

SHIP ARREST IN GIBRALTAR

Private Judicial sales and debt restructurings

Presented by ISOLAS LLP for

INSERT

20 October 2022
Christian Hernandez, Partner
ISOLAS LLP

ISOLAS
— 1892 —

www.gibraltarlawyers.com

© 2022 ISOLAS LLP – all rights reserved

What this session covers

It is hoped that by the end of this session, attendees will understand the following:

- Political and legal system in Gibraltar
- The right of arrest
- The arrest process
- Judgment and sale process
- Private treaty sales
- Post-sale & determination of priorities
- Debt restructuring remarks
- Gibraltar as both an owner & claimant friendly jurisdiction



Political and legal system

- Self-Governing British Territory
- Basis of Gibraltar law is English law
- The Supreme Court of Gibraltar is the equivalent of the English High Court
- Admiralty judges are knowledgeable and give admiralty matters priority in court listings
- The Gibraltar Court of Appeal is composed of English Court of Appeal Judges



The right of arrest

Actions in rem give rise to a right of arrest.

- Once a vessel is arrested pursuant to an *in rem* claim, the Gibraltar courts will have jurisdiction to decide the merits of the claim



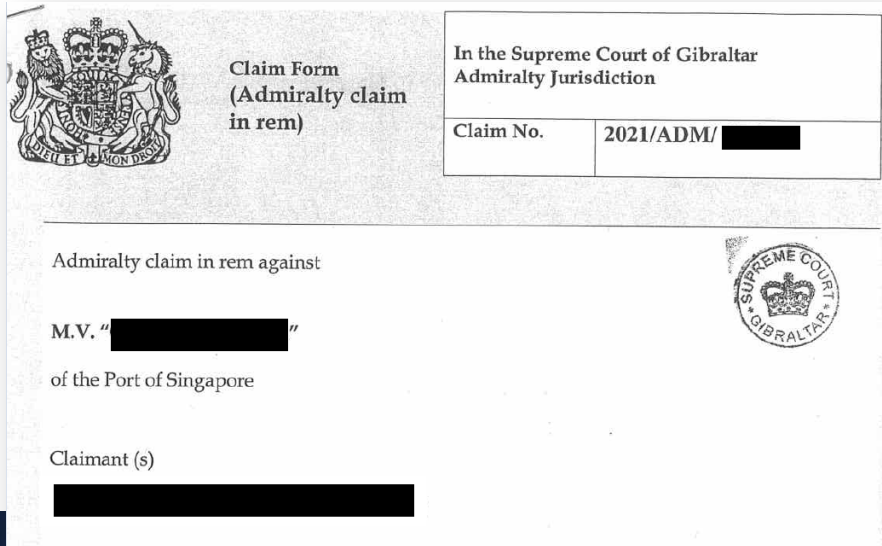
Claims giving rights to an action in rem

- a) *any claim to the possession or ownership of a ship or the ownership of any share therein.*
- b) *any question arising between the co-owners of a ship as to the possession, employment or earning 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 done by a ship. (maritime lien)*
- e) *any claim for loss of life or personal injury in respect of a defect in a ship, neglect or default in navigation, management of the ship, loading, carriage or discharge of goods, embarkation, carriage or disembarkation of passengers,*
- f) *any claim for loss or for damage to goods carried in a ship.*
- g) *any claim arising out of an agreement relating to the carriage of goods in a ship or the use or hire of a ship.*
- h) *any claim in the nature of salvage (including aircraft). (maritime lien)*
- i) *any claim in the nature of towage in respect of a ship or an aircraft.*
- j) *any claim in the nature of pilotage in respect of a ship or an aircraft,*
- k) *any claim in respect of goods or materials supplied to a ship for her operation or maintenance.*
- l) *any claim in respect of the construction, repair or equipment of a ship or dock charges or dues.*
- m) *any claim by the master or a member of the crew of a ship for wages. (maritime lien)*
- n) *any claim by a master, shipper, or charterer or agent in respect of disbursements made on account of a ship.*
- o) *any claim arising out of an act which is or is claimed to be a general average act.*
- p) *any claim arising out of bottomry. (maritime lien)*

The Arrest process

No need to have a court hearing, an arrest is done by filing documents in court and can be done 24 Hours a day 365 days a year.

