

FOREWORD

This handbook owes its origin to a project envisaged a few years ago to provide the shipping community with a top maritime product www.shiparrested.com. In the fast-moving world of international trade, online information is of utmost value. The www.shiparrested.com network offers various services related to ship arrest matters and the most relevant information on ship arrest/release topics, online and freely accessible for the maritime market. The key players of this network - medium size law firms with excellent practice or leading multinational law offices - have become a reference for many shipping professionals.

In the international environment of maritime affairs, the community needs to be able to unravel the different procedures in order to arrest or release a ship around the globe. The fact that the maritime rules may be interpreted differently in different countries is becoming increasingly significant.

The purpose of this handbook is to offer a fresh look and a very practical approach on ship arrest/release practices worldwide. Therefore, when preparing this new edition, we thought convenient to circulate a questionnaire amongst the authors. We provide, separately for each country, their replies as such.

Such a handbook seemed to be called for by the fact that it is the only one that gathers together the latest ship arrest/release procedures in major world jurisdictions. In this, we are grateful for the stimulus that we have received from the London and Scandinavian P&I Clubs in earlier editions to keep that trend.

Thanks are due to the shiparrested.com members, who have provided the network with top quality articles for the publishing of this book.

The law is stated as at 1st January 2007.

Valentine de Callatay
Head of Marketing Dpt
NetManager Consulting

February 2007

WWW.SHIPARRESTED.COM QUESTIONNAIRE

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

Applicable laws

2. Which International Convention applies to arrest of ships in your country?
3. Is there any other way to arrest a ship in your jurisdiction?

Claims subject to ship arrest

4. For which types of claims can you arrest a ship?
5. Can you arrest a ship irrespectively of her flag?
6. Can you arrest a ship irrespectively of the debtor?

Arrest procedure

7. Do your Courts require counter-security in order to arrest a ship?
8. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?
9. Does you country recognize maritime liens? Under which International Convention, if any?
10. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?
11. Do you need to provide a POA, or any other documents of the claim to the Court?
12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Miscellaneous

13. Which period of time will be granted by the Courts in order for the claimants to take legal actions on the merits?
14. Do the Courts of your country acknowledge wrongful arrest?
15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

SHIP ARREST IN BELGIUM

By Steven D'Hoine,
D'Hoine & Partners.
steven.dhoine@dplaw.be
Schaliënstraat 30,
2000 Antwerp, Belgium.
Tel: +32 3 470 23 00
Fax: +32 3 470 23 10

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

Belgium has an impressive tradition in maritime law. Belgium, and most specifically the port Antwerp, also has a favourable reputation of being a convenient place to arrest ships. The fact that Antwerp is one of the biggest and busiest ports of the world is not the only reason. The arrest of a ship and the accomplishment of the required formalities are well-organised: a simple and short procedure, an experienced Antwerp Maritime bar, local representation of all P&I Clubs of the world, excellent shipping signalling services and, last but not least, several Judges of Seizure who are at the disposal of the parties at every moment 24 hours a day, 7 days a week for all urgent matters related to the arrest of a ship.

The owner of a ship may demand immediate release of the ship upon issuing an acceptable Bank or P&I Club Letter of Guarantee, covering the amount of the claim plus 30% as a retainer for costs and interests. The formalities to lift the arrest are minimal, and can be fulfilled within the hour. The owner of a ship may also request for the withdrawal of the judgement, granting authorisation to arrest the ship. This request has to be filed before the same Judge of Seizure who granted the authorisation. This request is heard on a contradictory basis in summary proceedings.

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

The Brussels Convention 1952 relating to the Arrest of Sea-Going Ships has been ratified in Belgium and incorporated into the Code of Civil Procedure. The national legislation has been adapted accordingly. Consequently, all arrests of sea-going ships are subject to the Brussels Convention 1952, as enacted in the Belgian legislation.

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

No.

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

A sea-going ship can be arrested in Belgian territorial waters as a security for a maritime claim, as specified in littera a to q of art. 1.1 of the Brussels Convention 1952.

It is generally accepted that the claimant only has to present an allegation of right or claim. As soon as the claimant proves that his maritime claim is 'sufficiently probable', i.e. when the judge accepts 'prima facie' evidence presented to him on an ex parte basis, his request for authorisation to arrest a ship will be granted.

5. Can you arrest a ship irrespectively of her flag?

A sea-going ship can be arrested in Belgian territorial waters, whatever the flag it is flying.

6. Can you arrest a ship irrespectively of the debtor?

The particular ship, in respect of which the maritime claim arose, can be arrested. This ship can even be arrested in case the owner of the ship is not the debtor of the maritime claim.

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

The owner of the ship shall, in order to have his ship released from the arrest, have to give security that guarantees the payment of the claim of the arrestor. In other words, the owner of the ship will have to guarantee the payment of the claim, even if a third person (such as the charterer or the issuer of the Bill of Lading) is the debtor towards the arresting party.

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

In case the ownership of the ship has been transferred to another company, after the claim arose, the ship can be arrested for the maritime claim mentioned under art. 1.1. litt o, p and q of the Brussels Convention 1952 (disputes as to the title or to an ownership of a ship, certain disputes between co-owners of a ship, mortgage or hypothecation of a ship). For the other maritime claims case law and academic authority come to different conclusions. At present it seems that the predominant opinion gives no right to arrest a ship after change of ownership for other claims than the ones indicated above.

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

A request to obtain authorisation to arrest a sea-going ship has to be presented (ex parte) before the Judge of Seizures of the Court of First Instance which has jurisdiction for the port of call. It is a unilateral request, and the Judge of Seizures immediately grants (or rejects) authorisation. The request can be submitted at any moment of the day, even out of office hours and during the weekend or holidays. Upon receipt of the instructions to arrest the ship, the arrest of the ship can be effected within approx. 4 hours.

The Belgian Code on Civil Procedure gives the Judge the possibility to declare that the arrest will only be valid if after a short period of time (e.g. 48 hours) a so-called 'counter guarantee' has been put up, to protect the shipowner against wrongful arrest. For more than fifteen

years, no Belgian judgement granting authorisation under the condition of a countersecurity has been reported.

The judgement granting authorisation to arrest a ship is to be served by a Court Bailiff to the Captain of the ship and to the port authorities. The ships documents will be taken into custody. The bailiff can bring a ship to a stop with the help of police forces. A ship under arrest will not obtain the services of a pilot. More specifically in the port of Antwerp an arrested ship will not be able to leave the port since also the lockkeepers are informed.

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

In practice, no complete file of documents of evidence on the merits of the claim is needed to obtain an authorisation to arrest a ship. A claimant, requesting authorisation, only has to make his allegation of the existence of the maritime claim reasonably certain. Given the fact that at the time of the request the claim often just arose, the Judges of Seizure do grant authorisations for claims only scarcely documented.

It is advisable – but therefore not always necessary - to have a copy of the Bill of Lading, an invoice, a (general) protest and/or an interim report of a surveyor available.

It is not necessary to submit original documents, and the lawyer submitting the request represents the client without needing to present power of attorney.

In case the debtor or the shipowner opposes the authorisation to arrest in summary proceedings, it is highly recommend to have as much documentary evidence as possible to prove the alleged maritime claim.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Art. 7 of the Brussels Arrest Convention 1952 provides that the Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits in certain circumstances. This article has not been incorporated in the Belgian Code on Civil Procedure, but is applicable in Belgium as it is Belgian Private International Law as a result of the ratification of the Brussels Arrest Convention 1952. This implies that the Belgian Commercial Courts will in principle not refuse jurisdiction.

In practice however, claimants rarely make use of the possibility of 'Arresto fundatur jurisdictionis'.

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

a) The arrest is valid during three years. The arrest can be renewed for a second period of three years.

b) The arrest of a ship does not impose upon the arrestor the necessity to start legal proceedings on the merits of the case; nor does Belgian law impose Belgian Jurisdiction for the claim on the merits after an arrest in Belgium.

Obviously, since an allegation of a maritime claim has to be shown, it is necessary to start legal proceedings on the merits before the competent court within the time bar limits related to the claim itself.

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

The arrestor bears the risk of arresting the ship. If he loses the contradictory summary proceedings or the case on the merits, his arrest may be considered wrongful and he will have to indemnify all costs and damages caused to the ship, as a result of such wrongful arrest.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

It is possible to arrest another ship, which is owned by the person who, at the time when the maritime claim arose, was the owner of the particular ship in respect of which the maritime claim arose. Ships will be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

If these conditions are not met with, it is not possible to arrest a ship that is owned by another company than the company owning that particular ship. When owners tried to make abuse of this rule by creating 'single ship companies', Belgian Courts, in order to protect the rights of claimants, occasionally authorised the arrest of a ship owned by another company than the debtor of the claim, as soon as it has sufficiently been established that the separate corporate personality is only an artificial screen that does not correspond to reality. Therefore, Belgian Courts can be persuaded to pierce the corporate veil.



SHIP ARREST IN BRAZIL

By Felsberg e Associados.
claudiaperri@felsberg.com.br
www.felsberg.com.br

Paulista 1294, 2º andar, Cerqueira Cesar,
SP 01310-915, São Paulo, Brazil.

Phone: (55 11) 3141-9100

Fax: (55 11) 3141-9150

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

In a broad sense, arrest is a specific or typical¹ provisional remedy provided by law so as to ensure satisfaction of a judgment in a future action at law brought to enforce collection of a debt (mainly as regards collection of a certain sum) through a preventive and provisional seizure of assets of value sufficient for settlement of the debt.

The circumstances in general in which such provisional remedy may be requested are explained in Article 813 of the Brazilian Code of Civil Procedure. In short, such measure may be adopted when, in certain situations and in an attempt to evade the payment of its debts, a debtor intends to leave its civil domicile or perform certain acts envisaging the alienation of property, thus disposing of the assets necessary for the settlement of all its liabilities.

Further, in general, Article 814 of the Code of Civil Procedure establishes that the requirements for the judge to grant the provisional measure upon examining the motion for arrest are: i) unquestionable evidence that the debt is certain and indisputable²; and ii) proof of the existence of one of the circumstances foreseen in the aforementioned Article 813 is actually the case at hand, whether through supporting documents or evidence produced in a hearing specifically held for this purpose (“justification hearing”), which may be avoided if the creditor posts a bond, pursuant to Article 816, subparagraph II.

The arrest of ships, also known as “embargo” of ships, like arrest in general, is a typical provisional remedy adopted to secure future collection of a debt. However, the difference lies in the nature of the asset to be provisionally and preventatively seized: debtor’s ship or ships.

Therefore, in view of the distinctive characteristics of the commercial relationship, especially within the scope of Maritime Law, such type of arrest received special treatment by the Brazilian legislature, by the inclusion of provisions for specific events and requirements, mostly regu-

1. In Brazil, provisional measures are classified as “nominada” or “típica” (specific or typical) meaning that they are specifically provided by law, such as arrest, seizure, judicial notification, etc. “Inominada” or “atípica” (non-specific or non-typical) measures are remedies not specifically provided by law, which may be claimed by the plaintiff and granted or not, according to the discretion of the court.

2. Pursuant to the sole paragraph of Article 814 of the Code of Civil Procedure, a judgment ordering the debtor to pay its debt in cash, or through any other means that can be converted into cash, is held to be sufficient proof that the debt is certain and indisputable. However, a judgment rendered in a foreign country will require prior ratification by the Federal Supreme Court in order to produce effects in Brazil.

lated by Articles 479 to 483 and 607 to 609 of the Brazilian Commercial Code and by the International Brussels Convention of 1926, in force in Brazil by virtue of Decree No. 351 of 10.01.1935.

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

Only the International Brussels Convention of 1926, has been signed and ratified by Brazil and is promulgated in Brazilian territory by virtue of Decree No. 3551 of 10.01.1935.

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

No.

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

The applicability of a measure resulting in the arrest of a vessel, whether Brazilian or foreign, under Brazilian commercial law must take into account the distinction between two possible situations: a) the arrest is grounded on one of the credits qualified by the Commercial Code as “privileged”; and b) the arrest is grounded on credits qualified by the Commercial Code as “not privileged”.

Below is a brief analysis of such events:

i) Arrest grounded on “privileged credits”:

Privileged credits are not only those listed in Articles 470 and 471 of the Commercial Code, but also those provided by complementary legislation, which, under Brazilian law, are binding upon the ship wherever it may be, namely:

1. Taxes due to the State and court costs and expenses;
2. Salaries due for services rendered aboard ship;
3. Salvage indemnity claims;
4. Obligations assumed by the ship master while exercising the powers conferred upon him by law, falling upon the ship's hull or equipment, whether or not represented or not by notes (promissory notes, bills of exchange, etc.) signed by the master;
5. Indemnification for general average;
6. Indemnification for marine accidents;
7. Credits secured by marine mortgage;
8. Debts owed to private port operators;
9. Expenses with depositaries, as well as storage costs relating to the ship's instruments;
10. Expenses incurred with the ship's costs and maintenance;
11. Shortages on delivery of cargo and damage thereto;
12. Debts deriving from the contracts for construction and purchase of the ship; and
13. Debts deriving from costs incurred in the repair of the ship and its installations and equipment.

ii) Arrest grounded on “non-privileged” credits:

Any other credit of nature and origin other than as stated above, is qualified under Brazilian law as “non-privileged”, therefore it does not accompany the ship wherever it may be.

Therefore, the arrest based on such type of credit is enforceable only at the port where the ship has been registered and, even so, only upon the posting of a bond and after the filing of the applicable action to collect the debt of whatever nature. This means that in such event, the provisional measure requesting the arrest may only be instituted as an ancillary proceeding, not before the main action is filed³.

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

If the above listed requirements are contemplated, as a general rule a ship may be arrested irrespective of her flag.

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

If the above listed requirements are met, as a general rule a ship may be arrested, irrespective of her flag.

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

The Court may impose, at its discretion, a counter-security. Additionally, in the event of a foreign plaintiff who does not own real estate in Brazil, the plaintiff may be ordered to provide security for costs and legal fees incurred by the defendant's lawyer, corresponding to 10% to 20% of the total claimed amount. A bank guaranty may alternatively be offered instead of depositing such amount.

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

As a general rule, there is no difference.

9. Does your country recognize maritime liens? Under which International Convention, if any?

As previously informed, only the International Brussels Convention of 1926, has been signed and ratified by Brazil. Any maritime lien that is not contrary to Brazilian public order may be recognized.

3. Nevertheless, whatever the nature of the credit (privileged or non-privileged), pursuant to Article 479 of the Commercial Code, only ships without cargo or with no more than 255% of its cargo capacity onboard may be arrested. However, whatever the amount of cargo onboard, by virtue of the same legal provision the arrest will never be allowed if the ship has already obtained all required authorizations to depart, given by the competent port authorities, unless the credit being claimed arises from bunkering and catering carried out at the same port and for the same voyage.

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

If all the documents are available, it can be done in a couple of days.

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

A POA and any other documents that prove the credit are absolutely necessary.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Our Courts acknowledge jurisdiction based on our Code of Civil Procedure. Pursuant to article 88 of the BCCP, Brazilian courts may accept jurisdiction when: (i) the defendant, regardless of his/her nationality, is domiciled in Brazil; and/or (ii) the obligation is to be performed in Brazil; and/or (iii) the proceedings originate from events occurred or actions performed in Brazil. Further, pursuant to article 89 of the BCCP, Brazilian courts have exclusive jurisdiction for: (i) hearing legal proceedings relating to real estate located in Brazil; and (ii) conducting probate and distributing estates, even if the deceased is a foreigner and lived outside of Brazil.

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

As a general rule, thirty (30) days.

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

Yes, our Courts do acknowledge wrongful arrest in cases in which the lower Court's decision is overturned upon appeal, i. e., in cases in which the plaintiff did not properly prove that its credit gave rise to the remedy of arrest.

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

Not only will our courts pierce and lift the corporate veil when appropriate, but our Civil Code specifically provides for such remedy (article 50).



SHIP ARREST IN CAMEROON

By Feh Henry Baaboh
Henry, Samuelson & Co
fehlaw2001@yahoo.co.uk
www.henrysamuelson.com
Immeuble Ndeke & Fils Apt. 109 (Suite 20-24)
158 Rue des Manguiers, Bali
P.O. Box 15805 Akwa, Douala
Tel.: (237) 343-87-63
Fax: (237) 343-87-91

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

The law governing ship arrest in Cameroon is the Merchant Marine Community code of 03/08/2001 (the code). The code was inspired chiefly by the International Convention of 1999 on the Arrest of Ships and the Brussels Convention of 1952 on the Unification of Certain Rules on the Arrest of Ships.

This code is a regional legislation applicable to the CEMAC (Communauté Economique et Monétaire de l'Afrique Centrale) sub-region comprising Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea and Tchad, with executive secretariat in Bangui.

Ship arrest as a conservatory measure is arrest for security pending a substantive matter or the procurement of the executory formulae. It is the temporary immobilization of a ship by a claimant (presumed creditor) following a court order to that effect.

There is also ship arrest as an executory measure on the strength of a final judgment bearing an executory formulae (or decree absolute).

For the purpose of this paper however, "ship arrest" shall be interpreted to mean arrest as a conservatory measure within the letter and spirit of the International Convention Relating to the Arrest of Sea-going Ships of 1952 which provides in its article 1(2) that "Arrest means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment".

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

The International conventions applicable here are:

- The Merchant Marine Community Code of 03/08/2001
- International convention of 1999 on the arrest of ships
- Brussels convention of 1952 on the unification of certain rules on the arrest of ships

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

There are no other ways of ship arrest apart from

- Arrest as a conservatory measure
- Arrest as an executory measure

4. For which types of claim can you arrest a ship?

In our jurisdiction ships can be arrested for the following reasons:

(i) material or corporal damage, including loss of human life, on-shore or off-shore, caused by a ship or due to its exploitation; Article 568 of the merchant marine community code states that all misdemeanours or felonies committed on board a ship shall be looked upon on the complaint or petition of any interested person, judicial police officer or the maritime authorities and ship captain of the said ship. The criminal procedure code goes ahead in its article 92 (2) paragraph 1 and article 177 (1) to stipulate that the judicial police officer and the examining magistrate can arrest a ship in which a misdemeanour or a felony was committed for the discovery of the truth during investigations.

(ii) assistance or rescue;

(iii) chartering contracts or contracts on the use of a ship;

(iv) contracts on the transport of goods by a ship;

(v) general average;

(vi) loss or damages to goods and luggage transported by a ship;

(vii) towing or piloting of a ship;

(viii) supply of products, materials or services to a ship in view of its exploitation or its maintenance;

(ix) construction, repairs, equipment of a ship or shipyard costs;

(x) salary of ship captain or crew;

(xi) expenses (pre-financed) of the captain, charterer, shipper or maritime agent made on behalf of the ship or its owner;

(xii) commissions of the agents of the ship;

(xiii) contested ownership of a ship;

(xiv) rights of co-ownership of a ship or rights to exploitation of a ship, or the proceeds of exploitation of a ship under co-ownership;

(xv) allowance or any remuneration due on the basis of any measure or attempt aiming at preventing, avoiding or limiting a damage attributable/imputable to a ship, including damage by pollution-by virtue (or not) of an international convention, a legislative or regulatory text, or a contract;

(xvi) costs and expenses incurred in the course of removing the remains of a ship or its cargo;

(xvii) any/all insurance premium(s) owing by a ship;

(xviii) any litigation resulting from the contract of sale of a ship.

The 1999 international convention is indeed very exhaustive with respect to the causes of maritime claims liable to give rise to ship arrest.

