



Ship Arrests in Practice

*The latest updates on ship arrest / release practices
in 34 major world jurisdictions by members
of www.shiparrested.com network*

FOREWORD

Welcome to the fourth edition of Ship Arrests in Practice.

This guide provides a legal analysis of ship arrest practices in 34 countries. The aim of this publication is to assist the maritime community in the understanding of the procedures and practical issues arising from the arrest and release of a ship around the globe.

This handbook owes its origin to www.shiparrested.com, the only network devoted to ship arrests in the industry. The shiparrested.com editors, in a wish to offer a comprehensive treatment of the subject, issued a questionnaire so that one would understand at a glance the way the maritime rules are interpreted in each country. This fourth edition is the result of our yearly update on arrest procedures worldwide.

All chapters have been written by leading shipping lawyers and eight jurisdictions have been added in this new edition. Thanks are therefore due to our members-contributors who have provided the network with top quality articles for the publishing of this book. We are also grateful for the stimulus that we have received from the London and Scandinavians P&I Clubs in earlier editions to keep that trend as well as to the sponsorship of this edition by Arizon Abogados SLP.

The law is stated as at November 1, 2009.

Valentine de Callatay
Managing Editor
Valentine.deCallatay@shiparrested.com

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This edition of Ship Arrests in Practice is also available online at www.shiparrested.com.

N.B.: The information contained in this book is for general purposes only, providing a brief overview of the requirements to arrest or release ships in the said jurisdictions; it does not contain legal or any type of professional advice. For a detailed synopsis, please contact the members' law firms.

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SHIP ARREST IN BELGIUM



By Steven D'Hoine
D'HOINE & MACKAY
steven.dhoine@dm-law.be
Schaliënstraat 30
B-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, and most specifically the port Antwerp, has with reason 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, fast 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.

A vessel can be arrested within a few hours after having received instructions. No power of attorney or original documents are required.

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.

Moreover, in Belgium some rather unique possibilities with respect to arrest of a ship are available. For instance, a vessel can be arrested for certain maritime claims, even if the owner of the vessel is not the debtor of this claim (see further under n° 7).

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

All arrests of sea-going ships are subject to the Brussels Convention 1952 relating to the Arrest of Sea-Going Ships, as enacted in the Belgian legislation.

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

No.

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

Not applicable.

5. 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.

6. 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.

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

The ship in respect of which the maritime claim arose, can be arrested, even if it is not the owner but another person who is liable for the maritime claim, such as a bareboat charterer, voyage or time charterer or any other third party.

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 is the debtor towards the arresting party.

The only restriction is that the ship to which the maritime claim relates may not be arrested if it changed ownership between the moment the claim arose and the moment of arrest, unless the claim is secured by a maritime lien or mortgage.

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

If the owner is liable for the maritime claim not only the ship, in respect of which the maritime claim arose, may be arrested but also all other ships in the same ownership. Ships will be deemed to be in the same ownership when all the shares therein are owned by the same person or persons (see also under n° 19).

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

The ship in respect of which the maritime claim arose can be arrested, irrespective whether the vessel is Bareboat – or Time Chartered. See above under n° 7.

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

It is not common that Belgian courts impose a countersecurity on the arrestor.

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

There is no procedural difference.

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

Belgium incorporated the Brussels Convention on Maritime Liens and Mortgages of 10 April 1926 in its internal law through Articles 19 to 45 of the Maritime Code. The maritime liens or privileges are listed in Article 23 of the Maritime Code.

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

Upon receipt of the instructions to arrest the ship, the arrest of the ship can be effected within approx. 4 hours.

The unilateral request to obtain authorisation to arrest a sea-going ship can be submitted at any moment of the day, even out of office hours and during the weekend or holidays. 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.

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

No POA is needed. Belgian counsels represent the client without needing to present power of attorney.

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

No original documents are required.

It is not required either to have documents notarised or apostilled.

Furthermore, in practice, no complete file of documents of evidence on the merits of the claim is needed in order 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.

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

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 jurisdictioni’.

17. Which period of time will be granted by the Courts in order for the claimants to take legal action 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.

18. 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.

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

On several occasions Belgian courts have accepted the piercing and lifting of the corporate veil within the frame of conservative arrest proceedings. If the owner is liable for the maritime claim not only the ship in respect of which the maritime claim arose, may be arrested but also all other ships in the same ownership (see our reply to question 8). This rule can be circumvented easily by creating ‘single ship companies’. In this respect Belgian Courts

occasionally authorised the arrest of a ship owned by another company than the debtor of the claim. The courts thus lifted the corporate veil and treated ships owned by different companies as if they were in the same ownership as soon as it was sufficiently evidenced that the separate corporate personality is only an artificial screen that does not correspond to reality.

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

Belgian case law accepts that a ship under arrest may be sold as soon as the claimant disposes of an enforceable title. This will also be the case if the judgment is not rendered against the owner of the ship but against another person who is debtor of the claim related to the particular ship.

The procedure for obtaining leave for arrest starts with submitting an arrest petition to the court in whose jurisdiction the ship is located or is expected to arrive shortly. These may be arrest.

If a ship has been arrested and the arrest is not lifted in injunction proceedings or by way of alternative security, the arrest will be maintained until the creditor has obtained a title (judgment or arbitration award). Once such title is obtained, the conservatory arrest will automatically be transformed into an executory arrest. This may be followed by a judicial/public sale of the vessel before the court, if so requested, in which case the court will determine the pre-conditions for such auction.

Auctioning of a foreign seagoing vessel is subject to a detailed time frame and scheme of requirements to be fulfilled prior to the day on which the ship is actually auctioned. These procedural requirements and the bidding system aim at securing proper and fair auction proceedings with the purpose to obtain the highest price for the vessel to be auctioned.

The auction notice must be published in the newspapers as designated by the court at least thirty (30) days prior to the day of the auction. An auction can be organized between 30 and 40 days after the title in which the creditor's claim was adjudicated is obtained.



SHIP ARREST IN BRAZIL



By Cláudia Haidamus Perri
FELSBERG E ASSOCIADOS
claudiaperri@felsberg.com.br
www.felsberg.com.br
Av. Paulista, 1294 2º andar
01310-915, São Paulo - SP, Brasil
Tel: +55 (11) 3141-9106
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 typical 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 indisputable; 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 regulated 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. 351 of 10.01.1935.

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

As was mentioned in item 1, our legislation makes arrangements for arrests where the subject is a shipping vessel (articles 813 to 821 of the Code of Civil Procedure. However, where this concerns a foreign creditor, a situation involving the obtaining of a preliminary measure would be difficult considering the conditions included in the law.

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

If the debtor: (i) pays the debt and the process expenses which the creditor has had; (ii) has a reliable guarantor or pledges to guarantee the debt, the arrest order shall be suspended.

Should the parties renew or reschedule the debt, this shall also be considered a situation in which the arrest will be suspended.

Another hypothesis in which the arrest may be suspended would involve the presentation to the Court of an appeal demonstrating that the preliminary measure conceded by the Judge was made in a manner contrary to the law.

5. 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:

1) 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:

- i. Taxes due to the State and court costs and expenses;
- ii. Salaries due for services rendered aboard ship;
- iii. Salvage indemnity claims;
- iv. 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;
- v. Indemnification for general average;
- vi. Indemnification for marine accidents;
- vii. Credits secured by marine mortgage;
- viii. Debts owed to private port operators;
- ix. Expenses with depositaries, as well as storage costs relating to the ship’s instruments;
- x. Expenses incurred with the ship’s costs and maintenance;
- xi. Shortages on delivery of cargo and damage thereto;
- xii. Debts deriving from the contracts for construction and purchase of the ship; and
- xiii. Debts deriving from costs incurred in the repair of the ship and its installations and equipment.

2) 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 filed.

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

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

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

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

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

Within our legal system, the arrest of sister ships and ships in associated ownership is only

admitted when the credit arising from a judicial or extrajudicial security (and recognized as such by Brazilian law) was against the ship owner and not the ship.

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

Should the debt be contracted by the vessel (for example: loading of the ship, services provided to the ship), Brazilian law states that it is the vessel which is responsible for the debt, and thus, an arrest would be possible, it being of little matter who owns such vessel or is in possession of such.

10. 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.

11. 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.

12. Does your country recognise 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.

13. 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.

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

To file this kind of lawsuit it is necessary to provide the court with: i) all available documents that evidence the existence of the credit and its amount (for instance, invoices, delivery notes and receipts executed by the master, and any other related documents that may be supportive of the claimed credit); ii) a Power of Attorney for the Plaintiff's lawyers; and iii) evidence that the pertaining court costs have been duly paid.

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

All documents (mentioned in item 14) should be presented in the form of certified copies which have been ratified by a Judge. There is no method other than this existing in Brazil. Documents in a language other than Portuguese must be translated in Brazil by a sworn public translator. Regarding the Power of Attorney, the signatures must be duly notarized and afterwards consularized at the nearest Brazilian Consulate. If the Notary Public is not able to certify that the undersigned are authorized to execute the Power of Attorney on behalf of the grantor, it will be necessary to provide the court with a notarized and consularized copy of the by-laws or any other official document to the same extent. Anyway, if, for any reason, there is not enough time to obtain the notarizations, consularizations and translations before the arrest is filed, it is possible to provide the court with scanned copies of the documents and ask for additional time to submit the notarized and consularized originals and its translations.

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

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.

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

As a general rule, thirty (30) days.

18. 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 which the plaintiff did not properly prove that its credit gave rise to the remedy of arrest.

19. 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).

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

As long as it has judicial authorization, the company may suspend the arrest. This judicial authorization may only be given if the company provides another guarantee in the place of the vessel.



SHIP ARREST IN CANADA



By Shelley Chapelski & Jason Kostyniuk
BULL, HOUSSEY & TUPPER LLP
sac@bht.com & jrk@bht.com
www.bht.com

3000 Royal Centre, 1055 West Georgia Street
PO Box 11130, Vancouver BC, V6E 3R3
Tel: 604.687.6575
Fax: 604.641.4949



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

Ship arrest in Canada is usually simple and relatively inexpensive. Three documents are required:

- a. Statement of Claim to commence the action briefly setting out the relevant facts to establish in rem jurisdiction.
- b. Affidavit to Lead Warrant, which can be sworn by the solicitor upon information and belief.
- c. Warrant for Arrest issued by the Court to the Sheriff

In Canada, it is not required that the Sheriff go into possession of the ship following arrest, unless specifically ordered by the Court. Therefore, the only costs to arrest are disbursements to the Court and Sheriff and the legal costs to prepare the documentation. If a straightforward matter, it can be done for as little as Cdn.\$1500 to \$2000 in all.

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

Canada has not acceded to the Arrest Conventions. The grounds for arrest are found in domestic legislation.

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

There is no other way to arrest a ship but it may be seized through other processes described in the next answer.

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

In appropriate circumstances, Canadian Courts may grant Mareva Injunctions with respect to seizure of a defendant's assets within the jurisdiction. A vessel may also be seized and sold as an asset of a judgment debtor to satisfy a debt.

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

- S. 22(2) of the Federal Courts Act provides for in rem jurisdiction for:
- (a) any claim as to title, possession or ownership of a ship or any part interest therein or with respect to the proceeds of sale of a ship or any part interest therein;
 - (b) any question arising between co-owners of a ship as to possession, employment or earnings of a ship;
 - (c) any claim in respect of a mortgage or hypothecation of, or charge on a ship or any part

interest therein or any change in the nature of bottomry or respondentia for which a ship or part interest therein or cargo was made security;

(d) any claim for damage sustained by, or for loss of a ship including, without restricting the generality of the foregoing damage to or loss of the cargo or equipment of or any property in or on being loaded on or off a ship;

(e) any claim arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading or in respect of which a through bill of lading is intended to be issued, for loss or damage to goods occurring at any time or place during transit;

(f) any claim for loss of life or personal injury occurring in connection with the operation of a ship including, without restricting the generality of the foregoing, 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 the master or crew thereof for of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of the ship are responsible, being an act, neglect or default in the management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in embarkation, carriage or disembarkation or persons on, in or from the ship;

(g) any claim for loss of or damage to goods carried in or on a ship including, without restricting the generality of the foregoing, loss of or damage to passengers, baggage or personal effects;

(h) any claim arising out of any agreement relating to the carriage of goods in or on a ship or to the use or hire of a ship whether by charter party or otherwise;

(i) any claim for salvage including, without restricting the generality of the foregoing, claims for salvage of life, cargo, equipment or other property of, from or by an aircraft to the same extent and in the same manner as if such aircraft were a ship;

(j) any claim for towage in respect of a ship or of an aircraft while such aircraft is waterborne;

(k) any claim for pilotage in respect of a ship or of an aircraft while such aircraft is waterborne;

(l) any claim in respect of goods, materials or services wherever supplied to a ship for her operation or maintenance including, without restricting the generality of the foregoing, claims in respect of stevedoring and lighterage;

(m) any claim arising out of a contract relating to the construction, repair or equipping of a ship;

(n) any claim by a master, officer or member of the crew or a ship for wages, money, property or other remuneration or benefits arising out of his employment;

(o) any claim by a master, charterer or agent of a ship or shipowner in respect of disbursements or by a shipper in respect of advances, made on account of a ship;

(p) any claim in respect of general average contribution;

(q) any claim arising out of or in connection with a contract of marine insurance; and

(r) any claim for dock charges, harbour dues or canal tolls including, without restricting the generality of the foregoing, charges for the use of facilities supplied in connection therewith.

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

Yes, although the Canadian Courts will recognize sovereign immunity but not for government-owned commercial ships.

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

As a general principle, other than for maritime liens and certain statutory rights in rem, the ship owner itself must be liable for the debt in order to arrest. One exception is if it can positively be shown that the charterer was acting as the ship owner's agent when incurring the debt. Additionally, if the law of the contract governing the supply of ship's necessities grants a maritime lien to the supplier, then the supplier can arrest in Canada to enforce the lien even if that same claim would not otherwise constitute a maritime lien under Canadian law. Finally, pursuant to a recent amendment to Canadian law, Canadian suppliers of goods, materials or services (other than stevedoring and lighterage) to foreign ships now may also claim a maritime lien even if the debt was incurred by the charterer of the ship. See also the answer to Question 9 below.

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

Section 43(8) of the Federal Courts Act permits sister ship arrest. However, absent fraud, the ownership interests of the two ships must virtually be identical to establish the right to claim against a sister ship.

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

Subject to the exceptions described in 8, above, in the instance of both bareboat and time chartered vessels, and claims for necessities, the claimant bears the onus to prove that the charterer was acting as agent of the owner in order to advance a claim in rem. This is easier to establish with bareboat chartered vessels. As well, with respect to stevedoring services, it is deemed by domestic legislation that the creditor may arrest the ship for unpaid services incurred by a bareboat charterer, so long as the ship remains under charter to the bareboat charterer.

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

Countersecurity is not required for the arrest. However, if the plaintiff is a foreign entity without any assets in the jurisdiction, security for costs of the litigation, should that party lose the case and be ordered to pay costs to the defendant, is often ordered (if such an order is sought by the defendant).

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

The procedure is the same. However, if ownership of the ship has changed subsequent to the action in rem arising but before being arrested, the in rem liability of the ship is extinguished (subject to certain statutory exceptions).

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

Canada recognizes the traditional English maritime liens but is not a party to a Convention with respect to them. Canada also recognizes maritime liens for pilotage and if a foreign claim constitutes a maritime lien under the applicable foreign law, Canada will recognize the lien even though the same claim would not constitute a lien under Canadian law.

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

If we are provided with all the documents evidencing the debt or claim enabling the solicitor to swear the Affidavit to Lead Warrant, and the vessel is located in the port of Vancouver during normal business hours we can arrest in as little as 90 minutes. Otherwise, it can require up to 24 hours depending on the ship's location in Canada.

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

No, but to swear the Affidavit to Lead Warrant, we need written or oral advice from the claimant or his representative of the specific amount owing and the reason for the claim.

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

No original documents are required to arrest. Should the matter eventually proceed to a trial, original documents may then be required.

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

Subject to an application from the defendant on the basis of forum conveniens, the Court

will generally keep jurisdiction. If the Court agrees to stay the proceeding in favour of forum conveniens, it will generally require that the arrest security be transferred to that alternate jurisdiction so that the Plaintiff is not prejudiced. In the instance of an arbitration agreement, the court may order a stay to enforce the arbitration agreement, but again the arrest security should stand wherever the arbitration is taking place. For cargo claims, Canada exercises Hamburg Rules - style jurisdiction, subject again to arguments of forum conveniens.

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

The Court will generally enforce the time limitation provisions applicable to the transaction whether they be determined by Convention (i.e. Hague Visby Rules, Athens Convention), the contract or law of the location of the tort (in Canada, tort limitation generally ranges from 2 to 6 years, with 2 years being most common).

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

Canadian law on wrongful arrest follows that of the UK. Damages for wrongful arrest can be awarded only when the owner of the arrested ship proves that the action was commenced with malice or gross negligence.

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

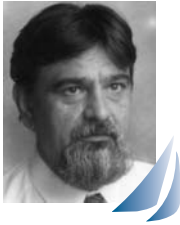
Canadian Courts will generally respect the corporate veil except in the instances of fraud.

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

The Court will consider sales pendente lite, especially if the ship is a deteriorating asset that the interested parties are not maintaining, and is likely to be sold in any event. The length of time to sell is largely determined by the degree of resistance from the ship interests. It can be done in as little as two months – the Court order must be obtained for the sale, the ship appraised, the sale advertised and bids accepted and Court approval of the specific sale granted.



SHIP ARREST IN CROATIA



By Miroslav Macesic
LAW OFFICES MACESIC & PARTNERS
macesic@macesic.hr
Pod kastelom 4,
51000 Rijeka, Croatia
Tel: +385 51 215 010
Fax: +385 51 215 030

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

According to Croatian law the arrest of ships is one of the “interim measures of security of a claim” that ensures future collection of the outstanding debt that is in dispute.

Apart from the arrest of ships other interim measures of security of a claim on ships are possible, but in practice are very rare.

The objective of the arrest of a ship is to make available to the creditor assets of the debtor for future enforcement. Therefore, arrested ships may be released if another security is given as replacement. The other security may be a monetary deposit, bank guarantee, P & I Club or other corporate letter of undertaking or other values that are available for enforcement if accepted by the creditor. If the creditor does not accept the offered security, the acceptability of the offered security will be decided by the court. Monetary deposits and bank guarantees are always accepted, while P&I Clubs/corporate letters of undertaking and other values on a case to case basis.

Because of various issues with international elements, and in particular the applicability of foreign laws, that are involved in the arrest of ships there are sometimes inconsistencies in the interpretation of the rules of law and in-court practice. However, such cases are exemptions, and it may be said that it is possible to obtain the arrest of a ship or obtain the release of an arrested ship in accordance with accepted international standards.

Croatia has adopted the continental legal system. It is a member-state of the Arrest Convention 1952. The Enforcement Act applies as a subsidiary source of rules of law, to the Maritime Code that regulates arrest of ship proceedings. There is a significant court practice and number of books and articles that deal with various relevant issues with regard to the arrest of ships.

Maritime Code applies. Maritime Code Amendments is few provisions slightly differ from the Convention.

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

NO, there is no other way to arrest a ship with the purpose of security of the claim.

According to the Paris Memorandum the Harbor Master Office Inspectors, exercising Port State Control authorities, can order the detention of a ship. The Custom authorities and the Criminal Court can hold the ship in temporary seizure for customs clearance or criminal proceedings purposes, but in practice very rarely and under very restricted terms.

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

NOT in the sense of these alternatives and as these alternatives are known internationally. However, the Maritime Code provides that every interim measure that would achieve the objective of security of a particular claim may be granted. In other words, subject to the

nature of the claim, various injunctions with regard to the ship are possible, but rare in practice.

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

A ship can be arrested for:

- maritime claims as provided by Art. 1 of the Convention; apart from bottomry and ownership claims, that are not provided in the Maritime Code, when Convention is not applicable,
- maritime liens as maritime privileges (separately provided in the Maritime Code),
- claims secured with mortgage, pledge or other similar registered encumbrances on the ship according to the laws of flag (separately provided in the Maritime Code).

For all other claims notwithstanding to the nature, if there is no reciprocity between Croatia and the state of flag.

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

YES, there are no limitations for the arrest of ships with regard to the flag of the ship.

The Flag of ship affects to the applicability of the Convention or the Maritime Code, the existence of maritime privileges and registered encumbrances. It also possibly affects some other underlining issues subject to particular matters.

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

For maritime privileges and registered encumbrances, yes.

For maritime claims depends.

The main principle, of the Maritime Code as regard to the relation of the debtor and the arrested ship, is that the arrested ship as an asset is the property of the debtor. The assets that are not the property of the debtor are not suitable to be the object of the enforcement. Consequently such ship is not suitable for arrest. In Croatia there is no "in rem" proceedings.

The Maritime Code since the Amendments of 2004 varies in relation to the respective provision to the Convention, and according to the 2004 Amendments it is not possible to arrest the ship irrespectively to the debtor. The debtor must be the registered owner of the ship.

In the case of the direct applicability of the Convention, the answer is yes, as it is provided in the Convention.

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

Sister ship and ship in associated ownerships may be arrested although in these cases the Maritime Code also slightly varies to the Convention.

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

According to the Maritime Code ships in Bareboat or Time Charter cannot be arrested, unless they are in the ownership of the debtor. In this regard the Maritime Code also varies from the Convention.

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

NO, the Courts do not require a counter-security in order to arrest a ship. However, the ship's interests may apply for counter-security in case of wrongful arrest as condition for maintenance of already ordered arrest. If the application is accepted and the counter-security is not placed within the ordered time period, the arrest will be lifted and the arrested ship released.

