



SHIP ARREST IN PANAMA.

The Republic of Panama with its strategic geographic position, democratic and stable government, and well established maritime judicial system, fully equipped to handle all types of admiralty and maritime cases is rapidly being recognized throughout the world as a reliable and preferred forum for the administration of international maritime justice.

So far in this year there have been 100 ship arrests filed with the Maritime Courts, which in order of magnitude, the main causes of arrests have been claims for provisions of vessels needs on shore (including bunkers), followed by claims for personal injury, seamen wages, cargo damage, breach of maritime contracts and others.

Currently there are over of 27,856 vessels a year in Panamanian waters, of which an average of 14,684 are transiting the Canal.

I. Jurisdiction

The Maritime Courts of Panama have exclusive competence in cases arising out of activities related to commerce, transportation, and maritime traffic, occurring within the territory of the Republic of Panama, its territorial seas, the navigable waters of its rivers and lakes, and the waters of the Panama Canal. It has also exclusive jurisdiction with respect to claims arising from the aforesaid activities in any other country of the world:

1. When the respective claims are brought against a vessel or its owners and the vessel is arrested within the jurisdiction of the Republic of Panama as a consequence of such claims;
2. When the court has seized other assets or properties belonging to the defendant even though such defendant is not domiciled in the Republic of Panama;
3. When the defendant is found within the jurisdiction of the Republic of Panama and is personally served with notice of an action brought in the Maritime court;
4. When the vessel involved in the complaint is a Panamanian flagged vessel, or Panamanian substantive law is applicable by virtue of contract or as provided for in Panamanian law, or if the parties expressly or impliedly agree to the jurisdiction of the Panama Maritime Courts.



An exception to the exclusive jurisdiction of the Maritime Courts is the competence of the Panama Maritime Authority on any claims in respect of damages to port installations and pollution of Panamanian waters. In accordance with Law 57 of 2008, the pollution of the sea or the navigable waters of Panama could involve the detention of the vessel by the Panama Maritime Authority until the investigations of the casualties are made. Additionally, the vessel could be subject to a fine imposed by the respective authority.

II. Vessels Immune to Arrest

Pursuant to Article 180 of the Maritime Procedure Code of Panama, any foreign war ship, whether built, or under construction, and vessels in the service of a state, provided that they are not engaged in commercial activities are immune to arrest.

III. Declination of cases – Forum Non Convenience

This principle is established in Article 22 of the Maritime Procedure Code of Panama as the discretionary faculty of the Maritime Court to decline, at the petition of an interested party, from taking cognisance or of continuing to take cognisance of proceedings from causes arising outside of the territory of the Republic of Panama in any cases where:

-The practice of taking proofs abroad or the appearance of witnesses is too onerous for each of the parties or if judicial inspections need to be taken abroad.

-There is an arbitration or jurisdictional clause agreed by the parties.

-The parties have previously and expressly agreed by written to submit their controversies to the jurisdiction of a court in a foreign country.

-When the controversy has been previously submitted to arbitration or to the jurisdiction of a court in a foreign country and is pending of decision.

The Maritime Courts may demand the fulfillment of certain previous conditions, when it shall be necessary, to protect the rights of the parties, such as, the appearance before the foreign court, and the consigning of a sufficient guarantee before the said court, before declining to hear the case.

In those cases where the guarantee deposit cannot be consigned in the court of arbitration or foreign court, and if a seizure has been made to any property of the defendant in Panama, the Maritime Courts shall suspend any further proceedings of the claim, until such time as the foreign court has



rendered a final judgment, and will keep the property seized or the guarantee substituting it, subject to the order of the said court.

IV. In Rem and Quasi in Rem Actions

From the outset, the ample maritime jurisdiction as broadly applied, has established the Maritime Court of Panama as a convenient and effective forum to secure, among other claims and disputes, the collection of maritime debts. Especially those arising from necessities, supplies, and services furnished to vessels, which in addition to personal liability, may imply the legal existence of a maritime lien that may be enforced judicially through in rem or quasi in rem processes of law as set forth in Article 19 of the Panama Maritime Procedure Code.

In rem actions allow the judicial enforcement of liens directly against the vessel irrespective of ownership. Quasi in rem actions are those brought against the owner by seizing his property within the jurisdiction of the court.

If the applicable law recognises a maritime lien, an action in rem may be filed before our Maritime Courts, irrespective of whether the procedural laws of the particular country have the action in rem. In accordance with our legislation the action in rem requires the claim to be based on a maritime lien against the vessel, its cargo or freight.

V. Applicable Substantive Law

As opposed to other countries that apply tests of minimum contacts among the forum parties and transactions, Panama has adopted via statute rules to determine the applicable law. Among others, article 566 of the Maritime Code of Panama provides “ 2-with respect to the rights and liens that affect the vessel, the laws of the country of registry. 3-with respect to the rights and liens on cargo of freight, the laws of the Republic of Panama unless there is an express agreement to the contrary.”

