

Procedures of Arrest in Egypt

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Conservatory arrest procedure under Egyptian Law

A creditor has the right to apply before the Chief of the Court of First Instance in his capacity as a judge of urgent matters (Competent Judge) for an order to arrest a vessel for security, if such claim is considered to be a 'Maritime Claim'.

The creditor's application should contain a brief explanation of the debt and reasons why he is applying for security. Furthermore, he must prove that the liabilities giving rise to the claim come within the definition of 'Maritime Claims' as defined in the Egyptian Maritime Law and the 1952 Brussels Convention. To do so, the applicant must support his application with sufficient documents to validate his claim.

'Maritime Claims' are defined in the Egyptian Maritime law by Article 60, which stipulates that no conservatory arrests may take place unless for settlement of a marine debt. The debt is to be considered as a marine debt if it arises out of one or more of the following reasons:

- Ports and sea channels duties.
- Expenses concerning removal, picking up, or lifting the ship wrecks and cargo.
- Damage caused by the ship caused either by collision or pollution or other similar marine casualties.
- Loss of life or personal injury caused by the ship or occurring in connection with her operation.
- Contracts related to the use or hire of the ship.
- Insurance on the ship.
- Contracts related to the carriage of goods by means of a charterparty or bill of lading.
- Loss of or damage to goods and baggage carried on the ship.
- Salvage.
- General average.
- Ship's towage.
- Pilotage.
- Supply of goods or materials whether supplied to the ship for her operation or for her maintenance; whichever maybe the source of such supply.
- Construction, repair or equipment of the ship or dock charges and dues.
- Wages of Masters, Officers, or crew.
- Master's disbursements, and disbursements made by shippers, charterers or agent on behalf of a ship or her owner.
- Disputes as to the ownership of the ship.
- Disputes over the common ownership of the ship or her possession, employment, or in common earnings of that ship, resulting from her exploitation.
- Marine mortgage.

This enumeration, as mentioned in the law, is made on an exclusive and exhaustive basis, and appears to

be modelled closely on the list of maritime debts set out in the 1952 Brussels Convention.

The Court's decision and its effect

The Competent Judge who is reviewing the application and its accompanying documents has the right to carry out a brief investigation into the grounds upon which the application is made. At his own discretion, he is entitled to allow or reject the order without specifying reasons for his decision.

If the application is accepted

No counter-security is required. The applicant is entitled to enforce the conservatory arrest order by arresting the debtor's assets/vessel as specified in the court order and he is required to file a substantive case within 8 days from affirmation of the conservatory arrest order, otherwise the order will be considered null and void.

In response to an arrest, the debtor shipowner may take the following action:

- Submit an application for the lifting of the arrest against a suitable guarantee, in order to replace the vessel as the form of security with such guarantee. The Egyptian courts do not accept a letter of undertaking in order to release the vessel. They do, however, accept the submission of a bank letter of guarantee, which shall not be cancelled unless a final judgment is issued or a settlement between the parties to the dispute is agreed.
- File an objection (within 10 days) against the conservatory arrest order. This, in and of itself would, not stop the arrest proceedings and it is important to note that this procedure is lengthy and the matter will be treated as a normal court procedure, which normally takes years to obtain a final judgment from the Court.

If the application is rejected

The applicant would be entitled to proceed as follows:

- Submit a new application. The further application will be heard again in absence of the parties and the judge may again reject or accept the application but, in the latter case the judge must state the reasons that the application was accepted after the initial application was rejected.
- File an opposition before the Court of First Instance. This would result in a full hearing with the attendance of all parties and the Court will issue a judgment either confirming or reversing the decision given by the sole judge.

This procedure follows the normal procedures of filing a lawsuit, namely that the judgment rendered from the Court of First Instance is subject to appeal before the Court of Appeal and before the Court of Cassation.

Conclusion

Legally speaking, the application for an arrest order is heard by the Competent Judge in the absence of the parties and the decision is given on the documents. The question of whether to accept or reject the application is left to the discretion of the Competent Judge and no reasons are required to be given in either case.

Consequently, and according to our experience before the Egyptian courts, an application to obtain an arrest order should be supported with sufficient documents, which must be original and official; otherwise the chances of success in obtaining an arrest order will be low.