

SHIP ARREST IN JAPAN

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

In Japan there are mainly two types of ship arrest. One is an arrest by lien or mortgage. The other is a provisional arrest.

Arrest by Lien or Mortgage – A holder of a maritime lien or a mortgagee can arrest a ship to execute a maritime lien or enforce a mortgage on the particular ship. They can arrest the ship without putting up any counter security. To release the arrested ship, the shipowners are usually requested to put up security (although recently, in the case of the “Fairwind 308”, our office managed to release the arrested ship without security).

Provisional Arrest – A creditor of shipowners can arrest any ship owned by the shipowners to obtain the security of his claim (regardless of whether such claim is maritime or not). To obtain a provisional arrest order, the arrestor must put up counter security. To release the arrested ship, the shipowners are usually requested to put up security, which is usually the same amount of the arrestor’s claim amount.

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

No International Convention applies to the arrest of ships in Japan. Japan has not ratified the arrest conventions of 1952 and 1999.

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

A claimant can arrest a ship by (i) an arrest by lien or mortgage or (ii) provisional arrest.

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

No.

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

For provisional arrests, the claimant can arrest a ship for any monetary claim of whatsoever nature against the shipowner. As regards an arrests by lien or mortgage, an arrestor must have a maritime lien or a mortgage on the arrested ship.

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

Yes.

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

In respect of a provisional arrests, a debtor must be a shipowners of the ship. As to arrests by lien or mortgage, a holder of a maritime lien or mortgage can arrest the ship irrespective of who is the debtor.

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

It is possible for a claimant to arrest a sister ship if the ship is owned by the debtor. It is possible but not east to arrest an associated ship by piercing a corporate veil.

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

Under our new maritime law (which will be enforced in the spring of 2019), a bareboat charterer or time charterer can create a lien on the ship. However, based on the principal of the famous case of the Hansa Altenburg in the Yokohama District Court, this new law shall be interpreted narrowly.

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

With respect to arrests by a lien or mortgage, a claimant does not need to put up counter-security. In contrast, in case of provisional arrest, a claimant must deposit counter-security.

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

Yes. If a claim gives rise to a maritime lien, the claimant can arrest the ship by lien. Otherwise, the claimant may only arrest the ship by provisional arrest.

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

Yes. Although Japan is not member of any International Conventions, the Japanese courts recognize maritime liens.

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

It depends on how complicated the claim is. It depends on quality of a lawyer. We arrested ships within 48 hours from the receipt of instructions. For example, in the arrest of the Three Tulip to enforce a mortgage, we received instruction on a Thursday and arrested her the next day. In the provisional arrest of the Aventicum, we received instruction on a Thursday at midnight and arrested her the following Tuesday morning. In the arrest of the Pegasus Prime by maritime lien, we received the instruction on a Friday morning and arrested her following Monday. It all depends on the case and quality of a lawyer. Our advice is to appoint an experienced shipping lawyer in case of ship arrest in Japan and to ask experience of a lawyer before your instruction.

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

Yes we need a POA. Several documents are required. The Japanese courts love "paper".

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

Originals of the POA and corporate certificates are required. However, some courts accept a copy on the condition that original document will be supplied later. It depends on discretion of the judges.

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

It depends on the case.

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

To file a motion to release the arrested ship in the court.

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

In case of ship arrest by lien or mortgage, cash, bank guarantees, insurance bonds and LOUs of P&I clubs can also be accepted as security. In case of provisional arrest, cash is generally the only way. Sometimes, however, any security is not required to release an arrested ship. We had success in releasing the Fairwind 308 without any security (Yokohama District Court 4 June 2007).

19. Does security need to cover interest and costs?

Usually the claim amount secured by the arrest already includes interests and costs.

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

In case of arrest by lien or mortgage, you can release the ship by putting up P&I LOU (although such P&I club must have a license in Japan).

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

Once the relevant documents are filed in the court, the ship can usually be released within one day. For example, in the recent case of the arrest of the JRS CORVUS, the ship was arrested on a Tuesday afternoon, the ship was released next early morning.

22. Is there a procedure to contest the arrest?

Yes, there is. Recently, six ships were arrested by a HK bunker supplier in Japan in the span of two weeks due to the collapse of a HK time-charterer. Our office set aside the arrest of all six ships successfully. Recently our office had success to set aside ship arrest of Ocean Dragon, Hansa Altenburg, DS Blue Wave and JRS Corvus as regards the trouble between the time charterer and the bunker supplier (and we are claiming damage from the arrestor based on wrongful arrest).

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

In case of the provisional arrest it is minimum two weeks. With respect to an arrest by lien or mortgage there is no need to take legal action on the merit.

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

Yes.

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

Yes, but it is not easy to pierce the corporate veil.

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

During proceedings, the ship can only be sold by a public auction at the Court.

**Takayuki Matsui graduated with a LL.B. degree from the Hitotsubashi University in 1986. After graduation, he practiced for five years in a Hull Section of a Maritime Claim Department of a Japanese Insurance Company. He was admitted to the bar in 1993. He is a partner of Max Law Office specializing in shipping laws in Japan. Matsui's focus has been collisions, cargo defense, arrest, and maritime disputes in court and TOMAC arbitration. He also has substantial experience in ship mortgage enforcement. He is qualified as Maritime Proctor in the Japanese Maritime Court. In 1999 he earned a LL.M. in Admiralty from Tulane Law School, New Orleans. He is an arbitrator and also a board member of the Documentary Committee of the Japan Shipping Exchange. He is an author of Time Charter Party, published in 2004. His hobby is arresting ships.*