

SHIP ARREST IN BARBADOS

By Sir Trevor Carmichael KA, LVO, QC
Chancery Chambers
tac@chancerychambers.com
www.chancerychambers.com
Chancery House, High Street
Bridgetown BB11128 Barbados
Tel: +246 431-0070
Fax: +246 431-0076



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

Part 70 of the Supreme Court (Civil Procedure) Rules 2008 (the "CPR") of Barbados applies to Admiralty proceedings in the High Court of Barbados. These proceedings include claims against ships and such claims are classified as Admiralty proceedings *in rem*. An arrest warrant of a ship may only be issued where Admiralty proceedings are brought *in rem* against a ship.

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

The United Nations Convention on the Law of the Sea ("UNCLOS").

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

Yes.

Part 70 of the CPR governs the arrest of ships in Admiralty proceedings *in rem* in Barbados.

Pursuant to s.15(3) of the **Marine Boundaries and Jurisdiction Act, CAP 387** (the "MBJ Act") of the laws of Barbados, whenever a conservation officer reasonably suspects that a person has committed an offense under the MBJ or the regulations, he may seize the vessel suspected of being used in the commission of the offense without a warrant of arrest.

Under s.9 of the **Maritime International Co-operation Act, CAP 13C** of the laws of Barbados, when a law enforcement official reasonably suspects that a ship is engaged in the illicit trafficking of drugs or psychotropic substances, he also has the authority to detain the ship at a port in Barbados.

A ship may be detained under s. (6)(2)(d) of the **Quarantine Act, Cap 53** of the laws of Barbados in order to prevent the spread of infection.

S.260 of the **Shipping Act, CAP 296, 1995 of the laws of Barbados** grants the Registrar or inspector the power to cause an unseaworthy Barbadian ship or foreign ship to be detained until it is fit to proceed to sea.

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

These alternatives involve the seizure and detention of the ship as described above at 3.

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

Under CPR 70.9(1) an arrest warrant may be issued against a ship in Admiralty Proceedings *in rem*. These proceedings involve a claim brought against the ship in connection with which the claim arises.

An arrest warrant will not be issued in Admiralty Proceedings *in personam* except where the person (the "Relevant Person") who would be liable on the claim in proceedings *in personam* was, when the cause of action arose:

- a) the owner or charterer (time or bareboat); or
- b) in possession or in control of the ship.

In the above mentioned circumstances, a claim *in rem* may be brought against:

- a) that ship if at the time when the claim is made the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
- b) any other ship if at the time when the claim is made, the relevant person is the beneficial owner as respects all the shares in it.

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

Yes, in specific circumstances as set out below.

- a) Where the arrest of the ship is in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through Barbados' waters.
- b) Where a ship violates any law or regulation adopted from the UNCLOS relating to Barbados' Exclusive Economic Zone.

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

No, a claimant may only issue an arrest warrant in Admiralty proceedings *in rem* against:

- a) the ship in connection with the claim; or
- b) any other ship, if at the time when the claim is made, the Relevant Person is the beneficial owner of all the shares in it.

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

There is no specific provision regarding the arrest of ships with respect to sister ships and ships in associated ownership. However, under CPR 70.9(1) "Ship" is defined as a vessel used in navigation not propelled by oars. As such, these vessels may be arrested under CPR 70.9(1).

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

There is no specific provision regarding these vessels. Based on the definition of "Ship" as mentioned above, these vessels may be arrested under CPR 70.9(1).

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

No. However, under CPR 70.12 (3) an arrest warrant may not be executed until an undertaking has been recorded in the marshal's office to pay for litigation fees and expenses incurred by the marshal in respect of the arrest, care and custody of the ship.

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

No, the procedure for arrest is the same as set out in detail at 13 below.