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

NO, from the procedural point of view there is no difference.

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

YES, Maritime Code defines maritime liens as maritime privileges. Provisions on maritime liens of the Maritime Code correspond to the International Convention on Maritime Liens and Mortgages, Geneva 1993.

Croatia has not ratified any convention relating to maritime liens.

However, since Maritime Code provides that a ship may be arrested for maritime liens and since according to the conflict of law rules the law of flag applies to maritime liens, a ship can be arrested for maritime liens.

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

In principal several hours are needed for the preparation of the application, translation of supporting documents by a licensed court interpreter (one is part of our office staff) and to file the application for arrest with the Court. The Court will check with the Harbor Master Office the expected time of sailing and will decide on the application urgently before sailing, if in pressure of time. Arrest matters are always considered urgent and in most cases the Court will decide within one or two days. The ship is arrested when the Harbor Master Office serves the Master with the arrest order and takes away the Ship's documents which remain in custody of Harbor Master Office during the arrest.

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

YES, the POA is a mandatory requirement of the arrest proceeding. For the arrest application a faxed or e-mailed copy is sufficient, while the original must be submitted to the Court within few days. No special form or legalization is required to grant a POA to an attorney at law.

The applicant must make the claim probable. Probability is a lower level of proof. The difference between a claim made probable and a proven claim is qualitative. Therefore it is recommendable that as stronger as possible evidences of the claim are provided.

The applicant should make probable that the ship in question can be arrested, usually meaning evidence of ownership. There is no need to submit an extract from the Ships' Register, but any other public or private document, including electronic data is sufficient.

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

No original documents are required, copies are sufficient, apart from the application for arrest that must be in original, as well as POA that must be submitted within reasonable time after the filing of the application.

Electronic filings with the Court are not possible for time being, but there are preparations in course and electronic filings with the Courts will be possible in the future. There are no documents that should be notarized or with apostille.

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

YES, unless there is agreed or exclusive jurisdiction of another country, or if no arbitration is agreed between the parties. In latter cases the courts will accept that the arrest is properly justified if the litigation or arbitration are initiated in other jurisdictions.

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

As a matter of law it is mandatory that the arrest is justified by initiating the proceeding in the merits within 15 days from the service of the Arrest Order, and notification of the Court. In case the applicant fails to undertake legal action within the time limit, on motion of the ship's interests the Court will set aside the Arrest Order and release arrested ship.

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

YES, the Courts acknowledge the wrongful arrest.

In case of a wrongful arrest the ship's interests are entitled to claim indemnity from the applicant who wrongfully arrested the ship. The claim for indemnity should be placed in the same arrest proceedings if it is still in course. If the arrest proceedings is terminated the claim should be placed in a separate litigation proceedings.

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

Piercing (lifting) of the corporate veil is known to domestic law, however there is not sufficient and proper court practice that acknowledges this institute.

The same is in arrest matters. There have been very few cases with regard to the piercing of corporate veil. However, it may be expected that in future there will be more cases that will clarify this institute and the terms of applicability.

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

Maritime Code has no provisions on pendente lite sale.

Enforcement Act, that is subsidiary source of law in arrest of ships proceedings, provides pendente lite in certain circumstances that might be applied also in the case of arrested ships. It may be said that there a legislative frame for pendente lite sale exists. It is also an issue that will be clarified in future.



SHIP ARREST IN CHINA



By Weidong Chen
LC & Co.
weidong.chen@lclaw.cn
www.lclaw.cn

Suite 802A, Building B, Jinying Mansion,
1518 Minsheng Road, Shanghai 200135
Tel: +86 21 6104 2958
Fax: +86 21 6104 2959

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

China is one of the major maritime jurisdictions in the world. It is certainly not a ship arrest haven, but it is a convenient place to arrest a ship at reasonable costs and relatively rapid speed.

A ship can be arrested either for the enforcement of a judgment or arbitral award, or far more frequently, for obtaining security for a maritime claim. The application can be made either before an action on merits has been commenced or thereafter. A Chinese maritime court has jurisdiction to arrest a ship which is located within its jurisdiction even if the parties have agreed to refer the substantive claim to a foreign court or arbitral tribunal. The law governing the arrest of ships is mainly the Maritime Procedure Law, 2000 ("MPL").

According to the MPL, to obtain an arrest order, the claimant shall file with the relevant maritime court a written application together with supporting documents and a prima facie maritime claim has to be made out. More importantly, counter security will usually be required. It can be cash deposit, or guarantees issued by local banks or insurance companies.

The amount of the counter security is at the discretion of the court but is normally no more than 30 days hire of the ship to be arrested.

The courts will immediately release the ship when security is posed by the respondent which can likewise be in cash deposit or guarantees issued by local banks or insurance companies or in other forms acceptable to the claimant.

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

China is not a party to the 1952 or 1999 Arrest Convention. However, Chinese law on the arrest of ships is generally in line with the provisions of the 1999 Arrest Convention.

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

A ship may also be arrested for a non-maritime claim, however, such an arrest will be granted only after the claimant has obtained a final and enforceable judgment or arbitral award. Furthermore, although the application for arrest may be filed with an ordinary court, the arrest shall normally be executed through a maritime court (or its superior court in appropriate cases).

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

Arrest of a ship is a special type of property preservation measures. Other measures include the attachment of other properties (tangible or intangible) and the freezing of bank accounts etc. These measures can be applied for alternatively or in addition to the arrest of a ship if the value of the ship to be arrested is insufficient to secure the claim.

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

The MPL lists 22 types of maritime claims which are qualified for arrest of a ship. These 22 types of claims correspond almost identically to the 22 categories of maritime claims defined in Article 1.1 of the 1999 Arrest Convention as to which arrest of ship is permissible. This list has probably included almost all kinds of maritime claims that may be encountered in real life.

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

Yes. What flag a ship flies is immaterial and as long as the relevant conditions for arrest are met the ship can be arrested.

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

Basically, a ship can only be arrested if her owner is the debtor of a maritime claim. There are essentially two exceptions:

The first is related to the arrest of a ship under a bareboat charter — such a ship can be arrested if the bareboat charterer of the ship is liable for the maritime claim and is the bareboat charterer of the ship when the arrest is effected.

The second exception is related to maritime liens. In respect of claims which enjoy maritime liens, e.g. claims for crew wages, port charges, salvage, loss of life or personal injury or other claims in tort (e.g. loss of or damage to property arising from a ship collision), the ship which gave rise to the maritime liens can be arrested even if she has changed hands (i.e. in the hands of an innocent party).

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

Sister ships can be arrested. A “sister ship” means any ship (other than the particular ship giving rise to the maritime claim) which is owned by the ship-owner, bareboat charterer, time charterer or voyage charterer who is liable for the maritime claim. However, the arrest of sister ships is not available to claims with respect to ownership or possession of a ship. The arrest of associated ships is not allowed, unless in the very extraordinary cases where the court is prepared to pierce the corporate veil and to find that the relevant companies have lost their separate corporate personalities (i.e. they are in effect one entity).

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

As to ships under bareboat charters, please see the comments under Question 7. Time chartered ships are normally not subject to arrest.

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

The MPL provides that the courts may request the claimant to provide counter security for the arrest application. In practical terms, however, the courts almost invariably require a proper counter security to be submitted for the application (counter security may be dispensed with in some exceptional cases, e.g. in claims for crew wages or loss of life/personal injury).

The acceptable forms of counter security include cash deposit, guarantees issued by first class local banks (including local branches of foreign banks) or letters of undertaking issued by first class local insurance companies. Letters of undertakings of a P&I club (other than China P&I Club) will normally not be accepted.

The amount of counter security is at the discretion of the courts. The MPL provides that the amount shall be such as to secure the possible loss that may be caused by a wrongful application for arrest. In practice, the courts will normally require a sum up to 30 days hire of the ship to be arrested.

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

The procedures for arresting a ship for an ordinary maritime claim and for a claim which enjoys maritime lien are identical. One point to note is that the right of maritime lien must be exercised within one year counting from the date when that right arose. This time limit is not subject to interruption or suspension. There is no such restriction with regard to arrest for ordinary maritime claims (provided the arrest is filed within the time bar of the claim).

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

Chinese law recognise maritime liens. The provisions regarding maritime liens are contained

in the MPL which are similar to those stipulated in the International Convention on Maritime Liens and Mortgages, 1993.

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

Depending on the volume of documents involved for the purpose of understanding the merits and drafting the application for arrest, the time required for preparing the arrest documentation would vary. In normal circumstances, it will take less than a day to complete the documentation work (including translation of the supporting documents which are in foreign languages). How quickly the arrest order can be obtained will largely depend on how soon the claimant can prepare the counter security that may be required by the court.

Depending on the circumstances of each case, sometimes it may only take several hours but sometimes it will take days to obtain an arrest order.

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

POA is required for the arrest application. Due to the urgency normally involved in a ship arrest, the courts will usually not insist on the submission of original copies of the POA or its notarisation and legalisation (apostille) at the time of application. However, the courts will normally require them to be submitted within a time limit thereafter, e.g. within 2 months of the arrest.

An original copy of the application for arrest is usually required. This document will be drafted by lawyers based on the documents received and it usually need be executed by the claimant. Documentary evidence in support of the claim shall also be submitted. Original copies are not normally required for the arrest. Nor is it usually required to have them notarised or legalised for the purpose of the arrest application.

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

As discussed under Question 14, an original copy of the application for arrest would usually be required. In addition, if the counter security is issued in the form of a bank guarantee of letter of undertaking, the original copy is also required. Otherwise, photocopies are normally acceptable. So far, no electronic filing is acceptable to the courts. As for the notarisation and apostille, please see the comments under Question 14.

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

Yes. The maritime court which has arrested the ship will accept jurisdiction over the substantive claim unless there is a valid jurisdiction or arbitration agreement between the parties to the contrary.

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

If a ship is arrested before the legal action on the substantive claim is commenced, the legal action shall be commenced within 30 days of the arrest or else the court will release the ship or return the security which has been posed by the respondent to release the ship. The above time limit may be inapplicable where the claimant and respondent have subsequently agreed to discuss settlement or they have agreed upon the duration of the security posed for the release of the ship (It is however unclear whether and how the latter rule will apply to a security provided by a third party, e.g. an letter of undertaking issued by a P&I club).

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

Yes, but the test for wrongful arrest has not been clearly laid down in the law or judicial practice. If the arrest is found wrongful, the claimant will be ordered to compensate the respondent for the losses it has suffered, including loss of earning, expenses for maintaining the ship under arrest and costs for posing security, etc.

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

Piercing corporate veil is a principle recognised by Chinese law but it is rare in practice, the main reason being that the burden of proof is hard to discharge, e.g. one of the main factors to be considered is whether the relevant parties have commingled assets and the evidence in this regard can be difficult to collect.

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

When a ship has been kept under arrest for over 30 days (during which the respondent has failed to provide security to release her) and if it is not appropriate to allow the arrest to continue, e.g. because the maintenance expenses are to exceed the value of the ship, the court may at the request of the parties concerned order to sell the ship by means of auction. Another condition to the application for sale of the ship is that the parties shall first have commenced the legal action on the substantive claim at a competent court or arbitration tribunal. The time frame within which a court sale can be completed depends on the circumstances of each case; normally, it will take several months to complete such a sale.



SHIP ARREST IN DENMARK



By Henrik Kleis

DELACOUR

hk@delacour.dk

www.delacour.dk

Lille Torv 6

DK-8000 Aarhus C, Denmark

Tel: +45 7011 1122

Fax: +457011 1133

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

Arrest of vessels 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 in a port or otherwise prevented from operating. 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. Are these alternatives e.g. saisie conservatoire or freezing order?

No. The only alternative is an arrest according to the Danish Administration of Justice Act which the courts only grant in rare circumstances.

5. 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.

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

Yes.

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

Contrary to the Arrest Convention and the laws of some other countries, arrest in Denmark requires that execution of the claim can be levied against the owner of the vessel, meaning that the registered owner of the vessel must be liable for the claim/the debtor of 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.

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

Sister ship arrest is possible, i.e. vessels that are owned by the same legal entity. Arrest of vessels in associated ownership is not possible as the vessel is not owned by the same legal entities.

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

Arrest of a vessel under a bareboat or time charter party is not possible as the registered owner is not liable for the claim/the debtor of claim. Only in case the owner is found to be the debtor of the claim an arrest is possible.

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

The bailiff's 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.

11. 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.

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

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

13. 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.

14. 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.

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

None. If the opponent questions the authenticity of the documents it may be required to

provide the original documents.

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

Yes, unless the dispute is subject to a arbitration or foreign jurisdiction/venue; this might be the situation if an arbitration or jurisdiction clause is agreed upon in a contract between the parties. If arbitration or a foreign jurisdiction has been agreed, the court will postpone the confirmatory proceedings until a decision regarding the merits of the claim is made by the foreign court or Arbitration Tribunal.

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

7 days.

18. 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.

19. Do the Courts of your country acknowledge the piercing and lifting 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.

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

No. The vessel may only be sold by a forced auction at the bailiff's court. The forced auction procedure can be commenced when the court has rendered its decision in the confirmatory proceedings, i.e. approved the claimants claim. The forced auction procedure often takes up to ½ year, even longer for vessels with foreign owners due to service of court documents abroad.



SHIP ARREST IN ENGLAND & WALES (Questions 1 to 9)

By Lewis Moore & Tony Swinnerton
SWINNERTON MOORE LLP
lewis@swinmoore.com
www.swinmoore.com
Cannongate House, 64 Cannon Street
London EC4N 6AE
Tel +44 (0) 207 236 7111
Tel +44 (0) 207 236 1222

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

Ship arrest in England is relatively straightforward and it involves lodging an application and supporting witness statements with the Admiralty Marshall and it does not involve any hearing. The Court fee is presently some £1,750 and the arresting party must give a personal undertaking to pay the fees of the Admiralty Marshall but these can be recovered when the ship is sold because the Admiralty Marshall's costs and expenses are a first priority of the claims against the proceeds of sale of the vessel.

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

The UK is a party to the Convention Relating to the Arrest of Seagoing Ships, Brussels, 1952, which is in broad terms applicable in the U.K.

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

No

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

It might be possible to arrest by seeking an injunction but this is more difficult and more expensive than an arrest.

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

Section 20(2) of the Supreme Court Act 1981 lists 19 types of maritime claim within the admiralty jurisdiction of the High Court and in respect of which a vessel may be arrested. These include claims relating to the possession or ownership of, or mortgage on, a ship, claims for damage done by or to a ship, claims for loss of life or personal injury due to a defect in a ship, claims for loss of or damage to goods carried on a ship, other claims relating to the carriage of goods on a ship, claims relating to the use or hire of a ship, claims for salvage, towage and pilotage, claims for goods and materials supplied to a ship, claims in respect of the construction or repair of a ship, claims by the master or crew for wages, claims arising out of a general average act, and claims arising out of bottomry and collisions. Notable exceptions to this list, i.e. where arrest is not possible, include claims for insurance premiums and claims for legal costs.

English law treats both English and foreign flag vessels equally and it does not distinguish between "convention" and "non-Convention" vessels either.

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

Yes

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

Yes

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

It is possible to arrest sister ships but not associated ships. Sister ships are vessels that at the time when action is brought are owned by the same person who was the owner of the ship in connection with which the claim arises at the time when the cause of action arose.

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

Bareboat yes; Time-Chartered no.



SHIP ARREST IN ENGLAND & WALES (Questions 10 to 20)



By Russell Kelly
LA MARINE, LESTER ALDRIDGE SOLICITORS
LA-Marine@LA-law.com
www.la-marine.co.uk
Alley House, Carlton Crescent
SO15 2EU Southampton, United Kingdom
Tel: +44 (0) 2380 820415
Fax: +44 (0) 2380 820410

10. Is counter-security required in order to arrest a ship?

No. All that is required is an undertaking by the solicitor instructed to make the arrest to pay the Admiralty Marshal's reasonable costs in serving the arrest warrant. However, it may be necessary to pay expenses incurred as result of the ship being detained, including for example berthing charges throughout the period of arrest. These can be added to the claim and be recovered out of the proceeds of sale if the matter proceeds to that stage.

11. Is there any difference between an arrest for a maritime claim and an arrest for a maritime lien?

Maritime claims are dependant upon the ownership of the ship. The ship can only be arrested provided that the party who was the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to issue a claim and to arrest the ship despite a change of ownership. The procedure for arrest is the same however.

12. Does your county recognise maritime liens?

Yes, but only in respect of claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia - which are claims in which the ship is pledged as security in return for monetary advances and usually during times of distress and are uncommon today as a result of modern mortgage agreements.

13. What period of time is required in order to arrest a ship following receipt of instructions by your law firm?

Subject to the receipt of all documentation relevant to the claim, the application to the court can take place within a matter of hours. The actual arrest will be dependent on the availability of local court marshals and bailiffs in the area that the ship is located but should be effected within 24 hours of the warrant being issued.

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

A Power of Attorney is not required in order to arrest a ship. Documents in support of the claim should be filed with the claim form, together with details of the ship's location and port of registration. Prior to the arrest, the arrestor should determine whether there is a caution against arrest in force against the ship in question.

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

All original court documents (the warrant of arrest and a claim form) must be filed with the court before the arrest. The warrant of arrest must be accompanied by an admiralty claim form detailing the particulars of the claim, together with a signed declaration to confirm the ownership of the ship, the level of security sought and confirmation that the claim has not been satisfied. A signed undertaking from the solicitor must also be submitted to cover the Admiralty Marshal's expenses in serving the arrest and claim form.

At present, no documents can be filed electronically. Certification or apostille by a Notary is not required although if supporting documents need translating then the translations should be certified by a Notary.

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

This will depend on the circumstances. If the claim arises out of a contract which contains an exclusive foreign jurisdiction clause it may be the case that the proceedings are stayed in favour of the relevant foreign court. However, for most other claims the Court will usually accept jurisdiction.

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

The claim form must be issued at the same time as the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced. The defendant has 14 days to acknowledge service and a further 14 days to file a defence if settlement is not concluded immediately.

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

Yes, but damages will only be recoverable if the defendant can show that the arrest was made in bad faith or with gross negligence.

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

The courts will be prepared to accept the piercing and lifting of the corporate veil in very limited circumstances. Usually there must be an element of improper conduct with intent to defraud. The use of the corporate structure must have been established to evade liabilities imposed by the law.

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

Yes, but the court will only make an order for sale if there is good reason to do so. The fact that the costs of maintaining the arrest may exceed the value of the claim and therefore diminish or extinguish the value of the claimant's security may be deemed to be sufficient grounds for a sale pendente lite.



SHIP ARREST IN FINLAND



By Ulla von Weissenberg
BORENIUS & KEMPPINEN LTD
ulla.weissenberg@borenius.com
www.borenius.com

Yrjönkatu 13 A, FIN-00120 Helsinki, Finland
Tel: +358 9 6153 3460
Fax: +358 9 6153 3499

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, incorporated in the Finnish Maritime Code of 1994 (Chapter 4). However, Chapter 4 of the Maritime Code is not applicable if the applicant is domiciled in Finland and the vessel in question is registered in the Finnish Register of Ships or if the claim is of a public nature.

The existence of a maritime claim in itself is not a sufficient ground for an arrest. It is only possible to arrest a vessel in Finland if the material claim as such can be enforced against the vessel in Finland. Therefore, the vessel must be owned by the defendant or the claim should be secured by a maritime lien on the vessel. When arresting a vessel in Finland the applicant must provide security to cover the costs of an unjustified arrest.

An arrest is effected in two separate phases. Firstly, the applicant must obtain a court order for the arrest and thereafter apply for the actual enforcement of the order from the executive authorities. To maintain an enforced arrest in force, the applicant must commence legal proceedings against the defendant to obtain an enforceable judgment within 1 month from the date when the arrest was granted.

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. If the claim of the arresting party is already pending before Finnish Maritime Court, the arrest application will be tried in this court.

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 of 1952 ("the Arrest Convention").

Finland has also on 31 August 2000 signed the International Convention on the Arrest of Ships of 1999 but the Convention has not yet been ratified.

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 a public nature (e.g. tax, public fee), the provisions of the Maritime Code concerning arrest do not apply. In these cases the general rules on distraint incorporated in the Finnish Procedural Code, Chapter 7 apply.

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

When enforcing an arrest order the vessel is in principle taken in to the custody of a Bailiff but due to the nature of the arrested property, this is not possible in practice. Instead, the Bailiff takes possession of all the vessel's necessary documents e.g. nationality certificate in order to prevent the vessel from leaving port. The vessel can also be chained to the key or prevented from refuelling. The Bailiff can also give notice of arrest and request executive assistance from e.g. the Coast Guard, the pilots, the Customs or the port authority to ensure the vessel remains under arrest. Required means are evaluated and used case-specifically.

5. 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. However, if the applicant of the arrest is domiciled or has its principal place of business in Finland and the vessel is Finnish or if the claim is of public nature, the provisions set forth in the Convention do not apply. 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 or an arbitral award enforceable in Finland; and
- (ii) the existence of a threat that the defendant will hide, destroy or dispose of his property or otherwise endangers the applicant's claim

6. Can you arrest a ship irrespective 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. 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.

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

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. When ratifying the Arrest Convention Finland limited the possibility to arrest vessels owned by someone who is not liable for the claim of the applicant. Only when a claim is secured by a maritime lien on a vessel such vessel can be arrested irrespective of who the debtor is.

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

As stated in question 7 a fundamental principle under Finnish law is that in order to secure a claim it is only possible to arrest property owned by the defendant. Therefore a sister ship can be arrested if both vessels were owned by the same defendant at the time when the maritime claim arose. The same does not apply to ships in associated ownership. However, according to the Maritime Code arrest of a sister ship is not possible if the underlying maritime claim is based on a dispute of ownership of a vessel or a dispute of ownership, possession or operation of or earnings from the vessels between co-owners of a vessel.

