

How to Release Vessels from Arrest in Kuwait

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August 2017

Nonetheless, the Kuwaiti Maritime Trade Law No. 28 of 1980 (the “Maritime Law”) regulates the concept of vessel arrest and sets out the legal basis upon which vessels may be the subject of precautionary and executory arrests. It also sets out the requirements for the release of arrested vessels.

We have, in a previous article, described the legal procedures that must be followed in order to place a precautionary arrest on vessels in Kuwait. This article shall discuss the manner of effecting the arrest, both from a legal and practical perspective.

Although, the Kuwaiti legislature sets out the mechanism for the protection of vessels, in accordance with the Kuwaiti Maritime Trade Law, the latter does not set out the procedures involved in releasing arrested vessels, save for Article 76 of the Maritime Law, which requires a guarantee or any other warranty sufficient to satisfy the debt in question.

What are the procedures for releasing a vessel?

The Maritime Law requires the existence of specific debts in order to arrest a vessel, which are detailed respectively in Articles 73, 74, 75, and 79. ‘Precautionary arrest’ may be enforced on the vessel by an order of the judge pro tempore of the Kuwait Court of First Instance, though this arrest shall only be made for the satisfaction of a ‘marine debt’. Marine debt in this context refers to a claim arising out of one of the circumstances cited in Article 73(2) of the Maritime Law.

Article 76 of the Maritime Law stipulates that the judge pro tempore of the Court of First Instance shall grant an order releasing the vessel if a guarantee, or any other warranty, sufficient to satisfy the debt is offered by the debtor. While Article 74(2) of the same law places an exception for releasing the vessel and states that;

“Release from arrest may not be ordered, if the arrest is sought due to marine debts mentioned specifically in items 14 and 15 of the second paragraph of Article 73,” which are “the 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, as well as the Marine mortgage”.

In this instance, the presiding judge may permit the vessel owner to continue use of it, if he is able to offer a sufficient guarantee; alternatively the judge may arrange for the management of the vessel during the arrest period in method manner determines at his discretion.

In relation to the procedure involved in releasing vessels, the Maritime Law is silent about this specific matter. However, the Kuwaiti Civil & Commercial Pleadings Law No. 38 of 1980 (the “Procedures Law”) has identified the required procedures for releasing vessels. In this regard, Article 218 of the Procedures Law states that an amount of money equivalent to the value of the debt may be deposited with the treasury section of the Execution Department. This deposit shall facilitate the releasing of the vessel and the subsequent satisfaction of the debts with the deposit.

The arrestee may also present an application to release the precautionary arrest placed on a vessel before the competent judge (the president of the First Instance Court) provided that an unconditional bank letter of guarantee with no time restrictions is also presented. It is preferred that the guarantee is issued by a Kuwait first class bank covering the value of the debt. The Judge will then issue his decision upon consideration of the application and the letter of guarantee.

In cases where the letter of guarantee satisfies the necessary requirements, the judge will issue his decision to deposit the guarantee in the court's treasury, pending a final determination on the subject of the claim, whether this be judicially or by way of an amicable settlement, and to release the vessel from arrest. Upon issuance a decision to release the vessel, the arrestee may then obtain the executory form of the relevant judgment and provide the same to the court bailiffs, who will undertake the necessary formalities required for the releasing of the vessel. The court bailiff will attend the Marine Inspection Department and issue minutes of releasing the vessel. The latter department will notify the remaining competent authorities of the release of the vessel from arrest and confirm that there is no objection to the sailing of the vessel.

The Courts in Kuwait have the discretionary power to decide whether or not the guarantee offered by the debtor is sufficient to secure the subject debt. The Kuwaiti courts will usually only accept a bank 'letter of guarantee' from a local authorised Kuwaiti bank as sufficient security, with alternative forms of guarantee often being rejected. The P&I Clubs' letters of undertaking are also often rejected as security for the release of a vessel (discussed further below). Furthermore, if the owner of the vessel wishes to release the vessel from arrest without presentation of a bank letter of guarantee in a case where the arrest placed on the vessel is undoubtedly a wrongful arrest, whether due to procedural or substantive reasons (e.g. payment of the debt), the arrestee may file an Urgent Case before the Judge of Execution seeking that the arrest placed on the vessel be considered null and void. The judgment rendered by the judge in such a case is promptly executable without bail and without awaiting a final judgment from the Court of Appeal, in cases where the arrestor files an appeal.

The arrestor has the right to challenge the releasing of the vessel in view of the insufficiency of the guarantee deposited in the event that the arrestor considers that the guarantee deposited by the arrestee pursuant to a court order is inadequate security, whether in view of its quantum or terms. The arrestor is entitled to file an obstruction against enforcement of the court order permitting the release of the vessel.

Accordingly, the court order permitting the release of the vessel shall not be executed pending a determination on the obstruction action filed. In order for the obstruction action to have this effect, the action should be filed before the court of execution before execution of the order. Upon filing the obstruction action, a hearing will be scheduled before the Judge of Execution as soon as practicable. Upon conclusion of the pleadings, a judgment will be issued either suspending execution of the order for release of the vessel (i.e. the vessel remains under arrest) or rejecting the obstruction action and proceeding with the execution of the order for releasing the vessel. In such a case, the vessel is able to continue sailing.

It should also be noted that there is no specific timeframe for proceedings relating to the release of a vessel from arrest, and the court's decision may be issued on the same day, or within the next three days, if all the necessary documents are available. It is recommended that the arrestee deposit the required bank letter of guarantee at the treasury section of the Execution Department as soon as possible to expedite the release of the vessel and thereby minimise disruption to the arrestee owner's business.

This article is intended to provide you with a brief overview of the procedures for the releasing of vessels under arrest in Kuwait. In our next article, we shall discuss the mechanisms for the executory arrest of vessels and the auction of vessels following arrest.