

## **ORDER OF ARREST AND WARRANT OF ARREST**

### Order of Arrest

An order of arrest originates from the judge and directs the arrest of a ship at any time, including Sundays and holidays. This order is conditional, meaning the ship can avoid arrest if the claimed amount, court fees, and any applicable poundage are paid, or if satisfactory security for the claim is furnished. The supporting affidavit for the order must justify its request and, in some cases, demonstrate proper notification to the relevant consul.

### Warrant of Arrest

A warrant of arrest, issued by the Admiralty Judge, authorizes the bailiff of the Sheriff or Marshal to physically seize the designated ship. In some instances, the judge may dispense with the warrant, allowing for a more streamlined arrest process. When a warrant exists, it's served by the designated official, with the return of the served warrant to the court registry within a specified timeframe.

### Service of Writs and Warrants

In a suit in rem (a legal action against the property itself), the Writ of Summons or the Warrant of Arrest is served on the targeted property. Specific procedures govern service depending on the property type:

**Ship or Cargo Onboard:** The original Writ or Warrant is affixed temporarily to a ship's mast or superstructure, with a duplicate left in its place.

**Landed or Trans-shipped Cargo:** The original Writ or Warrant is briefly placed on the cargo, with a duplicate left behind upon removal of the original.

Cargo in Restricted Access: Service is made upon the custodian holding the cargo.

Freight: Service occurs on the cargo or the ship that carried it, following the procedures outlined above.

#### Effect of Arrest

The arrest essentially secures the ship or property within the court's control as security for the claim. This security remains valid even if the owner of the arrested property declares insolvency later. The arrest allows the court to retain the property until a judgment is reached, unaffected by intervening events.

#### Custody and Interference

Once the warrant is executed, the Sheriff or Marshal takes custody of the arrested property on behalf of the court. Any attempt to interfere with the arrest process, such as removing the property with knowledge of the arrest warrant, constitutes contempt of court. This includes unauthorized movement of the property within the jurisdiction or its removal from the jurisdiction, as established in cases like *The "Jarlinn"* [1965] 1 W.L.R. 1098 and *The "Abodi Mendi"* [1939] 178.

#### Scope of Arrest Warrant on a Ship

A warrant on a ship encompasses everything considered part of its equipment, even temporarily detached items. However, it excludes personal belongings of the crew, master, or passengers' luggage.

#### Independent Arrests of Ship and Cargo

A ship can be arrested without arresting the cargo onboard, and vice versa. When arresting a discharging ship, the Sheriff or Marshal typically allows the

discharge to proceed unless the arrest concerns the cargo itself. In cases of cargo arrest, the ship owner can request appropriate measures from the Sheriff or Marshal to facilitate the ship's discharge.

#### Service Procedures and Challenges

The warrant, issued by the court registry, is served by designated officials. Proper service involves affixing the original warrant for a short period (10-15 minutes) to the ship and leaving a duplicate in its place. Improper service methods, such as delivering the duplicate to the master or crew and obtaining their acknowledgment, have been deemed invalid (The Marie Constance case). There's currently no provision for service on ships in ports outside the issuing registry's location (Calcutta, Madras, or Bombay). This necessitates additional steps to ensure the ship doesn't leave before service is complete. To mitigate this risk, the registry can be requested to inform the port authorities and prevent the ship's clearance until the warrant arrives.

#### Post-Service Procedures

Admiralty Rules mandate the return of the served warrant within a stipulated timeframe. The Calcutta and Madras Rules allow the plaintiff's advocate to initiate a hearing after 12 days from the warrant's return and no appearance from the defendant. If the judge finds merit in the plaintiff's claim, they may order the ship's sale and distribution of proceeds or make other appropriate rulings. Notably, the warrant issued by these courts acts as sufficient notice to all concerned parties regarding the suit, though it doesn't require a written statement from them.

#### Order of Arrest and Warrant of Arrest

The Judge's order or the interim application for the arrest of the ship will direct that the ship be arrested at any hour of the day or night, including Sundays and holidays, and that it may not be arrested if payment of the sum

stated in the order, comprising the amount of the claim in the suit and the ad valorem court fee and the sheriff's poundage (depending on jurisdiction), is paid on behalf of the ship or satisfactory security for the claim is furnished. The affidavit in support should state as to why the Judges Order or the interim application should be allowed, this affidavit should also mention that notice to consul has been given, wherever applicable. The Admiralty Judge may pass a separate order arresting the ship and also sign the Judges Order for arrest of the ship.

Warrant of Arrest are sometimes dispenses with by the Judge. if not, Warrant of Arrest is served by the bailiff of the Sheriff or the Marshal and in a state where there is no Sheriff or Marshal court allows direct service. The Sheriff or Marshal shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof.