So far however, the following debt items, inter alia, have given rise to the arrest of ships in

Cameroonian jurisdictions:

- (i) premiums owing as a result of insurance contracts of ships;
- (ii) supply of paint to ships;
- (iii) delivery of various products such as petroleum and food items to ships;
- (iv) supply of petrol, gas oil and advance payment to the owner of a ship;
- (v) execution of a contract of representation and ship consignment;
- (vi) claim by the crew of a ship who prove they had been abandoned by the captain without any protection, etc.

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

We can arrest any ship irrespective of her flag in the CEMAC territorial waters. In the situation of ships flying the flag of a state which is not CEMAC member state, the sheriff/bailiff who does the arrest prepares a report and serves on the consul or embassy of the said state. This report mentions the following details:

- name, profession and residence of the creditor upon whose instruction he is acting; here the code assumes (not all too correctly though) the creditor would always be a physical person, as one only talks of “profession” with reference to a physical person.
- court decision authorizing the arrest;
- amount of claim justifying the arrest;
- date of the notice to pay (which preceded the petition);
- forum election done by the creditor in the competent jurisdiction, and in the place where the ship is berthed;
- name and address of owner of the ship;
- name, category, tonnage and nationality of the ship.

When it is a ship flying the flag of a CEMAC member state, the aforementioned arrest report is registered by the bailiff in the register kept by the competent maritime authority and in which the ship is immatriculated. The said registration is required within seven days of the date of the report of arrest.

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

Ships are arrested irrespective of the debtor, this because ships belonging to persons or individuals are commonly and easily arrested but if the debtor is a state or the said ship is doing exclusively a government and not commercial service, it can't be arrested. The Merchant Marine Community Code in its article 1 paragraph 2 spells out the persons to whom its provisions are applicable and brings out a clear demarcation between the CEMAC member states and non CEMAC member states. In its article 2 (1) it goes further to define the reciprocity conventions signed between states, be them CEMAC member states or not, in maritime matters.

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

The courts in our jurisdiction do not require any counter security in order to arrest a ship. What is required is some court fees or charges.

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

In our jurisdiction, there is no difference between arresting a ship for a maritime claim or for a maritime lien.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Our country recognizes maritime lien as a principle of law but has not enacted any domestic law to this effect nor have entered an international convention on maritime lien.

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

Two days is enough for our law firm to arrest a ship, from the moment we are briefed.

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

The only documents to be tendered to the competent court are those attesting that the claim is certain, due and exactable thus we would not need a POA to proceed with the matter.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Our court would acknowledge jurisdiction according to the rule of forum convenience.

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

Per the Uniform Acts on the simplified debt recovery procedure the claimant has 30 days to take legal action.

14. Do the courts of your country acknowledge wrongful arrest?

Courts in our jurisdiction, do acknowledge wrongful arrest and provide a summary procedure for the lifting of such judicial acts authorizing the arrest and further they have the right to appeal.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The courts here do acknowledge the piercing and lifting of the corporate veil when it's necessary to bring out vital evidence in the case.



SHIP ARREST IN COSTA RICA

By Priscilla Argüello
Nassar Abogados (Centro América) S.A
parguello@nassarabogados.com
www.nassarabogados.com
Barrio Escalante 784
1000 San Jose, Costa Rica
Tel: (506) 257-2929
Fax: (506) 248-2021

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

The ship arrest in Costa Rica is governed by the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952)

When the creditor files for the arrest of a ship as a preventive measure he is obliged to file the merits of the claim within one month following the arrest.

The creditor must also present valid title for the claim (in Costa Rican legislation it is called “título ejecutivo”) to arrest the ship. In the absence of such title, the creditor must deposit a cash warranty equal to 25% of the amount of the claim, or 50% if deposit is not made in cash (Article 273 of the Civil Procedures Code) to execute a precautionary arrest of the ship. This warranty covers any damages or losses that the arrest eventually causes to the defendant in case the claim is rejected.

If the creditor has valid title for the collection (“título ejecutivo”), including ruling from a court of law in Costa Rica, the creditor does not have to deposit warranty.

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

International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952)

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

The arrest as a precautionary measure is governed exclusively by the Brussels Convention of 1952.

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

Precautionary arrest can only be ordered as a result of a maritime credit, according to the Convention of 1952.

When the creditor has valid title, including court ruling, the arrest can be based on other credits than maritime.

5. Can you arrest a ship irrespectively of her flag?

Yes. A ship can be arrested irrespectively of her flag.

6. Can you arrest a ship irrespectively of the debtor?

Yes. A ship can be arrested irrespectively of the debtor if there is connection between debtor and the claim.

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

The creditor can request precautionary arrest of the ship based on a maritime credit provided he makes the deposit of the warranty indicated in Article 273 of the Civil Procedures Code to execute a precautionary arrest of the ship. This warranty covers any damages or losses that the arrest eventually causes to the defendant in case the claim is rejected.

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

Yes. A maritime claim only can order a ship arrest based on the Convention of 1952. On the other hand, a maritime lien, the basis for the claim and the relation of the parties could be of any nature. A maritime lien does require a warranty as the maritime claim does.

9. Does you country recognize maritime liens? Under which International Convention, if any?

Yes. Maritime liens are recognized based on domestic law. However, Costa Rica has not ratified any international Convention on maritime liens.

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

As a preventive measure the arrest takes between 3 to 7 working days.

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

Yes. The court will verify the petitioner's formal representation of the debtor, in order to execute the ship arrest

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

The Courts will acknowledge jurisdiction based on the subject, the amount of the claim or the territory. According to the subject, the arrest of a ship falls within the jurisdiction of the civil courts.

The amount of the claim determines whether the arrest is handled by a minor (claims below US \$1,350) or major court (claims above US \$1,350).

In terms of territory, the case falls within the jurisdiction of the court where the defendant is domiciled. If his location is unknown, then the claim must be handled by the court where the plaintiff has his domicile (Article 24 of the Civil Procedures Code).

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

One month.

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

No, the courts in Costa Rica do not acknowledge wrongful arrests.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes, they acknowledge the pierce and lift of the corporate veil.



SHIP ARREST IN CROATIA

By Dr. Gordan Stankovic, Partner
Vukic, Jelusic, Sulina, Stankovic, Jurcan & Jabuka
shipping@vukic-lawfirm.hr
Nikole Tesle 9/VI
51 000 Rijeka, Croatia
Tel: +385 51 211 600
Fax: +385 51 336 884

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

Arrest as a conservatory measure may be sought at any point before or during the pre-judgment trial and/or the forced execution proceedings. In its motion for arrest, the arresting party (the applicant) must show: (a) a valid claim; and (b) the danger that, in the absence of the arrest, the person on the side of the ship (respondent) will prevent or significantly hamper the enforcement of the claim in question by disposing of or dissipating its assets. According to the prevailing court practice, if the parties are seated in two different countries, the existence of (b) above is presumed.

In the arrest proceedings, the burden of proof is less strict than in the proceedings on the merits. The two elements mentioned above (a valid claim and a danger) need not be fully 'proved'; it will be sufficient if they are 'made likely'.

The court will decide on the arrest solely on the basis of the documents submitted with the arrest motion. Only in very rare occasions will the court summon a hearing before deciding.

The arrest decree contains an order to the ship not to leave its current position, and an order to a local harbour master's office to seize the vessel's documents (certificate of registry, crew list and safety certificates). If needed, the court will order that the ship be watched. In case of arrest of a foreign ship, the court will, upon the applicant's request, notify the appropriate foreign bodies.

Generally, the arrest will be in force until the completion of the proceedings on the merits and until the commencement of the execution by way of forced sale of the vessel.

While the arrest is in force, the costs of maintenance of the ship and crew should be borne by the respondent. If the means of such maintenance are insufficient, the court shall order the applicant to advance the necessary funds, failing which the arrest will be set aside. The costs of watching the vessel should be advanced by the applicant.

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

The Republic of Croatia is party to the International Convention for the Unification of Certain Rules on Arrest of Sea-Going Ships, signed in Brussels, 10 May 1952 (the "1952 Convention").

The application of the 1952 Convention in Croatia is subject to the reserve envisaged in Article 10, para (a) of the Convention, not to apply the Convention to the arrest of a ship for any of the claims listed in paragraph (o) of Article 1 of the Convention (claims in connection with the title to or ownership of a ship), but to apply the domestic law instead.

In cases falling within the scope of application of the 1952 Convention, it is the primary and compulsory source of law on arrest in Croatia. In cases falling outside the scope of application of the 1952 Convention, the relevant provisions of the Croatian Maritime Code of 2004 (the "MC") will apply. As the matter of experience, however, the courts are often inclined to apply the domestic law although the case falls within the scope of the application of the 1952 Convention. The provisions of the MC are mainly in line with the respective provisions of the 1952 Convention, although some slight discrepancies do exist.

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

In all aspects which are not specifically covered by the 1952 Convention or the MC, there should subsequently apply the general rules regarding the interim injunctions. These are contained in the Croatian Forced Execution Act (the "FEA").

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

Where the 1952 Convention applies, the ship may be arrested for any of the "Maritime Claims" listed in Article 1, para. 1 of the Convention, with the exception of the claims under (o).

Where the MC applies, a ship may be arrested in respect of the claims arising out of:

- (i) damage caused by a ship either by collision or otherwise;
- (ii) loss of life or personal injury caused by a ship or occurring in connection with the operation of the ship;
- (iii) salvage;
- (iv) agreements relating to the use of a ship;
- (v) general average;
- (vi) towage
- (vii) pilotage;
- (viii) goods or materials supplied to a ship for her operation or maintenance;
- (ix) construction, reconstruction, repair or equipment of a ship or dock charges;
- (x) crew's labour-related claims; master's disbursements, as well as disbursements made by shippers, charterers or agent on behalf of the ship or her owner or the operator in connection with the ship; brokerage commissions or agency fees payable in respect of the ship.

In addition, a ship may be arrested in order to enforce a maritime lien or a ship mortgage or a similar security instrument, irrespective of whether the underlying claim falls within any of the above categories.

5. Can you arrest a ship irrespectively of her flag?

The ship's flag will be relevant to determine which rules to apply (whether the 1952 Convention or the MC; see Article 8 of the 1952 Convention) as well as to determine whether the arrest is subject to the restrictions contained in the 1952 Convention or the MC relating to the types of claims (see Article 8, paragraph 2 of the 1952 Convention; under the MC, the arrest shall be limited to the claims listed above only if there is reciprocity between the Republic of Croatia and the country of the ship's flag).

6. Can you arrest a ship irrespectively of the debtor?

The identity of the debtor is an important element. Where the MC applies, a ship may be arrested if it is owned by the "personal debtor". The "personal debtor" is a person who is liable for the claim in question and who was, at the time when the claim arose, the owner, operator or charterer of the ship in connection with which the claim arose. If the arrest is sought in order to enforce a maritime lien or a ship mortgage, the ship may be arrested irrespective of whether she is owned by the personal debtor.

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

Although the general rules (the FEA) do provide that counter-security may be sought under certain circumstances, the courts in Croatia generally do not require counter-security in order to arrest a ship.

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

If the arrest is sought in order to enforce a maritime lien, the arrest regime has the following specific issues: (i) it is irrelevant whether the underlying claim falls within any of the "maritime claims"; (ii) it is irrelevant whether the ship is owned by the personal debtor; and (iii) no sister-ship arrest is permitted.

9. Does you country recognize maritime liens? Under which International Convention, if any?

Croatia does recognize maritime liens. Although Croatia is not party to any of the international conventions dealing with this matter, the MC follows the provisions of the 1993 Liens and Mortgages Convention. In deciding whether a claim is a maritime lien, the Croatian court should apply the law of the ship's flag. In practice, however, the courts are inclined to apply the MC on this issue.

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

In simple cases, the arrest motion regularly takes one or two days to prepare. As all the supporting documents should be translated into the Croatian language, where the documentation is voluminous the translation may take longer than the preparation of the motion

itself. The court usually issues a decision within one or two days from the submission of the complete motion.

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

The motion for arrest should be accompanied by all the supporting documentation (translated into Croatian). Basically, such documentation should show: (i) that the case satisfies the conditions mentioned under 1. above (a valid claim and, in some cases, the danger of dissipation of assets); and (ii) that the respondent is the owner of the ship (except where arrest is sought in order to enforce a maritime lien or a ship mortgage). Where the motion is submitted by an attorney, a POA should be attached.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

The Croatian court's jurisdiction on the merits is mainly regulated by the Conflicts of Laws Act (the "CLA"). According to the CLA, the Croatian jurisdiction exists *inter alia* when the defendant's assets are located in Croatia. This rule will regularly be relied on where the proceedings on the merits are commenced while the ship is still arrested. In addition, where the 1952 Convention applies, the Croatian courts should acknowledge jurisdiction on the merits according to the rules contained in Article 7 of the Convention.

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

According to the MC, the claimant is granted a period of 15 days in order to commence the proceedings on the merits and provide the Croatian court with the proof thereof.

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

If the arrest turns out to be unjustified or should the applicant fail to commence proceedings on the merits within the given time, the respondent will have the right to claim compensation for the damages suffered as the consequence of such arrest.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The courts in Croatia generally do not acknowledge the pierce and lift of the corporate veil.



SHIP ARREST IN DENMARK

By Henrik Fransen

DELACOUR

hfr@delacour.dk

www.delacour.dk

Lille Torv 6

DK - 8000 Aarhus C, Denmark

Phone: +45 7011 1122

Fax: +45 7011 1133

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

Arrest of ships in Denmark can be made very fast and on an informal basis, i.e. without POA, original invoices and notarized and authenticated documents. The rules are quite flexible and the Danish court system works efficiently. The costs of an arrest in Denmark are low.

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

Denmark is party to the 1952 Arrest Convention and the provisions of this convention have been implemented in Chapter 4 of the Danish Merchant Shipping Act. The Danish law on arrest of vessels thus to a high extent reflects the provisions of the Arrest Convention.

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

Yes. An arrest according to the Danish Administration of Justice Act prevents the owner from transferring title to the vessel or issuing new mortgages when the arrest is registered in a Ship Register but the vessel is not detained. Therefore, an arrest of a vessel according to the Administration of Justice Act is often of no interest; however, it may be applied when there is no maritime claim or when an arrest is made in cargo, freight, or bunkers etc.

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

Maritime claims are the basis for arrests according to the Merchant Shipping Act and are defined in accordance with the Arrest Convention. For a list of the individual maritime claims reference is made to Arrest Convention art. 1.

5. Can you arrest a ship irrespectively of her flag?

Yes.

6. Can you arrest a ship irrespectively of the debtor?

Contrary to the Arrest Convention and the laws of many other countries, arrest in Denmark

requires that execution of the claim can be levied against the owner of the vessel, meaning that the owner of the vessel must be liable for the claim unless the claim is secured by a maritime lien. Consequently, claims for which a charterer of the vessel is liable do not form basis for arrest of the vessel as the owner of the vessel is not liable and no execution of the claim against the owner is possible. However, assets owned by the charterer, e.g. bunkers, may be arrested in accordance with the Administration of Justice Act.

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

The bailiffs court usually decides that the claimant has to provide a guarantee issued by a Danish bank or insurance company as security for claims for unlawful arrest and detention of the vessel. According to the Merchant Shipping Act, the security equals 5 days' loss of hire for the vessel, whereas the security is individually fixed by the court when an arrest is made under the Administration of Justice Act. The arrest will not have any legal effect until adequate security is provided.

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

Maritime claims secured by maritime liens have better priority than other claims, e.g. debts secured by mortgage, and include

1. wages and other employment payments due to the master and crew,
2. harbour, canal, and other waterway dues and pilotage dues,
3. claims for compensation for personal injury in connection with the operation of the vessel,
4. claims for compensation for damage to property provided that the claim is not based on agreement, e.g. claim for damage to cargo carried of the vessel.
5. claims for salvage, wreck removal, and contributions to general average.

A vessel can be arrested on the basis of a claim secured by a maritime lien whether or not the owner of the vessel is liable for the claim.

The maritime lien is subject to a 1 year time limitation upon which the lien as security is lost – the claim itself is often subject to longer statutory limitations. An arrest for a claim secured by maritime lien prevents the maritime lien from being time barred.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Yes. The rules on maritime liens are based on the 1967 Brussels Convention.

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

We are able to prepare the arrest application within 1-2 hours provided that no further information or documents are necessary. The arrest will often be accomplished in the afternoon, if the court receives the application in the morning.

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

No. Copies of the invoices or other documents are required to substantiate the claim.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

The main action of the claim, i.e. the merits of the claim, is subject to the choice of law agreed upon and often stipulated in a contract between the parties. If no contractual choice of law is stipulated the court will find the applicable law on the basis of the 1980 Rome Convention.

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

7 days.

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

Yes. The liability of the claimant for wrongful arrest is strict according to the Administration of Justice Act section 639.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Piercing the corporate veil is very difficult under Danish law. In general, a limited company in Denmark (A/S and ApS) is the only liable party for its actions.



SHIP ARREST IN ENGLAND & WALES

By Laurence McFadyen & Kevin Sach, Partners

SACH SOLICITORS

Laurence.mcfadyen@sach-solicitors.co.uk & Kevin.Sach@sach-solicitors.co.uk

www.sach-solicitors.co.uk

24 Alie Street

London E1 8DE, England

Tel: +44 (0)20 7680 1133

Fax: +44 (0)20 7680 1144

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

Sections 20-24 of the Supreme Court Act 1981 governs the right of arrest following the issuing of in rem proceedings (a claim against the ship) provided certain pre-conditions are met.

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

England and Wales are a party to the 1952 Arrest Convention but the original text of the Convention has not been specifically reproduced in the Supreme Court Act, or given the force of law.

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

No, all arrests are governed by the Supreme Court Act 1981

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

In a claim in rem, a claimant and a judgment creditor may apply to have the property proceeded against arrested, namely:

Section 20(2) Supreme Court Act 1981

(a) Any claim to the possession or ownership of a ship or to the ownership of any share therein.

(b) Any question arising between the co-owners of a ship as to possession, employment or earnings of that ship.

(c) Any claim in respect of a mortgage of or charge on a ship or any share therein.

(e) Any claim for damage done 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 in consequence of the wrongful act, neglect or default of -

(i) the owners, charterers or persons in possession or control of a ship; or

(ii) the master or crew of a ship, or 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.

- (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.
- (j) Any claim –
 - (i) under the Salvage Convention 1989;
 - (ii) under any contract for or in relation to salvage services; or
 - (iii) in the nature of salvage not falling within (i) or (ii) above;
 or any corresponding claim in connection with an aircraft.
- (k) Any claim in the nature of towage in respect of a ship or an aircraft.
- (l) Any claim in the nature of pilotage in respect of a ship or an aircraft.
- (m) Any claim in respect of goods or materials supplied to a ship for her operation or maintenance.
- (n) Any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues.
- (o) Any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages).
- (p) Any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship.
- (q) Any claim arising out of an act which is or is claimed to be a general average act.
- (r) Any claim arising out of bottomry.
- (s) Any claim for the forfeiture or condemnation of ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

Section 20(3)(b)

- (b) Any action to enforce a claim for damage loss of life or personal injury arising out of -
 - (i) a collision between ships; or
 - (ii) the carrying or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
 - (iii) non-compliance on the part of one or more of two ships, with the collision regulations.

The following claims may be brought in rem irrespective of ownership of the ship and therefore allow arrest proceedings to be commenced notwithstanding who actually owns the ship at the time the action is commenced.

- (i) Any claim for possession or ownership of a ship or to the ownership of any share therein.
- (ii) Any question arising between the co-owners of a ship as to possession, employment or earnings of that ship.
- (iii) Any claim in respect of a mortgage or a charge on a ship or any share therein.
- (iv) 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, or for the restoration of a ship or any such goods after seizure or for droits of Admiralty.
- (v) Any claim which gives rise to a maritime lien. The following claims fall into

this category:

- claims for damage done by a ship.
- claims for salvage.
- claims for master's wages and disbursements and seamen's wages.
- claims for bottomry and respondentia.

