# SHIP ARREST IN *ISRAEL*

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## 1. Please give an overview of ship arrest practice in your country.

**1.1 Sources of the Admiralty Court's Jurisdiction**

The Israeli Maritime Court was established during the British Mandate over Palestine-Israel which took place formally between 1922-1948, and in-fact from the year 1917 and until 1948. By a King's-Order-in-Council dated 2 February 1937 the Supreme Court of Jerusalem was constituted as a Maritime Court under the Colonial Court Admiralty Act, 1890. On the date when the Colonial Court Admiralty Act was enacted, the relevant acts of Admiralty which were in force were the Admiralty Acts of 1840 and 1861 and also the Naval Prize Act of 1864. These continue to apply to the Israeli Haifa Maritime Court's (being a division of Haifa District Court) jurisdiction (which was granted the maritime jurisdiction formerly held by the supreme court) up to this present date.

In addition, the Israeli legislator, when enacting the Israeli Shipping Law (Sea-going Vessels), 1960, in relation to maritime lien, has chosen to follow International Convention for The Unification of Certain rules of Law Relating to Maritime Liens And Mortgages, Brussels 1926.

Accordingly, there are two set of rules governing the Israeli Maritime Court: The English Admiralty Acts of 1840 and 1861 and the Israeli Shipping Law (Sea-going Vessels), 1960, which follows the 1926 Brussels Convention. Section 41 of this law determines the Maritime Liens and their priorities as follows:

(1) The official expenses of selling a vessel pursuant to a judicial sale,
(2) Port and port related charges and expenses,
(3) The costs of preserving a vessel pending Judicial sale,
(4) Payments due to the master and crew including damages for personal injury,
(5) Salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers.
(6) Damages for personal injuries to passengers
(7) Damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects,
(8) Mortgages - no distinction is drawn between a local or foreign registered Mortgage,
(9) Necessaries.

The question of the existence of a Maritime Lien or a Statutory Claim in Rem is determined by the "Lex Causa" and the priorities, being procedural by the "Lex Fori". If a party wants to prove the Lex Causa this is done by providing the Court with an expert opinion. If no such opinion is provided in accordance with the identity of laws principle, Israel law will be applicable.

Latest Significant Judgments have been handed down by the Haifa Maritime Court:

(i) In the matter of *Moraz Shipping* (2022), The Haifa Maritime Court denied Owner's application for establishing a limitation fund in relation to an oil leakage which leaked from the vessel while being bunkered near Haifa port. One of the Court's reasoning was that the incident was caused due to the actual fault or privity of the Owners- through the local operators of the vessel which did not instruct the vessel's crew and did not supervise the qualifications of the crew members. In this regards the Haifa Maritime Court referred to matters of claims in rem and arrests of vessel as an authority that in

rem proceedings can be taken against a vessel regardless to owner's liability, because, for enforcing these, it is enough that those who were authorized to obligate the vessel were the ones who caused the damage. As in general, the Haifa Maritime Court's approach is that a maritime lien requires Owner's liability, this judgment sets a path to extend matters under which owners will be seem to be to liable for the purpose of Court's recognition and enforcement of maritime liens.

(ii) In the matter of *M/V MORAZ* (2021) the Haifa Maritime Court accepted that the costs of medical treatment provided by a local hospital to a crew member who become ill with covid 19, constitute a maritime lien on the vessel, according to clause 40-41 (4) of the Shipping Act (Vessels)- "*payments claimed by the captain, crew and others who served on board arising out of their employment in the vessel...*".

(iii) In the matter of *M/V "HURIYE ANA"* (2017) the Haifa Maritime Court held that a sister-ship arrest is not recognized under the Israeli Law as no such possibility/authority appears in neither of the Admiralty Court Acts of 1840 and 1861 which constituted the Maritime Court (as a Colonial Maritime Court) and as Israel is not a signatory party to the Brussels Convention 1952 or any other convention which allows a sister-ship arrest. This judgment is the first time that the Maritime Court has dealt in a reasoned judgement with the issue of sister ship arrest. Until then, only ex-parte decisions were given. In the Matter of *M/V OSOGOVO* (2021), while denying a suppliers' arrest application for necessaries supplied to sister-ship vessels of the subject vessel, the Haifa Maritime Court mentioned that it does not deny the possibility of extending, under "judicial legislation" the causes for arrest and including a "sister-ship arrest", leaving the path for applying for such an arrest by using the legal principles of lifting the corporate veil.

