

## SHIP ARREST IN BANGLADESH

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

Bangladesh is one of the most advantageous arrest jurisdictions for the reasons, amongst others,

- a) Bangladesh is not a signatory to any arrest convention,
- b) ship can be arrested in an action *in rem*,
- c) vessel can be arrested in an action *in personam*,
- d) ship can be arrested for security,
- e) ship can be attached even after loss of navigability,
- f) ship can be arrested for maritime lien as well as maritime claim,
- g) arrest lies for as many as nineteen claims,
- h) arrest is straight forward,
- i) court has jurisdiction 7/24 hours,
- j) arrest is both quick and cheap,
- k) court does not require counter security for arrest,
- l) there is no provision or practice of awarding damage for wrongful arrest,
- m) P & I club's LIU/LOI is not accepted for release of the vessel and a vessel is released upon furnishing Bank Guarantee. The High Court Division of the Supreme Court of Bangladesh exercises Admiralty Jurisdiction under the Admiralty Court Act, 2000 and the Admiralty Rules, 1912. Admiralty Rules provide that in suits *in rem* a warrant for the arrest of property may be issued at the instance either of the plaintiff or of the defendant at any time after the suit has been instituted, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with:-
  - a) The affidavit shall state the name and description of the party at whose instance the warrant to be issued, the nature of claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been satisfied.
  - b) In a suit of distribution of salvage the affidavit shall state the amount of the salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same.

To file an application for arrest of ship the plaintiff/claimant must institute a suit by paying Tk. 1,00,000.00 as Court fee. In a suit for wages Court fee of Tk. 100.00 is required to be paid. The plaint along with the documents is to be filed in the section/office of the Court and the application for arrest of the ship is filed in the Court. Usually, the application comes up in the Daily Cause List of the court on the following working day. However, if the Court is satisfied with urgency of the matter it prepares a supplementary cause list and hears the matter on the same day. If *prima facie* case is made out in support of the claim the Court Admits the suit and directs issuance of summons. Thereafter, the application for arrest is heard and if the court is *prima facie* satisfied about the merit of the application it passes an order for arrest of the ship for security of the claim amount. An application for arrest of ship is heard *ex-parte* unless a caveat has been filed by the defendants. The order for arrest of ship is served upon the defendants by the Marshal of the Court on receipt of fee and charge paid by the claimant. Likewise, cargo on board or any property belonging to any party can also be arrested by the Admiralty Court.

The order for arrest can be vacated by the same court upon an application filed by the defendant on the ground that the ship was wrongly arrested and the defendants can also file an application for reduction of the quantum of security, but hearing of these kinds of application takes 1 or 2 weeks. When the ship is in a hurry, this kind of application is not generally advised. A ship is released from arrest upon deposit of the amount of claim in the Court or upon furnishing a local bank guarantee. An LOU issued by P & I Club is not accepted in Bangladesh. After release of the ship upon furnishing bank guarantee an application for reduction of Bank guarantee can also be moved by the defendants and, if allowed, a revised Bank guarantee would be furnished. The release order is also served by the Marshal upon receipt of Marshal's fee.

If the ship has not gotten released by the defendants, the plaintiff can pray for sale of the ship *pendente lite* and the Court sells the ship through auction and keeps the proceeds with the Marshal which is paid to the plaintiff if the suit is decreed in his favour. If there is more than one claimant and the proceeds cannot satisfy the claims, the Court applies the English Law of priorities.

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

Neither the International Convention relating to Arrest of Seagoing Ship 1952 nor the International Convention of the Arrest of Ships 1999 have been ratified by Bangladesh.

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

A ship could also be arrested by the plaintiff in execution of decree passed by the High Court Division or a judgment passed by a foreign Court against the Owner of the ship. A ship can also be attached before judgment in a suit *in personam*. In a suit *in rem* a ship can be attached if the ship is beached for scrap before institution of suit. Under the Bangladesh Merchant Shipping Ordinance (MSO) 1983 the Principal Officer, Mercantile Marine Department can detain an unseaworthy ship. Under the MSO the High Court Division can detain a foreign ship for damage caused in any part of the word to the Government of Bangladesh or any Bangladeshi citizen or company and the Principal Officer or Collector of Customs can detain a ship before such application has been made to the High Court Division. Under the Regulations for Working of Chittagong Port (Cargo and Container) 2001 the Chittagong Port Authority can detain a vessel until security has been given for the amount of damage caused and the Cost involved in removing the blockade of navigational channel or the total amount is paid.

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

There is no separate freezing order other than arrest of a ship in an Admiralty proceeding or in an execution proceeding to enforce a decree. However, an application for injunction to restrain a party from scrapping or removing a vessel can be passed by the Court.