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

It will not be possible to arrest bare-boat or time-chartered vessels if the charterer is solely liable for the claim.

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

An arrest order given by a court is enforced by the 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. 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 and in practice both limited and unlimited securities have been required. Generally only security given by a Finnish bank is accepted.

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. The authorities are not obliged to provide a security.

11. 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. The main principle is that a ship can only be arrested if the claim is a maritime claim and the vessel owned by the debtor. 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. Further, if the applicant of an arrest has a maritime lien to secure his claim, to obtain an arrest order 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.

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

Finland recognises maritime liens. The claims secured by a maritime lien are listed in the Maritime Code, Chapter 3 which corresponds to the list in the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967. However, Finland has signed the Convention but it has not been ratified.

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.

Certain claims are secured by a maritime lien on the cargo which is loaded on board the vessel but the scope of claims is more limited.

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

Generally, the application for an arrest must be served on the defendant and the defendant be given an opportunity to file a defence before the arrest order is finally given. As this procedure often endangers the purpose of the arrest it is possible to obtain an interlocutory order which 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 and enforced provided that the required security is available.

14. 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. An advocate (member of the Finnish Bar) does not need to present a POA in the court.

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 (e.g about the ownership), particulars of the amount of the claim with supporting documentation, a brief account of the grounds of the claim and an explanation why the arrest is considered to be necessary by the applicant.

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

A written application with supporting documents must be filed with the Maritime Court in order to obtain an arrest.

The claimant must produce prima facie evidence supporting his claim or right. Therefore a mere allegation will usually not suffice. The Maritime Courts will evaluate at their own discretion the strength of the presented evidence. If the applicant wants to invoke the benefit of a maritime lien, he must produce evidence of the existence of such lien. Normally an extract from the ship's register or a corresponding document as evidence of the ownership of the vessel is required. Also particulars of the parties and the vessel to be arrested as well as particulars of the amount of the claim can be attached. The attached documents are not required to be original. Neither notarization and nor apostille of a document are normally required.

According to the Finnish law parties are in principle allowed to deliver documents electronically

to the authorities to the extent the authority has necessary technical, financial and other resources to receive them. If the document is required to be signed, the requirements of an electronic signature as stated in the relevant act must be met. However, if the document includes information about the sender and there is no uncertainty about the originality or integrity of the document, the electronic document can be delivered unsigned to the authorities.

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

According to the Maritime Code, Chapter 21, a court competent to try an action in civil litigation 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 present. If security has been lodged with an authority for release from arrest, an action can be brought before the Maritime Court where the security was lodged. The same applies even if the security has lapsed.

In addition an action for damages concerning a contract of carriage of general cargo can be brought before a Maritime Court competent for a place where the vessel was arrested.

17. Which period of time will be granted by the Courts in order for the claimants to take legal action 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 final arrest order is granted. When the court decides on the principal claim, it must also decide on how long the arrest order is in force.

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

Under Finnish law the applicant's liability for an 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 e.g. if the applicant for any reason fails to obtain a judgement to establish his claim or if the claim is rejected.

19. Do the Courts of your country acknowledge the piercing and lifting 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. Therefore it is not normally possible to arrest property of owner's associated with the debtor. The only exceptions are partnerships, since the general partners are personally liable for the debts of the company.

However, according to the Enforcement Code property formally owned by a third party can be attached to secure a claim on condition that the ownership is based on formal arrangements which do not correspond to the actual nature of the transaction and aim at avoiding enforcement. A further condition is that the applicant's claim cannot be otherwise recovered from the debtor within a reasonable time.

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

The main principle under Finnish law is that it is not possible to sell the ship *pendente lite*. According to the Finnish Enforcement Code, if property which is subject to rapid deterioration or which is expensive to retain in custody has been arrested but the court has not yet given a judgment, the Bailiff is entitled to sell such property at the request of the claimant. In theory these principles may apply also to vessels under arrest.



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”, such concept including a company which shares are 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. Are these alternatives e.g. saisie conservatoire or freezing order?

As a matter of principle, a freezing injunction may be issued under the provisions of the Code of Civil Procedure, in case of urgency whenever the claim is not seriously disputable, otherwise when it aims at preventing an imminent damage or at stopping a disturbance obviously illegal. In practice, it is rarely ordered against a ship.

5. 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 petitioner 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.

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

Yes. All ships calling at a French port may be arrested – save warships and state-owned employed in a public non-commercial service or ships proven to be necessary for the personal exercise of a professional activity (eg. fishing boats).

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

Subject to the situations described below, French judges have regularly dismissed any petition for the arrest of a ship not owned by the debtor.

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

Under French law, any ship belonging to the debtor may be arrested even where the claim is not related directly to the ship. The Brussels Convention permits such arrest provided the claim is not in connection with the title to or ownership of a particular ship or with disputes between co-owners or the mortgage or hypothecation of this ship.

A ship owned by an associated company of the debtor may be arrested only if the company is proven to be fictitious (see parag.19 below).

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

Under the Brussels Convention, the holder of a maritime claim against the bareboat or time charterer of a ship is entitled to arrest the said ship or any other ship in the ownership of the charterer. The French domestic regime allows such arrest only if the claimant has a maritime lien on the ship or has reasonable grounds to believe that the underlying obligation was concluded on behalf of the actual owner of the ship.

10. 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 have the discretion to decide otherwise.

11. 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).

12. Does your 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.")

13. 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.

14. 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. When the petition is grounded on the Brussels Convention, the documents must also show the maritime character of the claim. When the petition is grounded on the domestic regime, the claimant must also produce documents proving the financial insolvency of the debtor.

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

In practice, no original or notarized documents are required. The documents supporting the petition must be handed to the ruling judge.

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

French judges may not rule on the merits of the claim, on the ground that the ship was arrested within their area of jurisdiction (Forum Arresti).

The criteria and conditions set under the international rules of conflict, as per the applicable International Conventions and EC Regulations, must be met.

17. 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 held null and void.

18. 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 clearly established.

19. 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, want of employees, concurrency of assets and/or debts, unity of management, lack of participation to the profits and/or debts of the company, unequal distribution of the dividends, existence of a subordination bond between the existing entities, etc.

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

Yes. The judiciary sale of the arrested ship is possible when the petitioner holds an enforceable deed. In practice, the procedure of judiciary sale lasts between one and two months.



SHIP ARREST IN GERMANY



By Thomas Wanckel
SEGELKEN & SUCHOPAR
wanckel@sesu.de
www.sesu.de

Baumwall 7, Überseehaus
D-20459 Hamburg, Germany
Tel: 0049/40/3768050
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 practice 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.

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

NO

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

NO

5. 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”

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

An arrest may be applied for irrespectively of the flag, but as already said an arrest against a ship flying the German flag will hardly be granted, as a judgement may be executed in Germany against all assets of the shipowners and therefore there is no “Arrestgrund”.

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

As already said an arrest will only be granted if the shipowner is the debtor of the claim. Please note in Germany the IoC (=Identity of Carrier)-Clause is held not valid!

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

Yes. Provided that sister ship is owned by the person/company against the claim is made.

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

If a claim is not based on a maritime lien the vessel may not be arrested for claims against bareboat-charterers and/or time-charterers as it does not affect the owner of the vessel. However, if the property of the charterer is concerned – i.e. bunkers – that property may be arrested.

10. 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.

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

Yes, for a maritime lien the vessel may be arrested irrespective of the owner, while for a maritime claim the debtor must be the owner.

12. Does your country recognise maritime liens? 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.

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

That very much depends on how fast the creditor may arrange for a possible counter-security. If all documents are at hand in the morning an arrest may be done in a day.

The time limits are then as follows: The 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.

14. 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.

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

No special documents are required and thus no originals are needed. In Germany very few courts accept an electronically filed motion, but only by fax. No notarisation, no Apostille.

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

German Courts generally accept jurisdiction clauses; only for claims under the 1952 Arrestconvention the arrest may lead to jurisdiction.

17. Which period of time will be granted by the Courts in order for the claimants to take legal action 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 month. If the applicants fail to comply with this order the arrest will be lifted.

18. 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.

19. Do the Courts of your country acknowledge the piercing and lifting 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.

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

During pending proceedings the owners are not entitled to sell their vessel.



SHIP ARREST IN GHANA



By L. Fubara Anga Esq.
AELEX LEGAL PRACTITIONERS & ARBITRATORS
lfanga@aelex.com
www.aelex.com

Casa Maria 22, Angola Road P.M.B. CT72,
Cantonments Accra, Ghana
Tel: (+233) - 21 - 783616 – 8
Fax: (+233) - 21 - 770493

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

Jurisdiction in respect of admiralty matters is vested in the High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court. Order 2 of the High Court (Civil Procedure) Rules 2004 (C.I. 47) provides that all civil proceedings must be commenced by Writ of Summons and must be filed along 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.

Order 62 of C.I. 47 generally makes provision for maritime actions. At the time of issuing a Writ of Summons, the Plaintiff files an Ex parte application for an order for a warrant of the arrest of the ship. 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 and the name and nature of the property to be arrested;

(b) In an action for wages or possession, the affidavit shall state the national character of the ship 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 for 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 transaction 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 issuance 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 within 24 hours. 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 the Order is also served on the Harbour Master, the Port Authorities and Customs Excise and Prevention 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.

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

Ghana has not acceded to the Arrest Conventions.

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

There is no other way to arrest a ship, other than as stated in (1) above.

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

No. Arrests can only be effected pursuant to an action in rem brought against a ship or a sister ship..

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

There is no law or rule of procedure that specifically defines what maritime claims are. The position is that where the C.I. 47 does not make specific provision for the rule of procedure in a matter, resort can be had to the practice and procedure applicable in any common law jurisdiction.

Without prejudice to the above, Section 446 of the Ghana Shipping Act, 2003 (Act 645) provides a definition of maritime actions in rem. It states that in any case in which an action may be brought against a ship other than actions arising from claims to the possession or ownership of a share in it, or a claim in respect of a mortgage or charge on a ship or a share, where the person who would be liable on the claim in an action in personam, when the cause of action arose, was the owner or charterer of, or in possession or in control of the ship, the admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against: (a) that ship, if at the time when the action is brought, the ship is beneficially owned in respect of the shares by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as under paragraph (a);

but in determining whether a person would be liable on a claim in an action in personam, it shall be assumed that the habitual residence or a place of business of that person is within Ghana.

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

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

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

No. The claim must be enforceable in personam against the owner of the ship or the demise charterer.

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

It is possible to arrest sister ships, but not associated ships.

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

An action in rem can be brought against a bareboat vessel, but not against a time-chartered vessel.

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

Counter-security is not required for an arrest. All that is required is an undertaking by the applicant or its Solicitor to pay the Admiralty Marshal's costs in serving the arrest warrant. However, if the applicant is a foreign entity without assets in the jurisdiction, security for costs of the litigation is often ordered, upon the application of the Defendant.

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

No, the procedure is the same.

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

Ghana recognises maritime liens under Section 66 of Act 645, but she is not a party to any Convention with respect to them.

According to Section 66 of Act 645, any of the following claims against an owner, demise charterer, manager or operator of a vessel shall be secured by a maritime lien on the vessel:

- (a) claims for wages and any other sums due to the master, officers and the 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 water, in direct connection with the operation of the vessel;
- (c) claims for reward for salvage of the vessel;
- (d) claims for ports, canal and other waterway dues and pilotage dues;
- (e) claims based on tort arising out of physical loss or damage caused by the operations of the vessels other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

13. 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.

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

There is no requirement of a POA, however copies of all relevant documents supporting the claim will have to be provided to the Court.

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

Original and hard copies of all the documents are required, but they do not have to be notarized. Documents cannot be filed electronically.

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

Yes. Ghanaian courts will accept jurisdiction over the substantive claim once a ship has been arrested within Ghanaian territorial waters.

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

The Plaintiff (arresting party) must file a statement of claim at the time of filing the ex parte motion for a warrant of arrest. As a result, the claim documents are usually served along with the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced.

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

Yes. Costs, damages, demurrage and expenses will be recoverable if the defendant can show that the arrest was made unreasonably and in bad faith.

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

Ghanaian courts may be prepared to pierce and lift the corporate veil under certain limited circumstances, for example in the instances of fraud.

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

Order 62 rule 16 of C.I. 47 makes it possible for a ship to be sold pendent lite. The process of sale can take about two months, after the applicant has obtained the sale order and the appraisal of the ship by the Admiralty Marshal.



SHIP ARREST IN GREECE

By Christos Th. Vardikos
VARDIKOS & VARDIKOS
vardikos@hellasnet.gr
www.vardikos.com
Mavromichali street 3,
GR 106 79 Athens, Greece
Tel: + 30 210 3611505
Fax: + 30 210 3617848

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

The Greek legal system provides basically for two types of seizure of the assets of a debtor, serving two different purposes, i.e. the provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire) and the executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

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

As regards vessels, Greece has ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships (10.05.1952) which was implemented in Greece by Legislative Decree 4570/1966(the "Convention").

One-member district courts enjoy general subject matter competence for provisional remedies. An arrest may be ordered by Court judgment only, issued following summary proceedings initiated by the filing of the Claimants' Petition. In circumstances of urgency, ex parte proceedings may be conducted should the requested measures seek to secure a substantive right and the indebtedness of the debtor is ostensible.

The sole oral hearing is based on a flexible procedural framework. This refers to both the authority of the judge for relying on facts not submitted by the parties and the free admissibility of any available means of proof. Evidence must be brought during this hearing. The decision to issue a provisional remedy, or to reject an application, is a judicial decision and may not be attacked by any methods of review.

According to Article 692/4 of the Code of Civil Procedure, provisional remedies must not lead to the full satisfaction of the substantive right which they seek to secure or preserve. An arrest judgment may be given provided that Petitioners would be able to show to the satisfaction of the Court, a prima facie founded and valid claim against the vessels' owners and the occurrence of a situation of urgency or of imminent danger justifying the necessity for granting the requested arrest.

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

A. Under the Private Maritime Law Code

- I. The transfer of ownership in lieu of security (fiduciary transfer of ownership).
- II. Hypothecation of the ship.

B. The Ship Mortgage (preferred Mortgage under Legal Decree 3899/1958

C. The Preferred Mortgage under the Legal Decree 2687/1953.

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

a. provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire), by any party alleging to have a claim against the owners of a specific vessel may apply for her arrest as Petitioner.

Interim Restraining Order: It is a standard practice that the Petition also contains a request for an Interim Order for the temporary prohibition of the vessel's sailing. If the ship under arrest is flying the Greek flag the Interim Order not only prohibits the vessel's sailing but also prohibits any change to her legal status.

The Interim Restraining Order is valid until the hearing date and subject to extension, on Petitioner's request, until the issuance of the judgment on the arrest. Petition, An Interim Order or an arrest Judgment become effective as from their notification, by way of service of an official copy thereof upon Respondents as well as upon the competent Port Authorities for entry into the appropriate Books kept by them. The main effect of the enforcement is the prevention of the vessel's sailing. Furthermore and to the extent Greek law would apply, any disposal of the arrested vessel is forbidden and if effected in breach of such prohibition, will be nul and void towards the arrestor and for the amount for which the arrest was ordered; disposal is likewise nul and void towards third parties as well, if effected after the entry of the arrest Order or Judgment into the Arrest Book of the Port of the ship's Registry.

An arrest effected as aforesaid is provisionally valid i.e. until a final judgment on the merits is issued against the arrestor or a like judgment, issued in the arrestor's favor, has been enforced.

b. executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

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

Arrest can be sought for claims of any type and nature, be it conditional or subject to time terms, but where the Convention applies, an arrest cannot be ordered for claims other than maritime as defined in Art. 1.1 of the Convention.

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

Arrest of ships is subject to the regime of the Convention where the latter is applicable i.e. to vessels flying the flag of another contracting State calling at a Greek port and for maritime claims only as the latter are defined by the Convention, otherwise, the general provisions of domestic law shall apply.- In both cases the procedure to follow is identical.

As regards Greek flag vessels their arrest can be sought and ordered even if they are not physically present within the jurisdiction of the Court with which the Petition is filed. The respective arrest judgment, being served as aforementioned, will cause the legal prohibition of any disposal of the vessel; the vessel's physical arrest may be then effected at any time within the jurisdiction of any Greek Court by virtue of the same judgment. Furthermore and insofar as Greek law is applicable, in case the ownership of the vessel has been transferred by the original debtor, arrest of the same vessel may be sought and possibly ordered against her new owner.

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

Actions in rem against the vessel only are not provided for by Greek law. Therefore, the Petition should be filed anyway against her registered owners, even in case the main liability for the claim lies on third parties such as the vessel's operators and possibly other parties having control over the vessel.

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

Under Greek law two ships are regarded as sister-ships if owned by the same person (or body corporate) and sister-ship arrests may be effected in Greece in limited circumstances.

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

The Court has the power to order Petitioners to provide counter security by way of Bank guarantee; however in practice such counter security is rarely ordered, although frequently demanded by Respondents.

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

Greece did not ratify the 1926 Convention. The Greek Code of Private Maritime Law however (Arts.205-209) has been influenced up to a point by that convention. Further, the administrative acts by which ships are capitals as foreign registered (those ships form the bulk of the Greek merchant fleet) stated that the maritime liens, included in Art.205 para. 1 of the Code of Private Maritime Law take priority over a preferred maritime mortgage. The Supreme Court of Greece (Areios Pagos) in its decisions (913/1975, 229/1983 (plenary) and 1055/1983) held that Art.2 of the 1926 Convention cited by the acts above was to be dealt with as a fact. Thus, the party to the proceedings asserting such a maritime lien had also to prove the existence and the content of the maritime liens which took priority over a preferred mortgage.

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

Upon receipt of instructions we may act all over Greece (through our network of associated offices) within the same day.

Court and related costs are in the region of Euro 250-300 including Bailiff's charges for the required notifications.

The respective lawyer's charges depend much on the urgency factor, the complexity of the issues involved, the work done and the time spent in initiating and conducting the arrest proceedings.

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

Attorneys are presumed to have the authority to act therefore the presentation of a Power of Attorney is not needed, unless this authority is challenged by the adverse party.

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

Submissions along with supporting documents, translated into Greek and comments on the witnesses' depositions are filed within 3 working days from the hearing. Supporting documentation needs to be notarized and apostilled, although simple copies may be used during the interim restraining order.

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

Jurisdiction of a Greek Court to decide on the subject merits is not created by the arrest itself. However and unless otherwise provided for by international conventions ratified by Greece, the presence of a vessel within the jurisdiction of a Greek Court, not competent in principle to decide on the merits, would create jurisdiction of this Court to so decide (*forum rei sitae*), for as long as the vessel is still within its jurisdiction. The jurisdiction so founded may, however, be affected by certain jurisdiction clauses or arbitration agreements. Article 905 of the Code of Civil Procedure provides for the enforcement of foreign judgments in Greece. Under Article 905, a civil judgment issued by a foreign court may be enforced in Greece if it has previously been declared executable by a decision of a proper Greek court.

Article 906 of the Code of Civil Procedure provides that foreign arbitration awards may be enforced in Greece if provisions of Article 903 of the Code are met.

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

Unless an action on the merits of the claim has been already brought, the arresting party should bring such action in the competent Court within such time as ordered by the Court, otherwise within 30 days from the service of the arrest judgment on Respondents, failing which the arrest is lifted *ipso jure*.

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

Following substantive proceedings against an arresting party, the latter may be held liable for damages resulting from an arrest or a guarantee lodged, only if Claimants would be able to prove to the satisfaction of the Court that the arresting party knew, or by gross negligence ignored, that its claim secured as above, did not exist. Furthermore such liability is conditional to a final and irrevocable judgment whereby the action of the arresting party on the merits of its claim is dismissed for it being unfounded.- In view of such requirements it is not an easy task for Claimants to succeed in his action for damages caused by a wrongful arrest.

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

It has been held by the Greek courts that the corporate veil may be pierced to reveal the beneficial ownership only where there exists an in concreto reason for doing so. In lifting the corporate veil, the Greek courts have traditionally considered two criteria.

A. The criterion of “the effective control” (of the company)

B. The criterion of the “use of intermediary persons” in respect of shareholding or management.

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

Under Greek law, the vessel remains in the custody of the ship-owner or the person who, at the time of the arrest, may be in possession of the ship. It is possible however, upon application to the Court for the arrestor to become the custodian of the ship in which case this party would have to bear the respective costs which are quite substantial. The disposal of the arrested ship may only be effected after an irrevocable judgment has been issued in the main action (which may run in parallel with or follow the arrest proceedings) on the merits of the case. Such disposal may only take place in a public auction conducted by a Notary.

The “Forced Auction Procedure”.

This procedure is governed by specific provisions contained in the Civil Procedure Code. A Notary who is specifically appointed by virtue of a Court order executes the forced sale. The sale has the form of an open public auction whereby the interested parties may submit their bids on the basis of a schedule prepared by a Court bailiff. No judicial sale can take place within the context of a ship arrest procedure, as the latter may only serve as a means of preservation, not a means of satisfaction, of a claim.

There are cases however when, in the context of arrest proceedings, the property arrested may be subject to deterioration and at the same time the cost for preserving it, is disproportionately high having regard to the level of claim. In such instances the Court, may, after a summary hearing, order its disposal. The auction proceeds shall consequently substitute the arrested property and shall be deposited with the Loans & Deposits Fund, pending the issue of an irrevocable judgment on the merits of the claim. In shipping disputes, such a procedure may be encountered in cases where perishable cargoes have been arrested and the cost of preserving same until the issue of an irrevocable judgment is excessive. However it should be noted that such sale orders are granted in these very limited circumstances.



