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Lifting a Ship Arrest Without Providing Security: Applications in Maritime Arrest Disputes by Usama Soliman, Soliman Advocates (Egypt)

Introduction

In ship arrest disputes, the issuance of an arrest order does not necessarily mean that the shipowner or interested party must provide financial security, a bank guarantee, or a P&I Letter of Undertaking in order to obtain the release of the vessel.

In certain cases, the real issue is the validity of the arrest itself: Was the order issued by the competent court? Was the vessel actually within the relevant territorial jurisdiction? Were the legal requirements for arrest satisfied? Were the applicable procedural requirements and time limits properly observed?

In such circumstances, the appropriate remedy may be to challenge the arrest, seek a declaration of its invalidity or non-recognition, and obtain the removal of its effects without providing security.

The practical judicial applications discussed below illustrate that an arrest may fail because of territorial jurisdiction, the transfer of ownership and expiry of the relevant period for maritime liens and the right of

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tracing, special statutory protection, or a material procedural defect in the arrest order.

I. M/V "Justice" – The Vessel Was Not Within the Territorial Jurisdiction

The case of M/V "Justice" provides an important example of the connection between the validity of a ship arrest order and the territorial jurisdiction of the court issuing it.

The vessel was Cypriot, registered in Cyprus, and flying the Cyprus flag. An arrest order was issued by the Alexandria Court on the basis that the vessel was present in Alexandria.

The arrest was an in rem/proprietary arrest, as the arresting party claimed ownership of the vessel and alleged that the vessel had previously operated under another name, had been in a repair yard, had been stolen, and had subsequently been renamed "Justice".

The decisive issue, however, concerned the actual location of the vessel when the arrest order was issued.

Official certificates issued by the Alexandria Port Authority established that the vessel was not present in Alexandria at the relevant time.

Although the arrest and enforcement procedures were subsequently carried out in Suez, the court found that the judge who issued the arrest order lacked territorial jurisdiction to issue it on the stated basis. The arrest order therefore could not constitute a valid basis for the subsequent arrest procedures, and the court ruled not to recognize the arrest.

The case also raised issues concerning the adequacy of the document relied upon to establish the arresting party's alleged ownership, as well as the time limit for execution of the arrest order.

The case demonstrates the importance of verifying, before executing an arrest order, the actual location of the vessel and the territorial jurisdiction of the court issuing the order.

II. M/V "Al-Masry" – Private Sale and Expiry of the Relevant Maritime-Lien Period

The second case concerns the vessel "Al-Masry", an Egyptian-registered vessel flying the Egyptian flag, whose ownership was transferred to a new owner by way of a private consensual sale.

Following the transfer of ownership, a creditor of the former owner sought to trace the vessel and take arrest and enforcement measures against it in respect of a debt owed by the former owner.

The new owner brought an action for recognition of title to the vessel and for the invalidation of the arrest and enforcement proceedings.

The court examined the continuing existence of the right of tracing and maritime liens following the transfer of ownership, particularly in light of the expiry of the relevant statutory period during which such rights could be exercised.

The Court of First Instance found in favor of the new owner, recognized its title to the vessel, and invalidated the arrest and enforcement procedures. The Court of Appeal affirmed that judgment. The judgment was rendered in Appeal No. 603 of Judicial Year 20, Ismailia Court of Appeal, hearing of 22 July 1998.

The significance of this case lies not merely in the transfer of ownership, but in the court's examination of whether the right of tracing and the maritime lien remained enforceable after the private sale and after expiry of the relevant period for exercising such rights.

III. M/V "Red Sea Explorer" – Statutory Protection of Investment Projects

In the case of M/V "Red Sea Explorer", the dispute concerned a company established under the investment regime, against whose vessel an administrative attachment had been imposed.

The challenge relied upon the protection afforded under Investment Guarantees and Incentives Law No. 8 of 1997 to assets and projects falling within its

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scope, including the restrictions applicable to administrative attachment against such assets.

The court ultimately ruled not to recognize the administrative attachment in question because of its lack of legal validity in light of the statutory protection applicable to the investment project.

This case demonstrates that the validity of a ship arrest or attachment may also depend upon the special statutory regime applicable to the company or project concerned, and that such protection may result in the arrest or attachment itself being set aside.

IV. M/V "Arouba" – Failure to Give Reasons for a Subsequent Arrest Order

Another relevant case concerns the vessel "Arouba", a Syrian-flagged vessel.

There had been previous orders concerning the arrest application, followed by a subsequent order that departed from the position taken in the earlier order.

The significance of the case lies in the requirement that, where a subsequent order departs from a previous judicial determination, the subsequent order must be reasoned and must explain the basis for such departure.

The later arrest order did not satisfy that requirement, constituting a material procedural defect affecting its validity.

Accordingly, the court ruled not to recognize the arrest order and the procedures based upon it.

Is Providing Security Always the Solution?

The above judicial applications demonstrate the importance of distinguishing between two different situations.

First, the arrest may be legally valid, but the shipowner may wish to secure the vessel's prompt release and therefore provide appropriate security.

Second, there may be a legal defect affecting the arrest itself, the arrest order, or the procedures by which it was implemented. In such a case, the central issue is the validity of the arrest itself.

In the latter situation, providing security may not be the only or most appropriate legal course. The interested party may instead seek the invalidation or non-recognition of the arrest and the removal of its legal effects.

Accordingly, before deciding to provide security, the following issues should be examined:

- The territorial jurisdiction of the court issuing the arrest order.
- The actual location of the vessel when the order was issued.
- The standing of the arresting party and the legal basis of its claim.
- The ownership of the vessel and the existence of any right to trace it.
- The effect of a transfer of ownership on creditors' rights.
- Maritime liens and the period during which they remain enforceable.
- Special statutory protections applicable to certain companies or projects.
- The validity and reasoning of the arrest order.
- The applicable procedural requirements and time limits for executing and maintaining the arrest.

Accordingly, the first question when confronting a ship arrest is not always: "How much security is required to release the vessel?"

The prior question may be: "Is the arrest itself legally valid?"

Where the arrest is found to be invalid or legally unenforceable, the result is not merely the release of the vessel against security, but rather the removal of

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the arrest itself and its legal effects, subject to the court's ruling.

Conclusion

These judicial applications demonstrate that responding to a ship arrest is not limited to finding a means of providing security for the vessel's release. It begins with a careful examination of the legal basis of the arrest itself, together with the substantive and procedural requirements governing it.

Security may be the appropriate route where the arrest is legally valid. However, another route may be to establish that the arrest itself lacks a valid legal basis, whether because of a jurisdictional defect, the loss of the right to trace the vessel, expiry of the relevant maritime-lien period, violation of special statutory protections, or a material defect in the arrest order or its procedures.