(iv)In the matter of *M/V "Thor Horizon"* the Haifa Maritime Court ordered on the stay of proceedings in a claim in rem filed on the grounds of damage done to the goods due to a law and jurisdiction clause. Claimants appealed to the Supreme Courts arguing that if the claim will be referred to the foreign jurisdiction it might be dismissed due to the 12 months- time bar of the Hague-Visby Rules (Article III (6)). Owners refused to undertake that when the claim will be filed before the foreign jurisdiction they will not argue that claim is barred. Under these circumstances, the Supreme Court held, that, as the claim might be dismissed if referred to the foreign jurisdiction, the law and jurisdiction clause will not be enforced by the Court, and cancelled the stay of proceedings.

(v) In the Matter of the *M/V "Captain Harry"* the Haifa Maritime court recognized in a German Judgement handed by the District Court of Hamburg ordering that the Owners are not under an obligation to pay the Claimant for the bunkers is supplied to the sub-charterer of the vessel. As a result (of the recognition) the Haifa Maritime Court dismissed the claim in rem filed before. This decision has been appealed before the Supreme Court.

(vi) In the matter of *M/V Nissos Rodos*, the Haifa Maritime Court denied a claim in rem filed by a local port agent who paid Haifa Port the ports due for 17 calls of the vessel at Haifa Port, reasoning that there was no contractual relations between the agent and the Owner (as the commercial relations were between the agent and a third party who operated the vessel) and that therefore there was no personal liability on behalf of the Owner to pay the claimed amount. (However, the findings of the Maritime Court were used for establishing the agent's civil claim against the operator of the vessel, resulting with substantial recovery for the agent).

(vii) In the matter of *M/V BADR* (2020) the Haifa Maritime Court held, that a vessel registered in the Libyan registration can not be registered under the Israeli registration too, and ordered on the cancellation of the Israeli registration of the vessel which was done ex-parte without the consent of the owners of the vessel and by making use of a deed of ownership issued in Bulgaria after the ex-parte arrest of the vessel and its' alleged

auction selling to its alleged creditor. The arrest was was filed on the basis of a mortgage deed which was found to be fake and later cancelled and so was the deed of ownership. The matter is subject to an appeal filed by the defendants, pending before the Supreme Court.

(viii) In the matter of *Vapi Kredi Banaksi Vs. M/V Hurriye Ana* (2020), The Haifa Maritime Court denied a Bank's claim to enforce a Mortgage which was registered in the vessel's registration. The Court held that the validity of the loan agreement was not proven and that no information was provided in relation to the payment schedule agreed with the debtor (which was not the owners) and what was the exact amount of debt remained. The fact that a mortgage is written in the vessel's registration is not enough in order to have it enforced.

(ix) In the matter of *M/V FREEDOM* and *M/V KAARSTIEN* (2021) the Haifa Maritime Court continued to establish his authority to act as a Prize Court according to the Naval Prize Act 1864 and to order, at the request of the State Of Israel on the confiscation and judicial auction sale of these vessels which are captured by the Israeli navy while attempting to breach the naval blockade imposed upon Gaza shore. These judgments follow the Haifa Maritime Court's decision in the matters of the *M/V Estelle* (2014), *M/V Marianne* (2016), *M/V Zaytouna Olivia* (2019) and clearly states that breaking the blockade for purpose of protest against the blockade will result in confiscation of the attempting vessels, while humanitarian aid itself will be transferred to Gaza strip through Ashdod port and inland carriage.

**1.2 The Application for Arrest**

The Application for Arrest must be filed with the Claim in Rem.

In practice, we support the Application by an Affidavit. A scanned Affidavit confirmed in front of the foreign lawyer or by an Israeli lawyer (by fax or e-mail) will be sufficient. Additionally, the Affidavit can be given by the arresting attorney. Copies of all the relevant documents in support of the arrest are attached to the Affidavit.

A Power of Attorney is not perquisite but in practice will file a signed POA, a copy scan is sufficient.

The Court has a discretion to order the arresting party to furnish security. in the matter of *M/V Tara Kaptanoglu* it was held that the Court will order so on rare occasions such as when there is a serious doubt as to the validity of the documents constituting the application for arrest. In the matter of M/V Captain Hury (2014) the Court ordered that the applicant which was a bunker supplier claiming US$ 315,763 for unpaid bunkers, will deposit an amount of US$ 14,285 in order to secure owner's costs. Eventually, the claim itself was denied.

