

PREVENTIVE DETENTION IN THE EGYPTIAN LAW

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What is the law applied to the preventive Detention of a ship ?

In Egypt the law that is applied to the preventive detention of a ship is law No . 8 / 1990 concerning the issue of the maritime commercial law , wherein the preventive detention of ship is governed by Articles from 59 to 66 , in addition to Brussels convention 1952 , concerning the unification of some rules of preventive detention of ship .

There is no contradiction between the Brussels treaty provisions and the Egyptian Maritime commercial law that copes with the above - mentioned convention .

What is the concerned authority with the Issue of the preventive Detention of ships ? How will it Issue it ?

The concerned authority with the issue of the order of preventive detention of the ship is the chairman of the court of first Instance in whose circuit the port wherein the ship landed .

The detention order is issued upon a petition presented to the court chairman appended to it all documents emphasizing the petition . Article 59 Maritime decides that the preventive detention of a ship may be performed upon the ship by the order of the chairman of the concerning court of first instance or who represents him . The order of detaining the ship may be applied even though the ship is ready to depart .

What are the debts that give the Right for the preventive Detention of the ship ?

The preventive Detention will never be valid except only for a maritime debt . The maritime debts are certified in detail in Article 60 maritime that defines the following :

- a.** Ports and water parts duties .
- b.** Expenses of removing , pinching up , or lifting the shipwreck and the goods .
- c.** Damages caused by the ship through collision , pollution , or other similar maritime accidents .
- d.** Losses in human lives , physical injuries caused by the ship or through its investment .
- e.** Special contracts of utilizing the ship or its lease.
- f.** Insurance at the ship.
- g.** Special contracts of transporting goods therein according to a lease contract or a Freight policy.
- h.** Destruction or deterioration of the goods and the properties the ship transports .
- i.** Rescue
- j.** compound losses .
- k.** Towage of the ship .
- l.** Guidance
- m.** supplying materials and articles needed for the investment and maintenance of the ship whatever the supplier may be .
- n.** Building , repairing or equipping the ship and the expenses of its stay in the dock .
- o.** The wages of the shipmaster , the officers , the shipmen and the maritime agents .
- p.** The expenses the shipmaster , the consigners , the charters or the maritime agents spend on the account of the ship or its owner .
- q.** The dispute on the ship ownership .
- h.** The dispute on the common ownership of a ship , its possession , or its investment or on the rights of the common owners in the amounts resulting from the investment .
- s.** The maritime mortgage .

What are the Documents Needed for the performance of the Detention ?

An official delegation should be issued by the applicant for detention to his lawyer . This delegation must be issued either in Egypt or any foreign country . The delegation must be issued from the registration office or the concerned authority , then the delegation should be ratified by the ministry of justice , the foreign ministry and the Egyptian consulate in the country of the detention applicant .

As for the documents certifying the maritime debt should be all original and translated into Arabic , the language used in the Egyptian courts .

Will there be Need for presenting surety Against the petition for Detention ?

The Egyptian law does not stipulate any conditions for any surety of any kind to be presented by the ship detention applicant whether be he Egyptian or foreigner .

What are the specific stipulations of the ship that may be detained?

The detention of the ship that is related to the debt may be performed without regard to whom who is responsible for this debt.

The sister ship

With the exception of the debts noted in sections q , r , s of Article 60 and with the exception of any other maritime debt excluding the exceptions , the detention may be performed on any brother ship of the debtor , provided this ship had been owned to the debtor by the time the debt existed .

Article 62 / 1 states that if the charterer of the ship practices its navigational control , and is the only responsible for the maritime debt related to it , the creditor may perform detention of this ship or any other ship owned by the charterer , and the detention may not be performed of any other ship of the owner lesser concerning this maritime debt .

Article 62 / 2 states that the provisions of the previous section may be adopted in all cases wherein another person other than the ship owner responsible for the maritime debt .