These applications reflect practical experience derived from maritime cases handled by our firm before the Egyptian courts, and demonstrate the importance of carefully examining the legal basis and procedural validity of a ship arrest before resorting to the provision of security for the vessel's release.



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SARR Freights Corporation & Anr. v. Argo Coral Maritime Ltd: The Delhi High Court's Verdict on Anti-Arbitration Injunctions in Foreign-Seated Disputes

by Rohan Janardhanan, Rex Legalis (India)

Introduction

The Delhi High Court's decisions in *SARR Freights Corporation & Anr. v. Argo Coral Maritime Ltd.* (CS(OS) 868/2025 and I.A. 30141/2025) address a critical question in Indian arbitration law: when can an Indian civil court restrain a foreign-seated arbitration? The learned Single Judge, Justice Mini Pushkarna, refused interim relief on 13 March 2026. That order was set aside on appeal by a Division Bench of Justice Vivek Chaudhary and Justice Renu Bhatnagar, which granted an anti-arbitration injunction.

The case arose from a maritime dispute involving the transport of military cargo for the United Nations. It culminated in a significant ruling on the limits of anti-arbitration injunctions, the primacy of final written contracts, and the residual jurisdiction of Indian courts over foreign arbitrations.

Factual Background

The dispute originated from a Booking Note dated 4 April 2023 for the shipment of military cargo for the United Nations Interim Security Force for Abyei (UNISFA) from Nhava Sheva Port, Mumbai, to Port Sudan. The plaintiffs, SARR Freights Corporation and SARR Freights Limited (both Indian companies headquartered in New Delhi), entered into a charterparty arrangement with Ocean7 Projects ApS, Denmark, acting as agents for the vessel owner, Argo Coral Maritime Ltd.

Before the Booking Note was signed, the parties' brokers had exchanged emails and a Fixture Recap, which provided for English law and London arbitration.

The Booking Note contained 43 clauses, with Clauses 20 to 43 being additional rider clauses. Clause 43, a dispute resolution clause, contained the law and arbitration provision, specifying English law and London Maritime Arbitrators Association (LMAA) arbitration. However, the Special Terms of the Booking Note incorporated only "additional rider clause 20 to 41", omitting Clause 43. The Booking Note also stated that its terms would prevail over any previous arrangements.

On 18 April 2023, the United Nations issued an advisory declaring cargo movement through Sudanese ports unsafe due to armed conflict. The plaintiffs cancelled the Booking Note, invoking force majeure. Argo Coral Maritime disputed this and claimed approximately USD 584,741 as dead freight. Two parallel arbitration references were subsequently initiated before the LMAA: one against SARR Freights Limited and another against SARR Freights Corporation.

The LMAA tribunal, by a majority Partial Final Award dated 18 October 2025, held that the parties had agreed to English law and London arbitration, treating the reference to "20 to 41" as a typographical error that should be rectified to "20 to 43". The plaintiffs then approached the Delhi High Court seeking a declaration and a permanent injunction restraining the defendant from continuing the LMAA proceedings, together with interim relief.

Issues Before the Court

The following four issues arose for consideration:

1. Whether the court had jurisdiction to entertain the civil suit;
2. Whether a binding contract existed between the parties;
3. Whether the agreement contained a valid arbitration clause; and
4. Whether the arbitration proceedings initiated by the defendant were oppressive, vexatious, or unconscionable.

In appeal, the Division Bench framed three principal questions: territorial jurisdiction; whether the final signed Booking Note governed the parties or whether the earlier emails and Fixture Recap could be read into it; and whether an arbitration agreement actually existed.

Key Findings and Analysis

Jurisdiction of Civil Courts

The Court reaffirmed that under Section 9 of the Code of Civil Procedure, 1908, civil courts have jurisdiction to entertain all suits of a civil nature unless expressly or impliedly barred by statute.

Justice Pushkarna held that "the jurisdiction of Indian Civil Courts is not excluded merely because arbitration is seated abroad, and Courts retain residual equitable powers to prevent abuse of arbitral process". The Court relied on Engineering Projects (India) Limited v. MSA Global LLC (Oman) to affirm this position.

On appeal, the Division Bench rejected the objection to territorial jurisdiction. The appellants were based in Delhi, the Booking Note was signed there, and the cargo was initially to move from New Delhi. A substantial part of the cause of action therefore arose in Delhi, and the possibility that Mumbai, where Nhava Sheva Port is located, might also have jurisdiction did not oust it. The Division Bench also affirmed that Indian courts may decide whether an arbitration agreement exists, notwithstanding the principle of competence-competence.

The Order of the Learned Single Judge

The learned Single Judge refused interim relief on 13 March 2026. Relying on Supreme Court decisions on the inference of an arbitration agreement from correspondence, including *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1, and *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd.*, (2015) 13 SCC 477, the learned Single Judge held that an arbitration agreement could be

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gathered from the Fixture Recap and that "20 to 41" was an inadvertent error.

The Single Judge also held that an anti-arbitration injunction is an exceptional remedy, granted only in the rarest of circumstances where the arbitration is shown to be vexatious, oppressive, and unconscionable. It was observed that whether the proceedings were vexatious or oppressive involved disputed questions of fact that could not be decided at the interim stage.

The Division Bench Judgment

The appellants challenged the order before the Division Bench. The Division Bench disagreed with the Single Judge and with the majority of the arbitral tribunal.

Existence of a Binding Contract

The Division Bench undertook a detailed examination of the Booking Note and the surrounding correspondence, emphasising that consensus ad idem and mutual intention are essential to contract formation. It found that the parties had consciously modified several commercial terms, including vessel specifications and detention provisions, demonstrating active negotiation. The final signed Booking Note was therefore the final agreement between the parties.

Validity of the Arbitration Clause

This was the central issue. The Court applied Sections 91 and 92 of the Indian Evidence Act, 1872, holding that once parties reduce their agreement into a clear, unambiguous, signed written document, prior negotiations and correspondence cannot ordinarily be relied upon to contradict, vary, add to, or subtract from the final written terms. The exception arises only where the document is ambiguous or defective. Since 1 July 2024, the corresponding provisions are Sections 94 and 95 of the Bharatiya Sakshya Adhiniyam, 2023. The Court distinguished Indian codified evidence law from English common-law principles of rectification, noting that English authorities could not be used to circumvent the settled position under Indian law.

The Court closely examined the Booking Note's drafting. The Special Terms expressly stated: "As per additional rider clause 20 to 41 in attached." The arbitration provision appeared in Clause 43. The Court rejected the theory that "41" was an accidental typographical error, finding that the parties had not mechanically signed a standard form but had consciously modified several commercial terms. The fact that Clause 43 appeared on the same page as the parties' signatures did not make it part of the contract. The Court found no ambiguity that called for correction.

