

## Maritime Litigations in Panama

Due to its key position, Panama is a necessary route for hundreds of vessels of all class.

This is a particular advantage for those who, in exercise of a credit right or to insure the result of a proceeding, have the intention of a ship arrest. In the Panamanian maritime procedure exists the forum arrest notion under which the arrest of a vessel or goods of the defendant by the Maritime Court is ascribed in its favor of the competence for knowledge of the matter in virtue of which the measure is executed.

To enforce the arrest, is only required to deposit before the Court the amount of US\$1,000.00 as a guarantee against possible damages and US\$2,500.00 for Marshal Expenses. This cost is very competitive compared with other jurisdictions and all the expenses are taxed as cost in the action.

The Maritime Court of the Republic of Panama has shown to be a convenient judicial forum for plaintiffs. The Panama Maritime Court is available the 24 hours a day, the 365 days of the year, to the international maritime community in order to institute judicial proceedings to enforce their claims through the seizure and arrest of vessels.

## Arrest of Vessels in Panama

The following are the main questions posed by the claimant, about the proceeding to perform the arrest of a vessel before the Maritime Court of Panama.

**1. What are the documentary and evidential requirements for an arrest of a vessel, cargo, freight, combustible or other goods of the defendant?**

R. The petition for arrest must be filed with the complaint. In this regard, complaint must briefly set the reasons of fact and the rights on which the same is based. Circumstantial or prima facie evidence must be included in the claim evidencing the legality of the right claimed. The evidence herein before mentioned may be copies.

**2. Can a vessel be arrested in Panama, in circumstances where the claim has no direct relationship with Panama? That is to say, that the flag of the vessel involved is not Panamanian, that the cargo was not shipped from or to Panama and neither the parties of the controversy (dispute) are from Panama.**

R. Correct. According to the article 164 of the Maritime Code of the Republic of Panama, the Admiralty Court of Panama also has jurisdiction with respect to the lawsuits derived from acts of maritime commerce and maritime trade outside the territory of the Republic of Panama, its territorial and navigate waters, when the defendant is out of its jurisdiction.

**3. Will the Maritime Court of Panama, permit to submit the case to another jurisdiction, maintaining the arrest of the vessel or the obtaining of the guarantee to substitute the arrest of said vessel, under the jurisdiction submitted?**

R. It is correct. According to the article 19 of the Maritime Code of the Republic of Panama, the Maritime Court may abstain, upon a petition filed by an interested party, from taking cognizance, or of continuing to take cognizance, of proceedings from causes arising outside of the territory of the Republic of Panama, in any of the following cases:

A. When the controversy has been previously submitted to arbitration, or to the jurisdiction of a court in a foreign country, and if a decision is still pending in such action.

B. When the parties have agreed by written contract to submit their controversies to arbitration, or to a court in a foreign country.

C. When testimony of witnesses is to be taken, and the witnesses reside abroad, and the practice of taking such proof abroad, or the appearance of said witnesses before the court is too onerous for each of the parties.

D. When a judicial inspection may be deemed necessary in order to have a better appreciation of the facts, and such acts would be carried out abroad.

In the above mentioned cases, the Maritime Court shall suspend the further proceedings of the claim, until such times as the foreign court has rendered a final judgment, and will keep the property seized, or the guaranty substituting it, subject to the orders of said court.

**4. Will the Maritime Court accept a P & I Club Letter of Guarantee as good security, or will the Court accept only Bank guarantees or cash, or can the claimant choose?**

R. The Court will accept, as good security, a P & I Club letter of guarantee, only if the same is filed by the mutual agreement of both parties. Whenever the Maritime Code requires that a party give security, the guarantee shall consist of any of the following:

- A. Cash which must be deposited by the interested party in the National Bank of Panama.
- B. Cashier's check drawn against banks with license to operate within the Republic of Panama.
- C. Surety bonds issued by companies in the Republic of Panama authorized for such in Panama.
- D. Bonds of the Public Debt of the Republic of Panama.
- E. Any other guarantee agreed to by the parties.

**5. Does a claimant have to put up counter security?**

R. No, the claimant does not have to put up counter security.

**6. What are the costs involved in arresting a ship in Panama, including Court fees, Lawyers fees and fees of the Marshal?**

R. The petition for the arrest of the vessel must be presented by the plaintiff accompanied by security of US\$1,000.00, in order to respond for the damages, caused by such arrest, and shall consign to the order of the Marshal of the Maritime Court, an amount of US\$2,500.00 as an advance for the expenses which may be brought about in the conservation and custody of the vessel.

The aforesaid guarantee of US\$1,000.00 is in the event that the arrest of the vessel is directed to seek execution of Maritime liens against the vessel, freight and cargo as well as in the event the arrest is utilized by the plaintiff to procure jurisdiction. However, if the arrest of the vessel is interposed as a purely precautionary action to keep the proceedings from having illusory effects and keep the defendant from transposing, dissipating, encumbering, alienating or impairing the vessel, then the plaintiff shall have to deposit a guarantee that the Court shall prudently indicate, and that will not be less than 20% or greater than 30% of the amount of the claim.

If the power of the attorney is not available when the arrest of the vessel takes place, the lawyer who is handling the case, can act as officious intervener of the claimant, for which it will be required to file a guarantee in the form of a bond. The maximum bond for complaints above US\$1,000.000.00 is US\$4,500.00. This bond is recoverable once the power of attorney is filed with the court.

Lawyer's fees are agreed by the lawyers and the client subject to the following circumstances:

- A. The amount of the claim.
- B. The purpose of the claim.
- C. The complexity of the case.
- D. In some instances, attorneys will take a matter on an hourly basis.

**7. What is the procedure for releasing a vessel from arrest in Panama, and how long does it usually takes to release a vessel from arrest?**

R. The vessel may be released from arrest, if the defendant or an interested third party deposits with the Court any of the guarantees acceptable by law and which are mentioned in questions No. 4. It is important to take into account that the Maritime Court of Panama is open the 24 hours of every day of the year, including holidays.

**8. Do claim documents have to be translated into the Spanish language?**

R. Yes. If the claim documents are in a foreign language this documents have to be translated into the Spanish language, by an Official Public Translator from the Republic of Panama. Notwithstanding the Court usually accept documents that are in English language if they are filed as prima facie evidence to request the arrest of the vessel.

**9. Must the claim documents have a notarized power of attorney from the claimant?**

R. No, as we explained in point N° 6, if for any reason the power of attorney is not available when the arrest takes place, the lawyer that is handling the case can act as officious intervener of the claimant, for which it will be required to file a guarantee in the form of a bond.

**10. Once documents are In the hands of a Lawyer. how long does It takes for the Judicial process of acquiring the court's authority for an arrest?**

R. Once the documents and funds for securities are in hands of the lawyers, the order of arrest can be obtained in a matter of hours.

**11. Does the Maritime Court accept documents that are sent by email / facsimile transmissions?**

R. Yes. The Admiralty Court accepts email /facsimile transmissions, but only as prima facie evidence to arrest the vessel.

**12. Is there any additional and special documentation, required in order to arrest a ship?**

R. In addition to the documentation mentioned in the answer of question N° 1, no other special documentation is required in order to request the arrest of a vessel before the Maritime Court of Panama.

**13. Is there any special procedure or requirement for an arrest of a ship?**

R. In addition to the requirements and procedures hereinbefore detailed in this questionnaire, there are no other special requirements in order to arrest a vessel in the Republic of Panama.

Please do not hesitate in contact us for any enquiries  
or assistance regarding maritime legal procedures in Panama.