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

Yes, the courts do recognise maritime liens under part 8 of the **Shipping Act CAP 296** of the laws of Barbados. They are as follows:

- (a) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;
- (b) port, canal, and other waterway dues and pilotage dues and any outstanding fees payable under this Act in respect of the ship;

- (c) claims against the owner 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;
- (d) claims against the owner, based on tort and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship; claims for salvage, wreck removal and contribution in general average.

The word "owner" mentioned in this section shall be deemed to include the demisee or other charterer, manager or operator of the ship.

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

Upon receipt of the relevant documentation and instructions from the client, the claim may be filed and served within 1 to 2 days. At the time of filing, a request in the form of a Certificate of Urgency is made to the Chief Justice for an urgent hearing of the matter. If this request is approved, the matter will be set down for hearing within 1 to 3 days of the request. At the conclusion of the hearing, the order for the warrant of arrest will either be approved or denied. Immediately following the order, the undertaking is lodged at the Marshal's office and the warrant is executed.

A party intending to issue a warrant of arrest must follow the procedure for arresting a ship as set out under CPR 70.9, which is as follows:

- a) Commence Admiralty proceedings *in rem* by filing a claim form (Form 22 in the CPR) at the Registry.
- b) Serve the claim form on the ship against which the claim is brought by affixing the claim form either on the outside of the superstructure of the ship or on the mast of the ship.
- c) File a sealed copy of the claim form at the Registry if the ship has been sold by the appointed marshal.
- d) A counter-claiming Defendant is also required to serve the claim form in the manner set out at (b) above.
- e) Consult with the caveat book at the Registry to ascertain whether there is a caveat against arrest in force with respect to the ship.
- f) File an affidavit made by the party or his agent which includes the following particulars:
 - i. The nature of the claim or counter-claim and that it has not been satisfied.
 - ii. The name and nature of the ship
 - iii. The port of registry of the ship
 - iv. Where applicable, the name of the person who would be liable on the claim in a proceedings *in personam*.
- g) Ascertain whether the beneficial ownership of the ship has changed since the issue of the claim as a result of sale or disposal by the court.
- h) Seek the court's permission to issue the warrant if the beneficial ownership of the ship subject to arrest has changed.
- i) Either serve notice of the Admiralty proceedings *in rem* at the respective consul if the claim is for possession of a foreign ship registered at a port of a State having a consulate in Barbados or seek the court's permission to issue the warrant.
- j) Either serve notice of the Admiralty proceedings *in rem* at the respective consul if the claim is for wages against a foreign ship registered at a port of a State having a consulate in Barbados or seek the court's permission.
- k) Record the warrant of arrest at the Registry to be sealed by the Registrar.

Execution of warrant of arrest

- a) An arrest warrant is valid for 12 months beginning on the date of its issue and it may be executed only by the marshal.

- b) Prior to the execution of the warrant, the party in favor of which the warrant has been issued must give an undertaking as described at (10) above.
- c) After the undertaking has been recorded in the marshal's office, the warrant of arrest must be served on the ship against which it is issued by affixing the warrant for a short time on any mast of the ship or on the outside of the superstructure of the ship. Within 7 days of such service, the warrant must be filed at the Registry.

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

The party intending to issue the warrant of arrest is only required to provide the following original documents for filing:

- a) the Admiralty Claim Form in rem which may be signed by the Claimant's Attorney-at-Law.
- b) Affidavit of service of the Admiralty Claim Form in Rem.
- c) Warrant of Arrest.
- d) Affidavit in support of the Warrant of Arrest.
- e) Notice of proceedings (if applicable).

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

The required original documents are listed at 14 above. Those documents are required prior to the initiation of the proceedings. Electronic filing is not a feature of our court system.

The Affidavit in support of the warrant must be sworn to at the Registry. In circumstances where the deponent is outside of the jurisdiction, the Affidavit must be notarized.

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

The court is likely to accept jurisdiction over the substantive claim once the vessel has been arrested in Barbados' internal or territorial waters. Pursuant to s. 10 of the Barbados Territorial Waters Act CAP 386 of the laws of Barbados, the courts of Barbados have jurisdiction over any claims which arise in the internal or territorial waters of Barbados. However, the court may refuse its jurisdiction over the substantive claim where there is a more appropriate forum available to the parties.