The Booking Note stated that it would prevail over previous arrangements. The Court relied on *Union of India v. Kishorilal Gupta & Bros.*, AIR 1959 SC 1362, *Young Achievers v. IMS Learning Resources (P) Ltd.*, (2013) 10 SCC 535, and *Joshi Technologies International Inc. v. Union of India* AIR 2015 SC 2321 to hold that an arbitration clause contained in an earlier agreement does not survive where that agreement is superseded by a later comprehensive agreement.

Oppressive, Vexatious, or Unconscionable Proceedings

The Division Bench reaffirmed that an anti-arbitration injunction is an exceptional remedy. Relying on McDonald's India (P) Ltd. v. Vikram Bakshi, 2016 SCC OnLine Del 3949, and Bina Modi v. Lalit Kumar Modi, 2020 SCC OnLine Del 1678, it held that an Indian court may intervene where the arbitration agreement is null and void, inoperative, or incapable of being performed. Since no arbitration agreement existed between the parties, the very foundation for continuation of the arbitration proceedings did not exist.

The Division Bench set aside the order of the Single Judge. The Court granted an anti-arbitration injunction restraining Argo Coral Maritime Ltd. from

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continuing, pursuing, or taking any steps in the LMAA arbitration against SARR Freights.

Significance of the Judgment

This judgment makes several important contributions to Indian arbitration law:
First, it clarifies that Indian civil courts retain jurisdiction to grant anti-arbitration injunctions even in foreign-seated arbitrations, though such power must be exercised only in exceptional circumstances. Second, it reinforces the primacy of the final written contract over prior negotiations. Where parties execute a clear, unambiguous, signed document that supersedes earlier arrangements, courts cannot return to prior correspondence to reconstruct the bargain.
Third, it distinguishes Indian codified evidence law from English common-law principles of rectification, holding that English authorities cannot be used to circumvent the settled position under Indian law. Fourth, it reaffirms that an anti-arbitration injunction is an exceptional remedy. The Single Judge required the arbitral process to be shown to be vexatious, oppressive, or unconscionable, while the Division Bench held the remedy to be available where no valid arbitration agreement exists.

Conclusion

The Delhi High Court's decisions in SARR Freights v. Argo Coral Maritime represent a significant development in the Indian law of anti-arbitration injunctions. While affirming the residual jurisdiction of Indian civil courts over foreign-seated arbitrations, the Court set a high threshold for granting such relief. On the facts, that threshold was met because the final signed contract did not contain the arbitration clause. The ruling underscores the importance of clear contractual drafting and the finality of signed written agreements, while also recognising the exceptional circumstances in which courts may intervene to prevent abuse of the arbitral process. For parties engaged in international commercial transactions, the judgment serves as a reminder that the terms of the final executed contract will ordinarily prevail over prior negotiations, and that arbitration clauses deliberately omitted from such contracts cannot be resurrected through extrinsic evidence.



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Considerations after Obtaining an Arrest Order: Legal, Practical and Financial Realities of Maintaining a Vessel Under Arrest in Trinidad and Tobago

by Cherie Gopie, M. Hamel & Smith

Ship arrest is one of the most effective remedies available to a maritime claimant. A vessel is mobile, valuable and capable of leaving the jurisdiction at short notice. Arrest allows a claimant to proceed against the vessel itself, sometimes across multiple jurisdictions and, importantly, to secure a maritime claim against an asset which might otherwise sail and disappear over the horizon.

Understandably, considerable attention is therefore given to the threshold question: can the vessel be arrested? In practice, that is only the beginning. Once the warrant is executed in Trinidad and Tobago, the vessel enters the custody of the Admiralty Marshal of the High Court. Once this happens, the vessel must be secured and preserved, expenses accrue and decisions may have to be made concerning crew, security, release and, ultimately, judicial sale.

These are familiar considerations in ship arrest jurisdictions worldwide. This article examines how

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they operate in Trinidad and Tobago, where Part 74 of the Civil Proceedings Rules, which are the overarching legal rules, provides a clear procedural framework for the arrest, custody, release and judicial sale of vessels, and considers some of the practical and financial issues which arise once a vessel has been placed under arrest.

The Legal Framework

Admiralty proceedings in Trinidad and Tobago are governed principally by Part 74 of the Civil Proceedings Rules 1998, as amended ("CPR"). Rule 74.2 identifies the categories of admiralty claims falling within the jurisdiction, while Rule 74.3 identifies those which may be pursued in rem against a ship or other property.

The distinction is significant. In an action in rem, the vessel itself is proceeded against and may be arrested as security for the claim. This is particularly valuable in international shipping, where the party ultimately liable may be based abroad and the vessel may be the only readily accessible asset within the jurisdiction. The traditional purpose of arrest was described in the landmark English admiralty decision, ***The Cella (1888) 13 PD 82***: the Court keeps the property as security to answer the judgment, unaffected by events occurring between arrest and judgment.

A ship, however, is not passive security. It requires custody and preservation while under arrest. The Trinidad and Tobago CPR expressly recognises this practical reality for an arresting party.

The Arresting Party's Financial Undertaking

A warrant of arrest is executed by the Admiralty Marshal or his substitute under Rule 74.12(2). Before execution, however, Rule 74.12(3) requires the arresting party to lodge an undertaking to pay on demand the Marshal's fees and all expenses incurred in connection with the arrest and the care and custody of the property while under arrest.

This is an important practical consideration. The arresting party must be prepared to place the Marshal in funds as the arrest progresses. Depending upon the vessel and the circumstances, expenses may include security or watchmen, necessary supplies, berth or anchorage expenses and other expenditure reasonably required to keep the vessel safe and preserve the res.

The precise requirements vary from arrest to arrest. A vessel alongside a berth may attract different charges and logistical requirements from one held at anchorage. An effectively abandoned vessel may require more extensive arrangements for supplies, safe manning and preservation. The likely duration of the arrest is therefore as important to the funding assessment as the daily cost. The Marshal also has power under Rule 74.13 to seek directions from the Court concerning property under arrest where necessary.

In this regard, the financial undertaking should be distinguished from the ultimate allocation of those expenses. Expenses properly incurred in the arrest, custody, preservation and sale of the vessel are ordinarily payable in priority from the proceeds of judicial sale, subject to the Court's assessment and applicable orders. Priority does not, however, guarantee full reimbursement. The arresting creditor must consider whether the anticipated proceeds will be sufficient to discharge the expenses, particularly where the vessel is of limited value, likely to quickly depreciate, or is costly to maintain. The financial exposure extends beyond the immediate obligation to fund the arrest.

Arrest, Security and Release

In most cases, the commercial purpose of arrest is not to retain the vessel but to obtain satisfactory security for the underlying claim. The CPR provides for the release of arrested property, including upon the provision of sufficient bail. In practice, security may also take an agreed alternative form, depending upon the parties and circumstances. Once acceptable

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security is provided, the vessel can be released and returned to commercial employment while the substantive dispute proceeds against the substituted security.