All other claims are limited by considerations of ownership and can only be brought in rem and thus against a particular ship if the following conditions are satisfied:

- (i) the claim arises in connection with a ship; and
- (ii) the person who would be liable on the claim if sued personally was the owner or the charterer or in possession or control of the ship when the cause of action arose; and
- (iii) at the time when the action is brought i.e. when the claim is issued, the person who would be liable on the claim if sued personally was the beneficial owner of all the shares in the ship or was the demise charterer of it.

A claim form can only be issued and a ship arrested in these circumstances if between the date of the cause of action i.e. the matter or breach of contract complained of, and the date the claim form is issued:

1. the ownership remains unchanged; or
2. the demise charterer is unchanged.

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

Any ship can be arrested irrespective of her flag, even State owned ships provided they were being used for commercial purposes. There are certain protocols which must be followed before specific flagged ships are arrested.

6. Can you arrest a ship irrespective of the Debtor?

Provided the arrest conditions are met, the arrest of a ship is a right and not one of discretion for the Court. The Supreme Court Act prohibits the arresting of ships and property belonging to the Crown (the State) save where those ships are engaged in commercial operations and subject to the protocols referred to.

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

No security is required to arrest a ship, only an undertaking by the solicitor to pay the Admiralty Marshal's fees and expenses.

8. Is there any difference between arresting a ship for a maritime claim and a maritime lien?

A maritime claim is one which falls within the admiralty jurisdiction and the right to arrest is dependent on ownership at the time of the arrest. A claim giving rise to a maritime lien being claims for salvage, crew and Master's wages, damage done by a ship and master's disbursements give rise to a right to arrest the ship even after a change of ownership.

9. Does your country recognize maritime liens? Under which International Convention, if any?

The following maritime liens are recognised under English law, damage done by a ship; salvage; seaman's and master's wages; master's disbursements; bottomry and respondentia

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

A ship can be arrested within a matter of hours of the relevant papers being received from the Client.

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

A Power of Attorney not required to arrest a ship or represent a Client in court. However to arrest a ship a prima facie claim must be made out, there must be evidence of ownership of the ship as well as particulars of her current location.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

The purpose of the arrest is to obtain security. Jurisdiction is founded by the service on the ship of the claim form, which is part of the arrest procedure, but the ship does not have to be arrested to do so. The court will consider applications to stay proceedings in respect of the main action on forum non conveniens grounds or otherwise in accordance with the Civil Jurisdiction and Judgments Act 1982.

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

The claim form is served on the ship at the time of arrest and the timetable for the progress of the claim commences from that date. The claim form must be acknowledged within 14 days and the particulars of claim served within 75 days. If it is a collision action, a different time table applies. The parties have 2 months from the date the claim form was acknowledged to contest the court's jurisdiction or to serve a collision statement.

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

Yes, but proof of mala fides or gross negligence has to be proven.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The corporate veil can be pierced in exceptional circumstances, where either the company formed has been created and used as a way to avoid existing liabilities or where the sale of the ship is a sham transaction to avoid existing liabilities.

SHIP ARREST IN FINLAND

By Ulla von Weissenberg
AMINOFF & WEISSENBERG
ulla.weissenberg@jaflaw.fi
www.jaflaw.fi
Korkeavuorenkatu 34
00130 Helsinki, Finland
Tel: +358-(0)9-6840 477
Fax: +358-(0)9-6840 4740

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

The arrest of foreign vessels is possible in Finland if the underlying claim is a maritime claim as defined in the Arrest Convention of 1952. However, it is possible to arrest a vessel in Finland only if execution measures may be enforced against the vessel i.e. the vessel is owned by the defendant or the claim is secured by a maritime lien on the vessel. When arresting a vessel in Finland the applicant should be prepared to provide security to cover the cost of an unjustified arrest.

An arrest is effected in two separate phases. Firstly, the applicant must get a court order for the arrest and thereafter apply for the actual enforcement of the order from the executive authorities.

Generally, the court competent to deal with an arrest order is the Maritime Court within whose jurisdiction the defendant is domiciled, has his principle place of business or where the vessel to be arrested is located.

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

Finland has on 21 December 1995 ratified the International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships (signed in Brussels on 10 May 1952, “the Arrest Convention”). The provisions of the Arrest Convention are incorporated in the Finnish Maritime Code of 1994 (Chapter 4).

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

If the ship to be arrested is Finnish and the applicant is domiciled or has its principal place of business in Finland or if the claim is of public nature (i.e. tax, public fee), the provisions of the Maritime Code do not apply. In these cases the general rules on distraint are applied.

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

Generally, it is possible to arrest seagoing ships only to secure the enforcement of maritime claims as defined in the Arrest Convention. Further, under Chapter 7 of the Procedural Code,

the granting of an arrest order is subject to;

- (i) prima facie evidence of the applicant's claim which the defendant can be ordered to pay by a judgement given by a court of law or by an arbitral award enforceable in Finland
- (ii) the existence of a threat that the defendant will hide, destroy or dispose of his property or take other steps which will endanger the applicant's claim

The requirement that the arrest of a vessel is only possible to secure the enforcement of a maritime claim does not apply to Finnish ships if the applicant of the arrest is domiciled or has its principal place of business in Finland. Therefore, it is possible for a Finnish applicant to arrest a Finnish vessel in Finland for claims that do not qualify as maritime claims i.e. for unpaid insurance fees.

5. Can you arrest a ship irrespectively of her flag?

Finland has extended the scope of the application of the Arrest Convention to all vessels registered in the Finnish Register of Ships or in corresponding foreign ship register, regardless of the nationality or the trading areas of the vessel. Consequently, there are no requirements in the Maritime Code that a vessel to be arrested should be registered in one of the states which has ratified the Arrest Convention.

6. Can you arrest a ship irrespectively of the debtor?

When ratifying the Arrest Convention Finland and the other Nordic countries have incorporated provisions in their national legislation limiting the possibility to arrest vessels owned by someone who is not liable for the claim of the applicant.

A fundamental principle under Finnish law is that to secure a claim, it is only possible to initiate execution measures against property which is owned by the defendant. This principle also applies to the arrest of vessels. Therefore, it will not i.e. be possible to arrest a vessel on bareboat charterer if the charterer is solely liable for the claim. However, if a claim is secured by a maritime lien on a vessel such vessel can be arrested irrespective of who the proper debtor is.

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

After receiving the arrest order the applicant must request enforcement from a local Bailiff of the region where the vessel is located. Before the Bailiff will enforce the arrest order the applicant must provide security for any damage or loss which may be caused to the defendant if the arrest of the vessel proves to be unjustified.

The law contains no guidelines for how to determine the amount of security. Therefore, the Bailiff enforcing the arrest order will at his own discretion decide what security will be considered sufficient to cover the liability of the applicant. A consequence of this is that the applicant is often required to provide unlimited security. This may take the form of a limited bank guarantee, issued by a Finnish bank, combined with unlimited other security. Such unlimited other security can be i.e. guarantee given by solvent Finnish persons, natural or company.

The Procedural Code contains a provision which entitles the Maritime Court to release the applicant from the obligation to provide security. This is only possible if the applicant cannot provide security and the applicant's claim is considered justified and well-founded. It is highly unusual that such release is granted.

Due to the possibility that the Bailiff may require unlimited security it is in practice often difficult for foreign applicant to arrest vessels in Finland. It should, however, be emphasised that this rule of an unlimited guarantee is not without exceptions and it is always possible to try to negotiate with the Bailiff beforehand about a sufficient limited bank guarantee.

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

There are some differences in this respect but a ship can only be arrested if the claim is a maritime claim.

If a claim is secured by a maritime lien on a vessel such vessel can be arrested regardless of whether the debtor is the owner of the vessel or not.

If the applicant of an arrest has a maritime lien to secure his claim, it is not necessary to show any threat that the defendant will hide, destroy or dispose of his property or take other steps which may jeopardise the applicant's claim.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Finland recognizes maritime liens. Currently Finland is not a member to any International Convention on maritime liens.

According to the Finnish Maritime Code, Chapter 3 a maritime lien secures the following claims connected to the vessel:

- 1) wages and other compensation due to the master or other person employed on board the vessel;
- 2) port, canal and other waterway dues and pilotage dues;
- 3) compensation for personal injury which has occurred in direct connection with the operation of the vessel;
- 4) compensation for property damage which has occurred in direct connection with the operation of the vessel, provided that the claim is not based on contract;
- 5) salvage remuneration, compensation for removal of wreck and contribution in general average.

A maritime lien is valid even if the debtor is a non-operating vessel owner, a charterer or other person who takes use of the vessel.

It is also possible to have a maritime lien attached to cargo which is loaded on board the vessel but the scope of claims is more limited.

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

As a general rule, the application for an arrest must be served on the defendant and the defendant is given an opportunity to file a reply before the arrest order is given. However, as this procedure often endangers the purpose of the arrest it is possible to obtain an interlocutory order. Such an order is immediately enforceable without any service of documents on the defendant. When applying for the arrest of a vessel an interlocutory arrest order is normally granted. In cases of extreme urgency an arrest order may even be obtained on the same day it is filed.

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

A lawyer shall produce a POA personally signed by his/her client unless orally retained by the party in court. However, an advocate (member of the Finnish Bar) does generally not need to produce a POA.

There are no specific requirements regarding the particulars of the arrest application but it should at least contain details of the applicant and the defendant, particulars of the vessel to be arrested (i.e. about the ownership), particulars of the amount of the claim with supporting evidence, a brief account of the grounds of the claim and an explanation why the arrest is considered to be necessary by the applicant.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

As a member of EU, Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is in force in Finland. Finland is also a party to the Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters done in Lugano on 16 September 1988 and the same done in Brussels on 27 September 1968, which generally is only applicable in respect of Denmark.

In case the applicant is not from one of the EU countries, nor from one of the countries party to the Lugano Convention, the competent court would have to be decided under general provisions of the Maritime Code. Generally legal proceedings may be commenced before the competent maritime court where the defendant is domiciled, where the defendant has his place of business or where the vessel is.

Finland has also ratified the New York Convention of 1958 on Recognition and Enforcement of Foreign Arbitral Awards.

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

In order to keep an arrest order in force the applicant must commence legal proceedings against the defendant within one month from the day when the order is granted. When the court decides on the principal claim, it must also decide on how long the arrest order is in force.

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

Under Finnish law the applicant's liability for unjustified arrest is strict. Therefore, the applicant is liable for any loss the defendant may suffer as a result of an unjustified arrest even if the applicant has not been negligent or acted in bad faith when enforcing the arrest. An arrest would be considered to have been unjustified i.e. if the applicant for any reason fails to obtain a judgement to establish his claim or if the claim is rejected.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The main rule in Finland is that the shareholders of a limited liability company are not personally liable for the obligations of the company. The same applies to a group of companies controlled by same interests. Piercing the corporate veil is generally not possible.

However, according to the Execution Act, Chapter 4, Section 14, property can be attached regardless of a claim that it belongs to a third party if the position of the third party is based on such legal arrangement that does not correspond to the actual nature of the arrangement taking into consideration i.e. the debtor's right to control the third party. It must be evident that such arrangement have been used in order to avoid the execution and it is likely that the applicant's claim cannot otherwise be recovered from the debtor within a reasonable time.



SHIP ARREST IN FRANCE

By Henri Najjar
RICHEMONT, NICOLAS & ASSOCIES
henri.najjar@avocatline.com
61, rue la Boétie
75008 Paris, France
Tel.: +33 (0)1 56 59 66 88
Fax: +33 (0)1 56 59 66 80

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

During the years following the adoption of the 1952 Brussels Convention, France was held to be a “ship arrest haven”. Indeed, as a response to the abusive expansion of single ship companies, French judges resorted to an extensive interpretation of article 3.2 of the Brussels Convention, granting orders of arrest against any ship apparently owned by “the same beneficial or associated owner”, ie. any company having shares owned by an entity holding also shares in the capital of the debtor.

This movement, which led to various conflicting judgments, subsided in the mid nineties. The French courts back-pedaled to a more conservative view, whereby the piercing of the corporate veil must reveal the fictitious character of the company owning the ship.

France remains however an interesting forum for arrest insofar as the domestic legislation allows, under certain conditions, the arrest of a ship for any claim against the owner, were it not maritime, and as the procedure for the arrest of ships is relatively rapid and not costly.

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

France ratified the Brussels Convention on the Arrest of Sea-Going Ships of 10 May 1952 and implemented it through the Decree no.58-14 of 4 January 1958.

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

Yes. Under the domestic regime established by the Law no.67-5 of 3 January 1967 on the status of ships and the Decree no.67-967 of 27 October 1967, as amended, completed by the general rules set by the Law no.91-650 of 9 July 1991 on the reform of the civil procedures of execution and the Decree no.92-7555 of 31 July 1992.

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

Under the Brussels Convention, ships may be arrested for any of the “maritime claims” identified in article 1 of the Convention.

Under the domestic legislation, ships can be arrested for any claim whatsoever the arrestor

may have against the owner of the ship, provided it is proven that this claim is “grounded in principle” and that there is a risk of non-recovery of the claim.

5. Can you arrest a ship irrespectively of her flag?

Yes. Any ship – save warships and state-owned ships employed in a public non-commercial service – may be arrested whenever it calls at a French port, under the domestic regime be. Such arrest can also be made under the Brussels Convention, whenever the ship flies the flag of another Contracting State.

6 Can you arrest a ship irrespectively of the debtor?

French judges have regularly dismissed any petition for arrest of a ship not owned by the debtor, save strictly when it is established that the arrestor (i) had reasonable grounds to believe that the underlying obligation was concluded on behalf of the current owner of the ship; or (ii) holds a maritime lien against the ship.

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

It is not common practice that French courts require counter-security as a prerequisite for the arrest of a ship. However, as a matter of principle, judges avehe discretion to decide otherwise.

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

There is no difference in the procedure of arrest. However, a maritime lien would allow the arrest of the ship irrespective of the identity of its owner (“into whatever hands it may pass” - article 8 of the Brussels Convention; article 9 of the 1967 Law of 3rd January 1957 (see point 5 above).

9. Does you country recognize maritime liens? Under which International Convention, if any?

Yes. France ratified the Brussels Convention on Maritime Liens and Mortgages dated 10 April 1926, incorporated into French domestic law through articles 31 to 41 of the Law of 3 January 1967, bearing in mind that an additional maritime lien is provided under article 12 of the Law of 3 January 1969 (“the shipping agent’s claim for disbursements paid outside the port of registry of the vessel.”)

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

If all the necessary documents are provided in due time, the arrest can be made within the same day in case of urgency.

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

There is no need to provide a POA. However, the petition must be substantiated with any document evidencing the claim (such as contracts, invoices, notices, correspondence, etc), plus under the Brussels Convention that it falls within the definition of “maritime claim”, and under the domestic legislation, that the debtor does not have an apparent creditworthiness.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

French courts are not competent to rule on the merits of the claim, on the ground that the ship was arrested within its area of jurisdiction (Forum Arresti).

The criteria and conditions set under international rules of conflict must be met, in particular those provided under the 1980 Rome Convention on Contractual Obligations..

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

The claimant must institute legal proceedings on the merits within one (1) month after the arrest is performed, otherwise the arrest will automatically be null and void.

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

French judges are reluctant to accept a claim for compensatory damages for wrongful arrest; unless the bad faith or malice of the arrestor is established.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes, however French judges do not rely anymore on the theory of “Appearance” but on the concept of “Fiction”. It must be established that the company owning the ship is fictitious. To this end, various cumulative elements are considered: same beneficial or associated owner, concurrency of assets and/or debts, unity of management, lack of participation to the benefits and/or debts of the company, unequal distribution of the dividends, existence of a subordination bond between the existing entities, etc.



SHIP ARREST IN GERMANY

By Thomas Wanckel, Partner
Segelgen & Suchopar Solicitors
wanckel@sesu.de
www.sesu.de
Bauwall 7, Überseehaus
20459 Hamburg, Germany
Tel.: 0049/40/376805-18
Fax: 0049/40/362071

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

Germany has not only well-known international sea-ports at the North- and the Baltic-Sea but also a long history in maritime law. Although it is said that German law is generally rather restrictive in allowing conservatory and provisional measures, no doubt an arrest can be achieved within a day and with reasonable costs involved.

In order to have an arrest lifted the ship-owners may put up security; security may given by a bank-guarantee, however, as practise shows, P+I-Club letters of first-class P+I-Clubs ("International Group") are widely accepted. Simultaneously the ship-owners will file an appeal ("Widerspruch") against the arrest-order and an immediate hearing on the merits of the arrest-order will follow.

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

Germany is since April 1973 member of the Brussels Arrest-Convention of 1952, but due to the leading opinions – although not undisputed - in Germany the provisions of the German Code of Civil Procedures ("Zivilprozeßordnung, ZPO") should prevail. This does, however, not lead to major differences except of one restriction. German courts will only grant an arrest if the creditor is able to demonstrate a good reason for an arrest, which is defined as "that without an arrest the enforcement of a judgment would be rendered impossible or substantially more difficult, see § 917 sub 1 ZPO.

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

See above

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

Generally speaking an arrest may be applied for if the creditor's claim is for payment or may become a claim for payment, which is generally broader than the claims admitted under the Brussels Arrest Convention 1952, however, that does not lead to major differences because – as practice shows – those claims cover the vast majority of claims against ship-owners.

The arrest can only be applied for if the shipowner is personally liable for the creditor's claim. If for example the creditor has supplied bunker to a chartered ship and has not been paid for he has to demonstrate to the court that the managers of the ship or the master acted on behalf of the ship-owners rather than for the charterers.

However, due to the German Procedural Law ("Zivilprozeßordnung, ZPO") an arrest will only be granted, if there is a "good reason" for the arrest ("Arrestgrund"). Although there are serious opinions in Germany arguing that the Brussels Arrest Convention, which does not refer to any "good reason" should prevail, however, as the German courts still do not follow this opinion creditors have still to consider this precondition. The basic rule is lined out in § 917 sub. 1 ZPO and defines "the good reason" in general: if the enforcement of the judgment would be rendered impossible or substantially more difficult.

Therefore an arrest against a ship flying the German flag will hardly be granted, as a judgement may be executed in Germany. To cope with § 917 ZPO it is not sufficient simply to show that the shipowners are in financial difficulties, as this is regarded as a sole commercial risk. German law does not protect the creditor against possible or imminent deterioration of the financial situation of his debtor, but will secure the creditor only in situations where the debtor has no assets within the jurisdiction or where he is hiding or selling off his assets, or moving them abroad, i.e. where he is trying to escape from his obligations.

In order to clarify what might be a "good reason" § 917 sub. 2 ZPO in its amended version with effect as of April 1st 2004 states: "It is sufficient to create an "Arrestgrund" if the judgement has to be enforced abroad and the reciprocity is not guaranteed".

This of course might not be as helpful as the old version which considered it sufficient if the judgement had to be enforced outside the EU, but gives another good reason to let the Brussels Arrest Convention 1952 prevail. However, where an arrest is really needed, i.e. against ships flying a flag of convenience the reciprocity will probably not be guaranteed. And finally: This restriction does not prevent any creditor to submit to the court good arguments why even where reciprocity is granted "the enforcement of a judgment would be rendered impossible or substantially more difficult"

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

The judge may grant the arrest but allow the execution only if the creditor provides for counter-security. This is mainly because German law is rather strict on compensation for wrongful arrests. The counter-security should safeguard the ship-owners' claim for compensation and therefore the amount of such guarantee is not related to the creditor's claim but to the damage the ship owners may suffer by his ship being arrested. The actual amount is in the discretion of the judge, but the ship's charter-rate for the off-hire period may be a reasonable guideline. A counter-security of the creditor will be ordered in cash or – if so requested in the application - may be given by a bank guarantee of a 1st class European bank. Therefore the creditors' bankers should be involved in due course before the application.

