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ARREST OF SHIPS

An arrest of ship or cargo is where, pursuant to an order of the court, movement of the ship or cargo is restricted. This may arise in circumstances where there is a claim against the ship for example, due to a collision. One of the unique aspects of admiralty law is that a ship is treated as a legal person and may therefore be sued.

Under Jamaican law, a vessel may be arrested to obtain security in respect of maritime proceedings commenced in Jamaica or another jurisdiction against that vessel or a sister ship. A sister ship is a vessel with the same owner as the sued vessel or a vessel owned, chartered by or in possession of the person who owns the sued vessel. Whilst this may allow for the issue of an arrest warrant, it does not include the seizure of a ship in execution or satisfaction of a judgment.

An arrest warrant may not be issued against a ship owned by a State where by any convention or treaty, Jamaica has undertaken to minimize the possibility of arrest of ships of that state or where a caution against arrest has been entered. A caution does not, however, prevent the vessel from being arrested as the Court may order payment of compensation to the owner or persons interested in the arrested property.

No vessel may be re-arrested in respect of the same maritime claim. However, where there is a default in the performance of a guarantee or, undertaking given to procure the release from arrest of a vessel, an application may be made for an order permitting re-arrest. Once the vessel is arrested it is deemed to be in the custody of the Bailiff and removing the vessel or property on it without his permission is deemed to be contempt of court.

Where the ship and not its cargo is under arrest, cargo owners may apply to the court to have the Bailiff discharge it at their expense. Where the cargo and not the ship is arrested, the owners may request that the Bailiff seek an order to discharge the cargo with the

associated costs forming part of the Bailiff's expense, this being recoverable by the owner.

Security for Release

In order to facilitate the release of a vessel from arrest security is normally given to the Court covering the amount of the claim or claims. The Court will accept security for principal, interest and costs in the form of a bond or a written undertaking given by a recognised Protection & Indemnity Club (ships' insurers formed by a group of ship owners).

Judicial sale

Where an owner is unable to meet the claims made against the ship, it will be sold via court order and payment of the proceeds of sale will be made in accordance with the priority established in **section 89** of the **Shipping Act**. The expenses of the Bailiff in preserving the ship and conducting the sale have the highest priority ranking, and it is therefore important that the agent of the vessel and or its attorneys not only ensure that his costs are reduced to a minimum but also that certain expenses including crew welfare are for the bailiff's account. Mortgagees' claims will be paid out immediately after those of the wages of the crew and master's disbursements and is prior to other maritime liens. The effect of such sale is the removal of all liens and encumbrances from the vessel thus enabling the purchaser to obtain a clear title.

Wrongful arrest

Where in relation to an action for arrest the party instituting the proceedings unreasonably and without good cause obtains the arrest of a ship or other property, he or she will be liable in damages to a party to the proceedings or to a person who has an interest in the ship or property.

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