

## SHIP ARREST IN CYPRUS

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

The Cyprus Admiralty jurisdiction is exercised by the Supreme Court, which by virtue of rule 50 of the Admiralty Jurisdiction Order gives an absolute right for arrest of the vessel or property. However, by virtue of an amendment to the Courts of Justice Law (Law 136 of 1991), any admiralty case, irrespective of the amount of the claim, can be tried by the District Courts.

The person/entity who wishes to arrest a vessel in Cyprus must file an action in rem against the vessel herself and simultaneously an application requesting her arrest. It is necessary for the Admiralty Court to be satisfied that there is a serious matter of trial and that on the facts presented there is a probability that the claimant is entitled to relief. In the event that the application for the arrest of a vessel is successful, the Admiralty Court will require the following from the claimant:

- a) Lodgment of a deposit for the expenses which may be incurred by the Admiralty Marshal in connection with the custody and supervision of the vessel whilst under arrest;
- b) Lodgment of any other amount of money required by the Registrar for the expenses of the arrest; and
- c) Posting a security bond by way of a Cyprus Bank Guarantee. Upon the issuance of the arrest order and the compliance of the above requirements the arrest order must be served on the vessel.

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

Cyprus is not a party to the 1952 Arrest Convention nor the Brussels Liens and Mortgage Conventions. The United Kingdom signed the said Arrest Convention in 1952 and the Administration of Justice Act Part 1 was subsequently passed in order to enable the United Kingdom to ratify the Arrest Convention. The said Act is applicable in Cyprus by virtue of its Constitution and Articles 19 and 20 of the Courts of Justice Law of 1960 (Law No. 14/1960).

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

No, there is no other way to arrest the vessel. In cases where the claimant cannot proceed with the arrest of a vessel, he may seek a “freezing” Mareva injunction, which is normally granted when the defendants have no further assets in Cyprus and there is risk of alienation/ dissipation of assets. The application for a Mareva injunction is made ex parte.

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

A “freezing injunction” is an option.

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

The Admiralty Court has jurisdiction to hear the following claims:

- a) claim to possession or ownership of a vessel or to ownership of any share therein (arrest is not possible for claims other than ownership and possession claims arising from the sale and purchase of vessels);

- b) question arising between the co-owners of a vessel as to possession, employment, or earnings of that vessel;
- c) claim in respect of a mortgage of or charge on a vessel or any share thereof;
- d) claim for damage done by a vessel;
- e) claim for damage received by a vessel;
- f) claim for loss of life or personal injury sustained in consequence of defect in a vessel or in her apparel/ equipment, or of a wrongful act, neglect, or default of owners, charterers, or persons in possession or control of a vessel or of master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults owners, charterers, or persons in possession or control of a vessel are responsible, being an act, neglect or default in navigation or management of the vessel, in loading, carriage, or discharge of goods or in embarkation, carriage, or disembarkation of person;
- g) claim for loss or damage to goods carried in a vessel;
- h) claim arising out of any agreement relating to carriage of goods in a vessel or to use/charter;
- i) claim in nature of salvage;
- j) claim in nature of towage in respect of a vessel;
- k) claim in nature of pilotage in respect of a vessel;
- l) in respect of goods or materials supplied to a vessel for her operation or maintenance;
- m) claim in respect of construction, repair, equipment of a vessel, dock charges/ dues;
- n) claim by a master or crew for wages and claim by or in respect of a master or crew for any money or property, which under any provisions of the Merchant Shipping Acts 1894-1954 is recoverable as wages at Court or in the manner in which wages may be recovered;
- o) claim by a master, shipper, charterer, or agent in respect of disbursements made a vessel's account;
- p) claim arising out of a general average act;
- q) claim arising out of bottomry; and
- r) claim for the forfeiture or condemnation of a vessel or of goods.

Although bunker suppliers do not have maritime liens under Cyprus Law, a claim for bunkers falls within the Admiralty Jurisdiction of the Court and an arrest of a vessel is possible for such a claim if the bunker supplier shows that there is a contractual relationship between the bunker supplier and the owner of the vessel. However, if the physical supplier cannot show any contractual relationship with the owner of the vessel, then it would not be possible to successfully apply for an arrest of the vessel.

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

You can arrest a ship in Cyprus irrespective of her flag, provided that she is in the territorial waters of Cyprus.

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

You can arrest a ship in Cyprus irrespective of the debtor unless the debtor is in a position to claim sovereign immunity.

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

The Administration of Justice Act 1956 is applicable in Cyprus. Although section 3(3) of the said Act enables a claimant to arrest a vessel to which a maritime lien attaches, no provisions are contained therein in respect of the arrest of a "sister vessel". This situation is compensated by section 3(4) of the Act which provides that the admiralty jurisdiction of the High Court may be invoked (whether the claim gives rise to a maritime lien over the vessel or not) by an action in rem against "... (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid". It should be distinguished that a person who possesses a maritime lien in respect of that "other ship" has no higher right or priority than that enjoyed, under circumstances by a statutory lien.