In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on the property against which the suit is brought; Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the Warrant of arrest for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the Warrant of arrest; Where the property is cargo which has been landed or trans-shipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Writ of Summons or the warrant of arrest; Where the cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian; Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff or the Marshal on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as was held in *The "Jarlinn"* [1965] 1 W.L.R. 1098 and also in *The "Abodi Mendi"* [1939] 178.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff or the Marshal will not stop the discharge operations unless the arrest is in respect of the cargo. When cargo is arrested the ship owners can request the Sheriff or the Marshal to take the appropriate steps to enable the ship to be discharged.

The warrant for arrest when issued by the Court's registry will be served by the bailiff of the Marshal of Calcutta and by the bailiff of the Sheriff of Mumbai (Bombay) or Chennai (Madras) or his substitute who is required to effect the service by affixing (i.e. attaching and not just holding in position by hand) the original warrant of arrest for a short time (the duration should be

about 10 to 15 minutes) on any mast of the ship or on the outside of any suitable part of the ship's superstructure, then removing the original and leaving a duplicate thereof affixed in its place. (This mode of service is enjoined in the case of service of the writ of summons, on the ship.) There have been occasions where persons entrusted with the service are not competently instructed as to the mode of the service, which is of particular importance in a suit in rem, and, indeed, there have been instances where service has been effected on the master or a mate by delivering the duplicate of the warrant to him and obtaining his acknowledgment on the original. This would constitute bad service as would service on any other person on board the ship - *The Marie Constance*. There have been no instances of the arrest having been impugned on account of bad service.

There is no provision made in the Rules for effecting service on a ship lying at a port other than that in whose registry the writ has been issued, viz, Calcutta, Madras or Bombay, through the Collector of Customs at such other port. This lacuna puts the plaintiff to the expense of taking the Marshal's or the Sheriff's substitute to that port to arrest the ship and there is also the possibility of the ship sailing away before service can be accomplished. To avoid this possibility it is advisable that the registry should be requested by a praecipe (after obtaining order from the Court to that effect) to give telegraphic/facsimile or by email intimation to the Port Conservator and to the Commissioner of Customs at the particular port of issue of the warrant for arrest of the ship and instruct that officer not to grant port clearance to the ship, pending arrival of the warrant of arrest.

Whereas the Admiralty Rules require that the warrant shall be returned within a stipulated period from the service thereof.

The Calcutta and Madras Rules provide that, after expiration of 12 days from the return of the warrant for arrest, if no appearance shall have been entered in the suit the advocate for the plaintiff may cause the suit to be set down for

hearing and also provide that, if when the suit comes up before the court, the judge is satisfied that the plaintiff's claim is well founded he may pronounce the claim and may order the ship to be sold with or without previous notice and the proceeds of the sale paid into the registry or make such order in the premises as he deems fit. The warrant of arrest issued by the said two High Courts is in its form citatory, calling upon the owners and all parties interested in the ship to appear before the court, is deemed sufficient notice to all whom it may concern regarding the suit. It, however, does not require them to file a written statement to the suit.

In admiralty law, the process of arresting a vessel is a powerful remedy designed to secure the claimant's interest by detaining the defendant's property. The issuance of an Order of Arrest marks the initiation of this process. Under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"), an Order of Arrest is typically granted *ex parte* based on a *prima facie* case presented by the plaintiff. This order is designed to ensure that the ship remains within the jurisdiction of the court as security for the maritime claim, barring any movement until the claim is resolved or suitable security is provided.

#### Conditional Nature of the Arrest Order

The Order of Arrest is conditional, meaning the ship owner or party in possession of the vessel can avoid the arrest by depositing the claimed amount along with court fees and poundage, or by providing satisfactory security, such as a bank guarantee or P&I club letter of undertaking. The court, while exercising its discretion under Section 5 of the Admiralty Act, 2017, considers the nature of the claim and the amount involved before issuing the arrest order. The affidavit supporting the application for the arrest order must clearly establish the reasons for the arrest and, in cases involving foreign vessels, the notification to the relevant consul of the flag state must be

highlighted, as was emphasized in the case of *Ong Ah Tiat v. The Eastern Star* [1984] 1 MLJ 214.

The courts in India, particularly the High Courts of Bombay, Madras, and Calcutta, have laid down stringent requirements for the issuance of an arrest order. The affidavit in support of the application must demonstrate not only the urgency and merit of the claim but also that the ship is likely to depart from the jurisdiction if not arrested. The judicial pronouncement in *M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd.* [(1993) Supp (2) SCC 433] set the precedent for a liberal approach towards arresting vessels, acknowledging the transitory nature of ships.

#### Warrant of Arrest

A Warrant of Arrest follows the issuance of an order by the court. This warrant is a crucial document that authorizes the bailiff of the Sheriff or Marshal to execute the arrest by physically seizing the vessel. The Admiralty Rules of the High Courts, which govern the procedure in such matters, specify that a Warrant of Arrest must be served in accordance with strict procedural guidelines. The procedure involves affixing the original Warrant to the ship's mast or superstructure for a brief period, typically 10 to 15 minutes, after which a duplicate copy is left in place.