The Trinidad and Tobago Court of Appeal examined release and substitute security in *Cashman Equipment Corporation v EMCS Caribbean Limited, Civil Appeal No. P028 of 2022,* decided on 5 May 2022. The dispute concerned ownership and possession of the barge JMC 50. The Court considered both the adequacy of the proposed security and the party to whom the barge should be released. It ordered release to the registered owner upon provision of security acceptable to the Registrar, emphasising that substitute security must provide an equivalent source of recovery enforceable within the jurisdiction.

For many reasons, arrest should not continue longer than necessary. The vessel could earn no income while expenses for maintenance, certification and insurance continued, and its condition and value could deteriorate. In the circumstances, replacing the vessel with suitable security would avoid unnecessary expense and accord with the overriding objective.

The decision illustrates the need to assess both the quality of substitute security and the commercial consequences of continued detention. Once adequate, enforceable security is available, retaining a vessel under arrest may add expense without improving the protection afforded to the claim.

The CPR also ensures that the Marshal's expenses are addressed on release. Rule 74.14(5) requires the party at whose instance release is sought, in accordance with the Marshal's directions, to pay or undertake to pay the relevant fees and expenses associated with the arrest, care, custody and release.

Where Security Is Not Forthcoming

Not every arrest results in prompt security. An owner may dispute the claim or jurisdiction, lack liquidity or, in some cases, effectively abandon the vessel. The vessel nevertheless remains in the custody of the Court and must be appropriately maintained and secured. Practical issues can become particularly important at this stage. Crew may remain aboard and arrangements may be required for food, water, fuel, safe manning or eventual repatriation. The vessel's location, condition, certification and operating requirements may also affect what is required to preserve it.

These are matters to be managed rather than reasons to avoid arrest. The arresting creditor is not necessarily legally responsible for the owner's obligations to the crew simply because it has invoked the admiralty jurisdiction. Nevertheless, practical expenditure may be required to ensure the safe custody and preservation of the vessel while it remains under arrest.

Where it becomes apparent that satisfactory security will not be provided, the claimant has another important option: judicial sale.

From Arrest to Judicial Sale

Judicial sale provides an effective means of converting the arrested vessel into a fund against which claims can be determined. Rule 74.24 of the CPR provides the machinery for appraisement and sale. The commission is ordinarily executed by the Admiralty Marshal and, unless the Court otherwise orders, the vessel is sold by public auction. The Court may also permit sale by private treaty where appropriate.

The procedural framework for appraisement and judicial sale in Trinidad and Tobago is well established, providing a structured mechanism through which an arrested vessel may be realised where satisfactory security is not forthcoming. Once the necessary order is obtained, the vessel can be appraised, advertised and offered for sale under the Court’s supervision. The timing and outcome will depend on the vessel’s circumstances, the Court’s directions and market interest.

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The application for sale also carries a funding obligation. Rule 74.24(3) requires an undertaking satisfactory to the Marshal to pay his fees and expenses on demand before the commission for appraisement and sale is executed. The claimant should therefore budget for both continued custody and the costs of bringing the vessel to sale.

Rule 74.24 also provides for the orderly accounting of the sale. The gross proceeds are paid into Court and the Marshal's account relating to the sale is brought before the Court for assessment. The remaining proceeds then constitute the fund against which competing claims and questions of priority may be determined.

Court supervision and assessment of the Marshal's account provide a framework for determining the expenses properly chargeable against the fund. The creditor's commercial assessment must nevertheless account for the possibility that the realised price will fall short of the estimated value, or that prolonged custody will consume a substantial part of the proceeds.

This creates a clear enforcement pathway. If satisfactory security is provided, the vessel may be released and the claim proceeds against that security. If it is not, the Court can order judicial sale and the proceeds stand in place of the vessel.

The Strategic Calculation: Looking Beyond the Arrest

For the maritime creditor, the strength of ship arrest lies in its immediacy. Effective arrest strategy, however, requires counsel to look beyond execution of the warrant. Before proceeding, consideration should be given to the value of the vessel and any mortgages, maritime liens or competing claims; the likelihood of the owner or its P&I Club providing security; and the likely requirements for maintaining the vessel while it remains in the Marshal's custody. The condition and circumstances of the vessel also matter. Its location, crewing, security and preservation requirements will influence the level of expenditure required during the arrest. Where security appears unlikely or challenging, the prospect and timing of judicial sale should be considered from an early stage.



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Administrative Arrest of Ships in Egypt at the Instance of the State or Its Public Entities: Legal Nature, Procedures, Grounds for Invalidity, and Remedies for Suspending Judicial Sale and Securing Release by Dr. Nabil Farag, Nabil Farag Law Firm

The importance of the administrative attachment anticipated by the State or one of its public entities against a ship stems from the fact that the money for the sake of which the attachment is imposed is "public money" and not private money. Consequently, an error in the attachment procedures which may lead to the invalidity of the attachment will in turn lead to the loss of State funds on account of minor mistakes committed by those tasked with and carrying out this attachment, and their failure to follow the steps that the law has prescribed and required in order to prevent its invalidity and the failure to accord its legal effect.

Its importance also stems, on the other hand, from the fact that these administrative attachment procedures against the ship are undertaken by the State or one of its public entities against the ship, its owners, and the parties having an interest in it, in the

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absence of prior judicial oversight and without recourse to the judiciary. This may expose the interests of ship owners and the parties having an interest therein to danger, injustice, and encroachment upon them, because the person carrying out the attachment procedures is at once the adversary and the adjudicator, and this occurs in the absence of judicial oversight.

Accordingly, it was necessary to review the importance of the role of each party to this attachment, its duties and obligations, with a view to safeguarding State funds and public money should the attachment procedures be tainted by any legal error that may invalidate them and lead to a ruling declaring them null and void and deeming them as if they had never occurred — which would cause the loss of public money — as well as safeguarding the rights of ship owners and the parties having an interest therein and their right to resort to the judiciary to impose its subsequent oversight over the attachment procedures, thereby achieving a kind of balance between the two parties without tilting in favor of one side over the other. In this research, we shall address the following points:

(First) Is the State or one of its public entities entitled to attach a ship directly without recourse to the judiciary, in satisfaction of its monies and debts due against the ship?

Law No. 308 of 1955, as amended by Law No. 30 of 1972, concerning administrative attachment, regulated the entitlement of the State or one of its public entities to impose direct administrative attachment on the debtor's assets, including his movables, immovables, and all that he owns. Ships therefore fall within the category of assets that may be attached by the State or one of its public entities. For example, when port and berthing fees are owed to the Port Authority, which become due to the Port Authority upon the ship's docking at one of the Egyptian ports; and likewise transit fees such as the fees due to the Suez Canal Authority for the ship's transit of the Suez Canal; and so forth among the remaining monies, taxes, fees, and fines owed to the State or one of its public entities against one of the ships to which these services are rendered. The aforesaid law granted the right to impose administrative attachment on the debtor ships and to sell them by public auction. This is, of course, an exceptional measure that the law conferred upon the State, its public entities, administrations, and departments, enabling them to impose administrative attachment on the debtor's assets without recourse to the judiciary, that is, without obtaining a judicial order or judgment authorizing such attachment. This is an exception to the general rules.