SHIP ARREST IN ISRAEL (Questions 1 to 9)



By John Harris

JOHN HARRIS & CO, LEGAL OFFICE

jharris@netvision.net.il

2 Palmer's Gate / 36 Hanamal St. P.O. Box 33199

31331 Haifa, Israel

Tel: 972-4-862 7067

Fax: 972-4-862 5257

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

Sources of the Admiralty Court's Jurisdiction

The jurisdiction of the Israel Admiralty Court (which sits in Haifa) is established by the 1840 and 1861 English Admiralty Acts. These acts were extended to the Dominions and Possessions of the United Kingdom by the Colonial Courts of the Admiralty Act 1890. Under the Palestine Admiralty Jurisdiction Order of 1937 these acts were extended to Palestine, then a British mandated Territory.

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

The Shipping Law of 1960 relates to a number of matters including maritime liens. So far as these are concerned, this law widens and elaborates on the Admiralty Court's jurisdiction as established by the abovementioned Admiralty Laws.

Section 40 establishes the existence of maritime liens against the vessel and also creates maritime liens on the freight due and the ancillary rights stated in Section 43. Section 41 determines the liens and their priorities 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 injury,
- (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 foreign registered Mortgage,
- (9) Necessaries.

Section 43, extends the maritime liens to include:

unpaid damages due to the vessel's owner for damage caused to the vessel or
for loss of freight and for amounts due to the vessel's owner under general average or
for amounts due to the vessel's owner for salvage services rendered by the vessel.

In order to establish a valid Arrest the Court has to be satisfied firstly that it has jurisdiction,

which jurisdiction is established by the provisions of the abovementioned laws and secondly that cause of action constitutes a maritime lien or statutory right in rem under the lex causa. Unless the foreign law is proved as a question of fact, the Court will apply the identity of laws principle.

The arrest procedure is initiated by filing a claim in rem against the vessel as the Defendant and if required, in persona against the owners, operators or any interested party. The Claim is filed under a summons to which is attached a statement of the nature of the claim, the amount claimed and the remedy required. Concurrently or subsequent to the issue of the Claim Application is made for the arrest of the Vessel. The Application must be supported by an Affidavit which in cases of urgency can be executed by the arresting attorney who will rely upon and attach the Affidavit of the arresting party. The filing of the Arrest Application is dependant upon the issue of the Claim.

The Affidavit should state the nature of the cause of action (supported by documentation) and those facts which establish the maritime lien.

The Application is heard ex parte and if the Court is satisfied on the above matters it will issue a Warrant for the Arrest of the Vessel.

Normally the Applicant does not have to file security but if the Court feels that the cause of action or the maritime lien have not been sufficiently established, it may issue the Warrant subject to the provision of Security. Upon service of the process upon the Vessel (the Master or any senior officer) the Arrest is established.

The Defendants have to file an Entry of Appearance within one week of service. If they have reason to challenge the cause of action or the existence of a maritime lien they can apply for the Arrest to be set aside.

It is not necessary to supply a power of attorney but this is preferable. Court fees at the rate of 2.5% of the amount claimed are payable of which half is payable at the time of filing the Claim in Rem and the remaining half, one week prior to the trial of the Claim in Rem.

No additional pleadings are filed unless the Court orders otherwise.

As from the time of filing the Arrest Application and pendente lite, the arresting attorney can make application to have himself, alone or together with the attorneys representing major creditors, appointed as ad hoc Deputy Marshals of the Admiralty Court and to formally take custody of the vessel. As such they attend to the, legal formalities of arranging for the sale of the vessel and (through agents appointed by them) practical matters such as crew repatriation, supplies of bunkers, water and provisions and the like.

The Deputy Marshals will arrange for the sale to be advertised in a local newspaper and also in Lloyds List.

It is normally a condition that 10% of the offered price should be deposited in order to make the tenders eligible.

On the day stated in the Notice the prospective buyers either personally or by duly appointed representatives, appear before the Court which conducts the auction. The Court will give the successful bidder 24-48 hours to deposit the balance of the purchase price and under a Court Order transfer of the vessel, free of all liens and encumbrances, can then be effected to the purchaser under a Court endorsed Bill of Sale.

The Marshal then prepares his distribution account in accordance with the priorities as determined by the Shipping Law. The account is then lodged with the Court for approval and any interested party is given an opportunity to object. Having heard the objection the Court then confirms the account with or without modification and authorises payment. After payment is effected, upon application, the Marshal is discharged from his duties.

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

There are no International Conventions which apply to the arrest of ships in Israel.

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

Ships or any other property of the debtor can be provisionally attached in a normal civil claim. This requires that the cause of action is within the Court's normal civil jurisdiction and the provision of a guarantee.

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

Apart from arrest or attachment no other alternatives for detaining the debtors property are available.

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

A ship can be arrested irrespective of its flag except an Israel registered vessel cannot be arrested for necessities supplied in Israel.

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

Israel law follows the Procedural Theory of Arrest so that there must be also a valid claim in persona – unless the maritime lien or statutory right in rem is clearly available irrespective of ownership or control of the ship.

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

It is not possible to arrest sister ships and ships in associated ownership. It is possible to attach same. See para. 3 above. In the case of ships in associated ownership, attachment would be subject to "lifting the corporate veil".

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

A ship can be arrested for an obligation incurred by a Bareboat Charterer. It is doubtful whether an arrest can be made for an obligation of a Time Charterer unless the maritime lien or statutory right in rem clearly confers this right.



SHIP ARREST IN ISRAEL (Questions 10 to 20)



By Peter G. Naschitz
NASCHITZ, BRANDES & CO.
pnaschitz@nblaw.com
www.nblaw.com
5 Tuval Street, 67897
Tel Aviv, Israel
Tel: 972 (3) 623-5000
Fax: 972 (3) 623-5005

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

Not normally.

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

The court can order the arrest of a vessel only if the claimants have a maritime lien.

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

Yes. According to the Israel Law of Maritime Shipping (Vessels) 1960-5720.

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

As soon as the relevant documents are received to the law firm it takes about one day.

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

Yes. POA and other relevant documents in order to establish the claim. (For example, in a claim for payment for supply of necessities; the supply contracts, the invoices, demands for payment to the vessel).

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

No original documents are required. The affidavit should be signed and attested in an Israeli embassy or by a lawyer who is licensed to practice in Israel.

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

Yes, provided that the arrest is based on a claim having a maritime lien. Otherwise the proceedings can continue in personam.

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

Normally, there will be 2 to 3 preliminary hearings and afterwards evidentiary hearings. Normally the entire trial will take 6 to 9 months (if the parties don't reach a compromise settlement).

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

In principle, if there is malicious, wrongful arrest the court may impose damages, although it has never happened.

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

Article 6(a) of the Israeli Companies Law 5759-1999 states that the court is entitled to ascribe a company debt to the shareholders (piercing the corporate veil), if it finds that it is correct and justified to do so in the circumstances, in cases in which the use of the separate legal entity is implemented; in a manner that could defraud a person or discriminate against a creditor; in a manner that harms the company's purposes, and while undertaking an unreasonable risk regarding its ability to pay its debts.

20. Is it possible to have a ship sold *pendente lite*? If so, how long does it take?

Only in exceptional cases where irreparable damages could occur. This is not customary.



SHIP ARREST IN ITALY



By Alberto Batini
BB & PARTNERS
a.batini@bbpartners.it
www.bbpartners.eu
Via Di Franco, 9
57123 Livorno, Italy
T. +39 0586 883232
F. +39 0586 884233

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

Italy is a party to the 1952 Arrest Convention, ratified in 1979. Moreover the Italian Code of Navigation provides a set of domestic rules applicable when the Convention does not apply in whole or in part. Arrest is possible in Italian Ports also where there is no jurisdiction on the merits. The procedure is fairly quick and informal. No counter security is required. Appeal is possible and usually heard and decided in few weeks. P&I Clubs Letters of Guarantee are widely accepted if issued by one of the IG Pool. Alternatively bank guarantees or cash deposit are available to release the vessel.

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

The 1952 Brussels Convention on Arrest of Sea Going Ships has been ratified on 9.11.1979 in Italy and applies to all vessels flying the flag of one Contracting State. It will also apply, pursuant to article 8, to those vessels flying the flag of a non-Contracting State in respect of any claim for which the law of the Contracting State seized with the case permits arrest. In addition our Code of Navigation provides subsidiary rules applicable when the Convention cannot be applied in whole or in part or to arrest issues not ruled by the Convention (articles 643-686).

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

A Vessel may be detained pursuant to an arrest order issued within a criminal proceeding by a Prosecuting Judge (i.e. when the Vessel can be considered as corpus delicti) or pursuant to an administrative detention order of a Public Authority (i.e. the Harbour master Office in case of damage to public properties like a berth, a quay, a light buoyancy).

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

In respect of the same claim usually arrest orders are alternatives and not cumulative. It is anyway possible that under special circumstances, where different interests are involved, a single event generates more detention orders (i.e. in a pollution case arising out of collision the interest of the State and those of cargo owners, the colliding vessel, the salvors, the victims). From a strict procedural profile an arrest order under the 1952 Arrest Convention for a particular maritime claim is always alternative to any likewise detention order to secure the same claim.

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

A Vessel can be arrested in Italy for any maritime claim among those listed under art. 1(1) of the 1952 Arrest Convention. For Vessels flying the flag of a non-Contracting State an arrest is possible also in respect of any other claim for which the law of the court seized with case permits arrest. This in Italy includes any debt of a contractual or non contractual nature but in this case the arrest can only be obtained if the Vessel is owned by the debtor.

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

A ship can be arrested irrespectively of her flag.

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

A ship can be arrest irrespectively of the debtor but, if the debtor is a State or other Public body, then the ship might be regarded as immune from arrest. Whether and to what extent immunity may be invoked is left to the law of the forum arresti. Immunity is related to the ownership or operation of the ship, not to the nature of employment. For example the fact that a privately owned ship is employed on a liner service which is of public interest should not justify immunity from arrest.

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

Sister-ships, meaning ships owned by the same Company owning the particular ship in respect of which the maritime claim arose, can be arrested under art. 3 (1) of the Arrest Convention. A similar principle is provided at Italian domestic law (art. 2740 Italian Civil Code). Ships in associated ownership (or management) cannot be arrested unless the Claimant can pierce the corporate veil. This is not impossible in Italy but is certainly a difficult exercise, which implies a rigorous burden of proof on identity of shareholders and management of the two companies.

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

In cases where the bareboat charterer is liable in respect of a maritime claim and not the registered owner, the situation is different if the Arrest Convention applies or not. If the Convention applies, art. 3 (4) enable arrest of such ship or any other ship in the ownership of the bareboat charterer, but no other ship in the ownership of the registered owner. The last sentence of Article 3, para. 4 seems to extend the rule to any case in which a person other than the registered owner of the ship is liable (i.e the time charterer, the ship manager, etc.). This is anyway in conflict both with the literal meaning of the provision and with the travaux préparatoires of the Convention. When Italian domestic law applies arrest of a ship under bareboat charter to secure a claim against the bareboat charterer, the time charterer or the ship manager is not possible unless the Claimant has a maritime lien assisting his claim. The main reason for this is that a creditor cannot arrest a ship to secure a claim if he can never be authorised to enforce the final judgment on the merit against the registered owner and auction the vessel. This is the worldwide unsolved problem of the Arrest Convention and Italy is no exception. Only maritime liens give right to enforce a claim against the vessel, even if she is property of someone different than the liable party. Not all maritime claims under the Arrest Convention are maritime liens under the different national domestic law systems. Not the 1926 Liens and Mortgages Convention enjoyed a wide acceptance around the world. The Lisbon Draft attempted to clear things as well as the 1999 Arrest Convention, not yet in force.

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

Italian Court does not require counter-security to issue an Order of arrest nor to enforce such Order. It might be possible anyway that the arrested party apply for a counter security at a later stage pending enforcement. The court can always amend the original order and impose a counter security. For this to occurs anyway the arrested party should be successfully proving not only considerable damages but also a lack of a prima facie claim, circumstances not easy to be proven especially when acting under the auspices of the 1952 Arrest Convention.

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

There is no procedural difference in the two types of arrest.

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

Italy recognizes maritime liens both under art. 552 of the Code of Navigation and in compliance with 1926 Liens and Mortgages Convention, to which Italy is a Contracting State.

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

A reasonable lapse of time needed to file an arrest application since the moment of instructions is one or two days in advance.

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

Our system requires a POA. Anyway, in order to file an arrest application within one day from instructions pending legalisation of the POA, is usual practice for the Claimant to grant an agency appointment via fax (without legalisation formality) to a Colleague of our firm who, in turn, will grant a POA locally in few hours. The agent in Italy is enabled to instruct lawyers to attend urgent matters, including arrest of ships. Subsequently the formal POA will contain a ratification of the agent's activity.

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

No original documents are required. Copies are generally accepted in whichever form of transmissions they are obtained. Informal or free translations are also admitted. Some judges are familiar with English language and will not require official translation unless the issue is debated with the opposing party. Only the official POA needs to be notarised and apostilled, except if issued in some countries (like Germany, Denmark, France, etc..) where simple notarisation is required without apostille legalisation.

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

The Italian Courts will not accept jurisdiction on the substantive claim unless jurisdiction on the merit is afforded on the particular dispute by the governing contract or the applicable EU Regulations or International Conventions. In other words the fact that the Court where the arrest must be enforced has jurisdiction on the arrest does not imply that such Court or any other Italian Court has substantive jurisdiction on the claim.

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

The period of time to activate substantive (or merit) proceedings is 60 days starting to count from the date the original arrest Order is confirmed by the Court. An arrest Order is usually granted and enforced upon an ex parte application. An inter parties hearing is thereafter scheduled within a few days or weeks for the opposing party to appear and file defences. When security is posted this process interrupts and the arrest is over. If the arrested party wish instead to continue litigation on the arrest the inter parties hearing will be the ultimate occasion for the arrested party to defend his case and obtained a revocation or amendment of the arrest Order. If the arrest Order is confirmed the 60 days to activate substantive proceedings will start to count. This time limit is interrupted, in case of arbitration, by simple service of a Notice of Appointment of Arbitrator. In case of lawsuit by service upon the opposing party of the writ of summons. Failure to commence substantive proceedings will enable the arrested party to apply to the Court of the Arrest for the immediate revocation of the Order.

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

Italian domestic law recognizes the issue of wrongful court actions, including arrests.

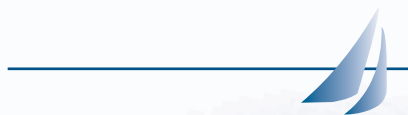
Anyway, as in many other countries, in Italy is extremely difficult to obtain a condemnation to damages for wrongful arrest. The Claimant should activate an ordinary lawsuit in tort against the arrestors aimed to demonstrate the he acted in the clear and unambiguous knowledge that the asserted maritime claim was not existing. This is basically impossible when acting in good faith under the auspices of 1952 Arrest Convention because the definition of each maritime claim is so widely drafted to make unlike to an arrested party to demonstrate that Arrestor was deprived of any right to arrest at all.

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

The piercing of corporate veil is admitted by some Court authorities and in principle not impossible in Italy. It is anyway a difficult exercise, which implies a rigorous burden of proof on identity of shareholders and management of the two companies.

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

Is possible to sell a ship only pending an arrest proceeding (i.e. while the ship is either under arrest or seized following enforcement of a final ruling). In this case the requirement which the party applying for the sale should demonstrate is that the condition of the ship is rapidly deteriorating and the vessel will soon be a constructive total loss or will see her value highly diminished. The Court will appoint an expert to estimate the value of the vessel, following which the Court will schedule a session to hear all creditors and the ship owner. A court auction will therefore be organised by the Court and the applicant will have the burden to advertise the sale, anticipating costs, on some national and international specialised press or via internet as order by the Judge. The entire process may take from 6 to 12 months depending from complexity of sale (i.e. age of vessel, other problems), number of creditors, difficulty in processing service of deeds, others.



SHIP ARREST IN IVORY COAST



By Philippe Pruvot & Elise Apostolou

3A ABIDJAN

legal.department@3afrance-expertise.com

www.3afrance-expertise.com

Avenue 2, Rue 9, 2eme etage, 1ere porte D

05 BP 1586 Abidjan 05 - Treichville.

Tel. +225 2124 0572

Fax. +225 2124 8962



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

Jurisdiction in respect of admiralty matters is vested in the High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court.

Order 2 of the High Court (Civil Procedure) Rules 2004 (C.I. 47) provides that all civil proceedings must be commenced by Writ of Summons and must be filed along 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.

Order 62 of C.I. 47 generally makes provision for maritime actions. At the time of issuing a Writ of Summons, the Plaintiff files an Ex parte application for an order for a warrant of the arrest of the ship. 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 and the name and nature of the property to be arrested;

(b) In an action for wages or possession, the affidavit shall state the national character of the ship 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 for 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 transaction 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;

The port of Abidjan is the main focus of maritime transportation. The port of San Pedro is mainly specialized in the export of wood even if it tends to diversify its activities (especially

by the establishment of a container terminal assigned to MSC).

Therefore, 99% of the arrests of ships' procedures are initiated at Abidjan so that the orders of arrests are delivered by the President of the Court of First Instance of this city. Usually, it is quite easy to arrest a vessel at Abidjan; however, the President of the Court requires that all documents submitted to him must be translated into French, which is the official language in Ivory Coast. The translation requirement could sometimes be a disadvantage because it takes time and has to be realised by a listed translator of the Court of Appeal.

Moreover, the Courts being closed on Saturdays and Sundays, the authorizations to arrest a ship must be obtained no later than on Fridays. However, the arrest order is implemented via the services of the port Harbour Master who needs the arrest orders to be formally approved by the Legal Department of the port Harbour which closes at 18:00 LT on Fridays. Furthermore, the local regulation requires that the arrest order states several detailed information (regarding for instance the domiciliation of the creditor, the legal form of both the debtor and creditor); without those detailed information, an arrest order could easily be cancelled upon request. The said requirement has two (2) important consequences:

- 1- the creditor must provide complete information on himself, on the vessel and on the debtor;

- 2- 99% of the releases of ships are the result from the cancellation of arrest orders. In this case however, the Court's decision to issue the arrest order is not cancelled and the claimants can still ask the Court to issue a new arrest order and therefore oblige the Shipowners to negotiate.

To conclude, detaining a vessel is quite easy when the creditors' claim file is complete and transmitted rapidly to the Court.

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

Ivory Coast did not ratify the Brussels International Convention dated 10th May 1952 but accepted to apply it after having accessed independence.

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

The answer is yes, but depends on the purpose of the procedure of arrest:

3.1 The provisional arrest of a ship

- The article 8 §2 of The Brussels Convention concerns the arrests of ships flying a State flag which is not a contracting party of the International Convention. The creditor has therefore the choice to base his demand either on one of the maritime debts of the convention or on one of the debt foreseen by the local Laws.
- The article 8 §4 of The Brussels Convention provides that local Laws applies when the arrested ship flies Ivory Coast Flag and when the creditor's usual residence or principal place of business is in Ivory Coast.

3.2 The arrest of a ship with the view to sale it

In such procedure the creditor bases on Ivory Coast Laws. The creditor would be able to arrest the vessel after the notification of a commandment of an enforceable title noticing a liquid and due debt.

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

These alternatives are "*saisie conservatoire*" which means "arrest" and not freezing orders. However, the Government and/or the Port Authority are able to retain a vessel basing on the Ivory Coast Public Law.

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

5.1 The provisional arrest of a ship

In such procedure, when the Brussels Convention applies, the arrest must be justified by a maritime claim as defined by the article 1 § 1 of the said Convention. Usually, the Courts issue easily an arrest order when the claim appears justified.

When the Ivory Coast Law applies, especially the Uniform Act of Ohada, the claim is not

necessary a maritime claim and the claim must only appear justified in its principle.
5.2 The arrest of a ship with the view to sale it
In such a procedure, the claim must be based on a liquid and due debt.

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

The answer is yes because, as per the Article 8 § 2 of the Brussels Convention "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".

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

- In principle, a vessel owned by a State cannot be arrested. However, this principle is limited to the vessels which have a governmental activity at the time of the birth of the debt.

Consequently, the vessels owned by a State can be arrested when such vessels have a commercial activity at the time of the birth of the debt.

However, Ivory Coast vessels can in no case be arrested in Ivory Coast.

- Under Ivory Coast Law, the seizure of property is limited to the property owned by the debtor. Consequently, when Ivory Coast Law applies for the arrest of ships, the ship must be the property of the debtor except when the creditor has a maritime lien.

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

There are only a few decisions with regards to this question in Ivory Coast. The article 3 §2 of the Brussels Convention provides that "Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons". Sometimes, the Judges had accepted to ignore the autonomy of each property and the legal personality of societies when evidence showed that there were a link between societies and therefore an organised fraud in order to be insolvent.

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

The article 3 §4 of the Brussels Convention provides that "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 claims. 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".

The international Convention points out the cause of the debt, i.e. a maritime claim relating to the ship.

When the Ivory Coast Laws apply, a creditor may arrest a ship which is not the property of the debtor when the creditor has a maritime lien and/or a mortgage.

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

As per the article 4 of the Code of Civil Procedure, the defendant (or the debtor) may ask to obtain a guarantee to cover the payment of the costs, interests and damages for which may be condemned the plaintiff (or the creditor). The demand for guarantee is conditioned to the existence of an adversarial debate.

The procedure of arrest is not subject to any adversarial debate. Consequently, the defendant (or the debtor) cannot ask for a counter guarantee.

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

A maritime Lien exists only because a maritime claim exists. It is therefore impossible to

arrest a ship basing only on the existence of a maritime Lien.

