

## **SHIP ARREST IN EGYPT**

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International jurisdiction of the Egyptian Courts: According the Egyptian Civil and Commercial code, the Egyptian Courts will have jurisdiction over Urgent and Conservatory procedures to be executed in Egypt irrespective of the nationality of the plaintiff or the defendant and even in case the Egyptian Courts are not competent to decide upon the subjective claim.

### **The applicable law**

Ship arrest in Egypt might be applied for under two different legal regimes:

**1-** The 1952 Brussels's Convention on unification of certain rules on arrests of sea-going vessels which has been ratified in Egypt.

**2-** The Egyptian Maritime Commercial Law No.8/1990, Articles(59-66).

The party pursuing the arrest needs only to establish that his claim is a "Maritime Claim" as enumerated under article 1 of the said Convention, which are similar to the ones provided for under article 60 of the Egyptian Maritime Commercial Law No8/1990.

## **Procedures and documents**

An application must be made before the competent court requesting the arrest of the vessel, showing evidence that the debt is already due and that such debt is a "maritime debt" as outlined above, and that the debt has not yet been paid. In addition to the above evidence, the following documents shall be required:-

- a.** A notarized and legalized Power of Attorney ("POA"), to be duly legalized by the nearest Egyptian Consulate.
- b.** All the relevant documents proving the debt together with an Arabic translation of each document by a sworn translator.
- c.** In case the arrest is intended not on the indebted vessel, but rather on a sister vessel, supporting evidence must be presented before the court proving that the vessel to be arrested is a sister vessel.
- d.** Payment of the relevant court dues.

The application for arrest as supported by the relevant documents will be then submitted before the judge, who will award or refuse granting the arrest and either way without giving any reasons for his decision.

In normal cases, an order of arrest will be awarded or refused within maximum 3 days, and in case granted, it becomes immediately enforceable on the vessel, through court bailiff who would issue minutes of arrest and notifies the Master that his vessel is under conservatory arrest.

Normally, in Egyptian ports, a court bailiff would also serve a notice of arrest upon the Port Authority, to the Port Police, and upon the Marine Inspection Department, thereby advising them of the arrest order granted by the court and such authorities will ensure that the vessel remains under arrest.

## **Counter Security**

Under Egyptian Law, there is no Counter security required from the plaintiff seeking for the arrest, whether the plaintiff is an Egyptian subject or a foreigner.

## **Arrest of a sister ship**

The plaintiff may arrest a sister ship provided that the sister vessel was owned by the same indebted owner at the time when the debt arose.

The plaintiff, however, is often requested by the Egyptian Courts to prove that both ships are owned by the same entity to obtain an order for arrest.

If the ship was under a demise charter, the plaintiff may arrest the same ship operated by the charterer or any other ship owned by the same charterer. However, evidence to that effect must be presented before the court at the time of the application for arrest.

## **Release Procedures**

The lifting of an arrest placed on a vessel in one of the Egyptian Ports may be effected, in case one of the following measures is undertaken :

### **First: Presentation of an adequate security in court's treasury**

The arrestee may present an application for lifting the conservatory arrest placed on the vessel before the competent judge (the president of the First Instance Court) provided presentation of an unconditional bank letter of guarantee with no time restrictions. The guarantee is to be issued by an Egyptian first class bank covering the value against which the vessel is arrested. The Judge would issue his decision after going through the application and the letter of guarantee. In the case the letter of guarantee fulfills the necessary requirements, the judge would issue his decision to deposit the guarantee in the court's treasury, pending a decision to be made on the subject of the claim whether amicably or judicially, and to lift the arrest placed on the vessel.

Upon issuance of such a decision to lift the arrest, the arrestor would obtain the executor form of the relevant judgment ordering the lifting of the arrest and delivers it to the court bailiffs to undertake the necessary formalities for the lifting of the arrest. The court bailiff would proceed to the Marine Inspection Department, and issue minutes of lifting the arrest. The latter department is to notify the remaining competent authorities of the lifting of the arrest and that there is no objection against the sailing of the vessel.

