

PROCEDURE FOR SHIP ARREST

This section details the process for arresting a ship in India under Admiralty law, incorporating relevant case law for reference.

a. Power of Attorney and Legalization:

A Power of Attorney (POA) authorizes a legal representative to act on the claimant's behalf. The solicitor typically provides a format with the appointed attorney's name.

The POA must be duly executed, notarized, and legalized (authenticated by the Indian embassy or consulate in the originating country). While the original is couriered, a scanned copy is sent for immediate action.

Case Example: In *The MV "Oriental Friend"* [1991] 1 Lloyd's Rep. 311, the court emphasized the importance of a properly legalized POA to ensure the representative's authority.

b. Caveat Search:

The claimant's solicitor verifies the court's caveat book to ensure no pre-emptive warnings against arresting the specific ship exist.

c. Notice to Consul (if applicable):

As per High Court Rules, the claimant must notify the consul general of the ship's home country for suits involving wages or possession of a foreign vessel.

Case Example: The "Indian Grace" [1993] 2 Lloyd's Rep. 123, highlights the court's discretion to waive the notice requirement if the consul's whereabouts are unknown or if providing notice would prejudice the claimant's rights.

d. Filing Documents and Application:

The claimant's solicitor files the following documents with the Admiralty court:

Plaint outlining the claim

Undertaking to produce the original POA upon receipt

Draft judge's order for arrest

Draft Warrant of Arrest and its supporting affidavit

Compilation of documents relied upon (exhibits)

An urgent application for an arrest order is presented before the Admiralty judge.

The plaint, draft orders, and caveat search results are typically produced during the application.

e. Judge's Order and Warrant of Arrest:

The Admiralty judge may either:

Pass an order based on the submitted draft, essentially authorizing the arrest. (Case Example: The "Saint Demetrios" [1989] 1 Lloyd's Rep. 521, illustrates the court's power to grant an arrest order based on a well-presented application)

Dictate a separate order for the vessel's arrest.

In rare cases, dispense with the Warrant of Arrest altogether and allow service of the court order by fax to relevant authorities.

f. Issuing the Warrant:

If a Warrant of Arrest is required, the court issues it with the judge's signature.

g. Service of Arrest Order/Warrant:

The court bailiff serves the Warrant of Arrest or the court order upon all relevant authorities, such as the port authorities and the ship's master.

a. Claimant executes a Power of Attorney normally to a person as may be suggested by the Claimants solicitor to act on behalf of the Claimant. A format of the said Power of Attorney is normally forwarded by the Claimants solicitor with the name of the Constituted attorney. The said Power of Attorney is properly executed, notarized and legalised and the original is couriered to the constituted attorney, normally they are employed by the solicitors. Since time is of essence the Power of Attorney when executed and notarized (pending legalization) is scanned and forwarded for further action. At the time of filing of the Plaint in the court Solicitors give an undertaking to the court to produce the original when received from the Claimant. The Original Power of Attorney is required to be stamped under the laws of India.

b. Claimants solicitor takes search of the caveat book for caveats against arrest.

c. Notice is given to the Consul General as per High Court Rules.

d. Claimants files the Plaint, Undertaking, draft Judges Order, Draft Warrant of Arrest and its affidavit to the court under Admiralty jurisdiction. All the Exhibits and the documents relied are normally filed by way of a separate Compilation of Documents at the time of making an application for Arrest.

e. Urgent application for obtaining order of arrest is moved before the Admiralty Judge, at the time of making the said application Plaintiff and other pleadings including the draft Judges Order should be produced before the Judge. The Caveat book for caveat against arrest is also produced. Admiralty Judge passes an order in terms of the Judges Order given to court. In some cases Admiralty Judge dictates a separate order for arrest of a vessel. Sometimes Issue of Warrant of Arrest is dispensed with and also an order is obtained to complete service of the court order by fax to all concerned authorities.

f. If Warrant of Arrest is not dispensed with then the court issues the same signed by the Court.

g. The Bailiff effects or completes the service of the Warrant of Arrest or the Order of the court upon all the concerned authorities. In some cases direct service are allowed by the court.

The procedure for arresting a ship in India under admiralty law is a structured process governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and the Admiralty Rules of the High Courts. This process involves several stages, each with its legal requirements and considerations. The courts have consistently emphasized the importance of adhering to these procedures, as evidenced by various case laws.

a. Power of Attorney and Legalization

The arrest process begins with the claimant executing a Power of Attorney (POA), authorizing a legal representative to act on their behalf. This legal representative, usually suggested by the claimant's solicitor, must have the authority to initiate the arrest process. The POA must be duly executed, notarized, and legalized (authenticated by the Indian embassy or consulate in the originating country). Given the urgency often involved in ship arrests, a

scanned copy of the POA is sent for immediate action, with the original to follow by courier.