The Claim Form is served on the ship itself by or through the agency of the Admiralty Marshal (normally this is done by one of the Court bailiffs). The Admiralty Marshal is an Officer of the Court who administers the physical arrest of the vessel.



Documents required to carry out an Arrest

- (i) A Claim Form needs to be prepared with either brief particulars (which is just a brief summary) of the claim or Particulars of Claim. The Claim Form can only be served, within the territorial jurisdiction of the Court and can only be served on the vessel itself.
- (ii) a praecipe (a request) for service of the Claim form in rem,;
- (iii) A solicitor's undertaking to pay the Admiralty Marshal's costs and expenses
- (iv) A Declaration supporting the application to arrest normally made by the arresting party's solicitors and should state the following:
 - a. nature of claim.
 - b. name of ship to be arrested and its port of registry
 - c. Confirmation that the ship being arrested is the ship against which the action is brought and is the ship in connection with which the claim in the action arose

The Arrest process (cont.)

The following are not needed to carry out an arrest

- ✗ POA
- ✗ Certified Translations
- ✗ Counter security
- ✗ Original documents - PDF's suffice



Judgment and sale process

Judgment process

An application for judgment will be filed before the Gibraltar courts if no security is posted / the claim is uncontested

Sale Process

It is possible for such a sale to be by way of

public auction **or** **private treaty.**



- i. Public auction sales are by sealed bids and normally take about 4 weeks from the date the order is made.
- ii. Private treaty sales can be done in less than a week.



Private treaty sales

In order to seek a sale by way of private treaty one must have a buyer willing to pay **at least market value** for the vessel having regard to the fact that the vessel is under arrest in Gibraltar.

This is done by obtaining **three valuations** from reputable brokers and securing an offer to buy the vessel on an as is where is basis in an amount over and above those valuations

[Redacted]

January 20 [Redacted]

ISOLAS
Portland House,
Glacis Road,
Gibraltar, GX11 1AA

VALUATION CERTIFICATE

MT [Redacted]
6,000 dwt built 20 [Redacted] Russia. IMO: [Redacted]

We have considered as requested the value of the above vessel. From the particulars given to us for the preparation of this valuation and from such other information as we have available, taking into account similar vessels which have been sold and which have been offered for sale and using our market knowledge and experience, we consider the vessel's value on the basis of a forced sale in Gibraltar to be in the region of

US\$ [Redacted],000,000 ([Redacted] million [Redacted] thousand United States Dollars)

This valuation is for the sole use of the party in whose name it is issued and no liability to any other party can be accepted. It has been carried out on the basis that the vessel is sold through the Courts of Justice and delivered as is where lies at Gibraltar. Market conditions are particularly difficult and valuations are a statement only of our opinion: no assurance can be given that this valuation will be sustained or is realisable in actual transactions. Our usual valuation conditions below apply.

Yours faithfully
For and on behalf of
[Redacted]
Director

Valuations are given by us subject to the following conditions:

Post-sale (priorities determination)

Whether a vessel is sold by auction or private treaty, the sale is advertised

the proceeds of sale of the vessel would have to be paid into Court for a period typically of 60 – 90 days in order to allow other creditors the chance to claim against these proceeds

Priorities of competing claims will be determined under well-established principles on the order of priorities

Technology & Innovation

IN THE SUPREME COURT OF GIBRALTAR

CLAIM NO. 2022/ADM/003

ADMIRALTY JURISDICTION

BETWEEN:-

J.P. Morgan Bank S.E. (formerly J.P. Morgan Bank Luxembourg S.A.)

CLAIMANT

-AND-

THE OWNERS OF THE MOTOR YACHT
M.V. "AXIOMA"

DEFENDANT

Notice is hereby given as follows:-

The vessel herein, namely "AXIOMA", has been ordered to be sold by orders of the 9th day of June 2022 and the 21st day of July 2022, of the Honourable Mrs. Justice Ramagge Prescott, Puisne Judge.

Proceeds of sale have been deposited and paid into Court.

The order of priority of the claims against the proceeds of sale will not be determined until after the expiration of the period of 60 days from today's date.

Any person with a claim against the ship, or the proceeds of sale thereof, on which he intends to proceed to judgment shall do so before the expiration of the period above described.

Dated the 28th day of September 2022.

<https://lloydslist.maritimeintelligence.informa.com/classified>

Debt restructuring

Judicial sales “clean the slate” of the debts of a vessel

The buyer obtains good and clean title



Owner or Claimant friendly?

