

Ogier's Aviation and Marine team ready to resolve disputes on Cayman vessels

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Ogier's global Aviation and Marine specialists are seeing increased demand for their expertise on disputes concerning Cayman Islands flagged vessels (**Cayman Vessels**) and foreign flagged vessels within the territorial waters of the Cayman Islands^[1] (learn more about Ogier's dedicated, specialist service on our [Aviation and Marine sector page](#)).

These matters vary considerably in their nature, ranging from disputes concerning the sale and purchase of Cayman Vessels to underlying trust and probate disputes, insolvent antecedent transactions, arrests, and mortgagees seeking to enforce their security). But they are predominantly high-value, urgent, multi-jurisdictional disputes which require specialist knowledge in order to navigate the unique issues that arise in such cases.

The Cayman Islands has an enviable and strong maritime reputation with the Shipping Registry, a division of the Maritime Authority of the Cayman Islands, celebrating its 120th anniversary in 2023. George Town, the capital city of Grand Cayman, was first recognised as a British Port of Registry in 1903 with the first registration of a ship (the 54-foot *El Paso*) having taken place on 13 January 1903.

In modern times, the Cayman Islands has become the registry of choice for superyachts globally. This is likely due to the global reach and effective, efficient nature of the Shipping Registry^[2]; Cayman Vessels having access to full British Consular services and Royal Naval assistance and protection worldwide, the Cayman Islands providing a solid political, legal, fiscal and social environment with a stable parliamentary democracy since 1831, the Islands' reputation as an efficient, tax-neutral, international finance jurisdiction that offers a wide range of first-tier financial and business services, and modern, comprehensive maritime legislation based on English common law which allows flexibility for owners without compromising safety and which contains creditor friendly provisions to secure the rights of mortgagees and financiers. [Our briefing note in respect of the registration process to flag a vessel in the Cayman Islands](#) explains why Cayman is the registry of choice for superyachts globally.

The briefing note also highlights the main options available to a claimant to seize, arrest or freeze a vessel in support of their claim in the Cayman Islands or, in certain instances, in a foreign jurisdiction. The information and expressions of opinion in this briefing are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Remedies

Ship arrest

Warrants for arrest may be issued post the commencement of an admiralty claim in the Grand Court in the Cayman Islands (**Grand Court**) in an action *in rem*. Grounds for admiralty actions are prescribed in Order 75, Rule 1 of the Grand Court Rules (**GCRs**) [3] and include damage received or done by a ship, personal injury or loss of life and limitation actions [4].

The plaintiff must request a search of the admiralty register at the Grand Court office for any caveats against arrest in respect of the vessel. Assuming the warrant is in order and the plaintiff has given an undertaking to pay on demand the fees and expenses of the bailiff, the Clerk of the Grand Court will seal the warrant and the bailiff will execute the warrant for the vessel's arrest which is effected by serving the warrant on the target vessel.

Security may be provided by the defendant to secure the release of the vessel by giving bail, a payment into the Grand Court in lieu of bail or satisfying the arresting party with a guarantee or undertaking given out of court. The arresting party is "entitled to sufficient security to cover the amount of his claim with interest and costs on the basis of his reasonably arguable best case." [5]. Where there is a dispute as to the amount of security to be provided, whether by bail or otherwise, an application can be made to the Grand Court to determine the amount.

Whether a caveat has been entered or not, if property is arrested by reason of bad faith or gross negligence, damages may be recovered in admiralty or, indeed, at common law.

Grand Court orders for sale of a vessel

The Admiralty Division has the jurisdiction to order the sale of a vessel that is under arrest. Upon application by the plaintiff, the value of the vessel is appraised (essentially an auction reserve price) and the vessel is sold by the bailiff for the highest price that can be obtained above the appraisal value. The vessel may be sold for less than the appraised value if the Grand Court approves such a sale. Following the successful sale of the vessel, its proceeds are paid by the bailiff into the Grand Court.

A party that has obtained judgment against the ship, or proceeds of the ship, may apply to the Grand Court for a determination of the priority of the claims against the proceeds of sale.