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

If so requested by the ship-owners the court may set a deadline for the creditor to file his main action. If that deadline elapses without the main action being filed the arrest will be lifted. Such deadline is in the discretion of the judge but as practice shows will be not more than a month, probably about 14 days. The judge will not nominate the competent court for such action, but as Germany has signed the Arrest Convention the court which has granted the arrest may be competent if no law and jurisdiction clause has been agreed upon.

9. Does your country recognize maritime lien? Under Which International Convention, if any?

The applicant may have to consider maritime liens and mortgages. Germany is neither a member to the International Convention on Maritime Liens and Mortgages 1967 nor 1993, but has transformed the 1967 Convention into the Commercial Code (Handelsgesetzbuch); however, cargo claims arising out of charter-parties or other contracts have been deleted. Liens are accepted for crew wages, port- and pilots-charges, claims for personal injury and death or damage to property, GA-contributions and salvage-remuneration and claims of the social-security-authorities. Maritime liens prevail over all other liens on the ship, also over the ships' mortgages but they all can destroy the value of the ship for any creditor not being so secured.

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

An arrest order may only be executed within one month from its delivery to the applicant. The execution will be done by the court's bailiff ("Gerichtsvollzieher") on a special order of the applicant, not by the court. The applicant also has to make sure that service of the arrest-order to the ship's owners is effected or at least applied for within one week after the ship has been arrested and within the one-month-time-limit mentioned before. If one of these time-limits has not been observed the arrest will be lifted if the ship-owners so applies to the court.

The execution may only be done as long as the ship has not started her voyage and is still within a German port.

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

The arrest procedure is simple and starts with an application filed by a lawyer, although this is not compulsory. No PoA is required but advisable to avoid delay if so requested. The application must be in the German language and supported by prima facie evidence ("Glaubhaftmachung") as to the claim and the "Good reason" ("Arrestgrund"). This is usually been done by a sworn affidavit of a competent manager of the creditor confirming that the facts stated in the application are true. However, no legalisation is required. Very rarely the attached documents have to be translated into German as well because the Courts in the main seaports of Hamburg and Bremen are well familiar with the English language.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

The competent court is the magistrate court ("Amtsgericht") for the port in which the ship is berthing unless there is already a dispute between the creditor and the ship's owners pending, then also that court has jurisdiction.

Mostly the courts decide the application without a hearing. If the presiding judge believes the application may be without merits, he usually will inform the creditor's lawyer before dismissing it and allow him to complete his arguments or to withdraw the application.

If an arrest is granted the judge will also determine the amount of security which entitles the ship-owners to have the arrest lifted.

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

As to the legal action there is no automatism, however, on an application of shipowners the court will file an order giving the applicants reasonably time, which is in the discretion of the court, mostly about a months. If the applicants fail to comply with this order the arrest will be lifted.

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

German law is rather strict on compensation for wrongful arrests. § 945 ZPO stipulates a strict liability which arises irrespective of illegality or fault on the part of the applicant for arrest but is only due to the decision of the judge that the arrest was unjustified from the very beginning.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Under German law it is rather rare that the corporate veil may be lifted; only in cases of clear misconduct of the managers or the shareholders there might be a direct claim against them.



SHIP ARREST IN GHANA

By David A. Hesse

Hesse & Hesse Barristers|Solicitors|Notaries

info@hesselawfirm.com

www.hesselawfirm.com

No. F460/4 Gbatsuna Street

Nyaniba Estates, Osu-Accra

P.O.Box 05 514, Osu-Accra

Tel: +233-21 778215/ 760768

Fax: +233-21 761197

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

Before independence from colonial rule was attained by Ghana in 1957, the law practiced in this jurisdiction was largely English Law with such amendments as were provided under statute to suit local conditions. English traditions, rules of practice and procedures were largely followed. English authorities were freely cited and these were binding on our courts. Ghana attained independence on the 6th day of March 1957. Since then, the position is that English authorities have ceased to be binding; however, they, like the authorities of other countries having similar legal system, continue to have persuasive force and are accordingly cited and taken cognisance of in appropriate cases. As of now, the law of this country is made up of the 1992 Republican Constitution, statutes, existing law and the common law. "The Common Law" is made up of The Common Law as inherited from Great Britain as amended by changes introduced by the Constitution of Ghana, statute, decided cases, established doctrines and principles of customary law and the rules and doctrines of equity.

As may be expected, statutes enacted in this jurisdiction generally follow the form and substance of relevant legislation in the United Kingdom and other common law countries. This trend is more marked in legislation affecting Business Law.

Order 2 of the High Court Civil Procedure Rules provides that all civil proceedings must be commenced by Writ of Summons and must be filed with a Statement of Claim. Every Writ of Summons must contain concise statement of the nature of the claim or relief remedy sought in the action. After the Writ of Summons has been filed in the High Court of Justice, a Court bailiff is assigned to effect service of the Writ of Summons and accompanying Statement of Claim on the Defendant.

In admiralty actions, the Writ of Summons is served on the Captain of the ship and a copy is posted on the ship.

After service of the Writ of Summons, the Plaintiff files an Ex Parte application for an Order for a warrant for the arrest of the ship. Our Rules of Court provide that a warrant of arrest may be issued at any time after the Writ of Summons has been issued, 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 is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been stratified;

(b) In an action of wages or of possession the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in Ghana, and a copy of the notice shall be annexed to the affidavit;

(c) In an action of bottomry, the bottomry bond, and if in a foreign language also a certified translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit;

(d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same;

(e) The lodging of an undertaking in writing by the solicitor who applies for the issue of the warrant to pay the fees and expenses of the Marshal.

The application for an order for warrant of arrest not being on notice can be filed, heard and granted on the same day or the following day. After the grant of the order a bailiff of the High Court is assigned to serve the Order on the Captain of the vessel. A copy of Order is also served on the Harbour Master, the Port Authorities and Customs Excise and Preventive Service at the port where the vessel is berthed.

A defendant who is served with an Order of arrest may apply to the High Court of Justice which granted the Order to have the order set aside or provide adequate security for the satisfaction of the Plaintiff's claim. If the defendant is able to provide adequate security to the satisfaction of the Court, the Court may vacate the order on terms and conditions as in the opinion of the Court is just and appropriate. Upon service of the order vacating the warrant of arrest, the Harbour Master and the Port Authorities will grant the Captain of the vessel unconditional leave to sail from the port of call.

Where the Defendant disputes the claim of the Plaintiff, our Rules of Procedure require the Defendant to enter an Appearance to the Plaintiff's Writ of Summons within Eight (8) days of service of the Writ of Summons. The Defendant is required to file his Statement of Defence to Plaintiff's claim within Fourteen (14) days after the entry of Appearance.

Under our Rules of Court a Plaintiff has a right to file a Reply to the Statement of Defence filed by the Defendant and to have the Suit set down for hearing.

It must be observed that admiralty actions do not travel beyond the order for arrest. In most cases, either the sum owed is paid immediately the vessel is arrested or satisfactory arrangements are made to provide security for the repayment of the sum owed.

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

All.

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

No, other than by court action.

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

For all claims.

5. Can you arrest a ship irrespectively of her flag?

Yes.

6. Can you arrest a ship irrespectively of the debtor?

Yes.

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

Yes.

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

No.

9. Does you country recognize maritime liens? Under which International Convention, if any?

Yes, all Conventions.

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

You can arrest within 48 hours.

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

Require the claim documents but not POA.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Our domestic Rules of Court.

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

The arresting party must file claim on the merits before arresting the vessel.

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

Yes.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes.



SHIP ARREST IN ISRAEL

By John Harris
John Harris Advocate & Notary
jharris@netvision.net.il
2 Palmer's Gate / 36 Hanamal Str.
PO Box 33199
31331 Haifa, Israel
Tel: 972-4-8627067
Fax: 972-4-8825257

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

The Sources of the Court's Arrest Jurisdiction.

1.1. The Jurisdiction of the Israel Maritime Court (which is situated at Haifa) is conferred by the English Admiralty Courts Acts of 1840 and 1861. These acts were extended to the Dominions and Possessions of the United Kingdom by the Colonial Courts of Admiralty Act 1890 and under the Palestine Admiralty Jurisdiction Order of 1937, to Palestine, then a British mandated Territory.

1.2. When the State of Israel was established in 1948, under the Law and Administration Ordinance, the Admiralty Court Acts of 1840 and 1861 (the "Admiralty Laws") became part of the domestic legislation of the newly established State.

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

There are no international conventions applying to the arrest of ships in Israel.

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

Ships are arrested in terms of the jurisdiction conferred by the Admiralty Laws.

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

A vessel can be arrested if the *lex causae* constitutes a maritime lien or statutory right in rem provided that jurisdiction exists under the Admiralty Laws.

The priorities are as follows:

- (1) The official expenses of selling a vessel pursuant to a judicial sale,
- (2) Port and port related charges and expenses,
- (3) The costs of preserving a vessel pending Judicial sale,
- (4) Payments due to the master and crew including damages for personal injuries,
- (5) Salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers,

- (6) Damages for personal injuries to passengers,
- (7) Damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects,
- (8) Mortgages (no distinction is drawn between a local or a foreign registered Mortgage),
- (9) Necessaries.

5. Can you arrest a ship irrespectively of her flag?

Any foreign vessel can be arrested.

6. Can you arrest a ship irrespectively of the debtor?

As the claim is in rem against the vessel in most cases, a vessel can be arrested irrespective of the debtor

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

If the Court has reservations regarding the arrest allegations and supporting documentation it may order the provision of counter-security.

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

There is no difference in respect of arresting a ship for a maritime claim or a maritime lien.

9. Does you country recognize maritime liens? Under which International Convention, if any?

Maritime liens are recognised under the Admiralty Laws.

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

Arrest can normally be effected within twenty four hours of receiving instructions and the relevant documentation.

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

There is no need to provide a POA. It is advisable to provide all documentation establishing the cause of action.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Jurisdiction is constituted under the Admiralty Laws, however, if under the *lex causae* the claim is not a maritime lien or does not constitute a statutory right in rem, the Court will decline jurisdiction.

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

The action in rem has to be filed concurrently with the application for arrest.

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

The claim will exist for wrongful arrest in cases of maliciousness or gross negligence.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The corporate veil will be lifted in matters of wilfull deceit.



SHIP ARREST IN ITALY

By Alberto Batini
BB & PARTNERS
bbp.li@bbpartners.it
www.studiolegalebatini.com
Via Di Franco 9
57123 Livorno, Italy
Tel. +39 0586 883232
Fax +39 0586 884233

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

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

1959 Brussels Convention (ratified 9.11.1979)

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

A vessel can be detained in case of damage to port or harbor facilities by the Harbour Master's Office. In this case the arrest is a sort of administrative detention order not issued by a Judge but by a port authority administration and aimed to obtain suitable security.

Other detention orders might be issued by a Public Prosecutor Office within a criminal investigation to preserve assets of the civil debtor, criminal forensic evidences or to avoid reiteration of a crime. The jurisdiction of this type of arrest rests with the Criminal Magistrate.

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

Claims against bareboat Charterers or Charterers by demise not otherwise assisted by a lien on the vessel are admitted only if the ship is flying the flag of a contracting state and the claim is a maritime claim under the Arrest Convention.

Claims against the time Charterers, slot Charterers, voyage Charterers, managers or operators, even if connected to the particular ship in connection which the claim arose, are not admitted unless assisted by a lien on the vessel.

5. Can you arrest a ship irrespectively of her flag?

If a ship is flying the flag of a contracting state to 1952 Arrest Convention, claims allowed are only falling under article 1.1. letters (a) to (q)

If a ship is not flying the flag of a contracting states she can be arrested for said maritime claims and for any other claim for which arrest is allowed under Italian law. This means that any credit of a civil nature against the owner of the vessel could be secured by way of ship's arrest.

6. Can you arrest a ship irrespectively of the debtor?

According to Italian law the existence of a lien will be determined by the law of the flag at the time the claim or credit arose. This means that Italian law refers often to foreign laws to determine the existence of a lien. The list of maritime claims provided by art. 1 (1) of the Convention does not create additional liens to those provided by national or foreign laws.

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

No but the Examining Judge, in particular circumstances, might impose a counter security to the claimant. This happens infrequently and usually never at the time of the ex parte arrest petition (i.e. at the time of submission of the arrest petition).

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

There are no procedural difference. The difference is of a substantial nature. The lien, when contemplated by the law of the flag, allows the ship's arrest against the bareboat Charterers, time Charterers, ship's managers, operators, etc... even in cases where they will not be allowed by 1952 Arrest Convention.

9. Does you country recognize maritime liens? Under which International Convention, if any?

Our country recognize a closed list of maritime liens under article 552 of the domestic code of navigation. Moreover Italy is a signatory to the 1926 Liens and Mortgages Convention.

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

By the next day the arrest is obtained and enforced, provided supporting documents are available and in order.

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

We need to provide a POA in English, notarized or apostilled. Usually when a POA is not available at short notice we successfully used the agency appointment. This means that client appoints by fax as his agent for urgent matters, including the arrest of that particular ship, a Colleague of our firm who in turns grant to us a POA locally. A formal legalized POA is produced in Court at a later stage, ratifying the actions undertaken by the agent. This instrument has been sometimes challenged by opposing parties in various courts but so far without success. A regular and legalized POA is anyway recommended since the beginning of the action.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Italian Courts will accept jurisdiction on the main action of the claim only in cases where jurisdiction on the merit has been validly agreed upon between the parties, or in tort cases where the accident giving rise to the action occurs in Italian territorial waters. In contractual actions where Italian jurisdiction has not been mutually elected, an Italian Court will accept jurisdiction if International Conventions on jurisdiction allows it, such as EU Reg. 44/2001, 1968 Brussels Convention, etc.. or – failing any relevant convention - if Italian International Private Law System recognizes the existence of Italian jurisdiction in case of contractual disputes of such nature. Recently Italian jurisdiction in cargo claims dispute under bills of lading containing a choice of jurisdiction abroad has been rejected. This means that the Italian Court will grant the arrest but will not retain jurisdiction on the merit.

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

The Claimant will have 60 days after the date that the arrest is finally confirmed in first instance, to start a merit proceedings in the country of competent jurisdiction. Evidence of timely commencement of lawsuit abroad is not required but if the opposing party challenge this, then claimant will be required to provide legalized evidence of timely action abroad to maintain the arrest in force.

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

This is a very infrequent circumstance. In order to be liable for wrongful arrest the claimant must have acted in bad faith and with the knowledge that his claim was not assisted by a maritime claim, a lien or any other equitable right. The burden of proof of this circumstance is upon the arrested party wishing to act for the recovery of damages. Moreover damages must be strictly evidenced and not simply alleged and this is often very difficult.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Italian courts started in the last few years and in very few judgments to recognize the possibility of lifting the corporate veil if it is evidenced identity of shareholders and substantial identity of direction / management of the two companies.



SHIP ARREST IN LATVIA

By Edward Kuznetsov
Manager of Legal Dept. of Baltic Kontor Ltd
eklaw@bk.lv
7 Maza Alusknes Street
LV-1045 Riga, Latvia
Tel: 00371-7-381463/67
Fax: 00371-7-501822

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

In Latvia claimant has legal right to arrest vessel to secure his claim before claim on merits is arisen in the court.

Latvian Maritime Code (hereinafter - MCL) (valid since 1st August 2003) gives definition of arrest as "any detention of a ship or prohibition of its relocation in accordance with a court adjudication in order to secure maritime claim. Arrest does not mean attachment of a ship in order to implement a court judgment or use of other compulsory means, including the detention of a ship in accordance with administrative procedures, upon implementation of state control of ports and supervision of the navigation regime in Latvian waters".

Petitions to arrest the vessel are tried by the courts of common jurisdiction. There are two types of courts in Latvian legal system, which can issue a ruling to arrest a ship. Regional courts try claims up to 30,000 Latvian Lats (about US\$ 56,000). Claims amounting in excess of 30,000 Lats are triable by the District courts. Minimum amount of claim enabling ships arrest is not determined by the law.

Court charge to arrest debtor's asset before hearings on merits is 20 Lats (about US\$ 19), in case amount of claim exceeds 4000 Lats (about US\$ 7400) court charge to be 0,5 per cent from the amount of claim.

Language of the hearing is Latvian and all documentation must be presented to the court in this language.

Ruling to arrest is made by a sole judge on ex parte basis. If the claim is provided by arrest of a vessel, the court gives out to the claimant a copy of the corresponding decision with an inscription that the copy is given out for detention of the vessel in the port. Appeal to the ruling can not suspend the enforcement of the ruling.

Security to release the vessel from arrest is known to Latvian legislation and accepted by judges. Different types of security can be accepted: P&I Club's letter of undertaking, deposit to the court bailiff's account, bank guarantee etc.

Lifting arrest is a lengthy procedure taking into account that the order to release the vessel

must be issued by judge in a court trial, with participation both plaintiff and defendant. In accordance with the law trial to lift arrest may be held within one month after Claimant delivers petition that he is satisfied by the defendant and asks to lift arrest. Practically such trial can be held during 3-5 days after petition to release the vessel was delivered to the court.

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

Presently Latvia is a party to Arrest Convention of 1952 and its provisions are incorporated into the MCL. At the same time definitions of maritime claims are listed in the MCL in conformity with Article 1 of the Ships Arrest Convention 1999.

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

As per MCL and local Civil Process Code regulations arrest of any ship is allowed if in relation to this ship exists a maritime claim.

Although on practice we had some cases where the ship was considered like other moveable asset of the debtor and was arrested for non-marine claims as well.

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

Maritime claims are listed in the MCL in conformity with Article 1 of the Ships Arrest Convention 1999.

5. Can you arrest a ship irrespectively of her flag?

Provisions of the MCL apply to all ships located in waters under Latvian jurisdiction with no difference either Contracting or not Contracting State flag the vessel is flying. Therefore a ship flying any flag can be arrested in Latvia.

6. Can you arrest a ship irrespectively of the debtor?

The arrest of any ship is allowed if in relation to this ship one of the following conditions is in effect:

- the person who owned the ship at the time when the maritime claim arose is liable for the claim and is the ship-owner at the time of arrest of the ship;
- the person who was the bare boat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bare boat charterer or ship-owner at the time of arrest of the ship;
- the claim arises from a mortgage or other similar type of encumbrance on a ship;
- the claim is in relation to the ownership or possession rights in a ship; or
- the claim is directed against the ship-owner, bare boat charterer or ship's operator and this claim is secured by a maritime lien.

Also any other ship or ships may be arrested if at the time of arrest they are owned by such persons who were liable regarding a maritime claim and at the time the claim arose were:

- 1) the owner of the ship in relation to which the maritime claim arose; or
- 2) the bare boat, time or voyage charterer of such ship.

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

As per law the arresting party could be required by the court to put up security for a wrongful arrest, but in practice it is not required.

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

There is no difference as per Latvian law. As per local law regulations a claim secured by a maritime lien or preferential rights of cargo may be brought against the object encumbered or its owner.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Latvia recognizes maritime liens although is not Member of any of appropriate Conventions. Claims secured by maritime liens are listed in the MCL in full accordance with Article 4 of the Geneva Convention 1993.