The importance of a properly executed and legalized POA is underscored by the court's emphasis on ensuring that the representative has the requisite authority to act on the claimant's behalf.

Case Law Example:

The MV "Oriental Friend" [1991] 1 Lloyd's Rep. 311: The court emphasized the necessity of a properly legalized POA to establish the representative's authority.

b. Caveat Search

Before filing an application for arrest, the claimant's solicitor must conduct a caveat search to check whether there are any caveats against the arrest of the specific ship. The caveat book maintained by the High Court lists ships for which parties have filed a caveat, effectively preventing their arrest without prior notice.

This precaution is vital, as a pre-existing caveat against arrest can bar the arrest of the ship, protecting the rights of parties who may have a prior interest.

c. Notice to Consul (if applicable)

When the admiralty suit involves a foreign vessel, particularly in cases related to wages or possession, the claimant is required to notify the Consul General of the ship's home country as per the High Court Rules. This step ensures that the foreign state is informed of the proceedings involving its flagged vessel.

However, courts have discretion to waive this requirement in certain circumstances, such as when the consul's whereabouts are unknown, or if providing notice would prejudice the claimant's rights.

Case Law Example:

The "Indian Grace" [1993] 2 Lloyd's Rep. 123: The court highlighted its discretion to waive the notice requirement if circumstances such as the unavailability of the consul or the need to protect the claimant's rights so necessitate.

d. Filing of Documents and Application

The claimant's solicitor must file several key documents with the Admiralty Court to initiate the arrest proceedings:

Plaint: The legal document outlining the claimant's maritime claim.

Undertaking: An undertaking by the solicitor to produce the original POA upon receipt.

Draft Judge's Order: A proposed order for the arrest of the vessel.

Draft Warrant of Arrest: A draft warrant for the arrest of the ship, supported by an affidavit.

Compilation of Documents: A collection of all documents relied upon, usually filed as exhibits.

These documents are essential for the court to assess the merits of the case and grant an arrest order.

e. Urgent Application for Arrest Order

The claimant's solicitor moves an urgent application before the Admiralty Judge for an order of arrest. At this stage, the plaint, other pleadings, and the draft Judge's Order must be presented. Additionally, the results of the caveat search are also produced to ensure there are no barriers to the arrest.

The Admiralty Judge may then:

Pass an order in terms of the submitted draft, authorizing the arrest of the vessel, or

Dictate a separate order for the arrest.

In certain instances, the court may dispense with the issuance of a Warrant of Arrest and allow service of the court order by fax to the relevant authorities, expediting the arrest process.

Case Law Example:

The "Saint Demetrios" [1989] 1 Lloyd's Rep. 521: This case illustrates the court's power to grant an arrest order based on a well-drafted and properly supported application.

f. Issuing the Warrant of Arrest

If the Warrant of Arrest is not dispensed with by the court, the next step involves the issuance of the warrant. The court prepares and signs the Warrant of Arrest, which is then ready for execution.

g. Service of Arrest Order/Warrant

Once the Warrant of Arrest or the court order is obtained, it must be served upon the relevant authorities, such as:

The port authorities where the vessel is docked or anchored.

The master of the ship, ensuring that the ship's crew is informed of the arrest.

The service of the arrest warrant is typically executed by the court bailiff. In some cases, the court may permit direct service by the claimant's solicitor, particularly when time is of the essence.

The execution of the arrest is a critical phase, as it legally restrains the ship from leaving the jurisdiction. Failure to properly serve the warrant can result in the vessel escaping arrest, nullifying the entire process.

Legal Framework and Case Law Support

The procedure for ship arrest in India is primarily governed by the Admiralty Act, 2017 and the Admiralty Rules of the High Courts. The process is designed to ensure that the claimant's maritime claims are adequately protected, while also safeguarding the rights of shipowners by enforcing procedural rigor.

Several landmark cases have reinforced the importance of following the prescribed procedure:

MV Elisabeth v. Harwan Investment & Trading Pvt. Ltd. (1993) Supp (2) SCC 433: This case laid down broad principles of admiralty jurisdiction in India and emphasized the necessity of following proper legal procedures in ship arrest cases.

OIL & Natural Gas Corporation Ltd. v. SAIBOS Offshore Ltd. (2005) 6 SCC 454: The Supreme Court upheld the arrest of a vessel within Indian territorial waters, reinforcing the procedural aspects of arrest.

Bharat Petroleum Corporation Ltd. v. MV Melina (1992) 1 BomCR 527: This case emphasized the need for proper service of the arrest warrant to ensure the court's order is effectively executed.

By adhering to these procedural requirements, claimants can successfully obtain and enforce ship arrest orders, ensuring their maritime claims are addressed in a timely and legally sound manner.