Article 61 / 1 notes that anyone adheres to one of the debts mentioned in Article 60 will have to lay detention on the ship to which the debt is related or on any other ship owned to the debtor if it had been owned by him by the time the debt existed .

Article 61 / 2 tells that the detention of a ship other than that related to the debt may not be valid if the debt is of those mentioned in sections q , r and s of Article 60 .

May the preventive Detention laid upon the ship be Adjoined Because of a maritime Debt Arising from a Dispute in the ship ownership ?

The order of adjourning the preventive detention will not be valid if it is caused by a debt arising from a dispute over the common ownership , its possession or its investment or because of the dispute over the common ownership resulting from its investment ; though Article 63 / 2 states that the order of adjourning the detention will not be valid if it is caused by maritime debts noted in sections q and r of Article 60 of this law . In this case the chairman of the court of first instance or who represents him may permit the ship possessor to invest it if he presents enough surety or organize the ship control within the period of detention in the manner the permit allows .

How will the preventing Detention of the Ship be Adjourned ?

Article 63 / 1 states that the chairman of the court of first instance or his representative order the detention adjourn if a surety or another enough guarantee covers the debt .

What will be the Needed practical surety for Adjourning the ship Detention ?

In practice , the Egyptian courts will not adjourn the ship detention without presenting a banking letter of guarantee to cover the fulfillment of the debt .

Will the letters of Guarantee Issued by the clubs of protection and compensation be Accepted ?

The guarantees issued by the clubs of protection and compensation for adjourning the preventive detention will not be accepted in the Egyptian Courts .

But if the detainer accepts the guarantee presented by the clubs of protection and compensation , the detainer himself may adjourn the detention of the ship .

What are the procedures of Applying the preventive Detention ?

After the issue of the order of the preventive detention of the ship , the detainee's lawyer receives an executive copy of the detention order , then he goes to the specific summoner and registers the detention order in the summonses registers , and the specific summoner goes to the ship place accompanied by guards of the port police . The summoner delivers the shipmaster a copy of the detention order , writes a minute of the ship detention and assigns a guard for it . The detention minute consists of the original minute that the summoner keeps with him to give it back to the court , in addition to it there are several copies , in the number of the parties who have to be notified by the detention, for each of them to perform his role . (All the expenses of the summoner should be on the account of the detention applicant) .

Who are the other parties that have to be Notified by the Detention ? What is the role of Each ?

Article 64 / 1 Egyptian Maritime notes that :

A copy of the minute should be delivered to the shipmaster or his representative , a second copy should be delivered to the concerned maritime authority in the port wherein the detention is executed to prevent the ship from departing , and a third copy should be delivered to the registration office of the above - mentioned port .

But what is meant by the concerned Authority in the port wherein the Detention is executed ?

By that authority we usually mean the authority concerned with the issue of the departure permit ; in the Suez port the public Authority of the Red sea ports , in port said port , the port Said port Authority , in Damietta port the public Authority of Damietta port , and in Alexandria port it is the public Authority of Alexandria port .

But if the ship to be detained will cross the Suez canal Authority should be notified , whether the ship is landing at Suez port or port said port , so that the Suez canal Authority executes the judicial order of detaining the ship according to its specific job .

Will the Detention Minute be Registered in the Ships Register ?

If the protectively detained ship hoists the Egyptian flag , the ships Registration office at the port wherein the detention is executed should be notified to register the detention in the specific register of the ship if the ship is registered in this port . If it is registered at another Egyptian port , other than that wherein the detention is executed , the ships registration office wherein the ship is registered should be notified .

What is the court of Action of the topic Notice and the period within which the Action should be presented ?

Article 65 of the Egyptian maritime law states that the creditor has to present the notice of the debt and the validity of the detention to the court of first Instance in whose circuit the detention is executed within the eight days following the delivery of the detention minute to the shipmaster or his representative , otherwise the detention will be invalid .

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