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

As it was told before in Latvia language of the hearing is Latvian one, so translation of supporting documents from any other languages is needed. To save time on the initial stage, we usually ask our Principals to send us all appropriate documents as soon as possible to start translation by sworn translators. It takes about 1-2 days to translate, depending on quantity of documents.

The court's resolution must be made at least the next day after petition of the plaintiff and all supporting documents are delivered to the court.

In practice Regional courts act quicker than District courts. This may be explained by higher level of bureaucratic protraction in the District courts. Judging from our experience it is realistic to obtain ruling in the Regional court within 1-2 days, and in the District court it takes 3-4 days after petition and all supporting documents are delivered.

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

Besides the petition and supporting documents, a relevant original Power of Attorney (POA) to local lawyers is required.

Signatures of the person giving powers and of the Notary must be covered by Apostile if the Hague Convention of 5th November 1961 has been ratified. If the Convention has not been ratified, the Notary's signature must be legalized by the nearest Latvian Consul or at the consular section of the Latvian embassy.

Petition of a claimant and documentation enclosed must demonstrate to the judge the ground, proof and validity of the claim. Copies of attached documents are sufficient if they are certified by the claimant (using company seal and signature of authorized person). If in the future the claim is heard on merits it will be necessary to deliver the originals of the supporting documentation to the court.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Latvian courts can adjudicate claim on merits in accordance with the MCL regulations:

(1) If a ship has been arrested in Latvia or the arrest has been revoked against appropriate security, except in a case where the parties voluntarily agree to transfer the dispute for adjudication thereof to the court of another state which has consented to adjudicate the matter on merits, or to an arbitration court.

(2) A Latvian court shall not adjudicate a matter if adjudication of the matter on merits is within the jurisdiction of a court of another state.

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

If arrest ruling is obtained the court obliges the claimant to bring suit on merits during fixed period of time, usually - one month. But the claimant may ask the court about another time to bring suit on merits (two or three months). The court can accept such request taking into account concrete circumstances of the case.

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

The defendant has the right to claim damages, arisen in connection with the claim security if the claim which has been sued against him was rejected by the court.

Claim for a wrongful arrest must be arisen in the court in a common way.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The pierce and lift of the corporate veil is not known to Latvian courts and was not used in practice till now.

SHIP ARREST IN THE NETHERLANDS

By Peter van der Velden
Udink & De Jong Attorneys at Law & Tax Lawyers
pvandervelden@ujlaw.nl
www.ujlaw.nl
Alexanderstraat 2
2514 JL The Hague, Netherlands
Tel. +31 65 476 82 54
Fax: +31 (70) 311 0722

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

Leave for arrest can be obtained within a few hours. The procedure starts with submitting an arrest petition to the court in whose jurisdiction the ship is located or is expected to arrive shortly. The arrest proceedings are ex parte. The arrest petition can be filed prior arrival of the ship and at any time of day. Even during out of office hours or in weekends. Provided it can be made clear to the judge that time is indeed of the essence, which in most cases should not be too difficult.

The petition should contain the full style of the claimant and debtor, the grounds for the arrest and the amount of claim. The court's decision is placed on the arrest petition, which will then be forwarded to a bailiff. The bailiff actually enforces the arrest. The port authorities will be informed about the arrest and will pending the arrest not allow the ship to order for a pilot without which the ship can/may not leave the port.

When granting the arrest, the court determines a time limit within which the arrestor must file his claim in main proceedings before the proper court or arbitrators, failing which the arrest expires. That can be in the Netherlands or elsewhere. The claim amount for which the arrest is granted is usually increased by thirty per cent to cover future interest and costs.

An arrested ship can obtain release by offering a guarantee for the amount of the claim issued by either a first class Dutch bank or by P&I Clubs of a certain standing. The wording of the guarantee is usually based on the standard Rotterdam Guarantee Form, developed by maritime lawyers and accepted in case law as sufficient alternative security for an arrest.

The ship owner may apply for an injunction ordering release. Such proceedings can take place on a very short notice. A decision will follow shortly as well. The court decides whether the claim has sufficient merit to justify maintaining the arrest of the ship. In practice, it is an uphill battle to convince the court that the claim is clearly without merit.

Release is effected by the bailiff acting upon instruction of arrestor's lawyers. The port authorities will be informed of the release forthwith, whereupon the ship can order a pilot and set sail. Once all has been arranged, an arrest can be lifted within a quarter of an hour, without the intervention of the court being needed.

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

The Brussels Arrest Convention of 1952.

Bilateral Shipping Treaty between The USSR and the Kingdom of the Netherlands of 1969. This treaty is continued by Russia and some other former USSR countries. Due to the privatization of state owned shipping companies, this treaty has mostly lost its function.

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

The Brussels Arrest convention is only applicable when the arrest is sought of a ship flying the flag of a country being a party to this convention. Therefore, in cases where the 1952 Brussels Arrest Convention is not mandatory applicable, an arrest on a ship is allowed for any, i.e. also non-maritime, claims against the debtor, on any vessel (or other asset for that matter) owned by him. "Sister-ship" arrest is therefore permissible.

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

As noted above, for any claim, provided the Brussels Arrest Convention 1952 does not apply.

5. Can you arrest a ship irrespectively of her flag?

No, if the ship flies the flag of a contracting state of the Brussels Convention, the ship can only be arrested for maritime claims as listed in the convention.

Russian state owned ships related to the use of subject ship for trade may in principle not be arrested.

6. Can you arrest a ship irrespectively of the debtor?

Under Dutch law, an arrest is in principle only allowed for a claim against the (legal) owner of the ship. Not for claims against any other party involved in the operation of the ship. There are though a few exceptions to this rule. Subject to certain requirements, such as claims against the bareboat charterer of the subject ship, cargo claims, claims for keeping the vessel in operation, such as claims for unpaid bunkers, supplies and the like.

Certain claims even follow the ship regardless in whose hands it may be, e.g. a claim for crew wages, salvage, general average, and the like. For these claims, the ship may be arrested, even if it was sold to another after the claim arose.

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

The courts are free to demand counter security but in practice this rarely happens.

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

The common law concept of “maritime lien” is unknown in Dutch law. If a maritime lien means that a certain claim is recoverable from the ship, i.e. even if the debtor is not the legal owner of the ship, a ship may be arrested for such claim/lien.

9. Does your country recognize maritime liens? Under which International Convention, if any?

The Netherlands are not a party to any conventions on maritime liens. However, claims based on a maritime lien, in the sense that it has the status of being recoverable from the ship, may qualify for an arrest.

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

My “record” is two hours. An arrest petition can be prepared very quickly provided the claim file is complete and straight forward.

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

A Power of Attorney is not required. Nor does there exist an obligation to submit supporting documents at the time of filing the arrest petition. The court assumes and trusts that the lawyer requesting permission to arrest has examined the claim supporting documents.

However, in case the ship owner applies for release in summary proceedings, the claimant must be able to show his claim documentation on a very short notice. Originals are not needed. Documents in another language than English, French or German may have to be translated.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Based on Dutch procedural rules, the arrest creates jurisdiction. Unless international conventions to which the Netherlands are affiliated provide otherwise. Secondly, if the parties had agreed on another jurisdiction or arbitration, Dutch courts must step aside. Lack of jurisdiction in the main proceedings does by the way not stand in the way of an arrest.

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

Usually one to two months when it concerns a foreign ship. Courts are free to determine this and are willing to give more time if there are good reasons for asking.

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

Yes. If the claim on which the arrest is based appears not to exist (because it has been rejected later on in proceedings on the merits), the arrest is deemed to be wrongful/illegal. In which case the arresting party is liable for all damages suffered by the ship owner due to the arrest.

This is a strict liability, i.e. the (wrongful) arrestor is by definition obliged to reimburse the ship owner for all his damages and losses, like port dues, but even consequential damages, such as loss of hire. However, the ship owner has an obligation to mitigate its damages, such as by way of offering alternative security in the form of a (bank or Club) guarantee, thus avoiding unnecessary detention.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Dutch law is very strict in the definition of "ownership" and in acknowledging company structures. As a result, Dutch courts are hardly inclined to "pierce the corporate veil" and do in principle not allow a ship arrest for a claim against a third party, although having close links to the ship owner. Even if it concerns a claim on a ship owner operating a fleet of separately owned single-ship companies. Neither is enough to break through the company structure if the same ship owner is holding all the shares in another ship owning company. An arrestor must be able to substantiate that the company structure is mainly created and/or used with the purpose to frustrate creditors.



SHIP ARREST IN NIGERIA

BBY AELEX LEGAL PRACTITIONERS AND ARBITRATORS

LAGOS, ABUJA AND PORT HARCOURT

lfanga@aelex.com

www.aelex.com

7th Floor, Marble House

1, Kingsway Road, Falomo,

Ikoyi, Lagos, Nigeria

Tel: + 234 1 4736296

Fax: + 234 1 2692072

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

Nigerian law provides a simple and uncomplicated procedure for the arrest of ships thereby making the country a suitable and favourable jurisdiction for such proceedings.

Jurisdiction in respect of admiralty matters is vested exclusively in the Federal High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court. The court can order the arrest of a vessel in order to confer jurisdiction upon itself or to provide pre-judgment security for the applicant. The jurisdiction of the court to applies to all maritime claims however arising and to all ships irrespective of the places of residence or domicile of their owner.

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

Nigeria has acceded to the International Convention for the Unification of Certain Rules Relating to the Arrest of Ocean Going Vessels, 1952 simply referred to as "The Arrest Convention 1952." The Convention has however not been promulgated into municipal law.

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

The Admiralty Jurisdiction Act, 1991 and the Admiralty Jurisdiction Procedure Rules, 1993, govern admiralty matters. The Act provides for two general classes of maritime claims namely: proprietary maritime claims and general maritime claims.

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

A person seeking to arrest a ship in Nigeria's territorial waters must satisfy the court that his claim qualifies as a 'Maritime Claim' as defined in § 2 of the Admiralty Jurisdiction Act 1991. This generally means that it must be a proprietary maritime claim or a general maritime claim.

1. Proprietary maritime claims include claims relating to the possession of a ship, title to or ownership of a ship or a share in a ship, mortgage of a ship or of a share in a ship, mortgage of a

ship's freight or claims between co-owners of a ship relating to the possession, ownership, operation or earning of a ship. Also claims for the satisfaction or enforcement of a judgment given by the Court or any court (including a court of a foreign country) against a ship or other property in an admiralty proceeding in rem are maritime claims.

2. General maritime claims includes claims for damage done or received by a ship (whether by collision or otherwise, claims for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship as well as arising out of an act or omission of the owners or charterers of a ship.

Once an applicant has ascertained that his claim falls within the meaning of a maritime claim as defined by the Act, he may commence the proceedings by filing an action in rem at the Federal High Court in the judicial division covering the port or area where the ship is located. He may at the same time file an ex-parte application disclosing a strong prima facie case for the arrest of the ship. This application must be supported by an affidavit deposed to by the applicant, his solicitor, or his agent stating the following:

- i. The nature of the claim
- ii. That the ship is within the jurisdiction of the court
- iii. That the ship may leave the jurisdiction of the court at anytime thereby depriving the applicant of his pre-judgment security.

The applicant is also required to provide with the application the following:

- i. Exhibits supporting the claim
- ii. An undertaking to indemnify the ship against wrongful arrest.
- iii. An undertaking to indemnify the Admiralty Marshal in respect of any expenses incurred in affecting the arrest.
- iv. An affidavit of urgency stating facts why the application must be heard expeditiously.

Although, at this stage of the proceedings, the court may admit photocopies of exhibits and undertakings, the applicant would subsequently be required to provide the originals or certified true copies. The Registry of the Federal High Court is usually open between the hours of 8 am to 1.30 p.m. on Monday to Friday. It is important to note that unlike certain jurisdictions where it is possible to obtain an arrest order prior to the entry of the ship into jurisdiction, the Nigerian courts will entertain an application for an arrest only when the ship has entered its jurisdiction. So where a prospective applicant is aware that a ship sought to be arrested is bound for a Nigerian port, it is advisable for him to instruct his solicitors in Nigeria as soon as possible so that the requisite processes can be prepared and filed immediately the ship enters Nigerian territorial waters.

An arrest order is usually served along side an arrest warrant and the writ of summons and statement of claim by delivering same to the master of the ship or by affixing sealed copies of the processes to a mast or some other conspicuous part of the ship. Copies of the said processes must also be delivered to the appropriate officers of the Nigerian Port Plc, for example the Chief Harbour Master, Traffic Manager and Port Manager.

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

An applicant for an arrest order may be required to give security for costs. The court will order security for costs where the claim is in excess of One Million Naira (approximately USD 8,000) or its foreign currency equivalent or where the plaintiff has no assets in Nigeria.

The form of security required is usually a deposit of the sum specified by the court; or a guarantee supplied by a Protection and Indemnity Club (P&I Club), an insurance company or a bank. In determining the quantum of security to be provided, the court shall have regard to all the circumstances of the case and shall not restrict itself to the costs of the legal proceedings.

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

Where the claim is one in respect of a maritime lien (a lien for salvage, damage done by a ship, wages of the master of a ship or other crew member and master's disbursements), or a claim in respect of a proprietary maritime claim (relating to the possession of a ship, title to or ownership of the ship or a share in the ship, a mortgage of a ship or a share in a ship, or a mortgage of a ship's freight), or a claim as between the co-owners of a ship as regards the possession, ownership, operation or earning of the ship, an admiralty action in rem may be brought against the ship or property in connection with which the claim arises. In this instance, the ownership of the vessel is not material.

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

An arrest order can be obtained within 24 hours of filing the requisite processes.

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

Save where the parties have by agreement fixed the limitation period in respect of claims, maritime claims must be filed within three years from the accrual of the cause of action. The limitation period for certain claims is fixed by statute, for example, section 394 of the Merchant Shipping Act, Chapter 224, Laws of the Federation of Nigeria, 1990 stipulates a two year limitation period in respect of salvage claims and section 2 of the Carriage of Goods by Sea Act, Chapter 44, Laws of the Federation of Nigeria, 1990 stipulates a one year limitation period in respect of claims for loss or damage to goods under contracts of carriage subject to the Hague Rules.

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

An applicant for an arrest order is liable to the ship owner for damages arising from a wrongful arrest. A ship owner has three options to wit:

- i. He may apply to court within three months from the termination of the suit for general damage not exceeding twenty thousand naira; or
- ii. He may make an oral application for damages immediately after judgment. The court in this instance is entitled to summarily assess the damages due to the ship owner; or
- iii. He may also bring an action for wrongful arrest claiming all the damages arising from the arrest, which he can establish.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The Nigerian courts recognize and exercise the powers to pierce or lift the corporate veil, in this regard an action may be commenced against a sister ship in respect of general maritime claims. However, the ship in relation to which it is a sister ship must be identified in the writ of summons. The writ of summons may identify more than one ship as a sister ship.



SHIP ARREST IN NORWAY

By Siril Steinsholt Visnes

Vogt & Viig AS

siril.visnes@vogtwiig.no

www.vogtwiig.no

Roald Amundsens gt. 6, P.O Box 1503 Vika

N-0117 OSLO, Norway

Tel: + 47 22 31 32 17

Fax: + 47 22 31 32 01

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

Arresting a ship is a relatively straight forward matter under Norwegian law, and can be arranged quickly at a reasonable cost. Our law firm can act in arrest cases in all Norwegian Courts/ports.

The claimant must submit an application for arrest to the District Court where the ship is located or is expected to arrive, alternatively to the District Court in the judicial district where the debtor resides if the ship owner is Norwegian. The application has to specify the claim, the size of the claim, the arrest ground and provide an outline of the allegations of the applicant. Documents supporting the allegations are not mandatory, but should be provided. The documents should be in a Scandinavian language. The Courts will however normally accept documentation in English.

A ship arrest application will either be dealt with by the Court based on the written application (ex parte) or at a hearing. For all practical purposes, arrest is always dealt with ex parte, as there seldom will be time to arrange a hearing before the vessel sails. The ship owner may apply for a subsequent hearing to be held if he intends to dispute that the conditions for obtaining arrest are satisfied.

The applicant must prove upon a balance of probability that he has a maritime claim, that an "arrest ground" is present and that the other averments for arrest are fulfilled. If there is danger in delay it is sufficient that the claim is proved *prima facie*.

The arrest ground is the essential averment for arrest in domestic Norwegian law and it prevails under the Convention based regime. What constitutes an arrest ground is set out in CoE s14-2(1) which reads: "Arrest in assets of economic value can be decreed when the behaviour of the debtor gives reason to fear that the enforcement of the claim otherwise will either be made impossible or made substantially more difficult, or has to take place outside the Kingdom". In short this means that the Norwegian Court is provided with discretion as regards whether or not an arrest shall be granted.

The Court issues an arrest decree which states the name of the parties, the claim, the maximum amount the claim shall be secured for and the arrest ground. The Court notifies the enforcement authorities, which ensure that the ship does not leave the harbor and reports the arrest to the ship register.

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

The 1952 Arrest Convention applies. The Convention is incorporated in the Maritime Code and the Code of Enforcement. Norway has signed, but not ratified the 1999 arrest Convention

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

Ships may be arrested by way of so called register arrest, meaning that the arrest is registered as an encumbrance in the ship register, while the vessel is not kept in detention.

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

All maritime claims as listed in the 1952 Arrest Convention art 1(1), with the addition of compensation for removal of wreck. A register arrest may be granted for any type of claim.

5. Can you arrest a ship irrespectively of her flag?

Yes

6. Can you arrest a ship irrespectively of the debtor?

No, the debtor has to be the owner of the ship, cf the Maritime Code section 93(4). The debtor being bareboat charterer or having any other sort of interest in the vessel is not sufficient. The Norwegian legislators have deviated from the 1952 Arrest Convention on this point, as claims against bareboat charterers are subject to arrest pursuant to article 3(4) of the Convention.

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

The Courts hold discretion to order the arrestor to put up security for potential damages to the defendant, cf Code of Enforcement section 14-6.

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

When arresting in respect of a claim secured by a maritime lien or a mortgage, an "arrest ground" is not required, cf Code of Enforcement section 14-2.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Yes, maritime liens are recognized under Norwegian law. The list of maritime liens in the Maritime Code section 51 corresponds with the list in the 1967 Maritime Lien Convention article 4 no 1. Norway is however not a signatory to the 1967 Convention.

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

We can normally arrange for arrest of a vessel in any Norwegian port within 1-2 days after we have received the claim documentation.

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

No.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

The Courts have jurisdiction pursuant to the Dispute Act section 31(2), subject to contractual jurisdiction or arbitration clauses only. A jurisdiction or arbitration clause does however not influence the creditor's right to arrest in Norway.

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

The Courts may fix a period of time for the claimant to take legal steps. If the Courts do not fix a time limit, the arrest will lapse if legal steps are not taken within one year after the arrest decree was passed.

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

Yes. The Code of Enforcement section 3-5 imposes strict liability on the arrestor for the loss of the defendant if the claim did not exist at the time the arrest was granted. The arrestor will also be held liable if he has given wrongful or misleading information about the arrest ground.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The Supreme Court has considered the question by use of obiter dictum on two occasions. In the leading judgment, "Kongeparken", the Supreme Court points at two factors which will be significant when the Courts decide whether the corporate veil shall be pierced:

(1) Will upholding the corporate entity be undue in regards to the creditor in the given situation?
(2) Have the companies been mixed in such a manner that the corporate entity does not deserve protection?

The approach of the Supreme Court in "Kongeparken" indicates that the Courts may open for piercing of the corporate veil, hereunder granting arrest of associated ships on a later occasion. The question of arresting an associated ship has never been litigated before the Norwegian Courts.

