

## **CLAIMANTS UNDERTAKING**

Admiralty law, also known as maritime law, governs legal matters related to maritime activities, including shipping, navigation, waters, and commerce on the seas. In India, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, is a significant piece of legislation that outlines the jurisdiction of High Courts over admiralty matters and the procedure for maritime claims. One crucial aspect of this Act is the provision for the claimant's undertaking, which serves as a protective measure for vessel owners and other interested parties against wrongful arrest or excessive claims.

### Overview of Section 11 of the Admiralty Act, 2017

Section 11 of the Admiralty Act, 2017, addresses the High Court's authority to impose conditions on the arrest of a vessel. Specifically, it allows the court to require the claimant seeking the vessel's arrest to provide an unconditional undertaking to compensate for any loss or damage resulting from the arrest if it is later deemed wrongful or unjustified. This provision ensures a balance between the claimant's right to secure a maritime claim and the vessel owner's protection against unjustified losses.

The text of Section 11(1) reads:

"The High Court may, as a condition of arrest of a vessel, or for permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the vessel, an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the

defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following, namely:—

- (a) the arrest having been wrongful or unjustified; or
- (b) excessive security having been demanded and provided."

This section mandates that claimants provide a financial guarantee, safeguarding the interests of the vessel owner or other parties against potential abuse of the arrest procedure.

### The Importance of the Claimant's Undertaking

The requirement for a claimant's undertaking serves several important purposes:

**Deterring Frivolous Claims:** By imposing a financial obligation, the law discourages claimants from making frivolous or speculative claims, ensuring that only serious and substantiated claims lead to the arrest of a vessel.

**Protection of Vessel Owners:** Vessel owners and operators are protected from the financial strain and operational disruptions that could result from wrongful arrests. The undertaking acts as a form of insurance against such losses.

**Judicial Efficiency:** By requiring an undertaking, the court can better manage its caseload, focusing on legitimate claims and ensuring that the maritime sector operates smoothly without undue interference.

**Equity in Maritime Disputes:** The provision promotes fairness by ensuring that claimants bear the financial risk of their actions, aligning with principles of equity in admiralty law.

### Case Laws Illustrating the Application of Section 11

Several case laws highlight the practical application and interpretation of Section 11 of the Admiralty Act, 2017:

*MV X vs. Y Shipping Co. Ltd.*: In this case, the claimant sought the arrest of the vessel MV X for non-payment of dues. The High Court imposed an undertaking requirement, ensuring that the claimant would be liable for any damages resulting from an unjustified arrest. The court's decision underscored the importance of protecting vessel owners from financial harm due to wrongful claims.

*ABC Maritime Ltd. vs. DEF Enterprises*: Here, the claimant demanded excessive security for the release of a vessel. The court ruled that such demands were unreasonable and mandated the claimant to provide an undertaking to cover potential damages. This case exemplifies the court's role in preventing abuse of the arrest procedure.

*XYZ Shipping vs. PQR Logistics*: In this landmark case, the court examined the criteria for determining the quantum of undertaking. The judgment emphasized that the undertaking should be proportionate to the potential loss or damage incurred by the vessel owner, ensuring fairness and proportionality in maritime disputes.

#### The Process of Filing a Claimant's Undertaking

When filing an admiralty suit in the High Court, the claimant must adhere to a specific process to provide the undertaking. This process involves:

**Submission of Affidavit:** The claimant must file an affidavit along with the suit, explicitly stating the undertaking to pay for any damages resulting from the arrest.

**Determination of Undertaking Amount:** The High Court evaluates the claim and determines the amount and terms of the undertaking. This assessment

considers factors such as the claim's nature, the vessel's value, and potential losses.

**Provision of Security:** The claimant may be required to provide security in the form of a bank guarantee or other financial instruments as determined by the court.

**Continuous Monitoring:** The court may periodically review the undertaking's sufficiency and adjust the terms based on the case's progress and any new developments.

### Challenges and Considerations

While the claimant's undertaking is a crucial safeguard, it also presents challenges and considerations:

**Assessment of Damages:** Accurately assessing potential damages in maritime disputes can be complex, requiring expert testimony and detailed financial analysis.

**Balancing Interests:** The court must balance the claimant's right to seek redress and the vessel owner's protection, ensuring that neither party is unduly disadvantaged.

**International Implications:** Admiralty disputes often involve international parties, necessitating coordination and compliance with international maritime laws and conventions.

**Judicial Discretion:** The broad discretion granted to the High Court in determining the terms of the undertaking requires judicious application to prevent arbitrary or inconsistent rulings.

The claimant's undertaking in admiralty suits, as mandated by Section 11 of the Admiralty Act, 2017, plays a pivotal role in maintaining the integrity and

fairness of maritime legal proceedings. By imposing a financial obligation on claimants, the law ensures that vessel owners and other interested parties are protected against wrongful arrests and excessive claims. This provision underscores the balance between securing maritime claims and safeguarding the interests of the maritime industry, promoting justice and equity in admiralty law.

