

SHIP ARREST IN *TRINIDAD & TOBAGO*

*By Cherie Gopie** & Gregory Pantin**

M. Hamel Smith & Co.

mhs@trinidadlaw.com

www.trinidadlaw.com

Port-of-Spain, Trinidad and Tobago

Tel: +1 868 299 0981

Fax: +1 868 625 9177



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

Admiralty proceedings in Trinidad and Tobago are governed essentially by Part 74 of the Civil Proceeding Rules (“CPR”). Part 74.2 of the CPR covers the following claims, questions and proceedings, namely—

- a) any claim to the possession or ownership of a ship or to the ownership of any share therein, including power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, must be sold, and to make such other order as the court thinks fit;
- b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- d) any claim for damage received by a ship;
- e) any claim for damage done by a ship;
- f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or fault of— (i) the owners, charterers or persons in possession or control of a ship; or (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of a ship, in the loading, carriage or disembarkation of persons on, in or from the ship;
- g) all proceedings to enforce a claim for damage, loss of life or personal injury arising out of
 - i. a collision between ships;
 - ii. the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
 - iii. non-compliance, on the part of one or more of two or more ships, with the collision regulations;
- h) any claim for loss or damage to goods carried in a ship;
- i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- j) any claim— (i) under the International Convention on Salvage 1989; (ii) under any contract for or in relation to salvage services; or (iii) in the nature of salvage not falling within (i) or (ii) above, or any corresponding claim in connection with an aircraft;
- k) any claim in the nature of towage in respect of a ship or an aircraft;
- l) any claim in the nature of pilotage in respect of a ship or an aircraft;
- m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

- n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- o) subject to the limitations imposed by section 136 of the Act, any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- q) any claim arising out of an act which is or is claimed to be a general average act;
- r) any claim arising out of bottomry;
- s) 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;
- t) any application to the court under the Act; and
- u) every limitation claim, in relation to— (i) all ships or aircraft whether Trinidadian or not and whether registered or not and wherever the residence or domicile of their owners may be; (ii) all claims, whether arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and (iii) (so far as they relate to mortgages or charges) all mortgages or charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law.

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

The United Nations Convention on the Law of the Sea (“UNCLOS”). The **Archipelagic Waters and Exclusive Economic Zone Act Chapter 51:06** of the Laws of Trinidad and Tobago was enacted partly to make provision for matters connected therewith in accordance with UNCLOS. The International Convention on Salvage 1989 also applies.

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

Yes, Part 74 of the CPR governs the arrest of ships in Admiralty proceedings in rem in Trinidad and Tobago. Furthermore, a ship may be detained under the **Quarantine (Maritime) Regulations Chapter 28:05** of the Laws of Trinidad and Tobago in order to prevent the spread of infection. In addition, **S.317** of the **Shipping Act, Chapter 50:10** grants the Registrar or inspector the power to cause an unseaworthy Trinidad and Tobago ship or foreign ship to be detained until it is fit to proceed to sea.

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

The above may be available although not strictly as alternatives to arrest. The seizure of a ship or detention of its cargo may be effected through the arrest process or through the processes in 3 above.

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

In the case of any such claim or question as is mentioned in rule 74.2(a), (b), (c) or (s) a claim in rem may be brought against the ship or property in connection with which the claim or question arises. In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, a claim in rem may be brought against that ship, aircraft or property.

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

Yes. A ship can be arrested irrespective of its flag, as long as it is within the jurisdiction of Trinidad and Tobago territorial waters, or the contiguous zone in the event that the vessel is seeking the flee. Ships of all States enjoy the right of innocent passage in the archipelagic waters of Trinidad and

Tobago. Under **S. 12. (1) Archipelagic Waters and Exclusive Economic Zone Act Chapter 51:06**, passage of a ship is innocent so long as it is not prejudicial to the peace, good order or security of Trinidad and Tobago and is in conformity with the provisions of the Convention and such other relevant rules of international law. The President may however, by Proclamation suspend, temporarily, in specified areas of the archipelagic waters, the innocent passage of foreign ships, where such suspension is essential for the protection of its security. Under **S.28**, certain entities are empowered to stop and board, inspect, seize and detain a foreign fishing craft, seize any fish and equipment found on board the foreign fishing craft, and arrest the master and crew of any foreign fishing craft, in the exclusive economic zone, the territorial sea and the archipelagic waters, and may also institute such criminal proceedings against them, as may be necessary to ensure compliance with the Act and the Regulations.

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?

Sister ships can be arrested. In the case where the claim arises in connection with a ship and the relevant person was when the cause of the action arose, the owner or charterer or in possession or in control of the ship, a claim in rem may be brought against that ship if at the time the claim the relevant person is the beneficial owner of the ship in respect of all the shares in it or any other ship, of which at the time the claim was made, the relevant person was the beneficial owner in respect of all the shares in it.

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

There is no specific provision regarding these vessels. However, under **Shipping Act, Chapter 50:10** “Ship” is defined as a vessel used in navigation not propelled by oars. As such, these vessels fall within the definition of ship and so may be arrested pursuant to the provisions of Part 74 of the CPR.