SHIP ARREST IN PORTUGAL

By Carlos de Sousa e Brito
Carlos de Sousa e Brito & Associados
Csba@csbadvogados.pt
Rua Castilho, 71 – 2º Dto.
1250-068 Lisbon, Portugal
Tel.: 351 21 384 62 00
Fax: 351 21 386 17 35

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

Ship arrests are common in Portugal and such a fact is not surprising taking into account its extensive coast, strategic location and key importance of navigation throughout its history.

Ship arrests are a provisional remedy envisaging a court decision pertaining to the collection of a debt though the seizure of assets. The provisional nature of this remedy and its link to the main action that eventually should be filed is very relevant. Indeed, according to Portuguese Law, the arrest petitioner must provide the court with the facts that show a serious probability that the claimed credit does exist and in addition demonstrate the risk of losing the guarantee (*fumus boni iuris* and *periculum in mora*).

Ship arrest under applicable International Law (see “Applicable Laws”) does not require evidence of *periculum in mora*, but the creditor must still prove the apparent existence of the claimed credit.

In all aforementioned cases it is not required proof of the credit's existence, but demonstration that there is a serious probability that the credit indeed exists.

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

The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships of 1952 (bellow simply referred to as 1952 Convention) is applicable to the arrest of foreign ships.

An additional number of particularities arise from Portuguese law, namely from articles 406 and 409 of the Civil Procedure Code and article 619 of the Civil Code.

It is in accordance with the aforementioned body of laws that the competent authority – the Maritime Court – determines the arrest of ships.

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

No.

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

In accordance with the 1952 Convention, namely article 2, ships can only be arrested in the jurisdiction of another State in respect of a maritime claim.

The Maritime Court is competent to arrest ships, whether Portuguese or not, in accordance with both Portuguese and International Law, namely the aforementioned 1952 Convention.

The arrest of ships in Portuguese waterways is possible under the 1952 Convention, although Portuguese Courts may not have jurisdiction to decide on the merits of the claim. Should this be the case, the prerequisite of the maritime nature of the underlying claim must be in place in order for the Convention to be applied, although it is not required demonstration of periculum in mora, as it is presumed to exist.

5. Can you arrest a ship irrespectively of her flag?

Yes.

6. Can you arrest a ship irrespectively of the debtor?

Ships can be arrested regardless of its flag and debtor, although applicable law may determine that the maritime claim requirement be observed. Especially relevant in this regard is article 3 of the 1952 Convention, according to which "Subject to the provisions of paragraph 4 of this Article and of Article 10, a Claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in Article 1(1)(o),(p) or (q)."

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

A creditor who fears the loss of the credit's guarantee may request the arrest of the debtor's assets. This is done lodging a petition with the Maritime Court containing a summary of evidence of the claimed credit's probable existence. The debtor may offer bail and the creditor accept it, in which case the Court may decide not to arrest the ship.

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

With respect to this matter, it should also be noted that Portuguese Law does not discern Maritime Claim from Maritime Lien.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Yes. Under the International Convention for the Unification of Certain rules relating to Maritime Liens and Mortgages of 10 April 1926.

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

Once occurring the reception of the documents relating to the evidence of the apparent existence of the credit, the ship can be arrested within one week.

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

In addition to these documents, a Power of Attorney is required. This is also the case when the assistance of a Lawyer is mandatory. A ship arrest with a threshold higher than _14 936,94 requires assistance by a lawyer and thus a Power of Attorney. But should the threshold be lower, the assistance of a lawyer is only required if questions arise as to the value of the proceedings during these.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

In accordance with the 1952 Convention and the Civil Procedure Code, the Maritime Courts should acknowledge the jurisdiction where the main action must be filed.

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

A ship arrest expires if the main action is not filed in the competent court within 30 days. However, it is very common for the Maritime Court, following a request by the petitioner, to extend this deadline to 60 days.

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

It should again be stressed that the arrest petition must evidence the serious probability of the claimed credit's existence. In addition, Portuguese Courts do not acknowledge wrongful arrests.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

It is possible for the arrest petitioner to request the pierce and lift of the corporate veil.



SHIP ARREST IN RUSSIA

By Andrey Suprunenko & Andrey Kosmachevskiy

Law Firm "REMEDY"

general@remedy.spb.ru

www.remedy.ru

40-42 Nevskiy av.

191186 St.Petersburg, Russia

Tel. (+7 812) 703-51-00

Fax (+7 812) 325-32-47

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

The ship arrest practice in Russia is wide and may be different due to the differences in court practice in regions – west, south, north, east. Basic ports where there is wide practice of ship arrest are: St.Petersburg, Novorossiysk, Kaliningrad, Vladivostok.

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

Russia ratified the International Convention on the Arrest of Sea-Going Ships (10 May 1952, Brussels). The provisions of this Convention are mandatory applicable to all ships flying the flag of another Contracting State and calling at Russian ports.

Merchant Shipping Code of Russia (1999) is the domestic law which implemented basic principles of the 1952 Brussels Convention and even Merchant Shipping Code (1999) is an advance over the 1952 Brussels Convention as it is based on principles of International Convention on Arrest of Ships (Geneva, 1999) especially in regard to the wide list of claims subject to ship arrest.

According to both above mentioned Conventions a ship may be arrested only under the authority of a Court. The regulations of procedure for the Court in Russia are defined in two Codes: the Civil Procedural Code of Russia and Arbitration Procedural Code of Russia. In general the Civil Procedural Code defines the procedure for the physical persons acting as claimants or applicants, and the Arbitration Procedural Code defines the procedural for the legal entities.

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

Due to absence in above mentioned procedural codes of special clauses devoted to the ship arrest there is a way, in principle, to arrest the ship as property of the debtor (regardless of status of a ship as special kind of property) by means of filing to the Court the application for the arrest of property of the debtor. Such application is filed together with the statement of the claim.

The ship may be arrested also under criminal procedure as exhibit of case or as subject of criminal offence.

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

Under Domestic Law - In Merchant Shipping Code of Russia (1999) the whole list of maritime claims (a to v) from the 1999 Geneva Convention is included. The domestic law was applied by the Russian judges mostly in respect of the Russian flag seagoing vessels.

Under the 1952 Brussels Convention – the Russian judges have been more or less in line with the list of the maritime claims indicated in the 1952 Brussels Convention. But the judges apply this Convention mostly to the foreign flag vessels.

5. Can you arrest a ship irrespectively of her flag?

You can arrest a ship irrespectively of her flag.

6. Can you arrest a ship irrespectively of the debtor?

According to the 1952 Brussels Convention which was ratified by Russia a ship may only be arrested in respect of a maritime claim only. Therefore bearing in mind the regulations established in the Arbitration Procedural Code of Russia the claimant first of all should prove the existence of the maritime claim in respect of the specific ship and same time the claimant should prove that the claim arose due to the actions of the debtor in respect of this specific ship when (as the claimant supposes) the debtor was the owner/ charterer of this ship. It may lead to that the real owner of the ship will try to object the arrest saying the ship never belongs to the debtor. The claims “in rem” can not be initiated in Russia.

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

The Courts in Russia may require counter-security in order to arrest a ship but they are not obliged to do so. However, if the applicant is applied to the Court in the order of prior security measures (that is - before the filing of the statement of claim) the Courts mostly require the counter security in amount of the volume of claim. The ways of the counter security being accepted by the Courts are different: from the cash deposit to different kinds of guarantee.

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

There is not any difference in respect to proceeding of arresting a ship for a maritime claim and a maritime lien.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Russian Federation joined to the International Convention on Maritime Liens and Mortgages (Geneva, 1993) in 1998. Thus Russia recognizes maritime liens. Moreover the domestic law – the Merchant Shipping Code of Russia (1999) includes all clauses and regulations of above mentioned the 1999 Geneva Maritime Liens Convention.

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

The lapse of time is required in order to arrest a ship depends on the region of the Russia where the applicant would like to arrest the ship. In St.Petersburg it may takes 5 working days from the moment the whole file arrives to our law firm to arrest a ship. The obstacles which complicate the issue are: the absence of unified resist court practice in whole Russia; struggle of state against property abuse (unlawful captures).

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

In order to apply to the Court the applicant (claimant) should provide the copy of legalized POA (the original of legalized POA is needed upon receiving from the court writs, decisions), documents supporting the claims – copies of receipts, charters, Bs/L. The applicant should pay the court fee.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Courts in Russia shall apply rules of 1952 Brussels Convention (cl.1 art.7) which was ratified by Russia and rules of Arbitration (or Civil) Procedural Code of Russia in order to determine the case upon its merits. The rules of Arbitration Procedural Code of Russia add some following cases – the dispute arose from the contract where the execution of contract shall be on the territory of Russia, the dispute arose from the unjust enrichment on the territory of Russia and some exclusive cases.

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

The claimant may use two different ways to receive the Court decision for the arrest:

(i) first, it will be necessary to lodge the statement of claim to the Court and to lodge same time the application for the ship arrest as security of the claim. Thus the legal actions on the merits will be taken by the claimant automatically.

(ii) second way, it will be necessary only to lodge to the Court the application for the ship arrest as the prior security of the claim, and Court in this second way deciding to issue the arrest order will decide same time to let to the applicant up to 15 days to lodge the statement of claim to the competent court or arbitration.

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

The arrestor has a liability for wrongful arrest and is obliged to reimburse the shipowner for his damages and losses due to this wrongful arrest. However, first of all it will be necessary for shipowner to receive the confirmation from the Court about illegality of arrest. In second, the shipowner shall apply with the statement of claim to the same Court where the court order about arrest was issued.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The cases in the Courts in Russia are initiated on base of applications (claims) of persons or legal entities against specific (concrete) persons or legal entities which are (as claimant supposes) responsible for the debts or actions. Therefore the courts will not accept the piercing of the corporate veil in clear way. The claimant should provide clear evidence of responsibility of specific legal entity. Sometimes it is possible to execute of judgment against the part of the capital stock or shares belonged to the debtor.



SHIP ARREST IN SINGAPORE

By Sue Ann Gan, Associate
Joseph Tan Jude Benny Advocates & Solicitors
sueanngan@jtjb.com
www.jtjb.com
5 Shenton Way #35-01 UIC Building
Singapore 068808
Tel: +65 62209388
Fax: +65 62257827

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

An admiralty action in rem may be begun by writ. Once the writ is issued, and there is a change of ownership thereafter, an action in rem can still stand. The writ issued before a change of ownership will survive any change of ownership.

Thereafter, the vessel is put on ship watch. Once we get notification from the ship watch agency that the vessel is due to call at within port limits in Singapore, a warrant of arrest may be issued for the arrest of the vessel.

However, before the warrant of arrest can be issued, we must file an affidavit containing the particulars such as the nature of the claim or counterclaim in which the warrant is required and the nature of the property to be arrested.

The affidavit must also contain particulars such as:-

- (i) the cause of action,
- (ii) the name of the person who would be liable in an action in personam,
- (iii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose, and
- (iv) that at the time of issue of the writ, the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or the charterer of that ship under a charter by demise.

Once the warrant has been obtained, it is valid for a period of 12 months beginning from the date of its issue. The writ can be served on the vessel by affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure. The whole arrest procedure would take a couple of hours, depending on how cooperative the owners of the vessel are at the point of arrest.

Once the vessel is under arrest, the owners of the vessel would appoint solicitors who would enter appearance for the owners of the vessel. The parties would then be negotiating security through their solicitors. Security would take into account the claim amount, interest and costs. The security amount must not be excessive.

If the owners of the vessel do not provide any security, an application may be made by the plaintiffs to have the vessel sold *pendente lite*. There are generally two main modes of judicial sale, namely, sale by public auction and sale by private treaty. After an order for appraisal and sale has been made, the Sheriff would invite offers and sell the property for the highest price.

The proceeds would represent the vessel under arrest. However, there is a standard priority in the payment out, starting from Sheriff's expenses, arresting party's costs, maritime lien holders, possessory lien holders, mortgagees and statutory lien holders.

The time taken for the vessel to be sold and for the proceeds to come to the plaintiffs would differ according to the state of the market. If the market is fluid, the vessel could be sold quicker and the proceeds distributed faster.

If, however the owners of the vessel do provide security, the vessel can then be released. Release of the vessel would not take more than a couple of hours, subject to the filing into court the necessary release papers.

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

Singapore is neither a party to the International Convention relating to the Arrest of Seagoing Ships of 1952 nor the International Convention on Arrest of Ships 1999.

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

No. Please see (1) above.

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

Claims that fall within Section 3(1) of the High Court (Admiralty Jurisdiction) Act (Cap. 123) would fall within the admiralty jurisdiction of the court:-

- a. any claim to the possession or ownership of a ship or to the ownership of any share therein;
- b. any question arising between the co-owners of a ship as to possession, employment or earnings 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, 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;

- 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;
- j. any claim in the nature of towage in respect of a ship;
- k. any claim in the nature of pilotage in respect of a ship;
- l. any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- m. any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- n. any claim by a master or member of the crew of a ship for wages;
- o. any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a 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; and
- 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, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty.

5. Can you arrest a ship irrespectively of her flag?

Yes.

6. Can you arrest a ship irrespectively of the debtor?

No. We can only arrest a ship if the person who would be liable on the claim in an action in personam is, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship.

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

No. An undertaking to the Sheriff, however, must be provided.

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

No.

9. Does you country recognize maritime liens? Under which International Convention, if any?

Yes. Under the laws of Singapore, claims which are recognized to give rise to maritime liens consist of salvage, damage done by a ship, seamen's and master's wages, bottomry and master's disbursements, as held in *The "Daien Maru No 18"* [1984-1985] SLR 536.

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

Usually, a warrant of arrest can be obtained within a reasonably short period of time, so long as all the claim documents are in our possession, and the affidavit leading arrest is affirmed/sworn.

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

There is no requirement for a POA to be furnished, however, claim documents must be furnished. Please see (1) above.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

High Court (Admiralty Jurisdiction) Act (Cap. 123)

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

Upon arresting the vessel and serving the writ of summons on the vessel, time starts running under the time table / procedure set down by the Rules of Court and the claimants can follow the timelines set out in the Rules of Court to move the claim on its merits along the prescribed timelines.

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

Yes.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes. However, this is only done in instances where the corporate structure is merely a device, façade or sham. Singapore's position follows the English doctrine of *Salomon v A Salomon and Co Ltd* [1897] AC 22.



SHIP ARREST IN SOUTH AFRICA

By Shane Dwyer / Alison McClure

SHEPSTONE & WYLIE

SW.DWYER@wylie.co.za

www.wylie.co.za

Durban PO Box 205

4051 Durban, South Africa

Tel.: (031) 3020 326

Fax: (031) 3042 862

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

There are essentially three ways in which one can arrest or attach a ship in South Africa:

(i) An arrest in rem -

A maritime claim may be enforced by an action in rem :

- if the claimant has a maritime lien over the property to be arrested; or
- if the owner of the property to be arrested would be liable to the claimant in an action in personam – where he/she would be personally liable in a direct action against them.

(ii) An arrest in personam -

A maritime claim may be enforced by an action in personam when the Defendant is a:

- person resident or carrying on business at any place in South Africa;
- person whose property within the Court's area of Jurisdiction has been attached by the claimant to found or confirm jurisdiction;
- person who has consented or submitted to the jurisdiction of the Court;
- company, if the company has a registered office in South Africa.

Note that it is only where the defendant is a foreigner and therefore it is necessary to found jurisdiction that their property has to be attached to establish that jurisdiction. An "attachment" is the term used for this proceeding, borrowed from Roman Dutch law, as distinct from an "arrest" which is the procedure to commence an action in rem, based on the English in rem Admiralty procedure.

(iii) A security arrest;

A court may order the arrest of any property for the purpose of providing security for a claim which is or may be the subject of arbitration or any proceedings contemplated, pending or proceeding, either in the Republic of South Africa or elsewhere, and whether or not it is subject to the law of the South Africa.

The Court will have jurisdiction over all matters pertaining to the arrest itself and any security furnished in relation thereto. The claimant, however, does not submit to South African jurisdiction for the merits of the claim in respect of which security is sought.

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

South Africa has not acceded to any International Convention related to the arrest of ships. The law and practice in respect of the arrest of ships in South Africa is regulated by the Admiralty Jurisdiction Regulation Act of 1983 as amended with effect from 1 July 1992 ("the Act"). In the drafting of the Act, certain aspects of the Arrest Convention 1953 were taken into account and incorporated into the legislation, such as the provision for the arrest of "associated ships", which is a wider concept than "sister ships". The Act provides the formula to determine what law applies to the substantive merits of a maritime claim, but the arrest procedures are determined by the provisions of the Act itself.

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

Apart from the procedure to "attach" as ship in personam there is no other procedure to detain a ship for a maritime claim. The Act is specific in its requirements for the arrest or attachment of a ship, where the claim is a maritime claim as defined in Section 1 of the Act. If the claim is not a maritime claim as defined and the claimant has a claim enforceable in personam against its owner, then subject to certain restrictions such as that the claimant must be domiciled locally and the defendant must be a foreigner, the ship could be attached by order of the High Court in exercise of its parochial (non-admiralty) jurisdiction to found jurisdiction to sue in common (Roman Dutch) law.

4. For which types of claims can you arrest a vessel?

The definition of a maritime claim in the Act effectively covers all causes of action in relation to ships, the carriage of cargo and matters maritime. The definitions are also wide enough to cover matters which are ancillary to "shipping" matters. A comprehensive list of maritime claims can be found in Section 1 of the Act.

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

Yes, a vessel can be arrested within our jurisdiction irrespective of the flag she is sailing under.

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

No - the claim must be enforceable in personam against the owner or demise charterer (who is deemed to be the owner for this purpose). However a vessel can also be arrested on an associated ship basis, meaning that where the maritime claim arises in respect of one ship, it is possible to bring an action in rem, or a security arrest, by arresting an "associated ship" instead of the ship in respect of which the maritime claim arose. The ship will be an "associated" one, effectively where the respective companies which own the "guilty" ship and the "associated" ship, are controlled directly or indirectly by the same person or persons.

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

No, South African courts do not require counter-security as a pre-condition for ordering the arrest of a ship. However, the owner of the ship arrested can seek an order for counter security to be put up, if they can make out a case that the arrest has *prima facie* been obtained without reasonable and probable cause, or the security demanded to obtain its release, is excessive.

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

Yes. The concept of a maritime lien is different to a maritime claim. A ship can always be arrested *in rem* for the claims recognised by South African law as maritime liens (but not for claims giving rise to a maritime lien in a foreign jurisdiction), even if the ship has been sold. It is a claim which properly lies *in rem* against the ship, notwithstanding *in personam* liability of its owner. In addition a vessel can be arrested for enforcement of a maritime claim, as defined in the Act, even if not a maritime lien, where the owner is liable *in personam*.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Yes, but only those restricted maritime liens recognised in terms of our common law as being so classified, which are in effect those claims recognised by English law. These are those that were recognised by the Colonial Courts of Admiralty in 1890, i.e. claims for bottomry, salvage, seamen's wages, master's wages, disbursements and liabilities, and any claims for damage caused by a vessel. No International Convention applies and no claim classified as a maritime lien by a foreign law, will be enforced as such.

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

In the case of an *in rem* arrest, an arrest can generally be effected as soon as the papers are drafted and issued at Court. This can be achieved within a few hours after instructions are received. In the case of a security arrest however, an Affidavit is required to be deposed to and as soon as a Judge is available to hear the application, an order can be granted and the arrest effected. Although a more substantive application therefore, a security arrest can still be effected within a few hours of the receipt of the instruction, subject to the availability of a Judge to hear the matter, but this should be capable of being arranged the same day, including over week-ends and after hours.