A maritime Lien gives a right of mortgage on a property even if property changes hands and a priority right to be paid before other creditors.

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

Ivory Coast recognizes Maritime Liens and applies the International Convention on Maritime mortgages and liens dated 10th April 1926.

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

If the file is complete and the documents translated in French by a listed translator of a Court of Appeal, the arrest could be obtained within the same day.

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

A special power of attorney would be required to recover the amount of money from the debtor who has been condemned by the Court.

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

The Court does not require originals except when a defendant alleges that a document is a forgery.

Consequently, all documents can be filled electronically; there is not any requirement of notarisation or apostille of the documents although it is better to legalise a special power of attorney.

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

In principle, once the vessel is arrested in Ivory Coast, the Courts accept jurisdiction.

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

The local Regulation, and not the Courts, imposes to the claimants to take legal action on the merits within one (1) month after the issuance of an arrest order. If the claimant does not respect this regulation the arrest becomes null and void.

Actually, the Port Harbour Master would refuse to enable a vessel to sail without having received a withdrawal (or release order) by the Court.

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

Ivory Coast recognizes wrongful arrest if evidence show that an arrest is abusive, especially when the debtor provides proofs showing that the debt has been paid.

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

As explained at point 8, it is possible to obtain such condemnation when the plaintiff (or creditor) shows strong evidence. Courts' decisions are rare, but existent.

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

A ship can be sold at the end of the procedure of arrest with the view to sell it; the creditor is supposed to have obtained an enforcement title from the Court. The procedure for sailing the vessel takes approximately two (2) months after the notification of a commandment to pay before execution.



SHIP ARREST IN LATVIA



By Edward Kuznetsov
MARINE LEGAL SERVICES
edward@marinelegal.lv
www.marinelegal.lv
11 Elizabethes street
Riga, LV-1010, Latvia
Tel: +371-67-359-670
Fax: +371-67-359-671

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

In Latvia claimant is entitled to arrest a vessel to secure his claim before claim on merits is brought.

Latvian Maritime Code (hereinafter – LMC) (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 of Latvian waters”.

Petitions to arrest the vessel are heard 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 deal with claims up to 150'000.00 Latvian Lats (about EUR 213'400.00). Claims amounting in excess of 150'000 Lats are heard by District courts. Minimum amount of claim enabling ship arrest is not determined by law.

Court tax to arrest debtor's asset before bringing claim on merits is 20 Lats (about EUR 30), in a case amount of claims exceeds 4'000 Lats (about EUR 5'700.00) court charge to be 0,5 per cent from the amount of claim.

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

Ruling to arrest is issued by a sole judge on ex parte basis. If the claim is secured by arrest of a vessel, the court gives out to the claimant a copy of 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 is 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 the judge in the court trial, with participation of 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 is delivered to the court.

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

Presently Latvia is a party of the Brussels Convention on the Arrest of Sea-Going ships of 10 May 1952. Provisions of the Convention are incorporated into the LMC. Still, definitions

of maritime claims are listed in the LMC in conformity with Article 1 of the Ships Arrest Convention 1999, which was ratified by Latvian government in 18 October 2001.

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

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

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

No, Latvian legal system does not recognize Saisie conservatoire or freezing order.

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

A ship can be arrested to secure a maritime claim. Types of maritime claims are listed in the LMC in conformity with Article 1 of the Ship Arrest Convention 1999.

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

Provisions of the LMC apply to all ships located in waters under Latvian jurisdiction with no irrespectively to the flag the vessel is flying. Thus, a ship flying any flag can be arrested in Latvia.

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

The arrest of any ship is allowed if in relation to the 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 bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat 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 relates to the ownership or possession rights of the ship; or
- the claim is directed against the ship owner, bareboat charterer or ship's operator and this claim is secured by maritime lien.

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

LMC states that any other ship or ships can be also arrested if at the time of arrest they are owned by such persons who were liable for 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.

This provision of LMC does not relate to claims arising from ownership or possession rights of the ship.

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

A ship can be arrested if the person who was the bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or ship owner at the time of arrest of the ship.

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

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

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

There is a difference as per Latvian law. If there is a maritime lien, a court action may be taken directly against the vessel. If there is a maritime claim, a court action can not be taken against the vessel herself.

12. Does your country recognize maritime liens? Under which international Convention, if any?

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

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

As it was mentioned above the language of court hearings in Latvia is Latvian. Thus, translations of supporting documents are required. To save time on initial stage, we usually ask our principals to provide us with all the appropriate documents as soon as possible to start translation by sworn translators. It usually takes 1-2 days to translate depending on amount 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 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.

14. 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 Apostille if the Hague Convention of 5 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 is necessary to deliver the originals of the supporting documentation to the court.

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

Civil Procedure code of Latvia states that all the documentation presented to Latvian court should be in Latvian language. Latvian courts accept original documents. At the stage of arrest in order to secure a possible claim on merits court may also accept copies of documents. If the copies of documents are presented to Latvian court they should be attested correctly. Translations of the documents should be prepared by sworn translators. Latvian courts do not accept electronically filed documents.

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

LMC states that if a vessel is arrested in Latvia in order to secure a possible claim on merits, Latvian courts hear the case if only the parties have not agreed about another country court's jurisdiction or arbitration court.

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

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

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

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

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

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

The piercing and lifting of the corporate veil is not acknowledged in Latvian legal system.

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

There is no practice in Latvia regarding use of *pendente lite*. But in theory it is possible.



SHIP ARREST IN LITHUANIA



By Vytas Ramanauskas
RAMANAUSKAS IR PARTNERIAI LAW FIRM
v.ramanauskas@rplaw.lt
www.rplaw.lt
S.Daukanto 9, LT-92234,
Klaipeda, Lithuania
Tel. +370 46 303430
Fax. +370 46 312393

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

The International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships, Brussels, 1952 (1952 Arrest Convention) was ratified by the Seimas of Lithuania in March of 2002 and is successfully applied by the Lithuanian Courts. Depending on the amount of the security required a request to arrest a ship should be submitted either to the City Court of Klaipeda or to the District Court of Klaipeda. The city court deals with the claims in the amount up to 100 000 Litass only. When the amount of claim is higher, then an arrest application should be made to the District Court of Klaipeda. There is no specialized maritime court or judges in Lithuania. Most frequently ship arrest applications are heard by the District court of Klaipeda. That court is also the court of appeal for the decisions of the City Court. The judges of the District court of Klaipeda are well experienced. Ship arrest procedures are clear and provided that the request for ship arrest complies with the procedural requirements, the Court will issue a ship arrest order. For smaller cases (in the amount up to 100 000 Litass) a ship arrest application should be presented to the City court of Klaipeda. That court has about 30 judges and some of them have very limited practical experience. They might not know the relevant practices that are applied by the District Court and the Court of Appeal of Lithuania in respect of ship arrest and dismiss arrest application for any formal reason. Therefore decisions made by the City Court's judges are always unpredictable.

There is a stamp duty payable on the civil claims that are pursued in the Lithuanian Courts, 50% of which is payable before an arrest application is presented to the Court. The amount of stamp duty payable is calculated on basis of the claim amount. It is limited by maximum amount of 30.000 LTL (about 8.700 EUR). No stamp duty is payable on ship arrest applications when claim on the merits will be pursued in arbitration or foreign jurisdiction.

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 Seagoing Ships, Brussels, 1952 (1952 Arrest Convention) and The International Convention on Maritime Liens and Mortgages (Geneva 1993) are ratified by Lithuanian Seimas and applicable.

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

The Ships that are registered and flying the State flags of the States that are Members to the 1952 Arrest Convention can be arrested only in respect of the claims enumerated in the Article 1 of the Convention. The other ships can be arrested applying general civil procedural rules as debtor's assets in respect of any other claims.

In accordance with the Article 12(1) on the Law of Klaipeda State Sea Port the Harbour Master may deny permission to sail of the vessel out of the port in case that there are unpaid port charges or fines in respect of the vessel or the vessel caused damage to the port's infrastructure.

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

No.

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

The basis for obtaining an arrest in accordance with the Arrest Convention is a maritime claim enumerated in littera a) to q) of the Article 1(1). The list is "closed" by excluding any other claims than those found in the list in respect of the vessels that are flying the flag States that are Members of the 1952 Ship Arrest Convention. All other ships can be arrested for any type of claim.

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

In accordance with the Article 8(1) of the 1952 Arrest Convention a ship flying the State flag of the Member State of the Convention can be arrested only for the claims enumerated in the Article 1 of the Convention. The Ships that do not fly the State flag of the State that is Member to the 1952 Arrest Convention can be arrested for any claims under provisions of Code of Civil Proceedings. This option is based on Article 31 of EC Regulation 44/2001 and jurisprudence of European Court of Justice, which confirmed the application of this regulation to 'extra-Community conflicts'.

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

The interpretation of the Article 3 part 1 of the 1952 Arrest Convention by the Lithuanian Courts is not clear yet. We believe that the Courts would grant arrest of the particular vessel in respect of which the maritime claim arose irrespectively whether she is owned at the time of presenting the arrest application to the Court by the debtor or another person. Such Order might be changed later if appealed.

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

Under provision of the Arrest Convention claimant may arrest the particular ship in respect of which the debt arose or any other ship owned by the debtor. Therefore arrest of a sister ship is permitted, except in respect of the claims mentioned in the Article 1(1), o-q. Ships in the associated ownership can be arrested if it can be proved that they are beneficially controlled by the same person. Demonstration on the company's website a list of vessels under the name of company's fleet might be sufficient to prove that.

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

Part 4 of the Article 3 of the 1952 Ship Arrest Convention shall apply in respect of arrest of a Bareboat chartered vessels. Such vessel can be arrested in respect of maritime claims created by the Bareboat Charterer, or any other vessel that is owned by the Bareboat Charterer can be arrested.

In case of Time-chartered vessel the position is uncertain. We believe that the first instance court would grant an arrest of a Time-Chartered vessel, but such arrest might be lifted if appealed against it.

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

No counter security is required to establish before arresting the vessel. The court on request of the ship's owners may order the arrestor to establish counter-security within certain period of time. If this is not complied with the Court makes an order to lift the arrest. However such order can be appealed within seven days. It can take up to three months then until the Court of Appellation makes decision. All that time the ship will remain arrested. Therefore very rarely counter-security is requested and established.

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

In case of maritime claim it is allowed to arrest either the ship in respect of which the maritime claim arose or any other sister ship. The subject to the maritime lien is the offending ship only. It can be enforced against the ship regardless of who was in control or possession of the vessel when the events which gave rise to maritime lien occurred. Maritime lien is not enforceable against a sister ship.

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

Lithuania does recognise maritime liens. The International Convention on Maritime Liens and Mortgages, 1993, has been ratified and is applicable in Lithuania.

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

It depends on the number of the documents that need to be attached to the arrest application and in what language they are. If many invoices, long Charter-parties, correspondences or other claim documents need to be attached to the application they have to be translated into Lithuanian language and that takes time. It is possible however to attach such documents without their translation into Lithuanian language pleading to the Court an urgency and providing an undertaking to provide their translation within few days. Therefore an arrest application can be submitted to the Court on the same day when the instruction to apply for ship's arrest is received. The Court rarely issues the arrest order on the same day on which the arrest application has been registered with the Court. Normally the arrest order is available on the following day. It can take up to three days in some cases. If a ship arrest application is registered with the Court on Friday the arrest order normally is ready on the following Monday afternoon or on Tuesday. The courts are closed during Saturdays, Sundays and National Holidays.

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

We require a written legal service agreement that needs to be signed by the Client. Faxed or emailed copy of the legal service agreement is sufficient to present a ship arrest application to the court on behalf of the Client. An original copy of the agreement must be available if requested by the judge. No notarization or legalization is practically required. Basic claim documentation and correspondence evidencing that the debtor failed to pay the claim or provide security in respect of it must be attached to a ship arrest application.

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

All documents can be filed electronically for the purpose of ship arrest. Only original legal service agreement should be available to provide to the court if so requested by the judge. To a ship arrest application normally to be attached:

- a copy of legal service agreement between the lawyer and the Arrestor;
- a copy of an extract from the Company Register of the Arrestor's State, confirming that the Arrestor indeed exists as a legal entity and providing the names of the persons who are entitled to represent the company.
- Basic Claim documents that will depend on the type of the claim;
- Copy of an agreement containing the arbitration clause in case that the arrest is for obtaining of security in respect of maritime claim that is to be pursued in the Arbitration or an agreement to litigate in a foreign State Court, or an evidence that such proceedings have been commenced.

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

Yes, the Lithuanian courts will have jurisdiction over the substantive claim once a vessel has been arrested, subject that there is no agreement between the relevant Parties to litigate in other jurisdiction or in the arbitration.

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

According to the provisions of Code of Civil Proceedings of Lithuania the Court may not allow more than 14 days from the day of ship arrest commence legal action on the merits of the claim with the competent court. Therefore within 14 days from the day on which ship arrest order is made the legal action on the merits must be started in order to maintain the arrest.

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

There is no such definition as “wrongful arrest” in Lithuanian law. However the arrestor can be liable to pay the damage compensation to the vessel’s owner in two cases:

- a) After the claim in respect of which the vessel was arrested is lost;
- b) In case of misuse of the procedural rights to seek the ship arrest, for example arresting the vessel despite the fact that an adequate security has been provided, submitting to the court knowingly wrong information when seeking a ship arrest etc.

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

This issue has never been solved by the Lithuanian Courts yet. We believe that this might be possible if there is sufficient evidence to prove that the vessel is beneficially controlled by the other person than her registered owner.

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

Theoretically such legal possibility exists, but it has never been tried in respect of a ship. It should be demonstrated to the Court that the vessel is abandoned by her owners and there is a risk that she might sunk or her value will be diminished to the amount that is insufficient to secure the Claimant’s claim. In most optimistic scenario it would take minimum three months until the vessel is sold.



SHIP ARREST IN MALTA



By Dr. Kevin Dingli & Dr. Tonio Grech
DINGLI & DINGLI
kevin@dingli.com.mt & tonio@dingli.com.mt
www.dingli.com.mt
18/2 South Street, Valletta VLT 1102, Malta
Tel: (+356) 21236206
Fax: (+356) 21240321



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

The law on ship arrest in Malta was, until recently, governed by very archaic rules. Suffice it to say that our admiralty jurisdiction was still regulated by British statutes which had long become defunct in their own country or origin, namely the Vice-Admiralty Court Act 1840 and the Admiralty Court Act 1861. These provided very limited head of jurisdiction 'in rem' on the basis of which a ship could be arrested, and in particular did not regulate the substance of the action in rem. Problems arose in more recent cases connected with bareboat charterers, for which no provision was made. Furthermore, there was no right of sister ship or of associated ship arrest.

All this changed with statutory amendments introduced in 2006, as further fine tuned in 2008. Although not strictly part of this Questionnaire, it ought also to be mentioned that these amendments also radically reformed the system regulating Judicial Sale by Auction of ships, as well as introduced the concept of Court Approved Sales for Ships.

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

Malta is not a signatory to the Arrest Convention 1952. Ships are arrested in Malta by Warrant of Arrest issued on any one of the grounds listed in Article 742B of the Code of Organisation and Civil Procedure giving rise to the in rem jurisdiction of the Maltese Courts. These include all maritime claims recognised under the Convention. The law provides for a precautionary as well as for an executive warrant of arrest. Creditors seeking to arrest a ship in security of a claim which is not yet judicially acknowledged must have recourse to the precautionary warrant. Judgment creditors and other creditors being in possession of an executive title (such as a Mortgagee) may immediately proceed to issue an executive warrant.

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

Ships may be arrested in Malta both in security of maritime 'in rem' claims as mentioned above, whenever the ship concerned is physically present within the territorial jurisdiction of the Maltese Courts, as well as in security of 'in personam' claims in those instances where the shipowner may be personally subject to the ordinary jurisdiction of the Maltese Courts. Finally, ships may also be arrested in Malta pursuant to the provisions of Article 31 of Council Regulation (EC) No. 44/2001, dealing with provisional including protective measures, in cases where the Courts of another Member State have jurisdiction as to the substance of the matter. However, in all these cases, the ship must always be arrested in virtue of the warrant of arrest, which remains the only way in which a ship may be arrested in Malta.

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

The law is very clear on this point. A ship can only be arrested in Malta in virtue of a Warrant of Arrest, and no other warrant may be issued out against a ship. In this context it is also to be borne in mind that in virtue of Article 37A of the Merchant Shipping Act, dealing with detention of ships as security for debts, ships constitute a particular class of moveables whereby they form separate and distinct assets within the estate of their owners for the security of actions and claims to which they are subject.

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

A total number of 25 Maritime Claims giving rise to in rem jurisdiction are provided for under paragraphs (a) – (y) of Article 742B of the Code of Organisation and Civil Procedure. These follow closely the British Supreme Court Act 1981 but also incorporate both Arrest Conventions of 1952 and 1999 even though Malta not yet signatory to either. The basic heads of claim may be summarised as follows :

a) Claims to possession / ownership / title to ship; b) Questions arising between co-owners; c) Claims in respect of mortgage / hypothec / charge on a ship; d) Claims arising out of a contract of sale; e) Claims for damages received by ship; f) Claims for damage caused by ship; g) Claims for loss of life / personal injury caused by ship; h) Claims for loss of life / personal injury caused by ship; i) Claims arising out of agreement for carriage of goods / use or hire of ship; j) Claims for salvage; k) Claims for damage to environment by ship; l) Claims relating to wrecks; m) Claims for towage; n) Claims for pilotage o) Claims for supplies / services rendered to ship; p) Claims for construction / repair / conversion / equipping ship; q) Claims for port / dock / harbour dues; r) Claims by crew for wages / repatriation; s) Claims for disbursements made; t) Claims for commissions / brokerage / agency fees; u) Claims arising out of general average act; v) Claims arising out of bottomry; w) Claims for forfeiture of ship; x) Claims for insurance premia and y) Claims for fees due to Registrar / tonnage dues

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

Yes. The only requirement is that the ship has a length exceeding 10 metres, and that the claim in respect of which the ship be arrested be no less than €11,600.

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

With very few exceptions, there are no privileged debtors, so that a ship may be arrested irrespectively of who the debtor might be. The exceptions relate to ships of war, and ships wholly chartered in the service of the Government of Malta or employed in any postal service either by the Government of Malta or by any other Government. Of course as shall be seen later, the underlying personal liability of the debtor for the maritime claim concerned is an essential requisite for ship arrest.

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

In cases concerning any one of the maritime claims listed in (a), (b) and (c) under question 5 above, an action in rem may only be brought against that ship in connection with which the claim arose.

In all other cases concerning the remaining maritime claims listed in (d) – (y), an action in rem may be brought against (i) that ship, where the person who would be liable on the claim for an action in personam (the “Relevant Person”) was, when the cause of action arose, an owner or charterer of or in possession or in control of, the ship if at the time when the action is brought the Relevant Person is either an owner or beneficial owner of that ship or the bareboat charterer of it, and/or (ii) any other ship of which, at the time when the action is brought, the Relevant Person is the owner or beneficial owner as respects all shares in it.

In these cases, therefore, sister ship and associated ship arrest is possible. The requirement of the Relevant Person being the owner or beneficial owner of the ship

or the bareboat charterer of it at the time when the action is brought does not apply in regard to those maritime claims secured by a special privilege in accordance with Article 50 of the Merchant Shipping Act, which survive the voluntary sale of the vessel by up to one year.

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

The answer to this question is already to be found in the response given to Question 8 above. If at the time the cause of action arose the person who would be liable for the claim in personam (the "Relevant Person:") was the charterer (which therefore includes both bareboat charterers as well as time charterers) of the vessel concerned, then if at the time the action is brought that same person is either an owner or beneficial owner of that ship or the bareboat charterer of it, that particular ship may be arrested in security of that maritime claim.

Furthermore, if at the time the action is brought the same charterer liable for the claim in personam happened to be the owner or beneficial owner of any other vessel, then that other vessel could also be arrested in security of the maritime claim concerned.

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

An Owner whose ship has been arrested may request that counter-security be put up by the claimant; and the Court is likely to uphold such request.

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

Maltese law does not recognise the concept of a 'maritime lien' as such. However, a number of 'special privileges on ships' are recognised under Article 50 of the Merchant Shipping Act. The difference between an ordinary maritime claim (as recognised under Article 742B of the Code of Organisation and Civil Procedure) and a special privilege is essentially twofold.

Firstly, special privileges survive the voluntary sale of a ship for a period of one year from when such sale is recorded in the ship's register. Secondly, special privileges would rank in priority to ordinary maritime claims.

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

As mentioned above, Malta does not recognise the concept of a 'maritime lien' as such; and Malta is not a signatory to any International Convention pertinent to maritime liens.

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

Provided of course that the ship to be arrested is physically in a Maltese port, or at an anchorage within the territorial jurisdiction of the Maltese Courts, and we have received (i) a sufficient background of facts in relation to the claim; (ii) documentation substantiating the claim, (iii) a power of attorney – all of which may initially be forwarded to us by fax or e-mail – as well as (iv) funds covering fees and costs, then we could proceed to arrest the ship well within 24 hours.

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

We always require these documents as we need to substantiate both our authority to act as special mandatories of the claimant, as well as the claim itself in order to avoid any possible claim for wrongful arrest.

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

We should perhaps differentiate between two separate and distinct stages, being the stage at which the precautionary Warrant of Arrest itself is issued in security of a maritime claim; and the action on the merits which must follow the precautionary warrant of arrest in order to maintain in vigore the effects of the warrant of arrest.