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VI. Labor Claims

In accordance with The National Constitution “the claims arising out of the provisions of the Labor Code of the Republic of Panama shall be of the exclusive jurisdiction of the Labour Courts of Panama. However with respect to the civil claims in tort, those that occur as a result of professional risks, contemplated under the circumstances mentioned in article 21 of the Maritime Procedure Law shall



be within the competence of the Maritime Courts when the same shall occur as the result of a labour accident, caused by deceit, fault or negligence on the part of the employer, or a third party”

In this sense, the Maritime Courts of Panama will have jurisdiction on claims for seamen or captain wages as they are considered maritime liens, but only in the case of foreign flag vessels and applying the law of the registry of the vessel.

VII. Purpose of the Arrest.

The purpose of the arrest decreed by the Maritime Courts of Panama is to ensure that the proceeding (or settlement thereof) will not have any illusory effect, and to keep the defendant from transferring, dissipating, encumbering, alienating, or impairing properties susceptible to said measure, in which case the claimant must deposit a security or guarantee of not less than 20 percent of the amount claimed. (This usually applies only to local cases of direct personal actions in which neither the vessels nor the property in Panama need to be arrested due to the fact that jurisdiction already exists in accordance to law.)

Another of the purposes is to bring within the jurisdiction of the Panamanian Maritime Courts, cognisance of causes emerging within, or outside the national territory, as a result of facts, or acts related to navigation, when the defendant is outside its jurisdiction. This petition of arrest shall only require the posting of security of US\$1,000 plus US\$2,500 as an advance for the expenses which may be incurred by the court in the conservation and custody of the arrested property. In addition to security, the Maritime Judges will demand from the arresting party, as a condition to decreasing the measure, the presentation of circumstantial or prima facie evidence, which proves the legitimacy of the rights claimed.

Finally, the third purpose is to physically seize property susceptible to arrest in order to make effective privileged maritime credits or liens over such property, usually vessels (cargo or freight or a combination of both may also be directly sued and seized). In these cases the court will also require security of US\$1,000 plus US\$2,500 for property maintenance and custody, and prima facie evidence.

VIII. Required Documentation to arrest a vessel in Panama.

In order to arrest a vessel, the claimant must file the following documentation:

1. Power of Attorney for representation of claimants and Good Standing Certificate of the claimant party. If not available then a cash bond must be deposited with the court proportional to the amount of the controversy. Certified originals of these documents should be filed as soon as available.
2. Writ of complaint



3. Application for arrest
4. Security deposit of USD1,000
5. Deposit for custody and maintenance of the vessel USD2,500 or USD4,500 if vessel is over 10,000 GRT.
6. Documentation in support of application for arrest. “Prima facie evidence”, such as contracts, invoices, correspondence, etc.
7. Certification of the vessel’s flag of registry and ownership. (i.e. fax copy of a reputable international shipping directory listing the vessel’s details.)

The above support documentation could be presented to the court, at the initial stage of the judicial process without formalities i.e. legalized or authenticated originals. Documents may even be presented in English language and photocopies or facsimile prints will suffice.

Following the arrests of the vessels, in the majority of cases, the claims are promptly paid or settlement agreements are entered into with acknowledgements and guarantees which probably did not exist when the purchase transaction was carried out.

IX. Security and Bonding for Release of Arrest.

In all the above cases, and notwithstanding the posting of the aforementioned security, in order to lift the arrest, the defendant or arrested party must deposit in the court, security in cash or a certified check drawn on banks duly licensed to operate in Panama; surety bonds issued by banks, insurance companies, or other bonding agencies in the Republic of Panama authorized to engage in such transactions, or any other guarantee agreed by the parties (i.e. P& I club letters of undertaking issued by their local agents in Panama). This guarantee must cover the amount claimed in the complaint and the costs assessed by the court which includes the amount claimed, attorney fees, interests and expenses.

X. Important features of Panama arrest forum.

Some of the most important features of Panama’s Maritime jurisdiction are the following:

1. Access to the courts themselves is free of charge, that is, without payment of access fees to the Panamanian State for use of the courts.
2. Reasonable attorney fees and expenses will be assessed against the losing party.



3. The process elevates results over form and does not require excessive formalities. Rather the goal is to allow the parties to present their case with the minimum formalities necessary to ensure adequate presentation of all issues.
4. Actions may be brought to the court at any time (i.e. 24 hours a day, seven days a week) through the person of an on duty official. This procedure was developed originally in close coordination with the Panama Canal Authority to ensure the fluid transit of vessels through the Canal. If the Court determines that an action has not been brought in a timely fashion, the court may assess damages or interest against the delaying party.
5. Arrests in cases arising outside the jurisdiction of the Republic of Panama or to enforce maritime liens on any vessel will require a minimum-security deposit irrespective of the amount claimed.
6. Appeals will be decided directly by the Supreme Court of Panama.
7. Panama has adopted a Motion to Show Cause (Apremio), whereby the Courts, upon cause, could have an immediate hearing to decide whether if there is a wrongful arrest.
8. The Maritime Code has adopted procedural rules of the United States Federal Rules, including oral hearings, discovery and pre-trials.
9. Special Limitation of Liability procedure.

In conclusion, Panama is considered to be one of the most important crossroads of the world. The number of vessels calling at Panama will increase even more with the Panama Canal expansion, development of modern ports, container parks, bunker suppliers, railway networks between the terminal ports and services in general to the maritime industry. In this scenario, the Maritime Court of Panama is an effective and reliable forum for maritime debt collections, particularly for good faith providers and suppliers to the shipping industry.