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

There is no provision requiring counter-security. However, pursuant to Rule 74.12 (3) of the CPR the warrant may not be executed the arresting party’s attorney at law provides a personal undertaking to the Court to be responsible for the Admiralty Marshal’s expenses in respect of the arrest including the care/custody of the property under arrest. In practice, such attorney usually requires this undertaking to be backed by a suitable deposit into the Firm’s client account and to have such deposit increased in the event that the expenses increase. Costs of arrest can quickly build up and be subject to unexpected contingencies.

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

No, there is no difference in the process for arrest.

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

Yes, Trinidad and Tobago recognizes maritime liens under **Part 5 of the Shipping Act Chapter 50:10** of the Laws of Trinidad and Tobago. 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.

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

It should be possible to effect the arrest of a vessel within 48 to 72 hours of obtaining instructions and filing the application, provided that the relevant information and documents to support the application to the High Court for the warrant of arrest are available and an appropriate undertaking in writing to match the attorney's personal undertaking to pay the fees and expenses of the Marshal of the Court. The arrest of a ship is not of itself inordinately time consuming, although it is somewhat technical. However, the procedure subsequent to an arrest can be quite time consuming and complex.

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

There is no need to provide a POA.

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, hard copies of all the documents are required, but do not have to be notarised. Documents cannot be filed electronically.

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

Yes. Trinidad and Tobago courts will accept jurisdiction over the substantive claim once a vessel has been arrested within our territorial waters.

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

Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, such property may only be released under the authority of a release by filing the appropriate practice form. A release may not be issued with respect to property as to which a caveat against release is in force, unless, either (a) at the time of the issue of the release the property is under arrest in one or more other proceedings; or (b) the court so orders.

Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal either pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred. The court, on the application of any party who objects to directions given to him by the marshal under the preceding paragraph may vary or revoke the directions.

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

Security such as bank guarantees, P and I Club LOUs and insurance bonds are acceptable to be placed for the release of ships.

19. Does security need to cover interest and costs?

Yes, security must cover the claim, interest and costs.

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

Yes, P&I LOUs are accepted as sufficient to lift the arrest. The court is entitled to be satisfied as to the adequacy and reliability of the security proposed.

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

A ship can be released within 24 hours of filing an acceptable security

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest as is set out in CPR 74.10.

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. Every caveat entered in the caveat book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a request in the appropriate practice form.

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

An order for an arrest will not be granted unless the *ex parte* application for a warrant of arrest is accompanied by the claim form, statement of case and supporting documents. There is accordingly no waiting period between the arrest taking place and the commencement of the substantive action. The precise timelines are difficult to pin down and will vary depending on the course of the matter. A Claimant may apply for judgment in default and an order for sale where a defendant to a claim in rem fails to acknowledge service of the claim within the time limited for doing so, then, on the expiration of 14 days after service, of the claim and upon filing an affidavit proving due service of the claim, an affidavit verifying the facts on which the proceedings is based and, if a statement of case was not served with the claim form, a copy of the statement of case. If the court is satisfied that the applicant's claim is well founded it may give judgment for the claim and may at the same time order the property against which the claim or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

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

Yes. A party claiming that a vessel has been wrongfully arrested can sue the arresting party for damages under this tort. However the threshold for recovering damages under this head is quite high - A claimant for damages for wrongful arrest of a ship must prove that the arrest was malicious or the result of gross negligence.

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

The Trinidad and Tobago courts recognize and exercise the powers to pierce or lift the corporate veil.

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

Yes. The court may, on application by a party before final judgement in a proceeding, order that a ship that is under arrest in the proceeding be sold. Where the ship is deteriorating in value, the court may at any stage of the proceeding, either with or without application, order it to be sold. The time frame from application to order may be relatively short, that is attained within two weeks, (if uncontested) however, the time frame for actual sale can be much longer and depends on whether the application is contested, the state of the vessel and the availability of a reasonable market.

***Mr. Gregory Pantin** is a Partner at Hamel-Smith & Co. Law Firm with more than 18 years practice as an Attorney-at-Law. His core practice is in the area of litigation. He handles a variety of complex commercial disputes particularly matters involving issues in Admiralty, Construction and Development, Corporate Law & Governance, Employment and Industrial Relations and the Environment. In addition to his core areas of practice, Gregory is also trained in mediation as well as arbitration through the Chartered Institute of Arbitrators. Gregory is also a Chambers Global ranked Attorney. Gregory practices as an Advocate before the High Court, Court of Appeal, and specialist courts such as the Industrial Court, Environmental Commission, Trinidad and Tobago Securities and Exchange Commission, the Caribbean Court of Justice (Original Jurisdiction) and arbitral panels.

****Ms. Cherie Gopie** is Partner at Hamel-Smith & Co. Law Firm with more than 14 years practice as an Attorney at Law. She has graduated from the University of the West Indies (LL.M. 2016), specialisation in Corporate and Commercial Law. At Hamel-Smith & Co., Cherie has appeared in and works closely instructing Counsel in the High Court, the Court of Appeal, and other specialist courts of Trinidad and Tobago. Cherie focuses on all areas of dispute resolution and advises the firm's clients on, among other areas, Admiralty Law, General Commercial Litigation, Medical Negligence Law, Personal Injury, Debt Collection, and Insurance Law.