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

A ship could be arrested in an action *in rem* for any of the following claims:

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein or for recovery of documents of title and ownership of a ship, including registration certificate, log book and such certificates as may be necessary for the operation or navigation of the ship;
- (b) any question arising between the co-owners of a ship as to possession, employment or income of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;

- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterer or persons in possession or control of a ship or of the master or crew thereof or any other persons for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim in the nature of salvage of life from a ship or cargo or any property on board a ship or the ship itself or its apparel, whether services were rendered on the high sea or within territorial waters or inland waters or in a port, including any claim arising by virtue of the application by or under section 12 of the Civil Aviation Ordinance, 1960, (Ordinance XXXII of 1960) of the law relation to salvage to aircraft and their apparel and cargo;
- (j) any claim in respect of towage of a ship or an aircraft;
- (k) any claim in respect of pilotage of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim for wages by a master or member of the crew of a ship or any claim for any money or property recoverable as wages of master or member of the crew under the Merchant Shipping Ordinance, 1983, or in the Court;
- (o) any claim for disbursements made on account of or for the purpose of a ship by the Master, shipper, charterer or agent of the ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry or respondentia;
- (r) any claim for forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty together with any other jurisdiction to grant reliefs as are provided under the provisions of the Merchant Shipping Ordinance.

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

A ship could be arrested irrespective of her flag.

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

As long as the claim gives rise to an action *in rem*, even if the ship belongs to a Foreign State the ship would be arrested. But the ships belonging to the Government of Bangladesh, Bangladesh Army, Bangladesh Navy, Bangladesh Air Force, Bangladesh Rifles, Bangladesh Police and Coast Guard are indemnified.

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

A sister ship can be arrested. But a ship in associated ownership (sister company ship) cannot be arrested.

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

If the ship is on bareboat charter, it can be arrested and if it is on time charter it cannot be subjected to arrest.

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

Counter-security is not required to be furnished at the time when the Court orders the arrest of a ship. However, the code of Civil Procedure provides that where, at any stage of the suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of Bangladesh, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within Bangladesh other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

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

If the plaintiff's claim is a maritime lien, the claim survives notwithstanding the change in ownership of a ship and the ship can be subjected to arrest. If the claim is a maritime claim and not a maritime lien the ship cannot be arrested if, before filing of the suit, ownership of the ship has changed.

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

Sections 477 and 478 of the MSO recognize maritime liens to the Seaman's wages and the Master's wages respectively. No other statute recognizes maritime liens. However, Court follows English law of maritime liens.

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

After receipt of file/documents along with Power of Attorney, 48 hours are required to obtain an order of arrest.

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

Power of Attorney executed by the client, notarized and attested by the Bangladesh High Commission in the plaintiff's country is required to be filed along with other documents to prove the claim. But the Court permits to file suit by dint of the scanned copy of the Power of Attorney subject to filing the original after authentication by the Ministry of Foreign Affairs and payment of stamp duty.

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

All documents in support of the claim along with correspondence between the parties are required to be filed at the time of filing the suit and application for arrest. Original documents are required to be filed at the time of trial.

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

Court usually accepts jurisdiction over the substantive claim once the vessel has been arrested. However, the Court may refrain from adjudicating the substantive claim if any agreement of jurisdiction stipulates for foreign jurisdiction. In case of pendency of maritime arbitration, court maintains the arrest order for the purpose of security and stays the substantive suit.

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

The easiest way to release a ship from arrest is furnishing security. However an arrest can be lifted without security if the vessel can establish that she has no liability to the plaintiff and the vessel has been wrongly arrested. But in the latter option, it takes ½ week's time to get the court's decision on the issue.

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

To release a vessel a Bank Guarantee issued by a local Bank is to be furnished as security.

19. Does security need to cover interest and costs?

The Bank Guarantee needs to cover the entire amount claimed including interest and costs. However, the court sometimes reduces the amount of security if the defendant can prima facie prove that the claim is inflated.

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

P&I Club's LOI/LOU is not accepted to lift the arrest but court allows LOI when the claimant agrees to accept it.

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

A release order can be obtained in the afternoon if the lawyer receives the security in the morning.

22. Is there a procedure to contest the arrest?

The defendants can contest the arrest by filing a caution/caveat firstly to prevent wrongful arrest by fraudulent claimants and secondly to minimize the amount of security for release of ship giving the actual picture to the court. Nowadays, Bangladesh court does not require any undertaking along with the caution/caveat though the Admiralty Rules provide for such an undertaking.

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

After the expiration of 12 days from the return of a warrant, if no appearance shall have been entered in the suit, the attorney for the plaintiff may cause the suit to be sent down for hearing on merit. But when the defendants enter appearance and contest the suit, it takes 3 to 4 years to adjudicate the suit on merit.

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

The Court does not acknowledge the concept of wrongful arrest for the purpose of counter security but it can vacate the order for arrest of ship on the ground of wrongful arrest. The court can award costs of the suit against the losing party. Moreover, if in any suit the defendant objects the claim on the ground that the claim or defence is false or vexatious and if thereafter, such claim or defence is disallowed the Court shall make an order for the payment to the objector, such cost by way of compensation which may extend up to twenty thousand taka.

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

The Court does acknowledge the principles of piercing and lifting of the corporate veil. In order to obtain arrest by piercing the corporate veil, one needs to establish that it is a deliberate attempt on the part of the ship owner to create different entities to avoid legal liabilities. If independent legal entities have been established in the normal course of business, the Court would be reluctant to pierce the corporate veil for the purpose of issuing an order of arrest.

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*. The process of sale could be completed within 2 to 3 months from the date of the order of arrest. It could take a longer period if any aggrieved party challenges either the order of arrest or the order of sale before the same Court or before the superior Court.

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