Article 1 of Law No. 308 of 1955, as amended by Law No. 30 of 1972, concerning administrative attachment, provides that: "The administrative attachment procedures set forth in this Law may be followed upon non-payment, within the deadlines prescribed by the laws, decrees, and decisions pertaining thereto, of the following amounts due, in the places and to the persons designated by the competent ministers:

(a) Taxes, royalties, and fees of all kinds.

(b) Amounts due to the State for public services.

(c) Expenses incurred by the State as a result of its works or measures required by the laws.

(d) Fines legally due to the government.

(e) Rents of the State's private property and consideration for the use of its public property, whether by contract or by way of clandestine exploitation.

(f) The prices of government lands sold, together with their appurtenances and interest.

(g) Embezzled public funds.

(h) The amounts owed to the Ministry of Awqaf and other public legal persons of the aforesaid amounts, as well as the amounts owed to the Ministry of Awqaf in its capacity as supervisor or guard, consisting of rents, ground rents, or replacement prices for the properties administered by the Ministry.

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(i) Amounts due to banks in whose capital the government participates by more than one half.

(j) Other amounts whose respective laws provide for their collection by way of administrative attachment."

This means that the law has granted the State the right to attach the debtor's assets directly without recourse to the judiciary and without obtaining a judicial order or judgment in that regard. This attachment is an executory attachment and not a precautionary or conservatory attachment that is, it is directly followed by the public auction sale procedures, including the setting of a base price for the attached ship and the scheduling of a public auction sale session, and so forth among the execution and sale procedures, which are supposed to take place after a final and enforceable judicial judgment has been issued (i.e., one bearing the executory formula). This is an exceptional and expedited means for recovering State funds.

Despite the fact that this means may be tainted by inequity, lack of impartiality, and encroachment upon the rights of individuals, companies, and ship owners — for how can the State or the public entity be at once the adversary and the adjudicator?! Moreover, these procedures are typically taken in the absence of the shipowner — the law has nevertheless subjected all of these procedures to subsequent judicial oversight. The shipowner, its charterer, or its possessor has the right to contest and object to all of the administrative attachment procedures undertaken by the State or one of its public entities before the judiciary, specifically before the competent execution judge. The execution judge examines the legality of this administrative attachment imposed by the State or one of its public entities against the ship, and considers whether this attachment and its procedures have been tainted by any form of invalidity, and whether these procedures conformed to the law or contravened it.

(Second) The legal procedures that must be undertaken by ship owners or interested parties against the administrative attachment to suspend the auction sale and to annul and invalidate the attachment:

The sole and correct legal procedure and path that must be undertaken and pursued by shipowners or other interested parties to suspend the public auction sale proceedings is for the shipowner or the interested party to file a substantive execution dispute action (action contesting execution), contesting the substance of the amounts for which the attachment was imposed and seeking the invalidation and annulment of the administrative attachment procedures imposed against the ship, the denial of legal effect thereto, and their being deemed as if they had never occurred; as well as an action for the recovery of the attached assets, namely the ship, which is filed by a third party claiming his entitlement to recover the ship for some legal reason.

In some cases, some legal practitioners (lawyers) err by filing a "stay of execution" application (ishkal) to suspend this attachment — a common and widespread legal error that is usually met with a ruling of dismissal and the continuation of execution. The simple reason for this is that the attachment procedures have already been completed by the imposition of the attachment and its recording in an official report drawn up by the representative of the State or the public entity — who is (incorrectly) known as the "attachment representative" (mandoub al-hajz), whereas his correct designation is "the attaching party's representative" (mandoub al-hajiz), as set forth in the text of the law. For how can one seek to suspend something that has already been completed and actually effected? The legally correct course is to seek the invalidation of the attachment procedures, the denial of legal effect thereto, their being deemed as if they had never occurred, and to contest the substance of the debt that is the subject of the attachment. This is sought through the substantive execution dispute action referred to above — that is, the action contesting the substance of the debt and the invalidity of the attachment, or by seeking the

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recovery of the attached assets, namely the ship — and not through the temporary "stay of execution" application (ishkal) commonly used in error.

Upon the filing of the aforesaid dispute action before the competent execution judge, within whose district the ship was attached, the attachment and public auction sale proceedings are suspended directly, pursuant to the text of Article 27 of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972, which provides that: "The filing of an action contesting the substance of the amounts claimed, or the validity of the attachment procedures, or seeking the recovery of the attached objects, shall result in the suspension of the administrative attachment and sale proceedings until the dispute is finally decided." The suspension of the administrative attachment and sale proceedings here is a suspension that occurs by operation of law, and does not require the execution judge to rule on the suspension of the attachment and sale proceedings. Thus, if the attaching entity has set a specific date for selling the ship at public auction and the shipowner has filed his dispute action, the State and the public entity are bound by law to suspend the sale proceedings and not to proceed therein as soon as they are notified of this substantive dispute, without the need for the execution judge to issue a ruling in this dispute. Otherwise, such sale would be invalid and contrary to law, and this sale is suspended by operation of law, not by a court ruling, until the execution judge decides the dispute action.

This supports our legal opinion that if the shipowner or the interested party files a "stay of execution" application (ishkal) seeking suspension of execution, as is commonly and erroneously circulated, execution would not be suspended at all, since the text of Article 27 of the Administrative Attachment Law has prescribed a single, exclusive means for suspending the sale proceedings namely, the aforesaid dispute action, and not the "stay of execution" application as is erroneously common. In our legal opinion also in this regard, the legislator should not have worded the text of the aforesaid Article 27 in this formulation, namely that "The filing of an action contesting the substance of the amounts claimed or the validity of the attachment procedures...shall result in the suspension of the administrative attachment and sale proceedings...", given that the attachment has already been imposed in fact and its procedures have actually been completed by recording it in the attachment report and notifying the debtor thereof. How, then, can the attachment proceedings be suspended thereafter, when they have already occurred and been completed in fact?! The better course would have been for the legislator to provide that "The filing of the dispute action...shall result in the suspension of the administrative sale proceedings". This being a legislative error that must be amended. The dispute action suspends only the sale proceedings and not the attachment proceedings, and this is a legislative error requiring amendment.

