

Warrants of Arrest of Sea Vessels over ten (10) metres in length:

Guidelines for Practitioners regarding Act No XXXI of 2019

Recent amendments to the provisions relating to the warrants of Arrests of Sea Vessels in the Code of Organization and Civil Procedure ('COCP') and the respective forms in Schedule B of the COCP have been introduced through the enactment of Act No XXXI of 2019. By virtue of Legal Notice 343 of 2019, these amendments came into force as of 18th December 2019.

These amendments were introduced to better safeguard the well-being of the Executive Officers of the Courts and to improve the manner in which warrants of arrest, whether precautionary or executive, can be served with urgency upon vessels in Maltese territorial waters, particularly in cases where vessels are outside port limits on anchorage in precarious weather conditions.

These Guidelines are being issued to assist practitioners with the proper implementation and use of the amended forms.

Pursuant to Article 856(1) and (3) of the COCP, as amended, the party issuing the warrant must now indicate in the appropriate form the name and details of the person who shall affect service of a copy of the warrant on the vessel or master thereof and who shall also seize the appropriate documentation and certification from on board the vessel to be delivered to the Registrar of Courts (the 'Nominated Person').

It should be noted that, in accordance with the captioned amendments, the Executive Officers of the Courts shall continue to be responsible to affect service on the Authority for Transport in Malta and other local authorities or other parties, such as the local agent, where applicable. The amendments provide that in addition to the above, the Executive Officers shall now also be responsible to affect service on the Nominated Person at the address indicated in warrant.

Practitioners are reminded that in accordance to Article 856(2) of the COCP, the warrant is still deemed executed for all effects of the law when notice is served on the Authority for Transport in Malta.

In view of the above, the following guidelines are being laid down:

1. The party issuing the warrant must indicate in the appropriate form the name and details of any person who shall affect service of a copy of the warrant on the vessel. By way of example, the said Nominated Person may include *inter alia*, the party's lawyer or any service provider or and natural person including any Executive Officer, acting in his own personal capacity. The person so nominated will be expected to board the vessel with an official copy of the Warrant of Arrest, serve that copy on the Vessel's highest ranking officer (nominally the Master), briefly explain to that officer that the vessel is under arrest and demand that officer to hand over the ship's documentation and certification as will be explained below.

Practitioners are reminded that when a conveyance is required to take the Nominated Person to a vessel, they should only engage commercial vessel operators which are duly licensed and authorised by the Authority for Transport in Malta in accordance with the law.

Moreover, it shall always be the responsibility of the party issuing the warrant to ensure, from beforehand, that the Nominated Person has accepted to affect service on the vessel and has agree on the remuneration, which is to be paid directly by the party issuing the warrant. When filing an application, the party issuing the warrant shall confirm on oath that the Nominated Person has accepted to carry out this mandate.

Executive Officers of the Court may still be appointed to affect service of the Warrant of Arrest on a vessel not berthed alongside provided there are nominated in their personal capacity.

2. Pursuant to Article 856(4) of the COCP, as amended, any documentation and certification seized from on board vessel by the Nominated Person shall be handed over to the Registrar of Courts within one (1) working day from when they are seized.

The Nominated Person must also take note of the name of the Vessel's highest ranking officer (nominally the Master) present on the vessel to whom the Warrant of Arrest was served. Such information will be requested by the Registrar of Courts when the Nominated Person hands in the vessel's documentation.

On each occasion, a record should be taken by the Registrar of Court of the documents/certification handed over to him by the Nominated Person.

3. In accordance with usage and practice, the appropriate documents/certification to be seized by the Nominated Person are the following (in original):
 1. The Certificate of Registry of the Vessel;
 2. The International Load Line Certificate, where applicable;
 3. Cargo Ship Safety Radio Certificate, where applicable.

Practitioners are reminded that where the vessel is already subject to another warrant of arrest, the appropriate documents/certification would have already been seized and delivered to the Registrar of Courts.

4. Whilst not obligatory, it is highly recommended that practitioners should also submit with their warrant a map/chart indicating the location within Maltese waters of the vessel in question especially when such is on anchorage. Likewise, it is also recommended that the party issuing the warrant also submits a translation of the warrant into the English language to better ensure the master is made aware of the fact that the vessel has been arrested.
5. Counter Warrants of Arrest: The same principles regarding service will apply, *mutatis mutandis*, when the arrest is being lifted through the filing of a counter warrant.
6. Considering the tasks that are expected from the Nominated Person and the responsibilities that those tasks carry as described above, the person selected as Nominated Person will be well-suited, knowledgeable, appropriate, and properly briefed by the practitioner to carry out the role expected from him/her.
7. Warrants of Arrest are handled by the Traffic Management Unit (TMU – Port Operations) and the Vessel Traffic Services (VTS – commonly known as Turretta) of the Authority for Transport in Malta, which are both located in Marsa. In this respect, all Warrants and Counter Warrants are to be notified to the Authority at its Marsa offices having the address of Port Operations, 23/25, Xatt l-Għassara tal-Għeneb (in front of the terminal from which the catamaran to Sicily operates).