We must explain in this respect that the Courts in Egypt do not reckon with the P&I Clubs' letters of undertaking as acceptable security to lift the arrest.

### **Second: lifting the arrest without presentation of a bank letter of guarantee before court's treasury**

In case the arrest placed on the vessel is an undoubtedly wrongful arrest whether due to procedural or subjective reasons (as in case the debt has already been paid), the arrestee may file an Urgent Case before the Judge of Execution, thereby seeking that the arrest placed on the vessel to be considered as null and void. The judgment rendered by the judge in such a case is promptly executable by the power of law, without bail and without awaiting that a final judgment be issued by the court of appeal (in case the arrestor files an appeal against the said judgment). In normal circumstances, time frame for hearing such cases would be within 30 - 45 days.

### **Arrestor's right to complain against the lifting of the arrest in view of the insufficiency of the guarantee deposited**

In case the arrestor considers that the guarantee deposited by the arrestee pursuant to a court order against the lifting the arrest placed on the vessel is inadequate security whether in view of its quantum or its terms in case it contains unacceptable conditions, he may file an obstruction against enforcement of the court order allowing the lifting of the arrest. Accordingly, the court order allowing the lifting of the arrest shall not be enforced pending a deciding upon the obstruction action filed. However, in order that

such effect to take place, the obstruction action should be filed before the court of execution before actually executing the order for lifting the arrest. Upon filing the obstruction action, a hearing would be scheduled as soon as possible before the Judge of Execution. Upon conclusion of the pleadings, the judge may issue its judgment either suspending execution of the order for lifting the arrest (i.e. the arrest remains enforced on the vessel) or rejecting the obstruction action and proceeding with the execution of the order for lifting the arrest and in such a case, the vessel shall be able to sail.

### **Responsibility for wrongful arrest**

As a general rule, a claimant has the right to resort to courts to pursue his actions. However, in case it is revealed that the arrest placed on the vessel is ill-founded as in cases the debt has already been paid, the court may order the arrestor to pay damages which cover the actual damage sustained by the vessel's owners, her charterers, operators or managers as well as the loss of profits, provided that both types of damage are fully supported with document.

### **Responsibility for fraudulent arrest**

In case it is revealed that the arrest has been placed on the vessel by virtue of fraudulent or fabricated documents, the arrestee may pursue criminal proceedings against the arrestor even in cases where the arrestee, towards avoiding delaying the vessel, pays the value of the claim since such payment will not hinder his right to pursue criminal proceedings against the arrestor. In such cases, the arrestee must prove that the documents used in the arrest are fraudulent, fabricated or null.

## **Costs of arrest**

As the official language before the courts is the Arabic language, the supporting documents proving the debt must be translated into Arabic. As concerns the costs for filing the arrest before the court, these do not exceed USD100.- plus expenses ranging from USD300.- to USD500.- depending on the port where arrest is placed against the vessel.

Lawyers Fees will depend on numerous factors including time spent and complexity of the case. Accordingly fees differ and are best calculated on case by case basis.

**A/**The court fee: to issue a writ around us \$ 30 and no bailiff s fee for serving the writ on board .

- No expenses for maintaining the ship under arrest

**B/** Normally, the court will not make any order or request security for the port charges or the crew wages. Such charges will accumulate against the vessel and the owner will be liable for the same during the time period of the arrest and the main action proceedings.

The port authority and the crew may then, in priority to other creditors under Articles 29 (b) and (c) of the Egyptian Maritime Code,

**C/** Lawyers Fees will depend on numerous factors for example time spent, complexity of the case documents to perused and so on. Estimates can usually be given to lawyers for specific cases.

**P.S:** This article provides only a general overview and must not be relied upon as constituting advice in any specific case. Advice should always be sought before taking any steps in actual proceedings.

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This article provides for a general overview only and must not be relied upon as constituting advice in any specific case. Advice should always be sought before taking steps in proceedings- For Further information pls. Contact Mr. U. Soliman