

SHIP ARREST IN PAKISTAN

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

In Pakistan arrest of ship is regulated under the “Admiralty Jurisdiction of High Court Ordinance 1980” (AJHCO’80) and the Sindh Chief Court Rules (SCCR). In addition to the aforesaid, the Civil Procedure Code, 1908, is also applicable.

Utilizing these rules, a claimant may, on filing an affidavit, obtain a warrant for the arrest of ship, from an Admiralty Court / High Court. Thereafter, such warrant is served by the court bailiff with the assistance of port master, by way of delivering it to the captain of ship or by way of affixing it on the mast of the ship. The bailiff then reports back to the Admiralty Court as to service of warrant.

An action in rem against a ship without making it a defendant. The real defendants are described as owner of or persons interested in the ship, and the writ of arrest may be effected by serving it on the ship which may be accepted by the master, owner or by nailing or pasting it on the mast or other conspicuous part of the ship. As a consequence of such service if the owner or person interested in the res enters appearance and puts up the defence then the person so appearing becomes party to the action and thereby becomes personally liable for whatever may be decreed against him. If no appearance is entered the action remains as an action in rem operating against the ship arrested and if a judgment is passed in favour of the plaintiff it can be enforced by sale of the ship but not against the owner personally or any of his property.

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

None. thus far. On 11 July 2000, Pakistan signed the United Nations International Convention on Arrest of Ships, 1999, but has not yet ratified the same.

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

No.

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

No.

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

According to AJHCO '80, arrest of ships is possible for the following causes of action:

(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 ship, including registration certificate. Logbook and such certificates as may be necessary for the operation or navigation of the ship (this can be an in rem claim)

(b) – Any question between co-owners of a ship as to possession, employment or earnings of that ship (this can be an in rem claim)

(c) – Any claim in respect of a mortgage of or charge on a ship or any share therein (this can be an in rem claim)

- (d) – Any claim for damage done by a ship (this can be an in rem claim)
- (e) – Any claim for damage received by a ship (this cannot be an in rem claim)
- (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, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults, the owners, charterers or persons in possession or control of a 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 (this cannot be an in rem claim)
- (g) – Any claim for loss of or damage to goods carried in a ship (this cannot be an in rem claim)
- (h) – Any claim arising out of any agreement relating to the carriage of goods in a ship or to use or hire of the ship (this cannot be an in rem claim)
- (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 or the ship itself or its apparel, whether services rendered on high sea or within territorial waters or internal waters or in a port, ...(this can be an in rem claim)
- (j) – Any claim in the nature of towage in respect of a ship or an aircraft, whether services were rendered on the high sea or within the territorial waters or internal waters or in a port (this cannot be an in rem claim)
- (k) – Any claim in the nature of pilotage in respect of a ship or an aircraft (this cannot be an in rem claim)
- (l) – Any claim in respect of necessaries supplied to a ship (this cannot be an in rem claim)
- (m) – Any claim in respect of the construction, repair or equipment of a ship or dock charges or dues (this cannot be an in rem claim)
- (n) – Any claim by a master or members of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which under any of the provisions of the Merchant Shipping Acts ... is recoverable as wages or in the Court and in the manner in which wages may be recovered’ (this cannot be an in rem claim)
- (o) – Any claim by a master, shipper, charterer, agent in respect of disbursements made on account of a ship (this cannot be an in rem claim)
- (p) – Any claim arising out of an act which is or is claimed to be a general average act (this cannot be an in rem claim)
- (q) – Any claim arising out of bottomry or respondentia (this cannot be an in rem claim)
- (r) – Any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship as a Naval Prize or in violation of customary law of sea or otherwise, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty (this can be an in rem claim)

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

Yes, any national or foreign ship can be arrested. AJHCO’80 applies to ships and a “ship” is defined as “any description of vessel used in navigation” – it does not distinguish between national or foreign ships. However, Admiralty Court cannot arrest any ship belonging to Pakistan’s Navy.

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

Depends on the facts leading to the cause of action.

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

Any ship or one of her sister ships, may be arrested in the case having proper cause of action and the ship and sister ship is available in Pakistani waters.

As for associated ownership, per Section 4(4) of AJHCO'80, actions falling under clauses (e) to (h) and (j) to (q) mentioned in Section 3(2) above which may be brought against a person who is owner of the ship or in possession or control of the ship may be brought in rem against any other ship which, at the time when the action is brought, is beneficially owned by that person.