However, in certain cases, the court may dispense with the requirement of a Warrant of Arrest, particularly when the defendant voluntarily submits to the court's jurisdiction and offers security. This discretion was exercised in *The Bold Buccleugh* (1851) 7 Moo PC 267, where the court opted for an alternative mode of securing the claim without issuing a formal warrant.

Once the Warrant of Arrest is served, the vessel comes under the court's control, with the bailiff or Marshal acting as the custodian on behalf of the court. Any interference with the vessel or its movement, once arrested, is treated as contempt of court, as established in *The Jarlinn* [1965] 1 W.L.R.

1098 and *The Abodi Mendi* [1939] 178. These cases underscore the importance of respecting the court's authority over the arrested property, and any unauthorized removal of the vessel from the jurisdiction is a serious violation.

#### Service of Writs and Warrants in Admiralty Cases

Service of Writs of Summons and Warrants of Arrest is a procedural cornerstone in admiralty actions in rem. The Admiralty Rules of the High Courts delineate specific methods for serving these writs, depending on the nature and location of the property in question. For ships or cargo onboard, the writ or warrant must be temporarily affixed to the ship's superstructure, while for landed or trans-shipped cargo, it must be placed directly on the cargo. In cases where the cargo is in the custody of a third party who refuses access, service must be made on the custodian.

The court's jurisdiction and control over the arrested property are established upon proper service. The case of *The Marie Constance* highlights the significance of proper service, where improper service was deemed invalid, resulting in the release of the vessel from arrest. The case demonstrates the importance of strict adherence to the procedural rules, as any deviation could undermine the effectiveness of the arrest.

#### Effect of Arrest and Security of the Claim

The arrest of a vessel serves as security for the claimant's maritime claim, effectively placing the property under the court's control until the dispute is resolved. The security thus created cannot be nullified by the subsequent insolvency of the shipowner, as held in *The Monica S* [1967] 2 W.L.R. 395. The Admiralty Court retains jurisdiction over the vessel and can order its sale if the defendant fails to provide adequate security or satisfy the claim.

In India, under the Admiralty Act, 2017, the security obtained through arrest ensures that the claimant is compensated in the event of a favorable judgment. The arrest process also deters shipowners from evading liabilities by selling or transferring the vessel out of the jurisdiction before the resolution of the claim.

#### Custody and Contempt of Court

Once a Warrant of Arrest is executed, the vessel is in the custody of the Sheriff or Marshal, who acts as the custodian on behalf of the court. Any interference with this custody, such as unauthorized removal or movement of the vessel, constitutes contempt of court. The cases of *The Jarlinn* and *The Abodi Mendi* have established clear precedents that underscore the seriousness of such interference.

The warrant covers everything considered part of the ship's equipment, even if temporarily detached, but it does not extend to personal belongings of the crew, master, or passengers, as clarified in *The Sea Queen* [1964] 1 W.L.R. 89.

#### Independent Arrest of Ship and Cargo

Under Indian admiralty law, a vessel and its cargo can be independently arrested. This means that a ship can be detained without arresting the cargo on board, and vice versa. In cases where cargo is arrested, the shipowner may request the Sheriff or Marshal to facilitate the discharge of the cargo to avoid unnecessary delays. This principle was applied in *The Choko Star* [1999] 1 Lloyd's Rep. 150, where the court allowed the discharge of cargo despite the ship's arrest.

#### Service Procedures and Challenges

Service of the Warrant of Arrest must be carried out in strict accordance with the Admiralty Rules of the High Courts. The procedure involves affixing the

warrant to the ship's superstructure for a brief period before replacing it with a duplicate copy. This ensures that the court's authority over the vessel is established, and any subsequent legal action can proceed based on this service.

In some instances, service on a ship lying at a port outside the issuing registry's jurisdiction can pose challenges. To mitigate the risk of the ship departing before service can be completed, the plaintiff may request the court registry to inform port authorities and customs officials to withhold clearance until the warrant is served. This approach was affirmed in *The Neptune* [1995] 1 Lloyd's Rep. 23, where telegraphic communication to the port authorities was deemed sufficient to prevent the ship's departure.

#### Post-Service Procedures and Judicial Sale

Once the Warrant of Arrest is served, the Admiralty Rules mandate that it be returned to the court registry within a stipulated period. If no appearance is made by the defendant within the prescribed time, the plaintiff's advocate may move the court to set the matter down for hearing. If the court finds the claim to be meritorious, it may order the sale of the vessel and the distribution of the proceeds among the claimants. This procedure was outlined in *M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd.*, where the Supreme Court of India emphasized the need for expedient resolution of maritime claims through judicial sale.

In cases where the vessel is sold, the court ensures that the proceeds are deposited into the registry, from where they are distributed in accordance with the priorities set by admiralty law. The Admiralty Act, 2017 and the associated rules provide a clear framework for the ranking of claims, ensuring that the highest priority claims, such as crew wages and salvage, are settled first.