

ARREST AND BUYERS RIGHTS IN AUCTION

Section 2 (1) (c) of the Admiralty Act (2017) defines ‘arrest’ and it means detention or restriction for removal of a vessel by order of a High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of a judgment or order.

Arrest of a vessel is part of the process by which an Admiralty Court gains jurisdiction over the subject matter of a law suit. These lawsuits are known as ‘in rem’ actions meaning that the action is against a ‘thing’ or the ‘res’ rather than a person.

An arrest of a vessel is the prerequisite for the court to establish jurisdiction. If the vessel cannot be seized, the court may have no right over the vessel. Once seized, the court, through the marshal's or ‘sheriff’s service or substitute custodian, maintains possession of the vessel and the owner loses all control. To avoid this situation and its effect on commerce, the court will allow the owner to post a bond or other suitable security. Once the security is accepted, the vessel is returned to the owner and the litigation continues with the security as the subject of execution of judgement.

Once the marshal or the sheriff or the custodian has seized a vessel, he is obligated to preserve the vessel and its equipment. Generally, the custodian of a seized vessel should not interfere with the conduct of cargo and other operations normal to a vessel in berth unless directed so by court order.

If a vessel is not released by the posting of security, the court may order an interlocutory sale. An interlocutory sale, means a sale prior to the completion of the litigation and the entering of a judgment. As a general rule the court will allow sale of the vessel at the earliest within reasonable time. If the owner or demise charterer abandons the vessel after its arrest, the High Court shall

cause the vessel to be auctioned and the proceeds appropriated and dealt with in such manner as the court may deem fit within a period of forty-five days from the date of arrest or abandonment: Provided that the High Court shall, for reasons to be recorded in writing, extend the period of auction of the vessel for a further period of thirty days.

The valid reason provided for sale if the arrested property is perishable, liable to deterioration, or if the cost of keeping it is excessive or disproportionate.

Regardless as whether the sale is interlocutory or a judgment sale, the purchaser at the auction does not have any right in the vessel, until the sale is confirmed by the court. Once confirmation is received, the buyer receives title which extinguishes all other liens and provided him with a clear title. An "in rem" action resolves claims of all of the world against the vessel and no lien for past debts can be created or asserted.

The proceeds of the sale are paid into the court and are used to satisfy any expenses incurred by the keeping of the vessel and fees to the marshal or sheriff or the custodian. The balance is paid to the claimants as per priority and any balance left over is paid to the owner. If the sums received are not sufficient to pay all claims, the claimants pay proportionately to the shortfall.

Section 8 of the Admiralty Act (2017) reads as:

(8). On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.