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

Arrest is possible of Bareboat and Time-Chartered vessels also.

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

Generally the Admiralty Court does not require any counter-security in order to arrest a ship.

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

No. The procedure remains the same.

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

Yes. admiralty jurisdiction can be invoked in a case where there is a maritime lien. The limitation period to initiate a claim concerning enforcement of maritime lien is 2 years from the date of the damage occurring or the maritime lien arising.

Pakistan has ratified any international conventions pertaining to 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?

3 to 5 working days.

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

Yes, a notarized or legalized POA is required.

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

Attested true copies are acceptable at the time of presenting the claim. Supporting documents need to be in English or accompanied with certified English translations. All documents are filed in Admiralty Court in hard copies. There is no e-filing system in place as yet.

The essential information and documents that are needed include:

- (1) Details/documents as to ownership of the ship,
- (2) details of ship's port of call, and
- (3) documents demonstrating the plaintiff's in rem claim.

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

Yes.

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

The provisions of AJHCO'80 and SCCR maintain that an arrested ship can only be released by the order of the Admiralty Court. Normally, to order a release of an arrested ship, the Admiralty Courts require furnishing of security for the amount for which the suit has been instituted.

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

Admiralty Courts have ruled that there must be some material before the Court to tentatively adopt a figure for the security amount. In one instance the Admiralty Court had given no basis for fixing the low amount of security for the release of ship, therefore, the Appellate Court increased the amount of security to the extent of the amount as shown to have been received by supplier as a result of alleged fraudulent entry in the bill of lading.

19. Does security need to cover interest and costs?

Yes, if the Admiralty Court directs so.

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

In the past cases an agreed contractual security (usually a P&I club letter of undertaking) were acceptable. However, current practice is to furnish, a bail bond, or bank / corporate surety, or the to deposit cash into Admiralty Court.

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

Within 24 to 48 hours of the order of the Admiralty Court to release the ship.

22. Is there a procedure to contest the arrest?

An order of arrest is contested by filing a written statement supported by an affidavit stating the arguments against the claim.

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

It takes about three to six years of an admiralty suit to conclude in first instance Admiralty Court.

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

Not per se. However, the winning defendant can claim costs against the claimant at the time of disposal of admiralty claim.

Additionally, the winning defendant can file a civil suit for damages claiming malicious abuse of civil proceedings if it is found that winning defendant could not be properly compensated by awarding costs in the original suit.

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

Yes, piercing of veil of incorporation is possible in cases where beneficial ownership of the vessel is to be determined the court is competent to investigate it in full and even probe into the facts to find out the person who really is the beneficial owner. Such probing inquiry becomes necessary where it can be shown that by fraudulent and deceitful means the beneficial owner of the majority shares is kept behind the scene to defraud the claimants. In such cases the court can even 'pierce the corporate veil'.

26. Is it possible to have a ship sold pendente lite; if so, how long does it take?

As a rule, the Admiralty Court will order the sale of the arrested ship only after the judgment and decree has been issued in its respect. However, as an exception, if all the parties to the pending suit agree to sale of ship pendente lite then the Admiralty Court may order the sale of the arrested ship, with or without conditions.

**Junaid Daudpota is the partner at Daudpota International, whose practice mainly focuses on Middle East and South Asia.*

Mr. Daudpota's practice covers transactional and contentious matters relating to various other areas of laws, such as competition, employment, banking, internet, agency and franchising, defamation, and anti-corruption, and arbitration.

Mr. Daudpota is expert at counseling clients on all aspects of laws relating to intellectual property prosecutions and enforcement in the gulf countries (including Saudi Arabia). He has coordinated multiple litigations and advised on IP strategy, portfolio management, and infringement matters in various gulf countries.

Mr. Daudpota has also acted as a consultant for the World Bank for Doing Business (country specific) reports. He has also co-authored the books on Competition Law in Pakistan and Anti-Money Laundering Law, and has commented on a number of national legislations around the world.

Mr. Daudpota is a member of International Bar Association (IBA), American Bar Association (ABA), and International Trademark Association (INTA), Singapore Institute of Arbitrators (SIArb). He has also been part of number of policy and educational committees.

Mr. Daudpota has also authored articles covering various legal disciplines, and regularly attends and speaks at international conferences and seminars.