

Gibraltar has always been a favoured jurisdiction for ship arrest for numerous reasons including its geographical location on the entrance to the Mediterranean, its well established admiralty law rooted in English law, its procedural speed and efficiency and its practical and flexible approach to arrests. This article takes the reader on a tour of the major stopping points around the process of an arrest and explains why the jurisdiction is increasingly favoured. By Melo Triay, Triay & Triay

THE PURPOSE OF AN ARREST

Since the later part of 1996 Gibraltar has become an increasingly favoured jurisdiction for banks to enforce their security against ships by arresting and procuring their judicial sale at auction. Normally a ship is arrested for two principal reasons:

1. To provide security for a claim against the ship (a claim in rem) which cannot be defeated by the subsequent insolvency of the owner; and
2. To answer and pay a judgment in rem.

The power to arrest a ship distinguishes a claim in rem from an ordinary claim against a personal defendant. In a claim against a personal defendant it is not normally possible to obtain security against the defendant's assets, unless it can be proved that the defendant is likely to dissipate his assets improperly before judgment can be obtained. Otherwise, assets can only be seized to cover a claim after judgement has been obtained.

In the case of a claim in rem the procedure starts at the other end, i.e. with the detention of the ship as security for the claim. Accordingly the exercise of the power of arrest to enforce payment of a debt is a very forceful tool which will result in either:

1. The immediate payment of the debt plus costs of the arrest where there is no reasonable defence to the claim; or
2. The payment of cash security into court to allow the release of the ship where the claim is disputed; or
3. The sale of the ship for the benefit of all creditors.

WHY GIBRALTAR?

Gibraltar has always been a favoured jurisdiction for ship arrest for numerous reasons including its geographical location. Its proximity to one of the world's busiest shipping lanes logically makes Gibraltar an eminently suitable jurisdiction for the seizure of a ship. Other contributing factors are:

Procedural Speed and Efficiency

A ship arrested in Gibraltar at the instance of a bank is likely to be sold within six weeks of its arrest. Time is of the essence when dealing with insolvent ship owners, and an efficient procedure for the sale of the ship results in significant savings for the benefit of all creditors who have claims against the ship. Admiralty matters are given priority in the Supreme Court of Gibraltar.

Legal Certainty

Gibraltar's Admiralty law and practice governing the arrests of ships is well established. Once arrested, the process that will result in the prompt sale of the ship for the benefit of creditors is immediately set in motion. In particular, rules of law governing the priority of claims between competing claimants are clear. For example, under Gibraltar law a bank enforcing its mortgage over a vessel has priority over most claims that usually arise when a ship is arrested. The fact that these issues are settled means that all parties know exactly where they stand, something which reduces expensive litigation.

Flexibility and Practicality

The Admiralty Court in Gibraltar has developed a practical and flexible approach to ship arrests which avoids wastage of time and money in the maintenance of a ship that is to be sold in any event. The Admiralty Marshal recognises that in the ordinary course of events, banks have recourse to the arrest of a ship as a measure of last resort and that they will have already suffered considerable financial loss. The Admiralty Marshal cooperates closely with litigants, granting them as much freedom and control of the ship as is required or is reasonably expedient in the circumstances of the case. This approach allows for a close contact with the realities of the situation which is unknown in larger jurisdictions where the powers of decision making are more remote from events on the ground. Experience has shown that this approach, unique to Gibraltar, works. It ensures a rapid and ordered liquidation of the ship and leads to, inter alia:

- An early Appraisal and Survey of the vessel, before an order for sale has been obtained.
- Prompt Court Orders granting permission to the arresting party to pay wages and repatriate excess crew.
- Prompt Court Orders (where appropriate) allowing the sale of the ship on an expedited basis by private treaty to a nominated buyer without the necessity of auction. This special, expedited sale procedure is crucial if the arrested ship has a cargo on board and the arresting party wishes to avoid claims from cargo owners for damages on the grounds of unlawful interference. The procedure can save in excess of 4 weeks and is particularly helpful where arresting banks are able to arrange a sale to new owners in advance.
- Approved arrangements for payment of the purchase price following the sale of the vessel by bank guarantee or (where appropriate) as a set off against a judgment obtained.

Expertise Built on Experience

All professionals involved in the ship arrest, from ship agents to the staff and Judges of the Admiralty Court, are well versed in this field. Issues are dealt with quickly, ensuring that the ship spends as little time as possible in Gibraltar.

