

QUESTIONNAIRE

STUDY RELATING TO LIABILITY FOR WRONGFUL

ARREST

RESPONSE OF THE IRISH MARITIME LAW ASSOCIATION

The Irish Maritime Law Association answers the questions posed in the questionnaire circulated with the letter of the President of the Comité Maritime International dated 27th May, 2015 as follows;

I. INTERNATIONAL CONVENTIONS:

(a) Please advise which, if any, of the following Conventions your jurisdiction is a party to and has given effect to in its legislation:

- (i) Arrest Convention 1952 **YES.**
- (ii) Arrest Convention 1999 **NO.**
- (iii) Maritime Liens and Mortgages Convention 1926 **NO.**
- (iv) Maritime Liens and Mortgages Convention 1993 **NO.**

(b) If none of the above is made part of your national law, or in any event, what are the grounds on which a vessel can be arrested in your country?

The ships of both Convention states and non-Convention states can be arrested in Ireland for the maritime claims enumerated in Article 1 of the Arrest Convention 1952, and not otherwise.

In addition a “sister” ship registered in a Convention State may be arrested in Ireland.

II. QUESTIONS RELATING TO WRONGFUL ARREST

1. To what extent is a claimant required under your national law to provide security in order to obtain an order for arrest or, subsequently, to maintain an arrest?

In order to obtain an Order for Arrest in Ireland the claimant’s solicitor is required to give an undertaking to indemnify the Admiralty Marshal in respect of all charges and expenses that may be incurred incidental to arresting the vessel, or any claim made against the Admiralty Marshal in connection with such arrest or

detention. In the event that such charges and expenses are not recovered from the Defendant, the Plaintiff's solicitor remains liable for them.

In order to maintain proceedings, and therefore an Admiralty arrest, in Ireland, the arrestor may be required to give security for costs if the arrestor is domiciled outside the state or is a company provided that the arrestor's inability to give security for costs has not been caused by the alleged wrong complained of. The rules in this respect are not peculiar to actions *in rem*.

Where an arrestor seeks to maintain an arrest in Ireland as security for the satisfaction of any judgment which may eventually be pronounced by a foreign court or in arbitration, the Irish Court may make such an Order if the judgment may be enforced in Ireland (say, under [Brussels] EC Regulation 1215/2012) and in doing so may, under the Jurisdiction of the Courts (Maritime Conventions) Act 1989, section 5 (5) "attach such condition to the Order as it thinks fit, in particular conditions relevant to the institution and prosecution of the relevant arbitration or legal proceedings." In the UK similar legislation has been interpreted to allow the court to require an undertaking as to damages.

2. Under your national law, if the claim for which a vessel has been arrested has subsequently been rejected by the court hearing the case on its merits, would the arrestor be liable in damages by reason of

- (a) The mere rejection of the claim? **NO.**
- (b) Or would proof be required about the arrestor's:
 - (i) awareness/knowledge that his claim had no foundation? **NO.**
 - (ii) negligence in bringing such a claim? **NO.**
 - (iii) bad faith or gross negligence or, otherwise, malicious bringing of such a claim? **YES.**

3. Under your national law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim):

- (a) Would the arrestor be liable in damages for the consequences of the arrest, and, if Yes, in what circumstances? **YES, but only in circumstances where the arrestor acted in bad faith, gross negligence or maliciously.**
- (b) For liability under (a), if any, would proof of negligence, bad faith or gross

negligence on part of the arrestor be required? **Proof of negligence would not be sufficient; there would have to be proof of bad faith, gross negligence or malice.**

4. If the arrest claim was not against the owner of the ship and could not be enforced against that ship under the law of the state where the vessel was arrested:

(a) Would, under your national law, the arrestor be liable in damages? **NO, except in cases of bad faith, gross negligence or malice.**

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required? **YES.**

5. If the amount of the arrest claim was grossly exaggerated:

(a) Would, under your national law, the arrestor be liable in damages to the owner of the ship for any of the following losses caused by reason of the grossly exaggerated claim:

(i) for the extra cost of the security required? **NO, because the amount of the security, if disputed, will be fixed by the Court at the time of the application for the release of the ship upon the giving of the security.**

(ii) for losses incurred by the owner of the ship by reason of the delay caused by the greater time required to procure the security? **NO.**

(iii) for losses incurred as a result of the owner being unable to provide the excessive security? **NO.**

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required? **NO.**

6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgements or arbitration awards against him, e.g. he owns many ships (not under separate corporate veils), which call regularly at ports where enforcement can take place:

(a) Can the arrest be considered wrongful as a result, so as to attribute liability to him under your national law? **NO.**

(b) For liability under (a), if any, would proof of negligence, bad faith or gross

negligence on part of the arrestor be required? **NOT APPLICABLE.**

7. Are there other circumstances in which, under your national law, an arrestor can be held liable in damages for the arrest of a ship? **YES, section 47 of the of the Admiralty Court (Ireland) Act 1867 provides:**

“The Party at whose Instance any Property is arrested under a Warrant of the High Court of Admiralty shall be liable to be condemned in all Costs and Expenses occasioned thereby, and in Damages for Detention of the Property, unless he shows to the Satisfaction of the Court the he could not, without such Arrest, have obtained Bail or other Security for the Sum in which the cause is instituted, or that he had otherwise good and sufficient Reason for having caused the Issue and Execution of the Warrant of Arrest.”

8. Does your national law provide for a penalty or other sanction to be levied upon the arrestor, separate and distinct from any damages, if he is held liable for the arrest? **NO.**

9. Would a court in your country, seized with a claim for damages for the arrest of a ship in another country, apply the law of the country of arrest (*lex forum arresti*) in that regard, or would it apply its own substantive national law (*lex jori*), or would it apply the substantive law applicable pursuant to the general international private law rules of its country? **In accordance with Article 6 of the Arrest Convention 1952, the Irish Court would apply the law of the Contracting State in which the arrest was made or applied for. If the arrest was made or applied for in a non-Contracting State, the substantive law applicable would be determined pursuant to international private law rules as applied generally in Ireland.**