(Third) The legal procedures examined by the execution judge who decides the substantive dispute, prior to ruling on the validity of the administrative attachment imposed against the ship or on its invalidity and its being deemed as if it had never occurred:

The provisions of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972, have specified the procedures that must be undertaken by the State and its public entities when imposing administrative attachment on the debtor's assets, including ships. Although these procedures are undertaken and carried out by the State and its public entities of their own accord, and without a final judicial judgment or order bearing the executory formula, judicial oversight over all of these procedures nevertheless arises here upon the filing of the aforesaid dispute action by the shipowner or by any party having an interest. It is, therefore, subsequent oversight rather than prior oversight. These required procedures are as follows:

(1) The existence of a written order issued by the representative of the State or the representative of

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the public entity that imposed the attachment on the ship, pursuant to the text of Article 2 of Law No. 308 of 1955, as amended by Law No. 30 of 1972, concerning administrative attachment, which provides that: "Attachment procedures may not be undertaken except pursuant to a written order issued by the Minister, the head of the authority, the governor, the director, or the representative of the public legal person, as the case may be, or by whomever each of them delegates in writing." Thus, the absence of such a written order issued by the representative of the attaching entity invalidates the administrative attachment imposed against the ship, and the execution judge rules the attachment procedures null and void on that ground.

(2) The attaching party's representative must also notify the shipowner or its master, give him a notice to pay, and warn him of the attachment of the ship before proceeding with the attachment, pursuant to the text of Article 4 of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972, which provides that: "The attaching party's representative shall serve upon the debtor or the person answering on his behalf a notice to pay and a warning of attachment, and shall proceed immediately to impose the attachment accompanied by two witnesses." If the attaching party's representative fails to warn the debtor that is, the shipowner or its master — and to give them notice to pay, the administrative attachment imposed against the ship is invalid, and the execution judge rules the attachment procedures null and void on that ground.

(3) The attaching party's representative — that is, the representative of the State or the attaching public entity — must likewise state in the attachment report the value of the amounts claimed, their types, and their due dates, and must accurately describe the place where the attached movables are located — that is, determine where the attached ship is located, whether it is at anchorage, inside the port, or on the quay, and precisely identify its number and name and what is contained in and adjacent to it all as the law has specified by the phrase "an accurate description" and so forth pursuant to the express text of the second paragraph of Article 4 of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972, which provides that: "The attachment report shall state the value of the amounts claimed, their types and due dates, and an accurate description of the place where the attached movables are located." If the attaching party's representative fails to state and specify in the attachment report the value of the amounts claimed, their types, and their due dates, the administrative attachment imposed against the ship is invalid, and the execution judge rules the attachment procedures null and void on that ground. Jurisprudence has likewise settled that: "The attachment is invalid if it is devoid of a statement of the amounts due, their types, and their due dates."

(4) The attachment report must also be drawn up at the place where the attachment is imposed, otherwise it is invalid. That is, the attaching party's representative must draw it up on board the ship and at its location, otherwise it is invalid. In this regard, jurisprudence has settled that: "The attachment report must be drawn up at the place where the attachment is imposed, otherwise it is invalid." If the attaching party's representative fails to draw up the attachment report at the place where it is imposed that is, on board the ship, then this administrative attachment imposed against the ship is null and void, and the execution judge rules the attachment procedures null and void on that ground.

(5) The attaching party's representative must also refrain from breaking any doors or forcing open any locks by force in order to impose the attachment, except in the presence of one of the

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judicial police officers, that is, one of the waterway police officers at the port where the attachment is imposed. That officer must sign the attachment report together with the attaching party's representative, otherwise it is invalid, pursuant to the text of Article 5 of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972, which provides that: "The attaching party's representative may not break doors or force open locks by force in order to impose the attachment except in the presence of one of the judicial police officers, and that officer must sign the attachment report, otherwise it shall be invalid."

(6) The attaching party's representative must likewise record in the attachment report the procedures he has undertaken, the obstacles and objections he encountered during the attachment, and the measures he took in respect thereof, pursuant to the text of Article 6 of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972, which provides that: "The attachment report must include the procedures undertaken by the attaching party's representative, the obstacles and objections he encountered during the attachment, and the measures he took in respect thereof. The attachment report must set out in detail the individual items of the attached objects, stating their type, descriptions, quantity, weight or measurement if they are of the kind that is measured, weighed, or gauged, and their approximate value. It must also specify the day and hour of the sale and the place where it shall be conducted, and the sale may not take place before the lapse of eight days from the date of the attachment. If the attached objects are perishable, they may be sold on the day of the attachment or on the following days."

(7) The attaching party's representative must also record the signature of the debtor (that is, the shipowner) on the attachment report if he is present, or of whoever acts on his behalf, that is the master or one of their representatives. The signature of the attaching party's representative and of the drafter of the report, as well as of the two witnesses and the keeper, is likewise required. A copy of the notice, the warning, and the attachment report shall be delivered to the debtor or to the person signing on his behalf, and another to the keeper. If the debtor or the person answering on his behalf refuses to sign the notice, the warning, and the attachment report, and refuses to receive a copy thereof, the attaching party's representative shall record this in the attachment report, pursuant to the text of Article 7 of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972. A copy of the attachment report must also be posted on the door of the police station, district, or office within whose jurisdiction the attachment falls, and this measure stands in lieu of service. If the debtor or the person answering on his behalf is not found, the attaching party's representative shall record this in the attachment report and deliver a copy to the officer of the police station within whose jurisdiction the attachment falls, while posting another copy in the places specified in the preceding paragraph, and this measure stands in lieu of service. Thus, if the attachment report lacks the signature of the debtor or the person answering on his behalf, or lacks a record of their refusal or non-refusal to sign, the attachment is invalid on that ground. This is what jurisprudence has settled and what the rulings of the Court of Cassation have consistently held: "The omission to state the signature of the debtor, or of the person answering on his behalf, or of the keeper, or the record of any of their refusals to sign the attachment report, entails the invalidity of the attachment itself."

(8) The attaching party's representative must also record the signature of the keeper appointed over the ship on the attachment report if he was appointed from persons other than the debtor or the possessor. The master is usually appointed as

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keeper over the ship pursuant to the text of Article 11 of the Administrative Attachment Law No. 308 of 1955, as amended by Law No. 30 of 1972, which provides that: "Upon imposing the attachment, the attaching party's representative shall appoint one or more keepers over the attached objects. The debtor or the possessor may be appointed as keeper. If no one accepts the keepership and the debtor or the possessor is present, he shall be charged with the keepership and his refusal shall not be recognized. If he is not present, the keepership shall be entrusted temporarily to one of the local administration officials." In this regard, jurisprudence has settled that: "The attachment report must include the following particulars: the name of the keeper in whose custody the attached objects are left, stating his capacity, address, his card number and the authority that issued it, whether the keepership is for remuneration or without remuneration and the amount of such remuneration if the keepership is remunerated, and the acknowledgment of the remunerated keeper of his acceptance of the remuneration."