Quick Payment

Normally, payment of a judgment can be achieved within eight weeks of the initial arrest. Because an arrest is usually a measure of last resort, the arresting party will usually have been out of pocket for some time. A procedure resulting in a quick payment out is crucial to the success of any jurisdiction.

Insolvencies of ship owners inevitably cause financial hardship and suffering to banks, creditors and often the crew. This is a harsh reality of life. Gibraltar has concentrated its efforts in making the process as painless as possible and has as a result established itself as possibly

THE SALE

An Order for sale will usually be granted at the same time as entry of the default judgment, 14 days after the arrest of the ship. Once an order for sale is granted by the Supreme Court, the Admiralty Marshal brokers to market and advertise the sale. The normal period of advertisement is three weeks. The Admiralty Marshal's conditions of sale provide for sale on a "where is, as is" basis and for a sealed bids auction. Experience has shown that this method achieves the highest price. Save in expedited sale cases as outlined above (which are even quicker), the arrest and sale of a ship normally takes approximately six weeks from start to finish.

COSTS

A ship is an expensive item to maintain. Following arrest, a ship must be maintained by the Admiralty Marshal to preserve her value for the benefit of all creditors. An arresting party thus becomes liable for the Admiralty Marshal's expenses of maintaining the vessel. Inevitably a ship arrest is an expensive exercise, which is why speed and efficiency are of such importance. It is in this area that Gibraltar has attained an excellent reputation.

The expenses of arrest include:

- Provisions for the master and crew, bunkers and fuel oils to maintain essential services on board.
- The employment of ship keepers to secure the ship and prevent her from breaking arrest.
- Berthing Fees.
- Tonnage dues.
- A Court Pounding of 1% of the gross proceeds is charged following the sale of the vessel. A reducing sliding scale has recently been introduced in the case of fleet arrests (see below).
- On a sale by auction the Admiralty Marshal's brokers will charge an additional 1% commission. This is avoided where an expedited sale takes place (see above).

NOTEWORTHY CASES

The simultaneous arrest of seven cruise liners, belonging to the Renaissance Fleet Line following the September 11th outrages was singly the most important incident of Admiralty Arrest ever conducted in Gibraltar, and demonstrates vividly the efficiency and flexibility of the Gibraltar jurisdiction in this field.

The scale of that task, probably unmatched in any part of the world, first became apparent with the need to find seven large enough semi-permanent berths alongside in the Port. The next priority was the pacification of a large and restless crew that had been out at sea for 20 days more than the customary one night between daily visits to the different ports on the cruise liners' usual itinerary. This required prompt payment of wages, followed by the rapid repatriation of over 1500 seamen and hotel staff. Thereafter, an orderly removal of the numerous concessionaires' equipment on board (discotheques, cinemas, gyms, boutiques, hairdressing salons etc) had to be arranged and supervised whilst ensuring that no time was wasted to facilitate the sale of the ships as early as possible.

In the end the ships were all sold within 7 weeks of their arrest. This achievement represented a splendid feather in Gibraltar's cap, and did credit to Gibraltar as a specialist jurisdiction. Interestingly, on the arrest of these vessels the first requirement made by each of the Masters was that the ships should be provisioned with beer as a matter of utmost urgency to ensure peace and safety on board!

Only a few weeks previously Gibraltar had seen the arrest of a fleet of Abu Dhabi bulk load carriers (another seven vessels) at the instance of the mortgagee bank. These fleet arrests led to the presentation of proposals to the Government of Gibraltar for the implementation of a sliding scale for the levying of the Court Poundage on the sale value. As a result of these representations the law has been changed so that Court Poundage can be reduced in appropriate circumstances.

TRIAY & TRIAY

LAWYERS

TRIAY & TRIAY GIBRALTAR

28 Irish Town, Gibraltar

Telephone +350 200 72020 **Facsimile** +350 200 72270 **Email** info@triay.com

TRIAY & TRIAY SPAIN S.L. SOTOGRANDE

Edificio Plaza Mayor, Planta 1a-17,

Plaza Mayor s/n, Pueblo Nuevo de Guadiaro, Sotogrande, 11310 Cádiz

Telephone +34 956 695395 **Facsimile** +34 956 796244 **Email** info@triay.com

TRIAY & TRIAY SPAIN S.L. MARBELLA

Av. Ricardo Soriano No.19-5, Marbella 29600 Málaga

Telephone +34 952 902400 **Facsimile** +34 952 827373 **Email** info@triay.com

www.triay.com