Freezing Injunction

A claimant may obtain a Mareva [6] or "freezing" injunction in respect of a vessel even in circumstances in which he could not arrest it (*The Rena K* [1979] 1 Q.B. 377) (the **Rena K**) [7] ie if the plaintiff does not have a claim *in rem*.

Freezing injunctions may also be ordered in support of foreign proceedings, assuming that, in broad terms, the judgment is capable of being enforced in the Cayman Islands.

The criteria which must be met by a plaintiff seeking a freezing injunction is broadly as follows:

- a good arguable case on the underlying merits
- a real risk, judged objectively, that a future judgment would not be met because of unjustified dissipation of assets
- the court must be satisfied that it is just and convenient to grant the injunction

The applicant for a freezing injunction will be required to give the Grand Court an undertaking in damages, to the effect that if the Grand Court later finds that the injunction has caused loss to the defendant and decides that the defendant should be compensated for that loss, the applicant will comply with any order the Grand Court may make.

The Grand Court may order a freezing order against third parties against whom there is no cause of action (known as the *Chabra* [8] jurisdiction) where the applicant establishes that there is a good arguable case that the assets in the possession of a third party are, in fact, assets that belong to a defendant against whom a cause of action is being pursued. The Grand Court may make a freezing order against a third party even if they are not based in the Cayman Islands, but has assets in the Cayman Islands.

Section 77 of the Merchant Shipping Act (2021 Revision) (Merchant Shipping Act)

Section 77 of the Merchant Shipping Act provides that if the Grand Court, whether under the Merchant Shipping Act or otherwise (such as under the GCR as referenced above), orders the sale of a vessel or share therein, the order of the Grand Court shall contain a declaration vesting in some person named by the Grand Court the right to transfer the vessel or share, and that person shall thereupon be entitled to transfer the vessel or share in the same manner and to the same extent as if the person were the registered owner thereof; and the Registrar of Shipping shall deal with any application relating to the transfer of the vessel or share made by the person so named as if that person were the registered owner.

Stop Order under Section 78 of the Merchant Shipping Act

Section 78 of the Merchant Shipping Act states that the Grand Court may make an order prohibiting for a specified time, any dealing with a vessel or any share therein, on any terms or conditions it thinks just and the Registrar of Shipping, without being made a party to the proceedings, shall, on being served with the order or an official copy, obey the same.

Under the Merchant Shipping Act, any transfer of a Cayman Vessel or share in such a vessel must comply with the applicable terms of the Merchant Shipping Act. As the Registrar of Shipping is ultimately responsible for issuing a new certificate of registry, which is necessary to demonstrate that the transfer of legal title to the Cayman Vessel has taken effect, the effect of an order under section 78 will be akin to a freezing injunction and will ensure that no legal transfer of the Cayman Vessel is effected in breach of a section 78 order.

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With a global footprint crossing European, Asian and Caribbean time zones and a global network of law firms we work with, we advise clients with aviation and shipping assets on cross-border financing, disputes, trading transactions and establishing owner vehicles, providing tailored solutions for owners, investors, operators, lessors and lessees.

[1] Although, in our experience, the majority of disputes that arise concern Cayman Vessels.

[2] Which can be found in 15 countries and 19 locations around the world, including the Cayman Islands, Brazil, China, France, Germany, Greece, Italy, Japan, The Netherlands, Panama, Philippines, Singapore, South Africa, United Kingdom, and the United States.

[3] The relevant provisions of the GCRs are substantively the same as those of the Civil Procedure Rules of the Supreme Court 1999 (the 1999 White Book), on which the GCRs are based.

[4] Being actions that by shipowners or other persons for the limitation of their liability in connection with a ship or other property.

[5] *The Moschanthy* [1971] 1 Lloyd's Rep. 37 at 44.

[6] *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213

[7] The *Rena K* has not been considered or applied by the Cayman Courts as at the date of this briefing, but the Grand Court will treat relevant decisions of the superior courts of England and

Wales as being of persuasive authority and are likely to follow it.

[8] *TSB Private Bank International SA v Chabra* [1992] 1 WLR 231

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This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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