(9) Finally, the attaching party's representative must, pursuant to the text of Article 14 of Law No. 308 of 1955, as amended by Law No. 30 of 1972, concerning administrative attachment, post a copy of the attachment report in a conspicuous place at the place of sale and on the door of the place where the attached objects are located, or at the administrative headquarters to which such place is subordinate. This shall be deemed sufficient notice, and it shall be done at least two days before the sale. Publication concerning the attachment may be made in the daily newspapers designated for judicial announcements, in the cases in which the attaching party deems it necessary to publish by this means. The attaching party's representative may postpone the sale for serious reasons. Whenever the sale is postponed, he shall record in the original report and in the copy thereof specified in the first paragraph the reason for the postponement and the new date, at least two days before such date. He shall, at the same time, notify both the keeper and the debtor of this date, provided that the posting is repeated, with the possibility of repeating the publication in the manner set forth in the two paragraphs. If the debtor refuses to sign the document evidencing such notice to him, it shall be signed by the attaching party's representative and two witnesses in proof thereof.



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Facing a Marine Casualty or Pollution Incident in Turkish Waters: Legal Risks and Liabilities by Efe Ülken, Ülken & Partners (Türkiye)

1. Introduction

Maritime accidents and incidents of ship-source marine pollution may give rise to significant legal consequences in terms of navigational safety, the safety of life and property, and the protection of the marine environment. Maritime accidents occurring in Turkish waters, including collisions, groundings, sinkings and similar incidents, as well as pollution incidents originating from ships, may, depending on the nature of the specific incident and the fulfilment of the conditions prescribed under the applicable legislation, be subject to technical investigations, administrative sanctions, criminal investigations and claims for compensation under private law. These legal implications may also arise in relation to yachts and superyachts, whether privately or commercially operated, subject to the scope and requirements of the applicable legislation. These

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processes, which serve distinct purposes and entail different legal consequences, are conducted within the framework of national legislation and the relevant international conventions to which Türkiye is a party.

This article examines the legal framework applicable to maritime accidents and marine pollution incidents occurring in Turkish waters, including those involving yachts and superyachts, the duties and powers of the competent authorities, notification and response obligations, and the procedures governing examinations and investigations. It further assesses the administrative, criminal and civil liability that may arise from such incidents in light of the applicable legislation, judicial decisions and scholarly opinions.

2. Legal Framework and Competent Authorities

The legal regime applicable to maritime accidents and incidents of ship-source marine pollution occurring in Turkish waters is governed by national legislation, primarily Law No. 6102, the Turkish Commercial Code ("TCC"), Law No. 2872, the Environmental Law, Law No. 5312 on the Principles of Emergency Response and Compensation for Damages in the Pollution of the Marine Environment by Oil and Other Harmful Substances ("Law No. 5312"), and Law No. 5237, the Turkish Criminal Code ("TCrC"), as well as the relevant international conventions to which Türkiye is a party. While the general principles governing the prevention of marine pollution are regulated under the Environmental Law, Article 2 of Law No. 5312 establishes a specific response and compensation regime applicable to vessels of 500 gross tonnage or above carrying oil and other harmful substances, as well as the coastal facilities specified therein. Accordingly, the determination of the applicable provisions depends on the nature of the incident, the location in which it occurs, and the characteristics of the vessel concerned.

Pursuant to Articles 12 and 24 of the Environmental Law, the authority to conduct administrative inspections and impose sanctions in relation to marine pollution primarily rests with the Ministry of Environment, Urbanization and Climate Change, although such authority may be delegated to the relevant institutions. Indeed, Circular No. 2023/3 on the Delegation of Authority for the Inspection of Ship-Source Marine Pollution grants inspection and administrative sanctioning powers to port authorities, the Coast Guard Command, the Turkish Environmental Agency and certain metropolitan municipalities, within the scope of the conditions and areas of jurisdiction specified therein.

Technical investigations into maritime accidents are conducted by the Transport Safety Investigation Center under the Regulation on the Investigation of Marine Accidents and Incidents. Pursuant to Article 8 of the Regulation, such investigations are aimed at identifying the causes of accidents and preventing similar incidents and do not constitute judicial or administrative investigations. However, pursuant to Article 2 of the Regulation, private yachts are generally excluded from its scope, subject to the exceptions provided for therein, including cases where they are involved in an accident with a vessel falling within the Regulation's scope.

Conversely, where there is suspicion that an incident constitutes a criminal offence, a criminal investigation is conducted by the public prosecutor. Consequently, technical investigations, administrative inspections and criminal investigations concerning the same maritime accident or pollution incident may be conducted simultaneously by different competent authorities.

3. Notification and Response Obligations

Where maritime accidents occurring in Turkish waters result in marine pollution or give rise to a risk of pollution, the parties concerned are obliged to notify the competent authorities and take the necessary preventive measures. Pursuant to Article 13 of Law No. 5312, any person who is involved in, witnesses, hears of or otherwise becomes aware of an incident is obliged to report the pollution or risk of pollution to the relevant authorities and emergency response units. Furthermore, Article 6 of the Implementing Regulation

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of the aforementioned Law requires shipmasters to promptly report incidents of pollution caused by oil or other harmful substances of which they become aware during navigation to the designated competent authorities. Accordingly, the notification obligation does not require actual environmental damage to have occurred; the existence of a risk of pollution is sufficient to trigger the notification requirement under the Law.

In addition to the notification obligation, pursuant to Article 8 of the Environmental Law, the parties concerned are obliged to prevent pollution where there is a risk of its occurrence, while, where pollution has occurred, the polluter is required to take the necessary measures to stop the pollution and eliminate or mitigate its effects. Similarly, Article 5 of Law No. 5312 imposes an obligation on the parties responsible for vessels and coastal facilities falling within the scope of the Law to maintain preparedness and adopt preventive measures aimed at preventing incidents and mitigating, eliminating or limiting any resulting damage. In this context, the obligation to take necessary measures is not limited to response activities following the occurrence of pollution but also encompasses the prior identification of pollution risks and preparedness to address such risks.

4. Investigation Procedures and Evaluation of Evidence

In the examination and investigation processes conducted following maritime accidents and incidents of ship-source marine pollution, it is first necessary to establish the circumstances in which the incident occurred, its causes and its consequences. In this context, technical safety investigations conducted pursuant to the Regulation on the Investigation of Marine Accidents and Incidents are aimed at identifying the factors contributing to the accident and preventing similar incidents, rather than directly determining fault or legal liability. By contrast, administrative investigations conducted under Article 25 of the Environmental Law involve the identification and documentation of acts violating environmental legislation by authorized inspection officers, as well as an assessment of whether the relevant administrative sanction should be imposed. Where there is suspicion that an incident constitutes a criminal offence, a criminal investigation is conducted by the public prosecutor pursuant to Article 160 of Law No. 5271, the Criminal Procedure Code. Accordingly, technical, administrative and judicial investigations concerning the same incident serve different purposes, and the findings obtained in each process must be evaluated in accordance with the applicable legal procedures.