The Warrant of Arrest itself does not require to be substantiated by any documents according to law, which only requires the completion and filing of the official form of warrant. However, in the subsequent action on the merits, documents should be submitted to the Courts in original format, or at least as certified true copies in the manner required by the law of procedure. In the event that only copies of documents are available, these would need to be substantiated by evidence given either viva voce before the Court, or by means of a sworn Affidavit.

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

Provided the claim falls within the ambit of Article 742B of the Code of Organisation and Civil Procedure, then the Maltese Courts would be vested with jurisdiction to entertain the substantive claim on the merits.

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

Action on the merits is to be brought, or arbitration commenced, in respect of the Claim stated in the Warrant of Arrest not yet being judicially acknowledged in virtue of a final and unappealable judgment or arbitration award or not otherwise constituting an executive title (such as would a Ship Mortgage), within 20 days from the date of issue of the Warrant.

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

Yes. Maltese Courts would recognise, and penalise, wrongful arrest.

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

Our Courts would likely follow English principles of company law in this regard, and would therefore allow the piercing and lifting of the corporate veil in appropriate circumstances.

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

The Court may order the sale of an arrested ship pendente lite if, on application of a Creditor, it appears that the debtor is insolvent or unlikely to continue trading and maintaining the asset. In reaching its conclusion, the Court will have regard to all the circumstances, including the nature of the claim, as well as of the defence; as well as to such steps as the defendant may have taken to secure the claim or otherwise to preserve the ship.



SHIP ARREST IN NETHERLANDS



By Peter van der Velden
KIVELD INTERNATIONAL LAWYERS
pv@kiveld.nl
www.kiveld.nl
Parkstraat 83
2514 JG The Hague Netherlands
Tel: +31 (0)88 254 83 83
Fax: +31 (0)88 254 83 83

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

The procedure for obtaining leave for arrest starts with submitting an arrest petition to the court in whose jurisdiction the ship is located or is expected to arrive shortly. These proceedings are ex parte. The arrest petition can be filed even during out of office hours or in weekends.

The petition should contain the full style of the claimant and debtor, the grounds for the arrest and the amount of claim. The courts decision is placed on the arrest petition. The bailiff enforces the arrest by handing the court order to the master. The port authorities will be informed about the arrest and will 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 is raised with 30% over the capital claim amount to cover future interest and costs while proceedings are pending.

The arrest must be lifted once sufficient alternative security is offered. This can be done either in the form of a first class Dutch bank guarantee or letter of undertaking by P&I Clubs of good standing. An arrest can be lifted without the intervention of the court being needed.

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.

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

The Netherlands is a party to the 1952 Brussels Arrest Convention since 1983. The provisions of this Treaty are not incorporated into the Dutch Civil Code (like in some other countries), with the effect that the 1952 Brussels Arrest Convention only applies 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.

There exist a Bilateral Shipping Treaty between The USSR and the Kingdom of the Netherlands ratified in 1969, which prohibits arrests in Dutch waters on Russian state owned ships (or of Dutch state-owned ships in Russian waters) related to the use of subject ship for trade. 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?

To be distinguished are conservatory and executory arrests on a ship. Exutory arrests are a means of enforcing a judgment (or arbitral award). For such enforceable/executory arrest, the arrest is allowed based on a judgment rendered by a Dutch court. Express permission for such arrest is then not needed.

The execution of an arbitration award (either rendered in domestic or foreign/international arbitration proceedings) requires court permission.

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

An executory arrest can – if the debtor is despite the arrest not willing or able to comply with the judgment or award – be followed by public sale (see further in answer to question 20).

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

For any claim, provided the Brussels Arrest Convention 1952 does not apply. In the latter case, the ship can only be arrested for maritime claims as listed in the convention.

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

Yes, but with one exception: Russian state owned ships related to the use of subject ship for trade may in principle not be arrested (see under question 2) .

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

In principle only 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 and also claims against the time-charterer for services rendered to the ship in order to keep into operation (claims for unpaid bunkers, supplies).

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.

State-owned ships may enjoy immunity, provided such ships are not commercially used.

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

As any asset of a debtor may be arrested in order to obtain security (or for that matter in enforcement of a judgment or award), a sister ship may be arrested. Ships not owned by the debtor cannot be arrested, i.e. only under extra-ordinary circumstances whereby the court “pierces the corporate veil”. Would a ship be owned by more than one owner, the ship can still be arrested for a claim against one of these “associated” owners.

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

See the answer under question 7.

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

Dutch courts have a discretionary power to demand counter security but in practice this rarely happens.

11. 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. However, 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.

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

The Netherlands is not a party to any conventions on maritime liens. However, claims based on a maritime lien, having the legal status of being recoverable from the ship, may qualify for an arrest.

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

Generally between 1,5 and 5 hours. The petition will be dealt with by the court immediately. Once permitted, the bailiff if put on stand-by on beforehand can then execute the arrest forthwith.

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

A Power of Attorney nor supporting documents are required when filing the arrest petition. The court assumes and trusts that the lawyer acting for the creditor is in the possession of claim supporting documents.

In case the ship owner applies for release in an injunction, the claimant must be able to show his claim documentation. Documents in another language than English, French or German may have to be translated.

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

No supporting documents, including original documents, are required when applying for leave for arrest.

Generally speaking, the requirement of submitting original documents is under Dutch law very rare, i.e. only when the opposing party contests the authenticity of the document. As original documents are not required when applying for arrest permission, nor are notarisation and/or apostille.

Although some communications can, an arrest permission cannot be filed electronically.

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

The arrest creates jurisdiction. Unless international conventions to which the Netherlands is affiliated provide otherwise. If the parties had agreed on another jurisdiction or arbitration, Dutch courts must step aside.

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

The time limit for filing suit after the arrest has been enforced must be at least eight (8) days after the arrest was enforced. Usually a time limit for filing suit of one to two months is granted when it concerns a foreign ship. Courts are free to determine this time frame and are willing to give more time or an extension of the initial time limit if there are good reasons for a longer period or extension.

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

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

19. Do the Courts of your country acknowledge the piercing and lifting 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 that is operating a fleet of separately owned single-ship companies or if a 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. There hardly exists case law on this subject as regards ships.

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

If a ship has been arrested and the arrest is not lifted in injunction proceedings or by way of alternative security, the arrest will be maintained until the creditor has obtained a title (judgment or arbitration award). Once such title is obtained, the conservatory arrest will automatically be transformed into an executory arrest. This may be followed by a judicial/public sale of the vessel before the court, if so requested, in which case the court will determine the pre-conditions for such auction.

Auctioning of a foreign seagoing vessel is subject to a detailed time frame and scheme of requirements to be fulfilled prior to the day on which the ship is actually auctioned. These procedural requirements and the bidding system aim at securing proper and fair auction proceedings with the purpose to obtain the highest price for the vessel to be auctioned.

The auction notice must be published in the newspapers as designated by the court at least thirty (30) days prior to the day of the auction. An auction can be organized between 30 and 40 days after the title in which the creditor's claim was adjudicated is obtained.



SHIP ARREST IN NIGERIA



By Lawrence Fubara Anga assisted by Oluremi Omibiyi
AELEX

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 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 applies to all maritime claims however arising and to all ships irrespective of their places of residence or domicile of their owners.

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” but has not promulgated it as municipal law so arrest is under extant 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. A ship may be arrested pursuant to an action in rem brought against such ship in respect of a proprietary or general maritime claim.

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

No. Arrests can only be effected pursuant to an action in rem brought against the ship or a sister ship.

5. 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 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 a 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 characters 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 counsel, 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. It is important to note that 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 counsel 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 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.

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

Yes. A ship can be arrested irrespective of its flag, as long as it is within Nigerian territorial waters.

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

No. In order to sustain an arrest, the claimant has to show that at the time his application is brought before the court the person liable to him otherwise known as the 'relevant person' is the beneficial owner or the demise charterer of the ship.

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

A sister ship may be arrested in place of the offending ship if it is found within Nigerian territorial waters and if the 'relevant person' is also the beneficial owner in respect of all the shares in the sister ship.

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

The Admiralty Jurisdiction Act is silent on Time-Chartered. However under §4(a) of the Act an action in rem may be brought against a ship where the 'relevant person' is the demise (bareboat) charterer of the vessel.

10. 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 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 or nature 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.

11. 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.

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

Yes. Nigeria recognises maritime liens by virtue of §5(3) of the Admiralty Jurisdiction Act which provides for a closed list of maritime liens such as liens for salvage; or damage done by a ship; or wages of the master or of a member of the crew of a ship; or master's disbursements.

Furthermore, Nigeria is a signatory to the International Convention on Maritime Liens and Mortgages 1993 but has not promulgated the Convention as municipal law.

13. 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.

14. 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 copies of the documents listed in answer 5 above have to be presented to the court in support of the claim.

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

Original, hard copies of all the documents are required, but do not have to be notarised. Documents cannot be filed electronically.

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

Yes. Nigerian courts will accept jurisdiction over the substantive claim once a vessel has been arrested within Nigerian territorial waters.

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

An order for an arrest will not be granted unless the ex parte motion for a warrant of arrest is accompanied by the statement of claim and supporting documents. There is accordingly no waiting period between the arrest taking place and the commencement of the substantive action.

18. 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.

19. Do the Courts of your country acknowledge the piercing and lifting 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.

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

The court may, on application by a party before final judgement in a proceeding, order that a ship that is under arrest in the proceeding be sold. Where the ship is deteriorating in value, the court may at any stage of the proceeding, either with or without application order it to be sold (order 14 rule 1 & 3 Admiralty Jurisdiction Procedure Rules). The sale of a ship ordered to be sold shall be by auction 21 days after the advertisement shall have been placed in two national daily papers by the Admiralty Marshal.



SHIP ARREST IN NORWAY



By Audun Bollerud
KLUGE ADVOKATFIRMA
audun.bollerud@kluge.no
www.kluge.no
Postboks 7548 Vika,
117 OSLO, Norway
Tel: 23 13 92 00
Fax: 23 13 92 01

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

In Norwegian law, arrest is a remedy to secure a monetary claim. The rules are general in nature, with certain special rules that apply to ships. Arresting a ship in Norway can be arranged quickly without large costs and can be an efficient tool to secure a maritime claim against a ship owner.

In order to arrest a ship, the claimant must submit an application to the District Court. Pursuant to the Dispute Act section 32-4, the claimant can either submit the application to the court in the judicial district where the defendant resides in Norway, or to the court in the judicial district where the ship is currently located or is expected to be located in the near future.

In order to arrest a ship, the claimant must prove the probability of the maritime claim, that a "ground for arrest" exists, and that the other conditions for an arrest are fulfilled. As a general rule, the "ground for arrest" is an essential condition for arrest. The Dispute Act provides that an arrest can only be decided by the courts when the behaviour of the debtor gives reason to fear that the enforcement of a claim otherwise will be made impossible or made substantially more difficult, or if enforcement has to take place outside Norway. However, if the situation is especially precarious, the ship can sometimes be arrested without a "ground for arrest".

The courts will usually consider the application on the basis of written material without a hearing, as time will often be of major importance. If the application succeeds, the courts will notify the enforcement authorities. This secures that the ship does not leave the harbour, and that the arrest is correctly reported to the ship register.

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

Norway is a party to the 1952 Arrest Convention, which is incorporated in the Maritime Code and in the Dispute Act. Norway has reserved its rights as provided by Art 10 (b). Norway has signed but not ratified the 1999 Arrest Convention.

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

There is really no alternative to the normal procedures for arrest as such. However, once a ship has successfully been arrested, the claimant can request the arrest to be registered as a legal right in the ship register, but without keeping the ship in detention. An arrest will also be registered in the ship register as part of the normal enforcement procedure. The advantage of a register arrest without detention, however, is that the claimant is less exposed to liability if the arrest is subsequently found to be wrongful.

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

A vessel may serve as legal security for a claim in other ways than arrest. One possibility is the ordinary rules on liens and mortgages, under which the claim is secured by a right in the ship. This gives the creditor the right to force a sale of the ship. Such security can be based on contract, order of the enforcement authorities or statute. The creditor's right of retention, which can be based on contract or statute, may also give security. This is a passive

right to retain the ship, but does not give the creditor a right to enforce its claim through forced sale.

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

According to the Maritime Code section 92, a ship can only be arrested if the claim is a maritime claim. Section 92 defines “maritime claim” in detail. In addition, section 93 (1) provides that the claim must be related to the ship, with some exceptions for sister ships.

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

Yes.

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

No. According to the Maritime Code section 93 (4), the ship can only be arrested if it can serve as an object for enforcement of the claim in question. As a consequence, the debtor has to be the owner of the ship.

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

As mentioned above, the main rule is that the claim must be related to the ship. However, some important exceptions from this are made in the Maritime Code section 93.

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

The power of arrest in Norwegian law is narrower than the power in the 1952 Arrest Convention. This is due to the requirement in the Maritime Code section 93 (4), which establishes that an arrest can only be granted where the debtor is the owner of the ship. Where a bare boat or time-chartered vessel causes damage, it is normally the bare boat charterer or time charterer who will be liable, and not the owner. Accordingly, it will not be possible to arrest the vessel in these cases according to general law. However, there are some important exceptions from this as regards maritime liens.

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

Section 33-3 of the Dispute Act provides that the court can require the claimant to deposit securities as a condition for the implementation of the arrest. The security is fixed at the courts discretion.

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

Section 92 (2)(q) of the Maritime Code exempts maritime liens from the definition of a maritime claim. However, as a general rule, a maritime lien will fall within the other categories of the definition in section 92 (2). Consequently, there is usually no difference in respect to arresting a ship for a maritime claim and a maritime lien.

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

Yes, maritime liens are recognized under Norwegian law. The provisions on maritime liens are found in the Maritime Code section 51. However, the 1967 Maritime Lien Convention is not effective in Norway.

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

Kluge law firm recognize the need for swift action in cases regarding arrest of ships, and we will normally be able to arrange for arrest of a vessel in any Norwegian port within 24 hours after receiving necessary documentation.

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

No. It is advisable and sometimes even required that the claimant appoints legal counsel to represent him with the claim. According to the law, an application for an arrest can be submitted orally to the courts, but this is more theoretical than practical and it is normal procedure to issue a written petition signed by either the claimant or his legal counsel.

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

There are no formal requirements as to what documents can be presented to the courts. However, it is advisable to submit any documentation relevant to the substantive claim together with the petition. This increases the chance of a successful arrest, as in most cases the claimant must prove the substantive claim on a balance of probabilities.

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

Yes. Subject to any agreements on venue or arbitration, legal proceedings regarding the substantive claim can be instituted in the courts of the judicial district where the ship has been arrested.

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

The defendant can request the courts to fix a time-limit by which the claimant must institute legal proceedings. If no such time-limit has been fixed by the court, the period will be one year from the issue of the arrest order. If proceedings are not instituted within the time-limit, the arrest order will be quashed. The courts can, at their own discretion, extend the one-year time limit if a request is submitted within the time-limit.

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

Yes. Section 32-11 of the Dispute Act imposes on the claimant a wide-ranging duty to indemnify the defendant for any economic loss he has suffered if the claim did not exist at the time of the arrest. The same applies if the claimant by negligence or intent has given wrongful or misleading information regarding the “ground for arrest”.

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

As a general rule, the shareholders of a company with limited liability will not be personally liable for the obligations of the company.

However, the courts will make an overall evaluation and, in exceptional circumstances, the possibility of piercing and lifting the corporate veil cannot be ruled out. Important factors in the overall evaluation will be whether it would be unreasonable towards the creditor to uphold the corporate veil in the particular situation, or whether the companies have been mixed in such a way that the upholding of the corporate veil does not deserve preservation from the courts.

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

When a ship has been arrested, the effect of the arrest is that the owner loses his complete control over the ship. This means that the owner cannot decide to sell the ship as long as the arrest is upheld.

An arrest does not give the claimant the right to a compulsory fulfilment. Such sale would require an enforcement ground. The claim is considered to be *pendente lite* until a legally binding judgement has been delivered by the courts. As a consequence, the claimant cannot demand that the ship is sold *pendente lite*. However, the courts can permit this if the arrest holder requests it, and it is necessary to avoid substantial decrease in value.



SHIP ARREST IN PANAMA

By Francisco Carreira-Pitti
CARREIRA PITTI P.C. ATTORNEYS
paco@carreirapitti.com
www.panamalaw.com

55th St. No. 225, CARPIT Bldg., El Cangrejo
Panama City 6-10100, Panama
Tel: (507) 269-2444
Fax: (507) 263-8290

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

The Republic of Panama and the Panama Canal are brand names in international shipping. The Panamanian Ship Registry is the largest in the world in number of vessels as well as tonnage. The Panama Canal is a focal point since there are over 21,000 ships calling Panamanian Ports every year and over 14,000 of them transit the waterway.

Until March, 1982, a United States Federal District Court for the Canal Zone handled maritime claims at the Panama Canal. Since then, Panama took over its maritime jurisdiction and the Maritime Court of Panama was created by Law 8 of 1982. The, then single, Maritime Court of Panama functioned as a specialized tribunal where the Judge is required by law to bear maritime law expertise.

Nowadays, there are two specialized maritime courts in Panama. This is a direct consequence of a growing practice in a maritime litigation context.

Furthermore, the National Assembly of Panama adopted a bill amend the existing procedural rules for admiralty claims. The Maritime Code of Panama created by Law 12 of 2009, fashioned after the U.S. Supplemental Rules for certain Admiralty and Maritime Claims of Federal Rules of Civil Procedure, incorporated American procedural devices such as: oral trials, discovery, arrests procedures, limitation of liability and mixed in rem and in personam claims.

All ships present in Panama are subject to the jurisdiction of the Maritime Courts of Panama. Regardless of the flag, or the place where the claim arose, whether inside or outside Panama, the Maritime Courts will exercise its jurisdiction. This is commonly referred to as forum arresti. Any vessel is subject to be arrested either under an in rem theory or an in personam action.

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

Panama has not ratified any of the International Conventions related to Ship Arrests. However where the applicable law to the claim is that of a country which has ratified any Convention the Maritime Courts of Panama will enforce it.

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

Under our procedural rules, there are three ways to arrest a vessel. First, any vessel or property can be arrested so that a defendant cannot dissipate assets beyond the jurisdiction by depositing a 20-30% bond of the amount in controversy when defendant's property is found within the territory of the Republic of Panama. A defendant is "present" in Panama when its real and effective place of business is in the territory of the Republic of Panama. Second, a vessel can be arrested ascribe the Courts jurisdiction when such a defendant is not present for purposes of jurisdiction or when an asset of defendant property is attached in order to serve process. Finally, a Maritime Court may exercise its jurisdiction to enforce maritime liens or encumbrances.

An administrative arrest is also available to plaintiffs. Under an Article 206 proceeding, any Panamanian Vessels' Registration can be blocked at the Public Registry so as to prohibit its sale or encumbrance. The evidentiary standard for this type of proceeding requires a showing that an "immediate and irreparable harm" may occur. A discretionary deposit may be ordered by the Court in the sum of no less than US\$ 10,000 to not more than US\$ 50,000.

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

Panama does not have the saisie conservatoire or freezing orders.

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

In the case of in rem claim, if the applicable law concedes a maritime lien or a statutory right in rem, any vessel can be arrested. In Panama cargo and freight are also subject to being arrested on an in rem claim.

In the case of an in personam claim, any claim arising out of acts related to maritime commerce, transportation and traffic arising inside or outside the territory of Panama and when the claims arises from an act or that are or should be executed from, through or to Panama the Court will try the claim.

Claims that have been tried in the Panamanian Courts involve Personal Injury claims, Seaman labour claims, Longshore workers claims, Insurance litigation, P&I direct actions, Collisions & allisions, Charter party disputes, Contractual claims, Cargo claims, Necessaries, Bunkers, Maritime claims based on negligence, Vessel property disputes, Mortgage executions, Towage, Limitations of liability procedures, Salvage, General Average and Arbitration.

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

Yes, in Panama the mere presence of any vessel at Panamanian waters gives the maritime court jurisdiction in rem over the vessel and in personam over the owners, operators and charterers. Panama does not recognize governmental immunity for state owned commercial trading vessels.

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

In Panama, the claims subject to Panamanian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer. Under Panama Law anyone with authority binds the vessel in rem, if the supplier is not timely notified otherwise.

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

There are two separate matters here. If the applicable law to the claim permits the arrest of sisterships or associated ownership vessels, Panama will recognize it. In cases where Panama Law is applicable sistership arrest is permitted if the vessel are owned by the same company in an in personam claim. If the claim is in rem, the action has to be directed against the same vessel. However, Panama permits mixed or combined claims, where there is a maritime lien or a statutory right in rem and there is in personam liability upon owners, operators or charterers.

In Panama piercing the corporate veil is an extraordinary remedy only available in cases of fraud or violation of public policy.

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

Under Panama Law anyone with authority over the vessel, owner, disponent owner, bareboat charterer, operator and/or time charterer binds the vessel for goods and services provided, except where the supplier is timely advised otherwise. As to cargo damages liability, the vessel is liable in rem regardless of who has control. In addition Bareboat and Time Charterers are liable in an in personam claim where the applicable law so permits.

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

In two arrest situations countersecurity is nominal, ONE THOUSAND U.S. DOLLARS (US\$ 1,000.00), to file an in rem claim and to attach property of a foreign defendant (forum arresti) which could be a vessel, bunkers, containers or any other property. Due to the low countersecurity the courts require a very high standard of proof of the underlying claim. In the third case, where the object of the arrest is to obtain security or to prevent a defendant from disposing of property, countersecurity is 20-30% of the amount in controversy and the evidentiary standard is relaxed.

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

There is no difference in arresting a ship for a maritime claim or a maritime lien, in both cases countersecurity is low and the evidence standard is high. The bottom line is the applicable law.