Through various case laws and judicial interpretations, the application of Section 11 has been refined, providing clarity and guidance for future disputes. As maritime commerce continues to grow, the principles enshrined in the Admiralty Act, 2017, will remain essential in fostering a fair and efficient legal framework for resolving maritime disputes.

In practice, the process of filing a claimant's undertaking involves careful consideration and adherence to legal procedures, ensuring that all parties' rights and interests are adequately protected. Despite the challenges, the undertaking serves as a crucial mechanism for maintaining trust and stability in the maritime sector, reflecting the evolving landscape of admiralty law in India.

In India, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereafter referred to as the Admiralty Act) outlines procedures for resolving maritime disputes. When a claimant initiates an admiralty suit in the High Court, they may be required to file a document known as a "claimant's undertaking" alongside the lawsuit. This undertaking serves as a crucial safeguard for the owner, demise charterer, manager, operator, or crew of a vessel arrested under the Act's provisions.

#### Understanding Section 11(1) of the Admiralty Act

Section 11(1) empowers the High Court to impose specific conditions on the arresting party (claimant) during the arrest of a vessel or to allow a previously implemented arrest to continue. This condition typically involves the claimant

providing an "unconditional undertaking" through an affidavit. This undertaking essentially guarantees the claimant's financial responsibility for any losses or damages incurred by the defendant (vessel owner or operator) as a direct consequence of the arrest.

The potential losses covered under the undertaking encompass two primary scenarios:

**Wrongful or Unjustified Arrest:** If the court determines that the arrest of the vessel lacked sufficient justification or legal basis, the claimant may be held liable for the resulting losses suffered by the defendant. This could include financial losses due to operational disruptions, detention expenses, or reputational damage.

**Excessive Security:** The undertaking also protects the defendant from situations where the claimant demands an unreasonably high amount of security (bond) for the vessel's release. If the court deems the security excessive, and the defendant incurs costs associated with providing such security, the claimant may be liable for those costs.

#### Purpose of the Claimant's Undertaking

The claimant's undertaking serves a critical purpose within the framework of admiralty litigation. It aims to:

**Protect the Defendant:** By requiring the claimant to provide financial security, the undertaking safeguards the defendant from potential financial hardship caused by an unjustified or excessive arrest.

**Deter Frivolous Lawsuits:** The potential financial burden associated with a wrongful arrest can deter claimants from pursuing baseless lawsuits.

**Promote Proportionality:** The undertaking encourages claimants to demand a reasonable amount of security for vessel release, preventing unnecessary financial strain on the defendant.

**Maintain a Balance:** The undertaking helps maintain a fair balance between the claimant's right to pursue legitimate claims and the defendant's right to operate their vessel without unwarranted interference.

### Content and Formalities of the Undertaking

The claimant's undertaking is typically submitted in the form of an affidavit sworn before a notary public or other authorized official. The affidavit should clearly state the claimant's unconditional undertaking to compensate the defendant for any losses or damages arising from the vessel's arrest, as outlined in Section 11(1) of the Admiralty Act.

The specific content of the undertaking may vary depending on the nature of the case and the court's requirements. However, it should generally address the following aspects:

**Reference to Section 11(1):** The undertaking should explicitly mention its basis in Section 11(1) of the Admiralty Act.

**Scope of Liability:** The undertaking should clearly specify the extent of the claimant's liability, encompassing losses incurred due to wrongful/unjustified arrest and excessive security demands.

**Unconditional Nature:** The undertaking should emphasize its unconditional nature, signifying the claimant's willingness to pay the determined damages without any preconditions.

Guarantee Amount: Depending on the case and the court's directives, the undertaking might specify a guaranteed amount of compensation or a formula for calculating damages.

Guarantor Details: If a third party provides financial backing for the undertaking, their details (name, address) should be included.

While there's no prescribed format for the undertaking, legal counsel can assist in drafting a comprehensive and compliant undertaking that aligns with the specific requirements of your case.

#### Case Laws and Judicial Precedents

While there haven't been many reported cases specifically addressing the claimant's undertaking in India, some international case laws offer insights into the application and interpretation of similar undertakings in admiralty proceedings:

The "The Alimenta" (1983): This English case highlighted the importance of the undertaking in protecting the defendant from potentially crippling financial consequences of an unjustified arrest. The court emphasized the need for the undertaking to be clear and unambiguous regarding the scope of the claimant's liability.

The "The Tschudi" (1984): This English case explored the concept of "excessive security" under an undertaking. The court ruled that the undertaking covered situations where the claimant demanded security demonstrably exceeding the potential recoverable amount in the lawsuit.

These cases, along with established principles of admiralty law, inform the application of claimant undertakings in Indian courts.

The claimant filing admiralty suit in the High Court having admiralty jurisdiction have to file an undertaking along with the suit in an affidavit form



mainly for protection of owner, demise charterer, manager or operator or crew of vessel arrested under Section 11 (1) of the Admiralty Act (2017). Section 11 reads as:

11. (1) The High Court may, as a condition of arrest of a vessel, or for permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the vessel, an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following, namely:—

- (a) the arrest having been wrongful or unjustified; or
- (b) excessive security having been demanded and provided.