In relation to arrest for a supply of necessaries, being a contractual lien the Haifa Admiralty Court will order an arrest if the Claimant is the contractual party to the agreement under which the necessaries were supplied, even if the party is not the actual supplier itself. On the other hand a Claimant which did not enter with the Owners in an agreement for the supply will not be entitled to a maritime lien, even if it is the actual supplier. Entering such an agreement can be done by the Owner itself, the Master or any entity authorized by the Owner to enter in such agreements (such as the managers).

The arrest procedure is relatively swift and the arrest can be effected within 24 hours of receiving instructions. If the application is made on a Saturday or public holiday, this period may be extended as a result. Most of the arrest applications do not require an appearance before the Court or the Judge. The claim in rem and the arrest applications are filed by electronic communication followed by a message sent from the Court's Clerk to the presiding Judge to draw his attention that an arrest application is filed.

The Order of Arrest will be normally discharged by the provision of a P&I Club or other acceptable guarantee normally a local (Israeli) bank guarantee.

The Vessel can apply to set aside the Arrest by contesting the merits of the claim or, on the grounds that the claim does not constitute a maritime lien or a statutory right in Rem under the Lex Causa or that the Admiralty Court does not have jurisdiction. In order to avoid delay to the vessel, security can

be furnished without prejudice and subject to the vessel's rights to contest the Arrest and to have the security provided cancelled.
Upon serving the Order of Arrest on the vessel's Command, the Port Authority and Border Police, the Arrest becomes effective. The arrest order is drafted in a manner it will contain orders according to which a scanned copy of the Arrest Order forwarded by e-mail or fax will be sufficient for the authorities for arresting the vessel and complying with the order. In practice an original true copy of the order is served after it has been sent by fax or e-mail.

**1.3 Court Fees and Legal Costs**
The Court fees payable are 2.5% of the amount claimed in the Claim in Rem of which half (1.25%) is payable at the time of filing the claim. No additional Court fee is payable for the Application of Arrest.
The legal fees for attending to the Arrest excluding VAT (at present 17%) and disbursements, are between US$4,000.- and US$6,500.-, depending on the complexity and urgency of the matter.

## 2. Which International Convention applies to arrest of ships in your country?

Although no international convention related to ship arrest has been formally adopted by the Israeli legislature the Israeli Shipping Act of 1960 follows the Brussels 1926 Convention and the Admiralty Court can use the convention as a persuasive source of law. Israel is not a party neither to International Convention Relating to Arrest At Sea 1952 (Brussels) nor to the International Convention On The Arrest Of Ships 1999 (Geneva) and In the matter of *M/V Huriye Ana* (2017) the Haifa Maritime Court held that he has no authority to order a "sister-ship arrest"

## 3. Is there any other way to arrest a ship in your jurisdiction?

Ships or any other property of the debtor can be provisionally attached in a normal civil claim. This requires that the cause of action is within the Court's normal civil jurisdiction and the provision of a guarantee.

## 4. Are there alternatives e.g. saisie conservatoire or freezing order?

Under normal civil procedure Rules and Practice the Court can also grant a "Mareva Injunction", restraining order and attachments on goods, property and entitlements.

## 5. For which types of claims can you arrest a ship?

Those claims in respect of which the Admiralty Court has jurisdiction in terms of the enactments stated in **Clause 1** above.

## 6. Can you arrest a ship irrespective of her flag?

A ship can be arrested irrespective of its flag except an Israel registered vessel cannot be arrested for necessaries supplied in Israel.

## 7. Can you arrest a ship irrespective of the debtor?

According to the Haifa Maritime Court's line of recent judgements only the debtor is entitled to a maritime lien- for example the contractual supplier as opposed to the actual supplier. Such right(s) can be assigned by the debtor and in such a case the assignee will receive the debtor's rights and as a result will be entitled to a maritime lien.

## 8. What is the position as regards sister ships and ships in associated ownership?

As Israel is not a signatory party to any of the Conventions allowing a sister ship arrest and as no such an arrest is applicable under the Admiralty Court Acts of 1840 and 1861 which constitute the Maritime Court. As presented in clause 1.1. (iii) above, under the judgment held in the matters of the M/V HURIYE ANA" (2017) and *M/V OSOGOVO* (2021), The Haifa Admiralty Court held that no such an

arrest is recognized under the Israeli law, however it might be possible to extend under "judicial legislation" the causes for arrest and to allow a sister-ship arrest where circumstances will allow lifting the corporate veil.

### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The Israeli Shipping Act 1960 follows the Brussels convention of 1926. Accordingly, clause 53 of this Act states that the orders relating to maritime liens will apply also to "*vessels operated by a charterer or any other person who is not its owner*". It is also worth mentioning, that, the Israeli legislator's reasoning when enacting the Israeli Shipping Act 1960, were, that, between the two distinguished maritime liens regimes: the English and the Continental it prefers the latest according to Brussels Convention 1926. However, the Maritime Court is recently consistent with the ruling (reasoned by the Court following the English maritime-law), that, a maritime lien requires personal liability of the Owners.

### 10. Do your Courts require counter-security in order to arrest a ship?

As mentioned in **clause 1.2** above - not normally, only on rare occasions such as when there is a serious doubt as to the validity of the documents constituting the application for arrest.

### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

For Arrest purposes the Courts make no distinction between the historical maritime liens which are embodied in the 1840 and 1861 Admiralty Acts and the additional maritime liens (which are in effect statutory claims in rem) constituted by the Section 40 of the Shipping Law 1960.
See Clause 1 above.

### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, as in Clause 1.1 above. None of the International Arrest Conventions apply in Israel as a matter of ratification or accession. However as the Israeli Shipping Law mentioned in clause 1 above follows, in clause 41, part of the International Convention for the Unification of Certain Rules of Law Relating to Maritimes Liens and Mortgages 1926 and as the Court itself was established by and according to English Law and the Admiralty Court in fact follows both, it may well be arguable to ask the Court to follow a relevant Convention on a specific matter, as a matter of customary law.

### 13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

As explained in clause 1.2 above, the arrest can be effected within 24 hours of receiving instructions.

### 14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA is not obligatory. We support the arrest application with an Affidavit which should clearly set out the cause of action and the documents in support thereof should be attached to the Affidavit.

### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

For the Arrest Application and Order no original documents are required, but the originals would have to be produced if the claim proceeds to trial.

### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Once the claim in rem is recognized under the laws mentioned in **clause 1** above, the Haifa Maritime Court will accept jurisdiction (provided that the arrested vessel is either with-in or on its way to Israeli territorial waters).

However, if the relevant documents contain law and jurisdiction/arbitration clauses, the Court will order on the arrest and after will refer the substantive claim to the relevant forum. In this manner the arrest will provide a security for the claim or arbitration proceedings which will be handled in the foreign jurisdiction.

### 17. What is the procedure to release a ship from arrest?

The ship can be released from arrest by successfully contesting the alleged grounds of arrest or the Courts jurisdiction or by providing an acceptable guarantee.

### 18. What type of security needs to be placed for the release?

The usual securities acceptable to the Court are a deposit within the Court, a P&I LOU issued by one of the International Group of P&I Clubs, or a bank guarantee issued by an Israeli bank.

### 19. Does security need to cover interest and costs?

Under the Arrest order, the Court states the amount that should be deposited or secured for the release of the Vessel. Usually the interests and costs are included in the claim and the arrest order as being part of the maritime lien.

### 20. Are P& I LOUs accepted as sufficient to lift the arrest?

Yes. See clause 18 above.

### 21. How long does it take to release the ship?

If security is provided as above, a matter of a day. If the arrest is contested for substantive or procedural reasons, the Court will attempt to resolve the matter as soon as possible but if the issues are complex this may take up to a week.

### 22. Is there a procedure to contest the arrest?

Yes, as described in clause 17 above.

### 23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After preliminary hearings the matter is normally concluded within one year as from the date of filing the Claim in Rem. As a matter of practice the Arrest in itself normally determines the matter.

### 24. Do the Courts of your country acknowledge wrongful arrest?

There is no leading authority relating to the matter of wrongful arrest. Under the general civil law a party seeking a temporary relief (such as a lien or restraining order) might be liable in tort or in a commitment emerging out of the Court's order to compensate the other party for its damages if the temporary relief is cancelled and if the seeking party acted unreasonably or in malice (Civil Appeal 732/80 Arens Vs. Bait-El). It seems that when deciding on an application or claim for damages for wrongful arrest the Haifa Maritime Court will follow the *Evangelismos Tests* of 1858 as interpreted By the Court of Appeal of Singapore in the matter of *M/V Vasiliy Golovnin* 2008.

### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Corporate veil can be lifted in circumstances of fraud, deceit or maliciousness.

## 26. Is it possible to have a ship sold pendente lite; if so how long does it take?

A ship can be sold pendente lite if it can be shown that the continuation of the arrest will substantially affect the value of the ship. In this case the net sale proceeds are regarded as having substituted the ship for all purposes, including the eventual determination of the validity of the claims in rem and the priorities.

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