Gibraltar can be described as both an owner friendly and claimant friendly forum. The reason for this is that Gibraltar is, in all, a very favourable jurisdiction for the resolution of maritime disputes.

Not only can an arrest be effected at very short notice and in very little time (an advantage for the claimant) but a party whose ship has been arrested can have the ship released almost immediately after he has satisfied the claim or provided security for the same (an advantage to the owner).

In addition, admiralty cases in the Supreme Court of Gibraltar are given priority to other cases and it is therefore not difficult to obtain hearing dates at relatively short notice (within days)



Thanks for your time!

QUESTIONS?

ISOLAS
— 1892 —

www.gibraltarlawyers.com

© 2022 ISOLAS LLP – all rights reserved

About the speaker

Christian is acknowledged as one of the leading lawyers in Gibraltar in the fields of corporate and real estate and shipping finance, banking and financial services. He has been named as a leading lawyer in these fields by Chambers and Partners, the European Legal 500, IFLR 1000 and Global Counsel 3000 amongst others. He has been the leading partner in a large number of substantial transactions ranging from mergers and acquisitions, venture capital and management buyouts, corporate and structured finance, regulatory issues and enforcement of security. Among others he represents major European and American high street and investment banks, property developers, insurance companies and UK and Irish PLCs, seeking re-financing and re-structuring of their customers' debts and relevant securities as well as advice on enforcement in relation to defaulting structures.

Following 10 years as a director of the Gibraltar of Commerce, Christian was appointed President in May 2013 where served until 2022.

Shipping

In addition to his corporate practice, Christian is recognised internationally for his work in admiralty and shipping law and his portfolio of clients include the International Transport Workers Federation, P&I Clubs, banks and shipowners. Christian is engaged in a significant number of ship arrest matters; a direct consequence of the global economic crisis.

Christian head's up ISOLAS LLP's Admiralty and Shipping team, which is recognised for its capabilities in sensitive maritime disputes work, acting for banks, shipowners and other organisations in high-stakes contentious proceedings, and complex shipping finance matters

Link to Christian's [Chambers & Partners Profile](#)

Link to Christian's [Legal 500 \(Hall of Fame\) Profile](#)



Christian Hernandez
Partner

 Christian.hernandez@isolas.gi

 +350 2000 1892



Christian C Hernandez

About the Team

ISOLAS
— 1892 —



Christian Hernandez
Partner

Christian.hernandez@isolas.gi

+350 2000 1892

ISOLAS operates in one of the premier ship arrest jurisdictions in the world as a result of its geographical location and use of English admiralty law and practice. Given the provisions of the law, not only can vessels be arrested in Gibraltar, but also, in certain cases, cargo and/or freight.

Whilst Gibraltar boasts a large number of law firms, there are very few which have a specialist Admiralty Department. Of these, ISOLAS has more years' experience than any other firm, which makes us the number one choice for shipping lawyers in Gibraltar.

When instructed to carry out an arrest, we advise our clients as to exactly what documentation will need to be provided in support of the application to conduct the ship arrest and will guide the client towards the necessary steps mandatory to protect their claim, leading up to, if required, an eventual sale of the vessel. We are continuously involved in the great majority of shipping disputes, as well as receiving instructions from many of the major London shipping law firms.

Should you require any further information please do not hesitate to contact us.



Michael Adamberry
Senior Associate

michael.adamberry@isolas.gi

+350 2000 1892



ISOLAS
— 1892 —

www.gibraltarlawyers.com

Tel +350 2000 1892

info@isolas.gi

ISOLAS LLP is a limited liability partnership registered in Gibraltar under number 00001 with its registered office at Suite 23, Portland House, Glacis Road, Gibraltar.

The term ‘partner’ is used to refer to a member of ISOLAS LLP, or an employee or consultant with equivalent standing and qualifications.



DISCLAIMER

Please note that the information and any commentary on the law contained in this document is only intended as a general statement and is provided for information purposes only and no action should be taken in reliance on it without specific legal advice. The information is current only as at the date stated herein (or first presented live where no date is stated). Every reasonable effort is made to make the information and commentary accurate and up to date, but no responsibility for its accuracy and correctness, or for any consequence of relying on it, is assumed by the author. Further this document is not intended to amount to legal advice.