

Arresting vessels in Kuwait

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December 2014 – January 2015

There are some aspects of the law relating to the arrest of vessels that do not apply to other property, due to some of the distinctive characteristics of ships and maritime law.

What are the procedures for arresting a vessel?

The Kuwaiti Maritime Trade Law no. 28 of 1980 and the Kuwaiti Civil & Commercial Pleadings Law no. 38 of 1980 provide the procedures for the precautionary arrest and release of vessels in Kuwait, as follows:-

1. The required conditions to arrest a vessel:

The Kuwait Maritime Trade Law requires the existence of certain particular debts to arrest a vessel, which are stipulated in Articles 73, 74 & 75. Precautionary arrest may be made on the ship by an order of the judge pro tempore of the Court of First Instance, and this arrest shall only be made for fulfilment of a marine debt.

Marine debt means the allegation of a right originating from one of the following reasons:

1. Damages caused by the vessel due to collision or other reasons.
2. Loss of lives or physical injuries caused by the vessel or arising from the utilization thereof.
3. Expenses of salvage.
4. Contracts of utilization or charter of the vessel under charter party or else.
5. Contracts concerning the transportation of goods under charter party, bill of lading or else.
6. Shortage or damage of goods and luggage transported by the vessel.
7. Common losses.
8. Tugging of the ship.
9. Pilotage.
10. Supply of products or appliances required for the utilization of the vessel or maintenance of the supplied items.
11. Building, repair or outfitting the vessel and expenses of its existence in the docks.
12. Remunerations of the shipmaster, officers and the crew members.
13. Amounts spent by the shipmaster, shippers, charterers or agents to the account of the vessel or its owner's account.
14. Dispute in respect of property of the vessel.
15. Dispute in respect of the common property of a vessel, possession, utilization thereof; or of the rights of common proprietors in the amounts resulting from the utilization of the vessel.
16. Marine mortgage.

Anyone who qualifies by any of the above, save for the last three (see below) shall have the right to arrest the vessel that is subject to the debt, or any other vessel owned by the debtor (sister ships) if such vessel was owned by him at the time the debt was incurred.

However, arrest may not be made on a vessel other than the vessel subject to the debt, if the debt is one of those provided for in the last three items of the above marine debts. Furthermore, if the debtor who

charters the vessel undertakes the marine management thereof, and is solely responsible for a marine debt relating thereto, the creditor may arrest this vessel or any other vessel owned by the charterer; and arrest may not be made on any other vessel owned by the owner by virtue of this marine debt.

2. The procedures to arrest a vessel in Kuwait:

According to the Kuwaiti Civil & Commercial Pleadings Law, the arrest of a vessel should be done by applying to the competent court, presenting two copies of an application including (i) the names of the claimant, defendant and any third party and their domiciles and (ii) relevant documentary evidence sufficient to support a prima facie claim giving rise to a right to arrest. The application should be based on one of the following:-

1. An official or ordinary document showing the unconditional debt due to the claimant;
2. Any other written evidence declaring the debt; or
3. An official document such as a judgment.

The judge shall issue his order in writing on one copy of the application on the day following its submission at the latest. The judge is not required to mention the reasons for the decision.

The clerks department shall deliver the second copy of the application to the applicant. The order issued in respect of an application shall be considered as nonexistent if it is not submitted for execution within thirty days from the date of its issuance, although such nullity shall not preclude the issuance of a new order.

A copy of the arrest order shall be delivered to the Master of the vessel as well as the official authorities in the port and to the registration office after the court ensures that the vessel is owned by the debtor.

The applicant must, within eight days from the date of the imposition of the arrest, bring a claim before the competent court for the confirmation of his right and the validity of the arrest, in cases in which the applicant fails to file the case within the time limit, the arrest shall be considered as nonexistent.

The complaint shall be performed in accordance with the usual procedures of bringing a case and may be brought in pursuance of the original case according to the procedures adopted in bringing the contingent claims. The complaint must be justified, otherwise it shall be void.

An applicant whose claim is rejected by the order, and a person against whom the order is issued, have the right to lodge a grievance with the competent court. The grievance shall be judged either by confirmation, amendment or cancellation of the order, and this judgment shall be subject of appeal, in accordance with the approved methods of appeals of judgments.

The litigant, against whom the order is issued, instead of complaining to the competent court, shall have the right to challenge this order to the same Judge, and this shall not be precluded by the original case being before the court.

Also it should be noted that there is no specific timeframe for the proceedings taken to arrest a vessel, and the court's decision may be issued on the same day or within the next three days if all the necessary documents for the arrest are available.

Finally, we should mention that there is no need for security to be posted with the application for arrest.

This Article was intended to provide you with a brief overview of the procedures of the precautionary arresting of vessels in Kuwait. In our next article, we will discuss the mechanism for releasing a vessel from arrest.