claim.

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

Section 3.4 of the Convention provides that in the case of claims made against a Bareboat or Time-Chartered vessel the charterer – and not the owner – is liable. Vessels under the ownership of the charterer may be arrested – but no other ship under the ownership of the registered owner.

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

It is not necessary to post counter-security in order to undertake a vessel arrest. It is at the discretion of the courts whether the claimant should be required to post counter-security in the event of a wrongful vessel arrest. The courts are more likely to request a counter-security payment if there are substantive doubts that the claim is made on good grounds, and is therefore unlikely to be successful.

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

The procedures by which a vessel may be arrested for either a maritime claim or a maritime lien are the same, and governed by the 1952 Arrest Convention. A maritime lien holder may have a priority to any funds generated for example by the sale of the vessel but it would depend on whether there are other lien holders whose liens rank in priority.

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

Yes. The Bahamas recognises maritime liens, under the 1952 Convention.

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

Instructions to the firm should ideally arrived no more than 48 hours before an application to make a ship arrest is submitted. It is best practice to file applications early in the day, with the aim of making a successful arrest of the vessel on the same date. Speedy action is essential because of the nature of maritime law, in which vessels are by their nature likely to move out of port at any time.

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

Applications are made by virtue of a Power of Attorney. Once a Claim Form has been issued, a number of documents in support of the claim should be supplied to the court.

These must include:

- Details of the nature of the claim or counterclaim, including compensation sought
- The name of the vessel for which arrest is being sought
- Full details of the vessel to be arrested, including the name and port of registry and the ownership of the ship

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

It is not necessary to submit any original documentation in order to undertake a ship arrest. Notarisation is only required to secure Power of Attorney.

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

Yes. Under the terms of the 1952 Arrest Convention, the Courts of those states signatory to the Convention have jurisdiction over the claim. However, there are instances when forum is argued and the Courts have selected not to allow the substantive proceedings to be adjudicated where there is a more suitable forum.

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

The procedure required will depend on whether a caveat against release has been filed. Where a caveat has been filed it is a requirement to seek the consent of the Caveator or provide notice to the Caveator of the application for release. The Court will then make a determination on the application.

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

In most cases the party who has obtained the arrest warrant will only agree to the release of the vessel where an LOU or bank guarantee has been provided.

19. Does security need to cover interest and costs?

It is best for the security to cover interest and costs. It will depend on whether the party with the warrant for arrest is willing to accept a P&I LOU. However, this is usually acceptable.

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

The release of a Ship can be done within 24 hours of filing an application with the Court for the release.

22. Is there a procedure to contest the arrest?

Yes a party can contest an arrest by filing an application with the Court in the proceedings.

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

Once the courts have confirmed that an arrest is to be made, the applicant will have a maximum of up to 60 days (the precise deadline to be set by the Court) within which to complete the vessel arrest.

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

Claims for wrongful arrest are not specifically covered by the 1952 Arrest Convention, but will be governed by local state law. There are provisions for handling claims for wrongful arrest within Bahamian Law, which

will have jurisdiction over the claim. However, it is important to bear in mind that claims for wrongful arrest will generally be based on issues which are hard to prove, such as bad faith or gross negligence.

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

Recent cases in the Bahamas have demonstrated that the Courts are acknowledging the piercing and lifting of the corporate veil. This matter refers to company owners seeking to conceal their identity by hiding behind the 'veil' of the creation of a corporation, which in effect separates an individual (and their liability) from the corporate entity. Where the Courts decide that this separation of the individual (usually the company owner) and the incorporation should not be maintained, the 'veil' is said to be lifted. Under these circumstances the owner or director of a company may be held liable for the debts of the company, which goes against the usual principle that such individuals would be immune from liability, since the corporation would instead be liable. There is no single legal principle under which the 'corporate veil' might be lifted, but the Bahamian courts will act when it is held to be in the interests of justice to do so – including in cases relating to ship arrests.

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

It is possible to sell a vessel pending the outcome of a judgment, but it is usually necessary to make a strong case for a pendente lite sale. Generally, this kind of sale will be sought when the value of the vessel is decreasing dramatically, so that it is in the best interests of the claimant to make a sale as soon as possible in order to maximise the asset. If a sale is made pendente lite, the proceeds are likely to be frozen under the direction of the Courts until the judgement is made.

*\*Kenra Parris-Whittaker, partner, is a seasoned young litigator with an exceptional track record across all practice areas. Her dedicated and rigorous approach has been crucial to the Firm's success.*

*The Nassau-born, Canadian-educated litigator attributes her success to thinking a few steps ahead of her opponent. The daughter of Bahamas real-estate guru Arthur Parris, Kenra always knew that she would be an attorney. She enrolled in law school (University of Buckingham, 2001, and later Inns of Court School of Law, 2004), then joined Callenders & Co., where she became a senior associate litigating commercial and maritime cases.*

*Now, as an admiralty, maritime, and commercial litigator, Kenra frequently represents crew members, vessel repair shops, shipyard owners, insurers, adjusters and others. She has been uncannily successful in these endeavors. With her reputation for securing successful outcomes for clients across a broad range of practice areas, Mrs. Parris-Whittaker is a wise investment- whether for small firms, major corporations or individuals.*