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

The procedure is set out under CPR 70.14. Generally, the party applying for the release must:

- a. be a party to the proceedings for the warrant of arrest.
- b. file a request and undertaking for release form.
- c. either seek the permission of the court for the release; or
- d. obtain the consent of all other parties for the release, with the exception of a defendant who has not acknowledged issue or service of the claim form,
- e. give notice to any person at whose instance a subsisting caveat against release has been entered, or to his attorney-at-law, requesting that the caveat be withdrawn.
- f. present the order from the court to the Marshal granting the release of the ship.
- g. provide security for the release as described at 18 below.

Exceptions to the aforementioned procedure:

Sale of ship under arrest by court order.

A ship under arrest may be released as a result of a sale under an order of the court.

Release where caveat against release is in force:

Where a caveat against the release of a ship is in force, a release will only be issued if the court so orders.

Bail

Generally, the court must permit the release of a ship upon sufficient bail being provided as stated in CPR 70.17.

Exceptions

Posting bail is not a ground for the release of a ship with respect to the following claims:

- a. any claims related to the possession or ownership of a ship or to the ownership of any share therein;
or
- b. any question arising between the co-owners of a ship as to possession, employment or earnings of the ship

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

Execution of release

The appointed marshal in the proceedings will release the ship provided that the following conditions are satisfied:

- a. the party in favor of which the release was issued pays the fees and expenses already incurred by the marshal and undertakes to settle all other fees and expenses in connection with the arrest, care and custody and release of the ship; or
- b. undertakes to pay on demand all expenses whether incurred or to be incurred.

19. Does security need to cover interest and costs?

The security only needs to cover the fees and expenses incurred by the marshal in relation to the arrest, custody and release of the ship.

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

A letter of undertaking is sufficient to lift the arrest.

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

It is difficult to estimate the timeline as it relies solely at the discretion of the court.

22. Is there a procedure to contest the arrest?

Yes, this procedure is set out in CPR 70.10.

Generally, a person who wishes to prevent the arrest of a ship must file a request in the prescribed form containing an undertaking:

- a) to acknowledge issue or service of the claim form in any claim that may be made against the property described in the request; and
- b) within 3 days of receipt of notice that such a claim has been made, give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court.

This request must be signed by the person seeking to prevent the arrest or his attorney-at-law. When the request is filed, the Registrar must enter a caveat against the issue of a warrant to arrest the property described in the request in the caveat book.

Exception

Caveat against arrest in limitation proceedings

Where a claimant in limitation proceedings has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation for Liability for Maritime Claims, 1976 and CPR 70.35, the claimant may file a request in the prescribed form at the Registry stating that a limitation fund in respect of the damage arising from the relevant incident has been constituted and give an undertaking to acknowledge the issue or the service of the claim form in any claim that may be begun against the ship described in the request.

This request must be signed by the claimant or his attorney-at-law. Upon the filing of the request, a caveat against the issue of a warrant to arrest the property described in the request must be entered in the caveat book.

Where a ship with respect to which a caveat against arrest is in force, is arrested due to an arrest warrant, the party at whose instance the caveat was entered may apply to the court for an order discharging the warrant. In these circumstances, the party who procured the arrest must show the court that the arrest of the ship was based on good and sufficient reason in order to prevent the warrant from being discharged and an order for the damages in respect of the loss suffered by the applicant as a result of the arrest.

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

It is difficult to estimate the timeline as it relies solely at the discretion of the court.

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

There is no specific provision with respect to wrongful arrest. However, as outlined at 22 above, damages may be awarded to the party who suffered loss as a result of the arrest in a case where the ship was arrested even though there was a caveat against arrest in force.

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

Yes.

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

Yes, this may take approximately 3 to 6 months.