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

Panama recognizes maritime liens in the Commerce Code, not under any Convention. However, it is vital to notice that if the foreign applicable law recognizes maritime liens via statute or convention, Panama will recognize foreign maritime liens, even if those liens cannot be enforced via an in rem action in their own country.

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

Depending on the complexity of the case, it could take a matter of hours only. It must be highlighted that we have access to available information on the ETA's of all vessels reaching Panama and/or transiting the Panama Canal.

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

Panama, like any other civil law country requires a POA for the process, not necessarily to arrest a vessel, however a bond depending on the amount in controversy is required. It is advisable to have the POA as soon as possible after the arrest.

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

All arrest petitions can be filed with copies via e-mail, preferable in pdf format or similar. Filing original documents could be required at a later stage depending on the pleadings. Only the POA and a Corporate Certificate of Good Standing are required to be notarized and Apostilled or legalized before the Panama Embassy.

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

In Panama once the arrest is executed the Court has jurisdiction over the parties and the claim. In order to arrest a vessel a claim must be simultaneously filed and evidence must be attached. Defendants could file a motion to abstain and transfer the case to another forum at a later stage.

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

In Panama action on the merits and the arrest petition are required to be filed together, once the vessel is arrested, the claim goes forward, unless the Court decides to abstain and transfer the case to a foreign forum. In other words, the arrest of a vessel starts the claim.

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

Yes, in Panama there are provisions for wrongful arrest. Where property not belonging to the defendant is attached; where a maritime lien is inexistent or barred by the statute of limitation; or where the parties have agreed in writing in a negotiated contract to a different forum. However, consideration should be given to the fact that all vessels transiting the Panama Canal have an average waiting period of about 36 hours, so any possible claim for wrongful arrest damages are limited.

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

Yes, piercing and lifting the corporate veil is an extraordinary remedy in cases of fraud or violation of public policy.

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

The rule in Panama is that where the owners, operators or charterer abandon the vessel and crew or where the complaint is not answered within 30 days of the arrest, the court is empowered to sell the vessel in a public auction. The process takes about 60 days after the court ordered appraisal by a local surveyor.



SHIP ARREST IN PORTUGAL (Questions 1 to 9)



By Carlos de Sousa e Brito & Joao Raimundo
CARLOS DE SOUSA E BRITO & ASSOCIADOS
csba@csbadvogados.pt
www.csbadvogados.pt
Rua Castilho, 71 - 2^a. Dto.
1250-068L 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. 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 does not require evidence of "periculum in mora", but the creditor must still evidence the apparent existence of the claimed credit. In the aforementioned cases it is not required evidence of the credit's existence, it is necessary to demonstrate that there is a serious probability that the credit indeed exists.

Considering the provisional nature of this "legal instrument" it is also important to emphasise the relevance of its link to the declaratory procedure, since, it has to be filed by the petitioner within 30 days after the notification of the arrest decision or in another deadline if requested by the petitioner and ordered by the maritime court. If the petitioner does not act accordingly the arrest / provisional remedy it is extinguished.

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 seagoing Ships of 1952 (below simply referred to as 1952 Convention) is applicable in Portugal 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 the article 619 of the Civil Code. It is in accordance with the aforementioned laws that the competent entity, i.e., the Maritime Court orders the arrest of ships.

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

No. In Portuguese territory the only way to arrest a ship is through the legal instrument aforementioned. The entire legal basis mentioned are specifically referred to ship arrest and therefore these legal issues do not find solution in any other law. The arrest of ships in Portugal must be requested before the Maritime Court through the initial petition.

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

In Portugal the debtor can only stop a ship from leaving the country through a saisie conservatoire since the national legal system has specific laws for this kind of situations. This legal instrument will allow the creditor to secure his credit's payment keeping an asset (ship) well located.

5. 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. However the Convention does not overlaps or restrings the internal laws and any national regulation of the State concerning ship's arrest.

Regarding the above mentioned we can conclude that 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.

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

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

Yes. Since the Portuguese and International Law does not forbids the arrest of a vessel concerning his flag, through a reverse interpretation we can conclude that a ship can be arrested irrespectively of his flag.

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

Yes, is possible in some situations to arrest a ship irrespectively of the debtor.

For example, the paragraph 1 of the 3rd article of the 1952 Convention allows, a Claimant to request the arrest of either (i) the ship in respect of which the maritime claim arose, or (ii) any other ship owned by the person who was, at the time when the maritime claim arose, the owner of the ship (responsible for the maritime claim).

This situation is possible even though the ship arrested be ready to sail. However no ship, other than the particular ship in respect of which the claim arose, can be arrested in respect of any of the maritime claims enumerated in Article 1 (1) (0), (p) or (q) of the 1952 Convention.

Another example, is stated in paragraph 4 of the 3rd article of the 1952 Convention, referred to situations of ship freight with nautical management transfer, which allows, (when the only responsible for the maritime claim against that vessel is the charterer), the arrest of that specific ship or any other owned by the charterer.

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

Regarding sister ships, the paragraph 1 of the 3rd article of the 1952 Convention allows the arrest of the ship in respect of which the maritime claim arose and also of any other vessel owned by the same person / company.

Regarding ships in associated ownership, the Portuguese legal system allows the arrest of ships in associated ownership, once there is not a law forbidding it.

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

There is a difference between these two types of charter contract. In a Time-chartered vessel the petitioner can request the arrest of the vessel from which the maritime claim arose or of any other vessel owned by the charterer. In a Bareboat Chartered vessels the only asset/ship that can be arrested is the vessel from which the maritime claim arose.



SHIP ARREST IN PORTUGAL (Questions 10 to 20)



Ana Cristina Pimentel
ARMANDO HENRIQUES, ANA CRISTINA PIMENTEL & ASSOCIADOS
Sociedade de Advogados, RL
e-mail ah.acp@netcabo.pt
Av. Miguel Bombarda, 50 - 2º - 1050-166 Lisboa
Telefone (351) 21 781 99 90
Telefax (351) 21 793 06 15

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

Although it is established on article 390 nr. 2 of the Portuguese Code of Civil Procedure that the judge may request the arrestor to put up an adequate security, considering the particular circumstances of the case under analysis, to our knowledge never did a Maritime Court Judge request for such counter-security to be given by the arrestor as a requisite for the arrest to be granted.

11. 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 credit or maritime lien; the same rules apply on both situations. However, when the arrest is requested on the basis of national law only, the arrestor will have to produce evidence before the Court on the probability of the existence of his credit as well as on the financial situation of the arrestee to justify the urgency of the proceedings and that the arrest of the ship will be the only measure that will allow the arrestor to be able to receive payment considering the overall situation of the arrestee and his assets.

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

Yes. Portugal is a party to the 1926 Brussels Convention for the unification of certain rules relating to maritime liens and mortgages. After the liens listed on article 2 of the Convention and the registered mortgages, follows the liens listed on article 578 of the Portuguese Commercial Code.

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

Once the file is analysed by the Lawyers, it will be necessary to prepare and draft the arrest application stating clearly all the relevant facts of the case, the reasons for the arrest to be granted and the amount claimed all dully supported by the relevant documentary evidence (contracts, invoices, exchange of correspondence, etc.), translated into Portuguese; at least the most relevant documents should be translated. A list of witnesses to be heard should also be included on the arrest application. From the moment the arrest application is submitted to Court – within the workable hours from 9.00 to 16.00 - the judge will have a period of 24 hours to analyse the file and give the first detention order preventing the vessel from sailing. This Court order is immediately sent by fax by the Court to the Harbour Master office of the port where the vessel is staying. Normally, as far as the Maritime Court is concerned, the first detention order is given within a few hours after the application is submitted to Court. The hearing of the witnesses appointed will take place a few days later depending on the judge's agenda and whether the judge considers such inquiry necessary. The arrest of ships calling the ports of Madeira and Azores Islands may take longer as the matter is brought before the Civil Courts and not before a specialized Maritime Court as it happens for the rest of the country.

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

When presenting the arrest application it will be necessary to attach a power of attorney. At least a copy of the power of attorney should be attached to the arrest application, providing the original is delivered as soon as received.

All the supporting documents evidencing the facts of the case and the amount of the claim should also be attached to the arrest application for the judge to be able to analyse the merits of the arrest application and consider whether there are sufficient elements to justify the need for the arrest procedure as guarantee for the payment of the amount claimed in debt.

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

The original power of attorney needs to be submitted to Court. The supporting documents may be presented in copies only. The power of attorney should be legalized with apostille or at least documents evidencing the identity and powers of the person signing the power of attorney should be presented to the Lawyer and considered as sufficient. The originals of the supporting documents may eventually be requested to be confronted with the copies on the file in case of any doubt or controversy regarding the validity or evidence value of the documents submitted.

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

Portuguese Courts will accept jurisdiction over the substantive claim on the situations listed on article 7 nr 1 of the 1952 Brussels arrest Convention.

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

The normal time limit for the claimant to take legal action on the merits is ten days counting from the date the arrestor is notified by the Court that the arrest application has been served on the arrestee. Such period of time may be longer at the request of the applicant on the basis of article 7 nr 2 of the 1952 Brussels Arrest Convention provided the arrestor justifies the need for such a longer delay, namely when the proceedings will have to be engaged on a different jurisdiction.

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

Yes. Article 390 of the Code of Civil Procedure determines that if the arrest is considered unjustified or will become void because of the arrestor, the arrestor is responsible for the damages caused to the arrestee if the arrestor did not act as a normal and prudent man should have done. Civil liability rules will apply to this situation and to the evaluation of the damages caused.

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

No. Only the debtor / arrestee and their registered assets are liable for the payment of the debts claimed against such debtor, an individual person or a company. The Court will not look into the links between different companies and their shareholders or allow the arrest of assets belonging to other entities other than the debtor/arrestee.

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

It will be possible to request for the anticipated sale of the ship, providing one can justify the need for such measure because of, for instance, the depreciation of the value of the ship and the consequences thereof for the owner and claimants. The circumstances of each particular case are analysed by the Court and this measure is normally only allowed when the ship is abandoned by the owner/arrestee, remains arrested for a long period of time and her situation is uncertain. The sale procedure will take several months considering the need to obtain the judge's order, the service on the owner of the ship and the sale procedure that will follow there of.



SHIP ARREST IN ROMANIA



By Adrian Cristea
CRISTEA & PARTNERS LAW OFFICE
adiclaw@seanet.ro
www.cristealaw.ro

54 Cuza Voda Street, Ground Floor flat 3
900682 Constanta, Romania
Tel: 00 40 241 518 112
Fax: 00 40 241 518 802



By Augustin Zabrautanu
POPESCU, IOSEPOVICI, ZABRAUTANU & ASSOCIATES LAW OFFICE
augustin.zabrautanu@pialaw.ro

www.pialaw.ro
17 Unirii Blvd., Bl. 4A, Sc. B, et. 5, apt.40
Bucuresti, Sector 5, Romania
Tel: 00 40 21 336 73 71
Fax: 00 40 21 336 73 72

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

Conditions imposed by Romanian law :

- a) Indicate and provide evidences to the Court that plaintiffs have started the main legal action (Court action or arbitration proceedings according to the provisions of the C/P or B/L) against the defendant. The evidence should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started;
- b) Indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel;
- c) Provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10%). The main purpose of such bank letter of guarantee is to compensate the losses of the defendant owner if finally the claim of the plaintiff will be found ungrounded by the Court.

In case the matter is very urgent, vessels can be provisionally arrested through the Harbor Master, paying a tax of Euro 400 (Saturdays and Sundays Euro 800).

A notice of arrest will be notified to the Harbor Master.

Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will become effective when the vessel will finalize operations and vessel's agent will attend Harbor Master to receive vessel's permit to leave outside. Starting with the hour when vessel's agent will ask for the Permit to leave, Harbor Master will count 24 hours (Saturdays and Sundays are not included within this hours anyway) and the vessel will be arrested for 24 hours. During these 24 hours, plaintiff will need to apply to the Court asking for the arrest of the vessel. Courts are judging these cases on an urgent basis and normally are issuing the decision within 24 hrs. There is no need for the time being to place the counter-security which will be requested by the Court at a later stage.

Court costs are low. Lawyer fees normally calculated on hourly basis Costs are usually recoverable from defendant.

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

Romania has acceded to the International Convention for the unification of rules about

the arrest of vessels, signed in Brussels on May 10th 1952, on November 8th 1995. For the participant states of the 9th Diplomatic Convention of Maritime Law, it was enforced on February 24th 1956.

Article 8, paragraph 1 of the Convention provides that its provisions are applicable in any contracting state to any vessel that carries the flag of a contracting state. Paragraph 2 of the same article concedes the possibility that vessel that carries the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state. Romanian Courts are applying this principle when are taking into consideration the arrest of one vessel in Romanian jurisdiction.

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

Sister ships may be arrested in Romania, following the provisions of the article 907 and 908 Romanian Commercial Code and not the provisions of the 1952 Arrest Convention.

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

No.

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

A ship can be arrested in Romania for one or more of the claims listed in article 1.1 of the 1952 Arrest Convention.

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

Paragraph 2 of the article 8 of 1952 Arrest Convention gives the possibility that vessel that carries the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state.

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

As already mentioned it is a need to indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel.

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

As mentioned above, sister ships may be arrested in Romania, following the provisions of the article 907 and 908 Romanian Commercial Code and not the provisions of the 1952 Arrest Convention. Romanian Courts are reluctant to order the arrest of sister ships. Ships in associated ownership cannot be arrested in Romania.

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

Bareboat and Time-Chartered vessels cannot be arrested in Romania for the claims against the Bareboat and/or Time-Charterer.

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

Court will order to provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10%).

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

Arrest of a ship for a maritime claim will be done according to 1952 Arrest Convention and arrest of a ship for a maritime lien will be done according to 1926 maritime liens and mortgages Convention.

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

Romania recognizes maritime liens according to 1926 maritime liens and mortgages Convention.

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

A notice of arrest will be notified to the Harbor Master.

Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will be placed immediately as the file arrives to our law firm and a legal assistance contract, even by e-mail and/or fax, will be signed with the client.

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

Based on the legal assistance contract signed with client, law firm will provide to the Court a power of attorney in the standard format prescribed by Lawyers statute.

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

There is no need to provide original documents to the Court, only copies mentioned to be true copies will be provided to the Court, on the understanding that originals will be kept by the law office. The evidence that main claim proceedings has been instituted should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started.

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

No.

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

Arrest cannot be requested if legal action on the merits has not yet started prior to the application to the Court.

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

Yes.

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

No.

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

No.



SHIP ARREST IN RUSSIA



Andrey Kosmachevskiy and Andrey Suprunenko
LAW FIRM "REMEDY"
40-42 Nevskiy av.
e-mail: general@remedy.spb.ru
[http: www.remedy.ru](http://www.remedy.ru)
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, 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 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 or administrative procedure as exhibit of case or as subject of criminal or administrative offence.

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

There is a way to arrest the ship as property of debtor in security of civil action as well as in the bankruptcy proceeding.

5. 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 is applied by the Russian courts mostly in respect of the Russian flag seagoing vessels. Under the 1952 Brussels Convention – the Russian courts are more or less in line with the list of the maritime claims indicated in the 1952 Brussels Convention. But the courts apply this Convention mostly to the foreign flag vessels.

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

You can arrest a ship irrespectively of her flag.

7. 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 specific 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. Certain claims may follow the ship regardless in whose hands it may be, e.g. claims for crew wages, salvage, port dues (maritime liens).

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

It is possible to arrest sister ship as the property owned to same debtor.

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

The provisions for the arrest of the vessels in accordance with the domestic law are the same as in the Convention, 1999 article 3 par.(1)-(2). If the Convention, 1952 is to be applied then the provisions for the arrest from Convention, 1952 will be applied.

10. 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.

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

There is not difference in respect to arresting a ship.

12. Does you country recognise 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.

13. 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). According to legislation in force the court should issue the order for the arrest (or refuse to arrest) within one working day after the day of filing the application.

14. 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.

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

The original of legalized (with apostille) POA is needed upon receiving from the court writs, decisions. The original (with apostille) extract from the State Trade Register or any Register in order to prove the existence of the claimant as legal entity is needed in oral hearing but the copy of such original should be attached while lodging the statement of claim or application for the arrest.

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

Yes, if there will not be any objections from parties lodged. 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.

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

Not more than 15 days.

18. 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.

19. Do the Courts of your country acknowledge the piercing and lifting 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.

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

If the vessel was arrested then it is not possible to sell it until the judgment comes in legal force. However there are some exclusive cases in bailiff proceeding.



SHIP ARREST IN SCOTLAND

By George Pennel
MACLAY MURRAY & SPENS LLP
George.Pennel@mms.co.uk
www.mms.co.uk
Quartermile One, 15 Lauriston Pl
EH3 9EP, Edinburgh, UK
Tel. 0044 131 228 7000
Fax. 0044 131 228 7001

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

Scotland is a separate and quite distinct jurisdiction within the United Kingdom with its own court and legal system. In general, the arrest of ships in Scotland now may only be carried out in accordance with Part V of the Administration of Justice Act 1956 (the "Act") which enacts in Scotland the International Convention on the Arrest of Ships (Brussels 1952) (the "Convention"). Arrest may be effected as a protective measure pursuant to the enforcement of a judgement issued by the courts of another Brussels or Lugano country or of another Member State of the EC.

Ship arrest in Scotland may be, in rem, where the creditor has a real right over the vessel by virtue of a maritime hypothec; in personam where the right of the creditor is against a debtor who happens to be a shipowner; and in rem et in personam, where the arrester has rights against the vessel and against the shipowner. The usual maritime hypothecs are for collision damage, seamen's wages, masters wages and necessary outlays, salvage, and in some rare cases, for repair. If the claim is truly in rem it is not necessary that the vessel is owned by the debtor at the time of arrestment. On the contrary, where the claim is in personam it is an absolute requirement that the vessel arrested is owned by the debtor. Arrestment may also be carried out to found jurisdiction. At common law, the mere presence of an asset in Scotland gives the Scottish Courts jurisdiction. However, arrestment to found jurisdiction gives the arrester no right to detain the property. It merely provides a basis for jurisdiction in the Scottish courts. Following the implementation of the Brussels & Lugano Conventions and Council Regulation (EC) 44/2001, arrestment to found jurisdiction is no longer available against defenders who are domiciled within the EEA.

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

Scotland is party to the International Convention on the Arrest of Seagoing Ships, Brussels 1952. The Convention is enacted in Scotland in the Administration of Justice Act 1956 (the "Act"). Scotland is also subject to the Brussels and Lugano Conventions enacted in the Civil Jurisdiction & Judgements Act 1982 ("CJJA") and Council Regulation (EC) 44/2001 (the "Regulation").

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

Warrant to arrest may be sought as a protective measure in connection with the enforcement of a judgement issued in another Lugano state or in another Member State of the EC or EEA. (S 27 CJJA and the Regulation). For applications under CJJA the documents required include affidavits as to the availability of remedy in the originating state are required. Registration of a decision of another member state of the EC requires a certificate conforming to Art 54 and 58 of the Regulation.

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

It is thought that orders granted in accordance with the Act and the Convention are now the only means of detaining a vessel in Scotland.

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

It is now generally accepted that arrestment of a ship in Scotland may be carried out only in accordance with and for claims identified in S 47 of the Act. The Act lists 19 forms of

maritime claim which can be the basis for arrest including:

- damage done or received by any ship;
- loss of life or personal injury as a result of a defect in a ship;
- the use or hire of a ship or carriage of goods on a ship
- general average
- salvage;
- claims by the master or crew for wages including the master's disbursements;
- claims for ownership or possession.

Note that there is no maritime lien in Scotland for "necessaries". In a number of jurisdictions necessities such as bunkers give rise to a maritime lien. That is not the case in Scotland.

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

Yes. In general it is not competent to arrest a warship or a vessel subject to Sovereign immunity unless at the time of the incident giving rise to the claim the vessel was engaged in a commercial enterprise (State Immunity Act 1978).

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

In rem claims may be brought against the ship itself although it is usual also to name the owner in the summons. In actions of that kind it is important to ensure that arrestment in rem is sought and obtained. In personam claims may be brought only where the ship is the ship with which the underlying action is concerned or all the shares in the ship are owned by the person against whom the action is brought.

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

Generally, sister ships and ships in associated ownership may be arrested. However, where the claim involves a maritime lien or where the 'defender' does not own all of the shares in a ship only the ship with which the action is concerned may be arrested.

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

At present, Scotland does not allow arrest of a vessel in an action in personam against a party other than the owner. It is not competent to arrest a vessel in an action against a time or bareboat charterer. Amendments which would allow vessels to be arrested in an action against a bareboat charterer have been enacted but are not as yet in force. It remains competent to arrest in rem a vessel in the possession of a bareboat or time charterer.

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

No. However, any losses which arise as a consequence of a wrongful arrestment, even if carried out in good faith, will be recoverable from the arrester.

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

Maritime lien or hypothec gives rise to a real right and it is irrelevant that ownership of the vessel may have been transferred after the right has arisen. A claim arising as a consequence of a maritime lien is directed against the ship itself which may be arrested pursuant to that lien (so long as the other requirements of the Act are met) even if at the time of arrest it is not owned by the defender.

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

The United Kingdom is a signatory to the International Convention on Maritime Liens and Mortgages 1993 Convention which came into force in 2004.

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

Much would depend upon the complexity of the case and the extent of any investigation

required. In general terms, if all of the appropriate papers are available and we are able to satisfy the relevant Money Laundering requirements it is possible that we could frame the summons and have the matter before the court in a matter of several hours. In urgent cases arrestment can be carried out in less than 12 hours..