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

No power of attorney has to be filed at the time of seeking an arrest order. All that is needed initially in order to place a vessel under arrest is -

- (i) the issuing and service of a Summons that includes a statement of the facts upon which the claim is based, as well as the issuing and service of a Warrant of Arrest; and
- (ii) a Certificate in terms of Rule 4(3) of the Act, deposed to by the attorney representing the

claimant, or by the claimant itself, in support of the Summons and the Warrant, which sets out the necessary averments as required by the Act and confirms the accuracy thereof.

If a security arrest is sought however, an affidavit must be filed and this must have the relevant documents in support of the cause of action (if any) attached to it. The owner of the ship can after the arrest is granted, challenge the authority of the attorney who obtained the arrest, in which case a power of attorney must be filed.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

If an action is commenced before this court in rem or following an attachment to found jurisdiction, in personam then it is the court seized of the matter notwithstanding where the cause of action arose, or where the claimant or the defendant are domiciled and the court will as a matter of domestic law have inherent and statutory jurisdiction. The defendant can however seek an order that the court thereafter decline to continue to exercise jurisdiction, or stay the action on the merits, on the basis of forum non conveniens where e.g. there is a choice of forum clause in a contract or where it is more appropriate that the matter be heard in the jurisdiction where e.g. a collision occurred. The test of when the court should consider deferring jurisdiction in favour of another court or forum, is determined by the common law of South Africa, which however follows the test applied by the English courts.

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

The arrest procedure in rem is itself the commencement of the substantive proceedings on the merits and is not merely a conservatory procedure, as a summons is served simultaneously with the warrant of arrest which has to be answered with a defense on the merits. With an attachment to found jurisdiction in personam the court will normally authorize and direct that particulars of claim be served within one month of the attachment.

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

Yes. It is however termed an arrest "without reasonable and probable cause", which is a narrower concept to one of "wrongful arrest".

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes, but strictly speaking only when circumstances of fraud have been proven. The associated ship arrest provisions also allow a measure of piercing the corporate veil, but only where the strict issues of common control of owning companies is proven.



SHIP ARREST IN SPAIN

By Felipe Arizon & Albert Badia

AACNI Law Firm

felipearizon@aacni.com

www.aacni.com

Alameda Principal 21, 6º- 29001 Malaga

Tel: +34 952 211774 – Fax: +34 952 226676

Via Augusta 143, 2º - 08021 Barcelona

Tel: +34 93 4146668 – Fax: +34 93 4146558

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

Arresting a ship in Spain is a good tool to enforce claims against ship owners and other operators. The recent implementation of specialized mercantile Courts in Spain has improved the swiftness of the procedure and reaction of the Court where an arrest application is presented. Likewise, the perception of a ship arrest as a tool to obtain security rather than as a way to proceed to the ship's auction has increased. A ship arrest can be carried out in 3 or 4 hours from the client's first call. A power of attorney is required in order to aver the representation of the plaintiff. A lawyer and a bailiff need to be employed before the Court. Registration of a lawyer before any Spanish province entitles him to act before all Spanish ports for a ship arrest, including the Canaries and Balearics islands.

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

Spain ratified the 1952 Brussels Arrest Convention on the 11 of September 1953, there since the Convention has been in force, and is considered the main legal tool in the field of Spanish ship arrest law. Spain has ratified as well the 1999 Geneva Arrest Convention, which however is not in force as signatory parties have not reached the minimum required.

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

Under general principles of Spanish law, a ship arrest may be applied for by a creditor, before, at the time, or after, bringing an action on the merits for the main proceedings. For the creditor to be able to succeed in his application, he needs to aver before the Court the existence of a “*fumus boni iuris*” and a “*periculum in mora*”. The plea under the general principles of Spanish procedural law has the benefit of comprehending any type of claim based on debts or damages whatsoever been caused, not therefore limited to the scope of maritime claims listed under Art.1 of the 1952 Brussels Convention. Hence, unpaid Protection and Indemnity Clubs premiums,⁴ or unpaid broker's commissions can be secured throughout it. For this second via to apply, regard is to be taken to the flag of the ship.

Fumus boni iuris is defined by the Spanish Courts⁵ as the sort of evidence provided by the creditor, normally by means of documentary evidence, from which an obligation from the

4. Nestor gives fighting power to P&I, Lloyd's List 2003 by Felipe Arizon.

5. Spanish Constitutional Court ruling 14/1992, and Ciudad Real Court of Appeal ruling 49/1999

debtor is showed for the alleged credit. The creditor does not need to present a sole document stating the existence of the credit but merely that on the whole of various documents the obligation of the debtor is evidenced. *Periculum in mora* is held by the Spanish jurisprudence as the situation, proven on evidence, of the existence of peril for the enforcement of a given credit, i.e., the well known *suspectio debitoris*

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

As set out under the 1952 Brussels Convention an arrest might be carried out for the following maritime claims:

- (a) damage caused by any ship either in collision or otherwise;
- (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
- (c) salvage;
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) loss of or damage to goods including baggage carried in any ship;
- (g) general average;
- (h) bottomry;
- (i) towage;
- (j) pilotage;
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) construction, repair or equipment of any ship or dock charges and dues;
- (m) wages of Masters, Officers, or crew;
- (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- (o) disputes as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
- (q) the mortgage or hypothecation of any ship.

5. Can you arrest a ship irrespectively of her flag?

In Spain the 1952 arrest Convention applies irrespectively of the ship's flag.

6. Can you arrest a ship irrespectively of the debtor?

Not in all cases, but in the great majority. This question needs to be paid careful attention. The response is to be positive where the claim is based upon a maritime lien. Equally, the same result can be reached by application of Article 586 of the Spanish Commercial Code, which reads "The shipowner and the ship operator, "navier" shall be civilly liable of the acts of the Master and of the obligations undertaken by the latter to repair, habilitate, and supply the ship, provided that the creditor proves that the amount claimed was invested in benefit of the ship". This article provides creditors with a generous safety net to collect their claims arising from time

charterer, voyage charterer, or even a ship manager. The ship owners will be held under this article responsible for the claims against the other parties.

Moreover, where the ship is under a time charter or a voyage charter, or operated under the management of a third Company, Art. 3(4ii) of the 1952 Brussels Convention establishes the possibility of arresting a ship for those cases in which a person different to the owners shall respond of the maritime claim. Therefore, to undertake the arrest itself, the claimant by pleading the aforesaid provision, will be entitled to obtain from the Court the arrest order. On the other hand, in order to enforce his claim on the arrested ship, the claimants will need to bring an action against the current ship owners in personam, or conversely bring an action against the actual debtor, which enforcement can be merely made against the bank guarantee placed in substitution for the arrested ship.

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

Yes, the amount varies according to the criterion of the Judge. A certain practice is accepted whereby Courts admit as sufficient counter-security an amount of circa 10% of the claimed amount, but the Court may establish otherwise.

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

There is no procedural difference.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Yes, in two different scenarios, as the case may trigger. Firstly, under the International Convention on Maritime Liens and Mortgages 1993 that has recently entered into force in Spain. Likewise, article 580 of the Spanish Commercial Code recognizes the existence of a list of liens that hold priority among them and above other common claims in case a ship is auctioned.

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

Provided all the necessary items are fulfilled, namely a copy of the POA is advanced by fax, and supporting documents are likewise delivered, the arrest can be carried out in less than 3 or 4 hours. The concrete timing will depend on the reaction of the Courts' officials and Judges towards the writ.

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

A POA is indeed needed, a faxed copy may suffice, but originals duly legalized shall follow. While the documents of the claim are not necessary, it is advisable to provide the Court with some of them enabling the Judge to foresee a good claim, which also may play a role in ascertaining the amount of countersecurity required by the Court.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

In ascertaining the jurisdiction for the merits of the claim, firstly the Court will examine whether the claim meets the criteria of Art.7 under the 1952 Arrest Convention. If the forum cannot be determined under Art.7, the Court will examine whether the matter is to be regulated under the umbrella of the 44/2001 European Regulation, or whether the Court is to refer to rules set out in the LOPJ (Organic law of the Judicial Power).

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

Normally, the Court grants 20 working days for presentation of the action on the merits.

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

Yes. Where the claimant fails in his action on the merits or in the arrest procedure per se, the Court will normally hold the plaintiff to pay for the legal costs of the defendants and the damages flowing from the arrest.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes, in fact it is an up-rising tendency. Spanish jurisprudence accepts both, the lifting and the piercing of the veil. The former aimed at discovering the reality behind the corporation, while the latter goes a step further, by unmaking the illegality sought under the corporation. In Spain, for it to be able to pierce the corporate veil, the claimant needs to establish the following; enough evidence to prove the unity of assets, interest, management, and actions between the Companies; the existence of an aim to defraud or prevent the application of the law, damaging the creditors' rights; no other possibility to obtain satisfaction of his credit.



SHIP ARREST IN TURKEY

By Zeynep Ozkan

Ozkan Law Office

zeynep@ozkan.av.tr

Husrev Gereade cad. Omer Rustu Pasa sok

No.12 Tesvikiye Istanbul Turkey

Tel: +90 212 327 69 40

Fax: +90 212 327 69 43

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

Turkey is not a party to any of the international conventions on the arrest of ships and the domestic law does not provide for specific rules on this matter. The arrest of ships under Turkish law is in general terms no different than conservatory measures leading to the seizure of other assets owned by a debtor or a wrongdoer. There is, however, a bill before the Parliament, which regulates the arrest of vessels specifically and adopts some of the provisions of the international conventions on this matter ("Bill"). The Bill is expected to be enacted within 2007 and once it is enacted the information provided herein may become obsolete.

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

Turkey is not a party to any of the international conventions on the arrest of ships and the domestic law does not provide for specific rules on this matter

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

The provisions of Turkish Bankruptcy and Liquidation Code and Turkish Procedural Code dealing with conservatory measures apply to the arrest of ships in Turkey. According to the aforesaid provisions, the claimant has to prove, on a probability basis, that there is a claim and a possible danger of not being able to satisfy the claim after a judgement in merits is obtained in the absence of a conservatory measure.

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

In principle, arrest of a ship in Turkey can take place for all types of claims regardless of whether the claim has a maritime character or is connected with the ship to be arrested or not. The Bill, however, adopts the definition of "maritime claim" provided in the International Convention on Arrest of Ships, 1999 and restricts the arrest of ships for claims enumerated in the aforesaid convention.

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

A ship can be arrested in Turkey irrespective of her flag foreign flag as per the provisions of the Turkish Bankruptcy and Liquidation Code and Turkish Procedural Code.

6. Can you arrest a ship irrespectively of the debtor?

Except for arrests in order to enforce a maritime lien, only the vessels owned by the debtor can be arrested.

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

The court may and in most of the cases shall require the submission of a counter-security in the form of bank letter of guarantee or cash money, the amount of which is at the discretion of the court, but usually varies between 15 to 40% of the claim amount.

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

The procedure for arrest as a conservatory measure for a maritime lien is the same as described herein.

9. Does your country recognize maritime liens? Under which International Convention, if any?

Turkey is party to the Brussels Convention on the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1926. Turkish Commercial Code, also, provides for claims that give maritime lien.

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

After the documentation is ready, the application can be made and the arrest order can be obtained within a couple of days.

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

The conservatory measures leading to the arrest of a ship can be obtained with an ex parte application setting out the grounds of arrest. The following documents must be submitted with the application:

Power of attorney, notarised and duly legalized (in urgent cases , it is possible to submit the application with a fax copy of the power of attorney and sometimes without the legalization provided that the duly issued original be submitted at a later stage).

Documents evidencing a possible claim (documents in foreign language must be translated into Turkish and sworn translations along with notarisation may be required if objected by the other party)

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Turkish courts shall apply Turkish Private International Procedural Law to determine the jurisdiction in merits.

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

The action in merits must be filed before the competent tribunal within either seven or ten days (depending on the type of conservatory measure order obtained) as from the date of the court order.

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

Should the arresting party lose the action in merits, they may be held liable for loss and damages suffered by the defendant.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

The Turkish courts are not inclined to acknowledge the piercing or lifting of the corporate veil.



SHIP ARREST IN VENEZUELA

By José Alfredo Sabatino Pizzolante, Partner
Sabatino Pizzolante Maritime & Comercial Atronéis
mail@sabatinop.com
www.sabatinop.com

Centro Comercial Inversiones Pareca, Piso 2, Ofic. 2-08/2-09
Av. Salom, Urb. Cumboto Sur. Apdo. Postal 154
Puerto Cabello 2050, Edo. Carabobo, Venezuela
Tel: +58-242-3641801/3641798/3641026
Fax: +58-242-3640998

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

Rules related to the arrest of ships in Venezuela have significantly improved with the enactment of the Law on Maritime Commerce (LMC). To some extent the notion of an action in rem has been included in the LMC, in the sense that actions can be exercised against the ship and her Master, without being necessary to make mention of the owners (art. 15 LMC), whereas the writ can be served by handing it over to anyone onboard the ship, and even by fixing one cartel in the ship in the presence of two (2) witnesses, if there is no anybody onboard (art. 110 LMC). The arrest or the prohibition from sailing will be carried out by notification effected by the Maritime Court of First Instance to the Port Captaincy where the vessel is found.

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

Arrest of ships under Venezuelan law is governed: a) By the provisions of Decision 487 on Maritime Guarantees and Arrest of Ships, issued by the Andean Community, based on the 1993 International Convention on Maritime Liens and Mortgages as well as the 1999 International Convention of Arrest of Ships; and, b) The provisions contained within the Law on Maritime Commerce (LMC) last amendment dated January 2006.

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

Recent jurisprudence has made it clear that the only way to arrest a vessel under domestic jurisdiction is by using the “embargo preventivo”, provided there is a maritime claim, so no other precautionary measure is allowed by law. Nevertheless, it is interesting to point out that together with the exercise of the arrest of a ship in terms referred to in previous paragraphs, art. 103 of the LMC includes another mechanism for guarantee of a maritime claim. Thus, the article in question prescribes that the holder of a maritime claim in respect of a ship, may request from the competent court a “precautionary measure of prohibition from sailing”, in order to guarantee the existing maritime claim. The court shall agree on the petition without mayor formality, provided antecedents are submitted from which it can be inferred presumption of the right that is claimed.

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

Specific provisions on the subject, although based on the 1999 Arrest Convention, are found in the LMC for which reason it seems appropriate to briefly review its Title III. Thus, article 93 contains the list of maritime claims giving rise to an arrest (embargo preventivo) of a ship:

- 1.- Loss or damage caused by the operation of the ship;
- 2.- Loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- 3.- Salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- 4.- Damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature;
- 5.- Costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
- 6.- Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
- 7.- Any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
- 8.- Loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- 9.- General average;
- 10.- Towage;
- 11.- Boating (Lanchaje);
- 12.- Pilotage;
- 13.- Goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
- 14.- Construction, reconstruction, repair, converting or equipping of the ship;
- 15.- Port, canal, dock, harbour and other waterway dues and charges;
- 16.- Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- 17.- Disbursements incurred on behalf of the ship or its owners;
- 18.- Insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
- 19.- Any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
- 20.- Any dispute as to possession of the ship;
- 21.- Any dispute arising out of a contract for the sale of the ship;
- 22.- Any dispute as to ownership of the ship;

- 23.- Any dispute between co-owners of the ship as to the employment or earnings of the ship;
24.- A mortgage or a "hypothèque" or a charge of the same nature on the ship.

5. Can you arrest a ship irrespectively of her flag?

Yes. As per art. 13 of the LMC domestic maritime courts are competent to know of proceedings involving a foreign flag ship in cases where according to domestic legislation it can be arrested, unless there is an arbitration agreement or attributing competence to another jurisdiction, in which case the arrest will be granted for the purposes of obtaining a guarantee to execute the eventual arbitration award or judicial decision.

6. Can you arrest a ship irrespectively of the debtor?

Yes, it is possible to arrest a ship, irrespective of the debtor being national or foreign.

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

Art. 97 of the LMC states that when lawsuit is referred to a maritime claim or maritime lien established in this law, provided it is based on public documents, private documents recognized or legally taken as such, accepted invoice, charter parties, bills of lading, or any other document proving the existence of a maritime claim or lien, the court shall decree the arrest. In the other cases, the court as a condition to decree the arrest of the ship may request to the claimant, the submission of a guarantee in the amount and subject to the conditions determined by the former, for the claimant to answer for the damages that may cause as a consequence of the arrest. Usually this guarantee may take the shape of a bond equivalent to 30% of the claim amount as a maximum legal costs, plus the double of the said claim amount. As per art. 98 of the LMC the defendant may oppose the arrest or request the lifting of it, if in the opinion of the court sufficient security has been provided.

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

In practice there is no difference, other than for the purposes of the priorities in the concurrence of credits.

9. Does your country recognize maritime liens? Under which International Convention, if any?

The LMC has incorporated the main provisions of the 1993 Convention on Mortgages and Maritime Liens, which are contained in the Decision 487 of the Andean Community. Consequently, the country does recognize maritime privileges or liens on a ship.

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

Petition of arrest has to be filed before the First Instance Maritime Court, and formalities can be arranged preferably 96 hours in advance.

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

Power of Attorney will be needed to appear in court; however, one of the innovative features of the Law on Maritime Procedures, is that contained in article 18 related to the use of the electronic Power of Attorney, in line with the need to facilitate the access to domestic courts to those trading with Venezuela. This mechanism allows for foreigners to act promptly in court, while awaiting for the POA to be properly granted or in compliance with the Apostille formalities, since it is important to point out that Venezuela is signatory to the 1961 Hague Convention abolishing the Requirement of Legalization of Foreign Public Documents.

12. According to which rules of law will your Courts acknowledge jurisdiction on the main action of the claim?

Domestic maritime courts shall acknowledge jurisdiction pursuant to Title XVI of the Organic Law of Aquatic and Insular Spaces. On the other hand, procedural aspects of maritime proceedings will be carried out as per the Law on Maritime Procedures.

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

Art. 14 of the LMC states that the court shall suspend any anticipated arrest granted prior to legal proceedings, if within the following ten (10) running days to be counted from the date of the arrest was effected, the lawsuit is not filed.

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

Eventual damages for wrongful arrest are prescribed by article 99 of the LMC, according to which the court which grants the arrest of a ship, will be competent to determine the extent of liability of the claimant, for any loss which may be incurred by the defendant as a result of the arrest in consequence of: a) the arrest having been wrongful or unjustified; or b) excessive security having been demanded and provided.

15. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Although it has been accepted in some employment law cases, this has had little development and there are no precedents in the maritime field at the moment.



APPENDIX 1

INTERNATIONAL CONVENTION RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

ARTICLE 1:

In this Convention the following words shall have the meanings hereby assigned to them:

1. "Maritime Claim" means a claim arising out of one or more of the following:
 - (a) damage caused by any ship either in collision or otherwise;
 - (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
 - (c) salvage;
 - (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
 - (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
 - (f) loss of or damage to goods including baggage carried in any ship;
 - (g) general average;
 - (h) bottomry;
 - (i) towage;
 - (j) pilotage;
 - (k) goods or materials wherever supplied to a ship for her operation or maintenance;
 - (l) construction, repair or equipment of any ship or dock charges and dues;
 - (m) wages of Masters, Officers, or crew;
 - (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
 - (o) disputes as to the title to or ownership of any ship;
 - (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
 - (q) the mortgage or hypothecation of any ship.
2. "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.
3. "Person" includes individuals, partnerships and bodies corporate, Governments, their Departments, and Public Authorities.
4. "Claimant" means a person who alleges that a maritime claim exists in his favour.

ARTICLE 2:

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any governments or their departments, public authorities, or dock or harbour authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

ARTICLE 3:

1. Subject to the provisions of paragraph. (4) of this article and of article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1, (o), (p) or (q).

2. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

3. A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

4. When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

ARTICLE 4:

A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the contracting State in which the arrest is made.

ARTICLE 5:

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, (o) and (p). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest. In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof. The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitations of liability of the owner of the ship.

ARTICLE 6:

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for. The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

ARTICLE 7:

1. The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

- (a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;
- (b) if the claim arose in the country in which the arrest was made;
- (c) if the claim concerns the voyage of the ship during which the arrest was made;
- (d) if the claim arose out of a collision or in circumstances covered by article 13 of the International Convention for the unification of certain rules of law with respect to collisions between vessels, signed at Brussels on 23rd September 1910;
- (e) if the claim is for salvage;
- (f) if the claim is upon a mortgage or hypothecation of the ship arrested.

2. If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgment which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the claimant shall bring an action before a Court having such jurisdiction.

3. If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

4. If, in any of the cases mentioned in the two preceding paragraphs, the action or proceeding is not brought within the time so fixed, the defendant may apply for the release of the ship or of the bail or other security.

5. This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

ARTICLE 8:

1. The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

2. A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest.

3. Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the ben-

efits of this convention any government of a non-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

4. Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

5. When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or other-wise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

ARTICLE 9:

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which was seized of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on maritime mortgages and liens, if the latter is applicable.

ARTICLE 10:

The High Contracting Parties may at the time of signature, deposit or ratification or accession, reserve:

(a) the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs (o) and (p) of article 1, but to apply their domestic laws to such claims;

(b) the right not to apply the first paragraph of article 3 to the arrest of a ship within their jurisdiction for claims set out in article 1 paragraph (q).

ARTICLE 11:

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

ARTICLE 12:

This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

ARTICLE 13:

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

ARTICLE 14:

(a) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.

(b) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

ARTICLE 15:

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention. The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification. The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 14(a).

ARTICLE 16:

Any High Contracting Party may three years after coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to the Convention. Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

ARTICLE 17:

Any High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

ARTICLE 18:

(a) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(b) A High Contracting Party which has made a declaration under paragraph (a) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(c) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

DONE in Brussels, on May 10, 1952, in the French and English languages, the two texts being equally authentic.

APPENDIX 2

INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

ARTICLE 1: Definitions

For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:
 - a) loss or damage caused by the operation of the ship;
 - b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
 - c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
 - d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
 - e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
 - f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
 - g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
 - h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
 - i) general average;
 - j) towage;
 - k) pilotage;
 - l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
 - m) construction, reconstruction, repair, converting or equipping of the ship;
 - n) port, canal, dock, harbour and other waterway dues and charges;
 - o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
 - p) disbursements incurred on behalf of the ship or its owners;
 - q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

- r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
 - s) any dispute as to ownership or possession of the ship;
 - t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
 - u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
 - v) any dispute arising out of a contract for the sale of the ship.
2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.
3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
4. "Claimant" means any person asserting a maritime claim.
5. "Court" means any competent judicial authority of a State.

ARTICLE 2: Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.
2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.
3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.
4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

ARTICLE 3: Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:
- a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or
 - b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or
 - c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or
 - d) the claim relates to the ownership or possession of the ship; or
 - e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.
2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:
- a) owner of the ship in respect of which the maritime claim arose; or
 - b) demise charterer, time charterer or voyage charterer of that ship.
- This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

ARTICLE 4: Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:

- a) the claim for which the ship has been arrested, or
- b) the value of the ship,

whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6: Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

ARTICLE 5: Right of re-arrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

- a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or
- b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or
- c) the ship arrested or the security previously provided was released either:
 - i) upon the application or with the consent of the claimant acting on reasonable grounds, or
 - ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:
 - a) the nature or amount of the security already provided in respect of the same claim is inadequate; or
 - b) the provisions of paragraph 1 (b) or (c) of this article are applicable.
3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

ARTICLE 6: Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:
 - a) the arrest having been wrongful or unjustified; or
 - b) excessive security having been demanded and provided.
2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:
 - a) the arrest having been wrongful or unjustified, or
 - b) excessive security having been demanded and provided.
3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.
4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.
5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

ARTICLE 7: Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.
2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.
3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

a) does not have jurisdiction to determine the case upon its merits; or
b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article,

such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and

b) such recognition is not against public policy (ordre public)

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

ARTICLE 8: Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

ARTICLE 9: Non-creation of maritime liens

Nothing in this Convention shall be construed as creating a maritime lien.

ARTICLE 10: Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

- a) ships which are not seagoing;
- b) ships not flying the flag of a State Party;
- c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

ARTICLE 11: Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

ARTICLE 12: Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

- a) signature without reservation as to ratification, acceptance or approval; or
- b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

ARTICLE 13: States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

ARTICLE 14: Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have

expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

ARTICLE 15: Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

ARTICLE 16: Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

ARTICLE 17: Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.



APPENDIX 3

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO MARITIME LIENS AND MORTGAGES, 1926

Article 1:

Mortgages, hypothecations, and other similar charges upon vessels, duly effected in accordance with the law of the Contracting State to which the vessel belongs, and registered in a public register either at the port of the vessel's registry or at a central office, shall be regarded as valid and respected in all the other contracting countries.

Article 2:

The following give rise to maritime liens on a vessel, on the freight for the voyage during which the claim giving rise to the lien arises, and on the accessories of the vessel and freight accrued since the commencement of the voyage;

1. Law costs due to the State, and expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale; tonnage dues, light or harbour dues, and other public taxes and charges of the same character; pilotage dues; the cost of watching and preservation from the time of the entry of the vessel into the last port;
2. Claims arising out of the contract of engagement of the master, crew and other persons hired on board;
3. Remuneration for assistance and salvage, and the contribution of the vessel in general average;
4. Indemnities for collision or other accident of navigation, as also for damage caused to works forming part of harbours, docks, and navigable ways; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;
5. Claims resulting from contracts entered into or acts done by the master, acting within the scope of his authority away from the vessel's home port, where such contracts or acts are necessary for the preservation of the vessel or the continuation of its voyage, whether the master is or is not at the same time owner of the vessel, and whether the claim is his own or that of ship-chandlers, repairers, lenders, or other contractual creditors.

Article 3:

The mortgages, hypothecations, and other charges on vessels referred to in Article 1 rank immediately after the secured claims referred to in the preceding Article. National laws may grant a lien in respect of claims other than those referred to in the said last-mentioned Article, so, however, as not to modify the ranking of claims secured by mortgages, hypothecations, and other similar charges, or by the liens taking precedence thereof.

Article 4:

The accessories of the vessel and the freight mentioned in Article 2 mean:

1. Compensation due to the owner for material damage sustained by the vessel and not repaired, or for loss of freight;
2. General average contributions due to the owner, in respect of material damage sustained by the vessel and not repaired, or in respect of loss of freight;
3. Remuneration due to the owner for assistance and salvage services rendered at any time before the end of the voyage, any sums allotted to the master or other persons in the service of the vessel being deducted.

The provision as to freight apply also to passage money, and, in the last resort, to the sums due under Article 4 of the Convention on the limitation of shipowners' liability.

Payments made or due to the owner on policies of insurance, as well as bounties, subventions, and other national subsidies are not deemed to be accessories of the vessel or of the freight. Notwithstanding anything in the opening words of Article 2.(2), the lien in favour of persons in the service of the vessel extends, to the total amount of freight due for all voyages made during the subsistence of the same contract of engagement.

Article 5:

Claims secured by a lien and relating to the same voyage rank in the order in which they are set out in Article 2. Claims included under any one heading share concurrently and rateably in the event of the fund available being insufficient to pay the claims in full.

The claims mentioned under Nos. 3 and 5 in that Article rank, in each of the two categories, in the inverse order of the dates on which they came into existence.

Claims arising from one and the same occurrence are deemed to have come into existence at the same time.

Article 6:

Claims secured by a lien and attaching to the last voyage have priority over those attaching to previous voyage.

Provided that claims, arising on one and the same contract of engagement extending over several voyages, all rank with claims attaching to the last voyage.

Article 7:

As regards the distribution of the sum resulting from the sale of the property subject to a lien, the creditors whose claims are secured by a lien have the right to put forward their claims in full, without any deduction on account of the rules relating to limitation of liability provided, however, that the sum apportioned to them may not exceed the sum due having regard to the said rules.

Article 8:

Claims secured by a lien follow the vessel into whatever hands it may pass.

Article 9:

The liens cease to exist, apart from other cases provided for by national laws, at the expira-

tion of one year, and, in the case of liens for supplies mentioned in No.5 of Article 2, shall continue in force for not more than six months.

The periods for which the lien remains in force in the case of liens securing claims in respect of assistance and salvage run from the day when the services terminated, in the case of liens securing claims in respect of collision and other accidents and in respect of bodily injuries from the day when the damage was caused; in the case of liens for the loss of or damage or cargo or baggage from the day of the delivery of the cargo or baggage or from the day when they should have been delivered; for repairs and supplies and other cases mentioned in No.5 of Article 2 from the day the claim originated. In all the other cases the period runs from the enforceability of the claim.

The fact that any of the persons employed on board, mentioned in No. 2 of Article 2 has a right to any payment in advance or on account does not render his claim enforceable.

As respects the cases provided for in the national laws in which a lien is extinguished, a sale shall extinguish a lien only if accompanied by formalities of publicity which shall be laid down by the national laws.

These formalities shall include a notice given in such form and within such time as the national laws may prescribe to the authority charged with keeping the registers referred to in Article 1 of this Convention.

The grounds upon which the above periods may be interrupted are determined by the law of the court where the case is tried.

The High Contracting Parties reserve to themselves the right to provide by legislation in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the vessel to which a lien attaches in the territorial waters of the state in which the claimant has his domicile or his principal place of business, provided that the extended period shall not exceed three years from the time when the claim originated.

Article 10:

A lien on freight may be enforced so long as the freight is still due or the amount of the freight is still in the hands of the master or the agent of the owner. The same principle applies to a lien on accessories.

Article 11:

Subject to the provisions of this Convention, liens established by the preceding provisions are subject to no formality and to no special condition of proof. This provision does not affect the right of any State to maintain in the legislation provisions requiring the master of a vessel to fulfil special formalities in the case of certain loans raised on the security of the vessel, or in the case of the sale of its cargo.

Article 12:

National laws must prescribe the nature and the form of documents to be carried on board the vessel in which entry must be made of the mortgages, hypothecations, and other charges referred to in Article 1; so, however, that the mortgagees requiring such entry in the said form be not held responsible for any omission, mistake, or delay in inscribing the same on the said documents.

Article 13:

The foregoing provisions apply to vessels under the management of a person who operates them without owning them or to the principal charterer, except in cases where the owner has been dispossessed by an illegal act or where the claimant is not a bona fide claimant.

Article 14:

The provisions of this Convention shall be applied in each Contracting State in cases in which the vessel to which the claim relates belongs to a Contracting State as well as in any other cases provided for by the national laws. Nevertheless the principle formulated in the preceding paragraph does not affect the right of the Contracting States not to apply the provisions of this Convention in favour of the nationals of a non-contracting State.

Article 15:

This Convention does not apply to vessels of war, nor to government vessels appropriated exclusively to the public service.

Article 16:

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure or methods of execution authorized by the national law.

Article 17:

After an interval of not more than two years from the day on which the Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratifications shall be recorded in a process-verbal signed by the representatives of the powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Belgian Government, and accompanied by the instrument of ratification. A duly certified copy of the process-verbal relating to the first deposit of ratifications, of the notification referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the powers who have signed this Convention or who have acceded to it. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

Article 18:

Non-signatory States may accede to the present Convention whether or not they have been represented at the international Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the states which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

Article 19:

The High Contracting Parties may at the time of signature, ratification, or accession declare that their acceptance of the present Convention does not include any or all of the self-governing dominions, or of the colonies, overseas possession, protectorates, or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate or territory excluded in their declaration. They may also denounce the Convention separately in accordance with its provision in respect of any self-governing dominion, or any colony, overseas possession, protectorate, or territory under their sovereignty or authority.

Article 20:

The present Convention shall take effect, in the case of the states which have taken part in the first deposit of ratifications, one year after the date of the process-verbal recording such deposit. As respects the states which ratify subsequently or which accede and also in cases in which the convention is subsequently put into effect in accordance with Article 19, it shall take effect six months after the notifications specified in Article 17, § 2, and Article 18, § 2, have been received by the Belgian Government.

Article 21:

In the event of one of the Contracting States wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other states informing them of the date on which it was received.

The denunciation shall only operate in respect of the state which made the notification and on the expiration of one year after the notification has reached the Belgian Government.

Article 22:

Any one of the Contracting States shall have the right to call for a new conference with a view to considering possible amendments.

A state which would exercise this right should give one year advance notice of its intention to the other states through the Belgian Government which would make arrangements for convening the conference.

PROTOCOL OF SIGNATURE:

In proceeding to the signature of the International Convention for the unification of Certain rules relating to maritime liens and mortgages, the undersigned plenipotentiaries have adopted the present Protocol, which will have the same force and the same value as if the provisions were inserted in the text of the Convention to which it relates:

I. It is understood that the legislation of each state remains free (1) to establish among the claims mentioned in No.1 of Article 2, a definite order of priority with a view to safeguarding

the interests of the Treasury; (2) to confer on the authorities administering harbours, docks, lighthouses, and navigable ways, who have caused a wreck or other obstruction to navigation to be removed, or who are creditors in respect of harbour dues, or for damage caused by the fault of a vessel, the right, in case of non-payment, to detain the vessel, wreck, or other property, to sell the same, and to indemnify themselves out of the proceed in priority to other claimants, and (3) to determine the rank of the claimants for damages done to works otherwise than as stated in Article 5 and in Article 6.

II. There is no impairment of the provisions in the national laws of the Contracting States conferring a lien upon public insurance associations in respect of claims arising out of the insurance of the personnel of vessels.

Done at Brussels, in a single copy, April 10, 1926.



APPENDIX 4

INTERNATIONAL CONVENTION ON MARITIME LIENS AND MORTGAGES, 1993

Article 1 - Recognition and enforcement of mortgages, "hypothèques" and charges

Mortgages, "hypothèques" and registrable charges of the same nature, which registrable charges of the same nature will be referred to hereinafter as "charges" effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

- (a) such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;
- (b) the register and any instruments required to be deposited with the registrar in accordance with the law of the State in which the vessel is registered are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar; and
- (c) either the register or any instruments referred to in subparagraph (b) specifies at least the name and address of the person in whose favour the mortgage, "hypothèque" or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the law of the State of registration or if that amount is specified in the instrument creating the mortgage, "hypothèque" or charge, and the date and other particulars which, according to the law of the State of registration, determine the ranking in relation to other registered mortgages, "hypothèques" and charges.

Article 2 - Ranking and effects of mortgages, "hypothèques" and charges

The ranking of registered mortgages, "hypothèques" or charges as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

Article 3 - Change of ownership or registration

1. With the exception of the cases provided for in articles 11 and 12, in all other cases that entail the deregistration of the vessel from the register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all registered mortgages, "hypothèques" or charges are previously deleted or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained. However, where the deregistration of the vessel is obligatory in accordance with the law of a State Party, otherwise than as a result of a voluntary sale, the holders of registered mortgages, "hypothèques" or charges shall be notified of the pending deregistration in order to enable such holders to take appropriate action to pro-

tect their interests; unless the holders consent, the deregistration shall not be implemented earlier than after a lapse of a reasonable period of time which shall be not less than three months after the relevant notification to such holders.

2. Without prejudice to article 12, paragraph 5, a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

(a) a certificate has been issued by the former State to the effect that the vessel has been deregistered; or

(b) a certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect, at such time as the new registration is effected. The date of deregistration shall be the date of the new registration of the vessel.

Article 4 - Maritime liens

1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for the salvage of the vessel;

(d) claims for port, canal, and other waterway dues and pilotage dues;

(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or

(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

Article 5 - Priority of maritime liens

1. The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.

2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3. The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank *pari passu* as between themselves.

4. The maritime liens securing claims for reward for the salvage of the vessel shall rank in the

inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

Article 6 - Other maritime liens

Each State Party may, under its law, grant other maritime liens on a vessel to secure claims other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

- (a) shall be subject to the provisions of articles 8, 10 and 12;
- (b) shall be extinguished
 - (i) after a period of 6 months, from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or
 - (ii) at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale; whichever period expires first; and

(c) shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.

Article 7 - Rights of retention

1. Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:

- (a) a shipbuilder, to secure claims for the building of the vessel; or
- (b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.

2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.

Article 8 - Characteristics of maritime liens

Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag.

Article 9 - Extinction of maritime liens because of time

1. The maritime liens set out in article 4 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.

2. The one-year period referred to in paragraph 1 shall commence:

- (a) with respect to the maritime lien set out in article 4, paragraph 1 (a), upon the claimant's discharge from the vessel;
- (b) with respect to the maritime liens set out in article 4, paragraph 1 (b) to (e), when the claims secured thereby arise;

and shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the arrest or seizure of the vessel is not permitted by law.

Article 10 - Assignment and subrogation

1. The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.
2. Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.

Article 11 - Notice of forced sale

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:
 - (a) the authority in charge of the register in the State of registration;
 - (b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;
 - (c) all holders of registered mortgages. "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and
 - (d) the registered owner of the vessel
2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:
 - (a) the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or,
 - (b) if the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.
3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

Article 12 - Effects of forced sale

1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:
 - (a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; and
 - (b) the sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.
2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the

vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, *inter alia*, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

3. A State Party may provide in its law that in the event of the forced, sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sales, before all other claims secured by a maritime lien on the vessel.

4. It at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.

5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

Article 13 - Scope of application

1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.

2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.

Article 14 - Communication between States Parties

For the purpose of articles 3, 11 and 12, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.

Article 15 - Conflict of conventions

Nothing in this Convention shall affect the application of any international convention providing for limitation of liability or of national legislation giving effect thereto.

Article 16 - Temporary change of flag

If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:

- (a) For the purposes of this article, references in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to "the authority in charge of the register" shall be deemed to be references to the authority in charge of the register in that State.
- (b) The law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, "hypothèques" and charges.
- (c) The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require that the authority in charge of the vessel's record specifies by a cross-reference in the record the State of registration.
- (d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, "hypothèques" or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained.
- (e) The notice referred to in article 11 shall be given also to the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily.
- (f) Upon production of the certificate of deregistration referred to in article 12 paragraph 5, the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.
- (g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

Article 17 - Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 18 - Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1993 to 31 August 1994 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 19 - Entry into force

1. This Convention shall enter into force 6 months following the date on which 10 States have expressed their consent to be bound by it.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect 3 months after the date of expression of such consent.

Article 20 - Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.
2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention. as amended

Article 21 - Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the depositary.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 22 - Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this sixth day of May, one thousand nine hundred and ninety-three.



FOREWORD	1
QUESTIONNAIRE	3
SHIP ARREST IN	
1. Belgium	5
2. Brazil	9
3. Cameroon	13
4. Costa Rica	17
5. Croatia	20
6. Denmark	24
7. England & Wales	27
8. Finland	31
9. France	36
10. Germany	39
11. Ghana	43
12. Israel	47
13. Italy	50
14. Latvia	53
15. Netherlands	57
16. Nigeria	61
17. Norway	65
18. Portugal	68
19. Russia	17
20. Singapore	75
21. South Africa	79
22. Spain	83
23. Turkey	87
24. Venezuela	90
APPENDICES	
International Convention Relating to the Arrest of Sea-Going Ships, 1952	94
International Convention on Arrest of Ships, 1999	99
International Convention for the unification of certain rules of law relating to maritime liens and mortgages, 1926	106
International Convention on maritime liens and mortgages, 1993	112