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

Bareboat Owners and Time Charterers are viewed as 'disponent owners' of vessels. In the case the claims mentioned in (d) to (r) above, where a person who would be liable on claim in an action in personam was, when the cause arose, owner or charterer of, in possession or in control of, the vessel, the Admiralty jurisdiction of the Supreme Court may be invoked by an action in rem against:

- a) the vessel, if at the time when the action is brought, she is beneficially owned in respect of all the shares therein by that person; or
- b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

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

It is standard practice that the claimant is required to put up a counter security for damages that the owner of the vessel may sustain as a result of a wrongful arrest. The claimant is required to post a security bond by way of a Cyprus Bank Guarantee in respect of damages that the defendant vessel might suffer if the arrest proves to be wrongful. The amount of the security to be provided is at the discretion of the Court, which will take into account all circumstances of the case. Usually, 10% to 30% of the claimed amount will need to be put up although in a few exceptional cases we have seen the court order as much as 50% of the claimed amount.

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

There is no difference in the procedure between a maritime lien and a maritime claim. However it should be noted that under Cyprus Law maritime liens enjoy certain advantages over all other permitted actions in rem (statutory liens) at the time of creation of the lien, in priority and in the enforceability of the security. In addition, statutory liens have no priority over mortgages.

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

Under the English Administration of Justice Act 1956, the following maritime liens are recognised under Cyprus Law: a) Bottomry; b) Salvage; c) Wages; d) Master's Wages; e) Disbursements and liabilities; and f) Damage done by a ship.

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

It will normally take between 2-4 business days to arrest the vessel from the moment we receive supporting documents and instructions.

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

No POA is required to bring the claim and present the Arrest Application to the relevant Court.

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

All admiralty actions whether *in rem* or *in personam* are instituted with the issue of a writ of summons. Name, place of residence, occupation of every claimant and defendant and a concise statement of the claim made or relief/remedy sought, should be included in the structure of the writ. The issue of the writ gives the claimant a right against the vessel, which originates from the cause of action in rem and crystallizes upon the arrest of the vessel. The claimant should file with the Court an affidavit appertaining to the nature of the claim and stating that the aid of the Court is required.

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

In order to arrest a vessel in Cyprus, you are required to file an action in rem against her. After the issuance of the arrest order, the substantive claim can be prosecuted.

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

Any party can apply to the Court for the release of a vessel and the Court will grant such an order if the terms as to security or payment of any costs have been provided. An application can be made by any party without any notice to be given to the other party (if there is no caveat). The procedural rules provide the following four options in which a release can happen:

- a) Upon proof of payment into Court of the amount claimed or of the appraised value of the property arrested, or, where cargo is arrested for freight only, of the amount of the freight verified by affidavits;
- b) On the application of the party at whose instance the property has been arrested;
- c) On the consent in writing being filed signed by the party at whose instance the property has been arrested;

On discontinuance or dismissal of the action in which the property has been arrested.

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

The type of security is usually in the form of a Cyprus Bank Guarantee or cash.

#### 19. Does security need to cover interest and costs?

When evaluating the amount requested for security, it is usually the case that the security cannot be more than what the ship is worth. A claimant will also ask for interest and costs, however the initial arrest expenses are paid by the arresting party to the Admiralty Marshal who is responsible for the maintenance of the vessel, while it is under arrest.

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

P&I LOUs are not recognised by Courts; Courts require the Bank Guarantee in order to lift the arrest, usually given by a local bank.

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

It depends on the circumstances of each case. If security is paid, and the Court orders for such release, usually within a day the vessel can be released.

#### 22. Is there a procedure to contest the arrest?

Yes, wrongful arrests are recognized under Cyprus Law and test for wrongful arrest is primarily “bad faith”.

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

Under Cyprus Law, in an action *in rem*, the writ of summons must be served at least 21 days, and in an action *in personam*, at least 10 days, before the date named in the writ of summons for the appearance of the parties before the Admiralty Court.

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

Cyprus Courts acknowledge concept of wrongful arrest, hence the requirement for the claimant to post security.

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

Cyprus Courts will only pierce and lift the corporate veil in very exceptional circumstance (basically fraud).

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

It is possible to have a ship sold pendente lite. Typical grounds for an application are that a vessel is costing a disproportionate amount in daily expenses or is deteriorating owing to being under arrest for a long time or that a cargo is perishable. Therefore, the continuing and mounting expenses of arrest and the fact that goods are deteriorating are good reasons for which a Court may consider in ordering the property to be sold pendente lite. It is very difficult to advise on the precise timescale involved as this will largely be determined on a case-by-case basis and any objection by the Respondent to the Application will greatly prolong the process.

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*\*Vasiliki Malta studied law at the University of Essex, she obtained her LLB with honours in 2016. After obtaining her LLB, she acquired an LLM in Maritime Law from the University of Southampton. She has also attended various seminars and international workshops within the area of Maritime Law. Vasiliki has undertaken work experience with a well-known law firm in London specialising in Shipping law. After returning back to Cyprus, Vasiliki has successfully completed her training period and has been admitted to Cyprus Bar Association. Her area of expertise inter alia, include shipping law (including ship management, ship registration, and ship security issues), ship finance (including drafting and negotiating of ship mortgages and deed of covenants, registration of the mortgages with the Shipping Deputy Ministry etc.), corporate and commercial law as well as contract law. Vasiliki has also experience in various litigation areas including civil litigation. Moreover, Vasiliki is currently involved in a number of proceedings at Admiralty Court. She can draft, negotiate and conclude a wide range of agreements, including but not limited to commercial contracts (i.e. share purchase agreements) and other legal documents. Additionally, Vasiliki has managed to effectively settle cases out of the Court in favour of her clients. Vasiliki joined L.G Zambartas LLC in November 2018.*