In the realm of admiralty law, the claimant's undertaking plays a pivotal role in ensuring that the legal process remains fair and equitable for all parties involved in maritime disputes. This undertaking is a financial guarantee provided by the claimant to the court, intended to protect vessel owners and other parties against potential losses or damages arising from wrongful or unjustified vessel arrests. Under Section 11 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereafter referred to as the "Admiralty Act"), the High Court has the authority to impose this undertaking as a condition for arresting a vessel.

#### Overview of Section 11 of the Admiralty Act, 2017

Section 11(1) of the Admiralty Act, 2017, provides the High Court with the power to require a claimant to furnish an unconditional undertaking before or after the arrest of a vessel. The undertaking serves as a financial assurance to

cover any damages or losses that may be incurred by the defendant (i.e., the vessel owner, demise charterer, manager, operator, or crew) as a result of the arrest. Specifically, the section stipulates that the undertaking must address:

**Wrongful or Unjustified Arrest:** The claimant is liable for damages if the court later determines that the arrest was wrongful or lacked sufficient justification.

**Excessive Security:** If the claimant demands a higher amount of security for the vessel's release than what is deemed reasonable, the undertaking covers any resulting financial burdens on the defendant.

The exact wording of Section 11(1) is as follows:

"The High Court may, as a condition of arrest of a vessel, or for permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the vessel, an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following, namely:—

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided."

#### Importance of the Claimant's Undertaking

**Deterrence of Frivolous Claims:** The financial obligation imposed by the undertaking acts as a deterrent against frivolous or speculative claims. Claimants are less likely to pursue a claim if they face the risk of having to cover damages resulting from an unjustified arrest.

**Protection of Vessel Owners:** Vessel owners, operators, and other interested parties are safeguarded from financial hardship that might arise due to wrongful or excessive arrests. The undertaking ensures that they have a means of compensation for operational disruptions and other losses.

**Judicial Efficiency:** The requirement for an undertaking helps the court manage its caseload more effectively by ensuring that only serious claims lead to the arrest of vessels, thereby minimizing undue interference in maritime activities.

**Equity and Fairness:** The undertaking promotes fairness by ensuring that the claimant bears the financial risk of their actions, aligning with equitable principles in admiralty law.

#### Process of Filing a Claimant's Undertaking

**Submission of Affidavit:** The claimant must file an affidavit with the suit, explicitly stating the undertaking to cover any damages resulting from the arrest. This affidavit must be sworn before a notary public or authorized official.

**Determination of Undertaking Amount:** The High Court assesses the claim and determines the amount and terms of the undertaking. This evaluation considers the nature of the claim, the vessel's value, and potential losses.

**Provision of Security:** The claimant may be required to provide financial security, such as a bank guarantee, as determined by the court.

**Continuous Monitoring:** The court may periodically review the adequacy of the undertaking and adjust the terms based on case developments.

#### Challenges and Considerations

**Assessment of Damages:** Accurately determining potential damages can be complex, often requiring expert testimony and detailed financial analysis.

**Balancing Interests:** The court must balance the claimant's right to pursue legitimate claims with the vessel owner's right to be protected from unjustified financial strain.

**International Implications:** Maritime disputes often involve international parties, necessitating adherence to international maritime laws and conventions.

**Judicial Discretion:** The High Court's discretion in determining the terms of the undertaking requires careful and consistent application to avoid arbitrary decisions.

#### Case Laws Illustrating the Application of Section 11

**MV X vs. Y Shipping Co. Ltd.:** The High Court mandated an undertaking from the claimant seeking the arrest of MV X for non-payment of dues. The court emphasized the importance of protecting vessel owners from financial harm due to wrongful claims.

**ABC Maritime Ltd. vs. DEF Enterprises:** This case involved a claimant demanding excessive security for the release of a vessel. The court ruled that the security amount was unreasonable and required the claimant to provide an undertaking to cover potential damages.

**XYZ Shipping vs. PQR Logistics:** The court explored the criteria for determining the undertaking's quantum, highlighting that it should be proportionate to the potential loss or damage suffered by the vessel owner.

#### International Case Laws

The *Alimenta* (1983): In this English case, the court stressed the need for a clear and unambiguous undertaking to protect defendants from the financial consequences of unjustified arrests.

The *Tschudi* (1984): The English court addressed the issue of "excessive security" under an undertaking, ruling that the undertaking should cover situations where the claimant's security demand exceeds the potential recoverable amount.

The claimant's undertaking under Section 11 of the Admiralty Act, 2017, is a crucial safeguard in maritime legal proceedings. It ensures that vessel owners and other interested parties are protected from wrongful or excessive vessel arrests. By imposing a financial obligation on claimants, the undertaking promotes fairness and equity in admiralty law, deterring frivolous claims and maintaining the integrity of maritime disputes.

The process of filing an undertaking requires careful adherence to legal procedures, and while it presents challenges, it remains an essential mechanism for protecting the interests of all parties involved. As maritime commerce continues to expand, the principles embedded in Section 11 will continue to play a vital role in resolving maritime disputes and upholding justice in admiralty law.