The proper collection and evaluation of evidence are of paramount importance in determining legal liability arising from maritime accidents and pollution incidents. In particular, vessel navigation records, electronic data records, incident scene inspection reports, photographic and video evidence, sample analyses and expert reports constitute the principal forms of evidence used to establish the circumstances of the incident and identify the source of pollution. Pursuant to Article 26 of the Environmental Inspection Regulation, sampling is not mandatory where the polluted area, the type of pollutant and the polluting vessel can be identified through technical equipment. However, where the type of pollutant or the polluting vessel cannot be identified, samples are required to be taken depending on the nature of the incident.

5. Administrative and Criminal Liability

Administrative liability arising from maritime accidents and incidents of ship-source marine pollution may arise where obligations prescribed under the applicable environmental legislation are breached. Pursuant to Article 20, paragraph 1, subparagraph (ı) of the Environmental Law, administrative fines are imposed where petroleum and petroleum derivatives, contaminated ballast water, domestic wastewater or other waste are discharged into the sea from ships or other marine vessels in violation of the applicable legislation, with the amount of the fine determined on the basis of the nature of the pollutant and the gross tonnage of the vessel. However, where it is established that the pollution has been remedied using the vessel's

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own resources, the administrative fine is imposed at one-third of the otherwise applicable amount. Where the administrative fine is not paid immediately and in full, or sufficient security is not provided, the vessel may be prohibited from navigation and operation. Furthermore, pursuant to Article 25 of the Law, administrative sanction decisions may be challenged before the administrative courts within thirty days from the date of notification, and the initiation of legal proceedings does not automatically suspend the collection of the fine.

Where acts causing marine pollution constitute a criminal offence, the criminal liability of the parties concerned may also arise. Article 181 of the TCrC criminalizes the intentional discharge of waste or residual substances into the sea in a manner that causes environmental harm and contravenes the technical procedures prescribed by the relevant legislation, while Article 182 provides for criminal sanctions where the same act is committed through negligence. Accordingly, the determination of criminal liability requires an assessment of the circumstances in which the act was committed, the presence of intent or negligence, and the other statutory elements of the offence in light of the facts of the particular case.

6. Civil Liability, Compensation Claims, Insurance Coverage and Arrest of Vessels

In relation to compensation for damages arising from maritime accidents and incidents of ship-source marine pollution, it is first necessary to identify the liable parties and determine the applicable liability regime. Pursuant to Article 28 of the Environmental Law, persons who cause environmental pollution or damage are liable for damages arising from the pollution and environmental degradation they cause, irrespective of fault. Furthermore, under Article 6 of Law No. 5312, the responsible parties are held jointly and severally liable for various categories of damage arising from pollution or the threat of pollution, including clean-up and preventive measure costs, environmental restoration expenses, property damage, personal injury and loss of income.

Insurance coverage also plays a significant role in compensation claims arising from maritime accidents and pollution incidents. In this context, Protection and Indemnity (“P&I”) insurance provides coverage for the shipowner's legal liabilities towards third parties arising from the operation of the vessel, subject to the applicable insurance terms and coverage limits.

Furthermore, the arrest of a vessel may be sought to secure compensation claims arising from maritime accidents and pollution incidents. Article 1352 of the TCC recognizes claims arising from environmental damage caused by a vessel, as well as expenses incurred to prevent, minimize or remedy such damage, as maritime claims. Pursuant to Article 1353 of the TCC, an arrest order may be issued against a vessel to secure such claims. The arrest of a vessel constitutes a provisional legal protection measure intended to secure the creditor's potential compensation claim and does not, in itself, result in the recovery of the claim or a final determination of the debtor's liability. Nevertheless, pursuant to Article 1371 of the TCC, the shipowner or debtor may request the release of the vessel from arrest by providing sufficient security.

7. Conclusion

Maritime accidents and incidents of ship-source marine pollution occurring in Turkish waters may give rise to different legal consequences under administrative, criminal and private law. These legal consequences may arise not only in relation to commercial vessels but also in connection with yachts and superyachts, regardless of whether they are operated for private or commercial purposes. Accordingly, determining liability arising from such incidents requires a case-specific assessment of the circumstances in which the incident occurred, the applicable legislative provisions, the obligations alleged to have been breached, and the causal link between the incident and the resulting damage. Since technical safety investigations, administrative inspections and criminal investigations are subject to distinct objectives and procedures, it is essential to distinguish between the legal nature of these processes.

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In this context, the proper fulfilment of notification and response obligations following a maritime accident or pollution incident, the preservation of evidence, and the monitoring of proceedings conducted before the competent authorities in accordance with the applicable legislation are of significant importance in managing potential legal risks. These considerations are equally relevant to yacht and superyacht owners, operators and managers, particularly in light of the potential financial and operational consequences of maritime casualties and pollution incidents. Furthermore, an assessment of the applicable insurance coverage and legal mechanisms available to secure compensation claims is essential to protecting the rights of injured parties and safeguarding the legal interests of the parties concerned.



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Network Events

20th Annual ShipArrested.com Members Conference held last week in Hong Kong

The ShipArrested.com Members' Conference, hosted by CMS Hong Kong from 12–14 November 2026, marked the 20th edition of the international network's annual gathering. Bringing together legal practitioners and shipping professionals from 35 countries, the programme offered valuable networking opportunities and practical legal insights into current developments worldwide as well as regional maritime practices. The Mariners, with its close ties to the seafaring community, provided a particularly fitting venue.

Our host deserves particular praise for their warm hospitality and thoughtful organisation of a social programme that complemented the breadth of the working agenda. Highlights included Thursday evening's harbour-view welcome drinks and canapés, followed by a memorable Friday dinner at The China Club featuring a traditional face-changing performance. Special thanks also go to fellow local ShipArrested member, LSR Services, for generously sponsoring drinks throughout the weekend.

Saturday's optional sightseeing tour showcased Hong Kong's distinctive character, beginning with a Star Ferry crossing of Victoria Harbour and an open-top double-decker bus tour of Central. A journey aboard the historic Peak Tram brought panoramic views from Victoria Peak, while a junk boat ride to Lamma Island for a delicious seafood lunch rounded off the outing.



ANDREW HORTON, PARTNER, CMS HONG KONG WELCOMING DELEGATES AT THE START OF CONFERENCE PRESENTATIONS

Warm congratulations and thanks to CMS Hong Kong for hosting and all contributing speakers for making this landmark twentieth gathering a quintessential celebration of the expertise, collegiality and international cooperation at the heart of ShipArrested.com. Another successful meeting is officially on the books, and we now look forward to our 2027 gathering in Goa, India!



CONFERENCE DELEGATES AT THE CLOSE OF THE CONFERENCE WORKING AGENDA

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