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

A power of attorney is not required. However, solicitors are obliged to satisfy themselves that the court process is not abused by attempts to seek unfounded arrestment. That will always require that copies of certain documents be produced to the Court. Warrant to arrest requires a brief hearing before a judge who reviews matters and considers the request. In general, documents relating to ownership and any contractual relationship should be produced if the judge is to be persuaded to grant the warrant to arrest.

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

At present, no documents can be filed electronically with the courts. As outlined above, in order to obtain a warrant to arrest an action must be raised in the court by lodging summons/writ as appropriate. The other documents or copies will be determined by the nature of the underlying claim and the need to persuade the Court to grant the warrant.

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

A dispute brought before the courts in Scotland will be dealt with on the basis of the Brussels and Lugano Convention rules or the Regulations. Where an asset such as a ship, owned by a person domiciled outside the EEA is arrested to found jurisdiction the Courts of Scotland will accept jurisdiction in the underlying dispute. Pleas of forum non-conveniens, to give effect to arbitration or mediation clauses, lis pendens etc will be given effect by the Courts of Scotland.

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

Arrestment on the dependence is generally effected before an action has commenced. In Scotland an action is commenced when the summons or writ is served on the defender. Again, the Brussels and Lugano rules as to notice apply and defenders within the EEA are given 21 days and those outside the EEA, 42 days notice before the case can be "called" in court. Once the claim is called, the defender has 7 days to lodge defences with the court. In the usual case of ship arrestment where the parties adjust and agree a form of letter of undertaking the claim itself may not be served. However, prior to service an arrestment on the dependence will expire after 20 days and must be reserved if it is to be continued thereafter every 21 days until the action is commenced by service of the summons on the defender.

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

Yes. In general, claims of wrongful arrest required some element of bad faith. However that is not the case where the asset arrested is a ship. Arrest of a ship is carried out periculo petentis ie at the peril of the party who has carried out the arrestment. Any arrest of a vessel which is carried out for a purpose other than those listed in S 47 of the Act runs a considerable risk of generating a claim of wrongful arrest.

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

Yes but only in exceptional circumstances where it is evident that the company/corporate structure has been put in place with the intention to defraud or evade liabilities.

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

No.



SHIP ARREST IN SENEGAL



By Philippe Pruvot & Elise Apostolou
3A AFRIQUE DAKAR
legal.department@3afrance-expertise.com
www.3afrance-expertise.com

Route de l'aéroport Leopold Sedar Senghor, Foire Ouest
BP 25897 Dakar Fann
Tel: +221 33 820 09 19
Fax: +221 33 820 78 77



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

The procedure of arrest enables a natural or legal person who has a maritime claim relating to a ship to detain her it when there is not any enforcement title and obtain a Bank guarantee. This Bank guarantee enables the creditors to recover their debt after having obtained an enforceable decision against the ship/her Master/her Owner or after having obtained an enforceable decision to sell the ship.

The arrest order issued by the President of the Court is notified to the ship, to the Port Harbour Master and to some other Competent Port Authorities.

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

Senegal did not ratify the Brussels International Convention dated 10th May 1952 but accepted to apply it after having accessed independence.

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

The answer is no. There is however a difference between “saisie conservatoire” and “saisie exécutoire de navire”.

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

These alternatives are “saisie conservatoire” which means “arrest” and not freezing orders.

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

In such procedure, when the Brussels Convention applies, the arrest must be justified by a maritime claim as defined by the article 1 § 1 of the Brussels Convention. Usually, the Courts easily issue easily an arrest order when the claim appears to be justified.

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

The answer is yes because, as per the Article 8 § 2 of the Brussels Convention “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”.

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

The debtor is usually either the owner or the charterer of the ship. The quality of the debtor is however not so important given that the debt is "in rem".

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

The article 3 §2 of the Brussels Convention provides that "Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons". Consequently, the ship which is directly linked with the maritime claim or which is owned by the same owner or associated owner can be arrested by the creditor.

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

The article 3 §4 of the Brussels Convention provides that "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 claims. 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".

The international Convention points out the cause of the debt, i.e. a maritime claim relating to the ship.

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

The answer is no. It is sufficient to evidence that the claim is a maritime claim and relates to the ship.

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

The procedure is exactly the same, i.e. obtain an arrest order from the Court by evidencing the reality of the maritime claim relating to the ship.

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

Senegal recognizes Maritime Liens and Mortgages but does not apply any International Convention but local Laws.

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

If the file is complete, the arrest could be obtained within the same day of reception of the file.

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

The commercial invoices, the Bills of Lading, the preliminary survey report if any would be required. However, there is no need to submit any power of attorney.

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

It is usually better to submit original documents. If it is impossible however, copies of the documents sustaining the claim can be transmitted by e-mail or fax. The Documents in English Language must be translated into French.

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

In principle, once the vessel is arrested in Senegal, the Courts accept jurisdiction.

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

Once the vessel is arrested, the claimant must take legal action on the merits within one (1) month.

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

Senegal recognizes wrongful arrest if evidence show that an arrest is abusive and the claimant can be condemned to pay damages. However, this situation is rare because when the Judge considers that the claim is not justified, he rejects the motion for the arrest.

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

The answer is yes.

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

It is not possible to sell a ship pendente lite.

A ship can be sold by Court decision to do so and supposes that the debtor has kept low profile during the procedure.



SHIP ARREST IN SOUTH AFRICA



By Shane Dwyer
SHEPSTONE & WYLIE ATTORNEYS
dwyer@wylie.co.za
www.wylie.co.za
35 ALI WAL STREET, DURBAN
SOUTH AFRICA
TEL +27 31 3020111
FAX: +27 31 3042862

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

See above. They might have certain similarities, but they are not identical.

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

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.

6. 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.

7. 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.

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

A sister ship as well as an associated ship can be arrested (in fact the former falls within the definition of the latter) for liabilities of the owner or bareboat charterer of what is termed the "ship concerned" or "guilty ship".

An associated ship is one (in simple terms) which is owned by a company which is controlled directly or indirectly by the same person who controlled the company which owned the "guilty ship" (the ship concerned) at the time the cause of action arose.

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

Bareboat charterers (or "demise charterers") are deemed to have been and to be, the owner of a vessel for purposes of an arrest in rem. As such, if the liability sought to be enforced, is that of the bareboat charterer, the ship can be arrested in rem for the liabilities of the bareboat charterer.

The same does not however apply to a time chartered vessel.

Nevertheless, for purposes of an associated ship arrest, the charterer (whether bareboat, time or voyage) is deemed to have been the owner of the ship concerned (the "guilty ship") for purposes of the arrest of an associated ship (i.e. one owned by a company which is controlled by a person who controlled the company which was the charterer and therefore the deemed owner of the guilty ship, at the time the cause of action arose)

10. 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 with reasonable and probable cause, or the security demanded to obtain its release, is excessive.

11. 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*.

12. Does your country recognise 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.

13. 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 weekends and after hours.

14. 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.

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

For an arrest no original or notarised or authenticated documents are required. It is

permissible to file electronically transmitted documents, whether faxed or scanned and eMailed. If however a matter proceeds to trial and documents are required to be submitted in proof of the claim, it may be necessary to produce the original document or a copy thereof, which would then have to be authenticated by notarisation and apostille.

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

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.

17. Which period of time will be granted by the Courts in order for the claimants to take legal action 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 to be served within one month of the attachment.

18. 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".

19. Do the Courts of your country acknowledge the piercing and lifting 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.

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

Yes. From the time of the order the ship can be sold within 6 weeks but the time period can be longer if the owner or another creditor opposes the sale or the terms for sale stipulated by the Court.



SHIP ARREST IN SPAIN



By Felipe Arizon
ARIZON ABOGADOS SLP
felipearizon@arizon.es
www.arizon.es

Paseo de Reding 43, groundfloor
29016, Malaga, Spain
Tel. +34 952 211774
Fax. +34 952 226676

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, (1) 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 Courts (2) as the sort of evidence provided by the creditor, normally by means of documentary evidence, from which an obligation from the 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 suspensio debitoris.

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

No, they are not. In practice the stoppage of a ship can only made by an arrest of the ship. A different scenario may come up where the ship is detained by her involvement in a criminal matter, or for having breach Administrative Laws.

(1) Nestor gives fighting power to P&I, Lloyds' List 2003 by Felipe Arizon.

(2) Spanish Constitutional Court ruling 14/1992, and Ciudad Real Court of Appeal ruling 49/1999

5. 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.

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

In Spain the 1952 arrest Convention applies irrespective of the ship's flag.

7. Can you arrest a ship irrespective 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. However, in order to enforce his claim on the arrested ship, the claimant will need to bring an action against the current ship owners in personam, either based on the aforesaid art. 586 CCo, or in a lien. As an alternative in some cases the claimant may bring an action against the actual debtor by enforcing the bank guarantee placed in substitution for the arrested ship.

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

Sister ships can be arrested in accordance to Art. 3 of the 1952 Arrest Convention. For cases of associated ownership see below "lift of the corporate veil".

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

There is no case law setting out the position on these cases. However, as far as bareboat chartered ships are concerned, the 1952 Arrest Convention sets it clear that the ship can be arrested. Time and voyage charterers ships can also be arrested if the claim amounts to a maritime lien, or where the ship owner is legally liable for the claim.

10. 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.

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

There is no procedural difference.

12. Does your country recognise 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.

13. 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.

14. 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.

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

Initially Courts will accept copies of any documents. The only document which production is mandatory is the power of attorney. Other documents related to the claim should be provided to the Court in order to ensure the best understanding of the case by the Magistrate, which in turn may assist in getting his agreement to a low countersecurity.

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

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).

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

Normally, the Court grants 20 working days for presentation of the action on the merits.

18. 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.

19. Do the Courts of your country acknowledge the piercing and lifting 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.

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

A ship's auction will normally take place as an enforcement of an action, hence at the end of the proceedings. Unless all parties agree to have the ship sold at an earlier stage, the action will take place at the very end of the process. Alternatively, in some cases the parties have reached an agreement to bring the ship to Gibraltar for an urgent auction.



SHIP ARREST IN THAILAND



By Philippe Pruvot & Elise Apostolou
3A BANGKOK CO., LTD.
legal.department@3afrance-expertise.com
www.3afrance-expertise.com
Eastern Tower - Condominium 39/16 - Jermjompoh Road
20110, Chonburi, Sriracha, Thailand
Tel: +66 815 669 018
Fax: +66 3877 0316



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

In Thailand, the ship arrest procedure is subject to The Arrest of the Ships Act, B.E. 2534. The vessel subject to a potential procedure of arrest must be a seagoing ship used in the international carriage of goods or passengers. The arrest must be made by way of petition before the Court which has jurisdiction. If the creditor provides evidence before the Court that his claim is a maritime claim as stated by the section 3 of the aforementioned Act, the Court would order the arrest of the ship concerned.

Under the provision of the Arrest of the Ships Act, B.E. 2534, the arrest procedure must be urgent. For instance, upon acceptance of a petition for ship arrest, the Court would hold an ex parte inquiry without delay.

However, the creditor who would like to apply for a petition to arrest a ship must be domiciled in Thailand. If not, the Court would not allow the arrest of the ship.

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

Thailand does not apply any International Convention. However, the Arrest of the Ships Act, B.E. 2534 is based on the content of the International Convention Relating to the Arrest of Seagoing Ship, signed at Brussels, on May 10th, 1952.

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

No.

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

No.

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

The maritime claims which could base an arrest procedure in accordance with the Arrest of the Ships Act, B.E. 2534, are the following:

- Loss of life or personal injury caused by any ship or which occurs in connection with the operation of the ship;
- Salvage;
- Agreement relating to the use, hire, hire-purchase or loan of any ship, provision of transport service, or any other similar agreement;
- General average act where the ship owners, the carriers and the owners of such goods as carried in a ship are bound to compensate the owners of a particular property in

consequence of an international act which is necessarily incurred for the common benefit of all the parties concerned or for the common safety of the ship and goods carried therein, provided that there exists a specific law or mutual agreement governing liability in this regard;

- Loss or damage to properties carried in any ship;
- Towage;
- Pilotage;
- Goods or materials wherever supplied to a ship for its operation or maintenance;
- Construction, repair or equipment of any ship or dock charges and dues;
- Port facilities or port charges or dues;
- Stevedoring charges;
- Wages of ship masters or personnel;
- Master's disbursements, including disbursements made by the charterers, the agents, or the shippers on behalf of the owner or controller of a ship;
- Disputes between co-owners of a ship as to its possession, employment on earning;
- Mortgage of a ship.

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

The answer is yes. Basing on a maritime claim as mentioned in item 5, if the vessel is a sea-going ship in accordance with the definition stipulated in Section 3 of the Arrest of the Ship Act, B.E. 2534, the creditor can file a motion regarding the application of an arrest of a ship regardless of the flag of the ship.

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

The creditor who is domiciled in Thailand can apply before the Court for obtaining an order to arrest a ship owned by a debtor or which is in his possession, i.e. time chartered vessel etc; thus, the arrest of the ship's procedure as regards sister ship is possible in Thailand.

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

With regards to the arrest of sister ships, please refer to point 7.

With regards to the arrest of the ships in associated ownerships, a ship owned by the associated ownership cannot be arrested due to it is not owned by the debtor or in possession of the debtor.

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

Please refer to our comment point 7.

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

Before ordering the arrest, in practice, the Court would direct the creditor to furnish such security as it thinks fit to cover any damage arising out of the arrest.

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

There is no difference.

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

In Thailand, there is the specific Law regarding the maritime lien, namely, the Ship Mortgage and Maritime Lien Act, B.E. 2537.

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

In case the information and all documents are complete, the arrest and release procedure can be completed within 1-2 business day.

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

A POA is not required in case of arrest of a ship. However, in case of release of a ship owned possessed by a debtor who is not domiciled in Thailand, a POA or LOA (Letter of Appointment) would be required.

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

The electronic submission of the documents has not yet been available before Thai Courts' procedure, but in ex parte inquiry, the creditor may adduce the copy document certified by the creditor to support the claim before the Court.

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

In principle, once the vessel is arrested in Thailand, the Courts accept jurisdiction.

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

Once a ship has been arrested, the creditor has to initiate an action based on his maritime claim within 30 days after a warrant of arrest has been posted on the vessel. If not, the Court shall have the power to order the release of the ship.

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

Thailand recognizes wrongful arrest. The debtor can make a counter claim to recover damages in respect of the arrest applied for the creditor.

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

This concept is not yet acknowledged by the Courts.

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

In Thailand, there is not any apparent statute prohibiting the selling the vessel pendent elite.



SHIP ARREST IN TURKEY



By Zeynep Özkan
ÖZKAN LAW OFFICE
zeynep@ozkan.av.tr
www.ozkan.av.tr

Husrev Gerede Cad. Omer Rustu Pasa Sok. No:12
34357 Tesvikiye / Istanbul
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 and the claim in respect of which a ship may be arrested does not have to be of a maritime character.

The Turkish Commercial Code ("TCC") shall be amended substantially in the very near future. The Draft Turkish Commercial Code, which is at the agenda of the Turkish Parliament at the moment, regulates the arrest of vessels specifically and adopts some of the provisions of the international conventions on this matter. As the Draft TCC is expected to be enacted soon some of the important provisions of thereof shall also be outlined herebelow.

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. The Draft TCC incorporates most of the provisions of the International Convention on Arrest of Ships, 1999.

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 applicable to any assets apply to the arrest of ships as well. 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. The Draft TCC, when enacted, shall regulate the arrest of ships specifically.

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

All types of conservatory measures, including those applicable to ships, are governed by the provisions of Turkish Bankruptcy and Liquidation Code and Turkish Procedural Code. Under the current regulations, arrest of ships is only one form of conservatory measure and the claimant may apply to other types of conservatory measures as well.

After the enactment of the Draft TCC, the provisions of Draft TCC shall be applicable to the arrest of ships. The Draft TCC specifically provides that arrest of ship shall be the only conservatory measure with respect to maritime claims.

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

Under the current regulations, 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 Draft TCC, however, adopts the definition of "maritime claim" provided in the International Convention on Arrest of Ships, 1999 and restricts the arrest of ships to the "maritime claims" enumerated in the Draft TCC.

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

A ship can be arrested in Turkey irrespective of her flag as per the provisions of the Turkish Bankruptcy and Liquidation Code and Turkish Procedural Code and, when encaded, under the provisions of the Draft TCC.

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

Except for arrests based on a maritime lien, only the vessels owned by the debtor can be arrested.

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

Under the current regulations, all of the assets of the debtor may be arrested, which may also include other ships of the debtor, and therefore there is no specific provisions in relation to sister ship arrest. As to the arrest of ships in associated ownership, only the ships owned by the same debtor may be arrested. The ships belonging to the affiliated companies of the debtor may not be arrested in principle.

The Draft TCC specifically deals with the issue and permits the arrest of any other ship of the debtor provided that they are owned by the debtor liable for the maritime claim.

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

Except for arrests based on a maritime lien, only the vessels owned by the debtor can be arrested. The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant a maritime lien.

10. 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.

11. 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.

12. Does your country recognize maritime liens? Under which International Convention and/or domestic law 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.

13. 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.

14. 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:

1) 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)

2) 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)

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

It is sufficient to receive fax/electronic copy of the documents related to the claim. Notarization/apostilization of the claim documents is not required unless there is an objection about forgery or similar matter.

The only document that is required to be notarized and apostilled is the POA. However the original of the POA is not required at the stage of filing the arrest application. We can file the claim by the duly legalized copy of the POA.

16. 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.

17. 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.

18. 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.

19. 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.

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

In the event that the costs of maintaining the arrested ship becomes significantly substantial or the value of the ship decreases substantially or due to similar reasons the finalization of the pending litigations may not be waited, there are grounds to apply to the court or Bailiff Office for the sale of the ship pendente lite. The time scale for the relevant process may vary substantially.



SHIP ARREST IN UNITED ARAB EMIRATES



By C. Chakradaran
AFRIDI & ANGELL
dubai@afridi-angell.com
www.afridi-angell.com

Emirates Towers Level 35, Sheikh Zayed Road,
P.O. Box 9371, Dubai, United Arab Emirates
Tel: +971-4-330 3900
Fax: +971-4-330 3800

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

Under the UAE Federal Maritime Law (Law No. 26 of 1981) ("FML") a right of arrest as provisional relief may be exercised in respect of a maritime debt. Claims constituting "maritime debts" are listed in Article 115 of the FML (see question 5).

An ex parte application is made to the Civil Court having jurisdiction over the port where the vessel is and the grant of any relief is entirely discretionary. A Plaintiff must provide prima facie evidence that it has a maritime debt against the Defendant, and that unless an arrest order is made, the Defendant is likely either to leave the Emirates permanently or to act in a manner which is likely to prejudice the Plaintiff's rights.

The court will after examination of the application and the supporting documents filed arrive at a decision - often without hearing Counsel. The Court may require counter security from the Plaintiff in the form of a bank guarantee (see question 10). If an arrest order is granted a substantive suit has to be filed within 8 days of the grant of the arrest order. The court will also require the following from the Plaintiff:

- (a) An undertaking to pay all official fees and expenses relating to the towing or moving of the vessel or in any way connected with the arrest of the vessel including any amounts due to the crew;
- (b) An undertaking to compensate the owners of the vessel against any delay or damage that may arise from the arrest of the vessel if the arrest is held to be wrongful by a judgment of the court.
- (c) The Dubai courts have in the past been known to require confirmation from the port that the defendant is the owner of the vessel and that the vessel is within port limits.

The FML (Article 122) provides that the civil court in whose area of jurisdiction the arrest took place shall be competent to decide on the subject matter of the claim in certain circumstances even if the vessel does not fly the UAE flag (see question 16). The FML (Article 325) contains certain provisions as to the jurisdiction of the courts in cases involving collisions.

The (UAE Civil Procedure Code of 1992 as amended by Federal Law No. 30 of 2005) ("CPC") appears to confer jurisdiction upon the UAE courts to hear a case against a foreign defendant who has no domicile or residence in the UAE and also to order provisional relief (such as the arrest of a vessel) even when the courts do not have jurisdiction to adjudicate upon the substantive merits of the matter.

The UAE courts have granted arrest applications as security for arbitration proceedings in another jurisdiction. In addition to the powers of arrest conferred by the Maritime Law, the Port Authorities of each Emirate also have certain powers of arrest and detention. The UAE courts do not award legal costs other than in a token amount. Accordingly, the costs relating to the arrest and substantive suit will not be recoverable.

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

The UAE is not a party to any International Convention relating to arrest of ships. The arrest will be under the FML.

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

See questions 1 and 2 above. The arrest is under the FML.

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

The arrest is under the FML.

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

Claims which constitute “maritime debts” as listed in Article 115 of the FML. These are:

- (a) damage caused by a vessel as a result of a collision or other accident;
- (b) loss of life or personal injury occasioned by the vessel and arising out of the use thereof;
- (c) assistance and salvage;
- (d) contracts relating to the use or exploitation of the vessel under a charter party or otherwise;
- (e) contracts relating to the carriage of goods under a charter party, bill of lading, or other documents;
- (f) loss of or damage to goods or luggage transported by a vessel;
- (g) general average;
- (h) towage or pilotage of a vessel;
- (i) supplies of products or equipment necessary for the use or maintenance of the vessel, in whichever place the supply is made;
- (j) building, repairing or supplying a vessel and dock dues;
- (k) sums expended by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof;
- (l) wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment;
- (m) disputes over the vessel's ownership;
- (n) a dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof;
- (o) a maritime mortgage.

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

Yes.

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

Yes, assuming that it is not a sovereign asset enjoying immunity in law.

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

The Plaintiff may arrest not only the vessel to which the claim relates, but also any vessel owned by the Defendant at the time the claim arose. The courts are not generally inclined to lift the veil of corporate personality. There is no right to arrest other vessels owned by a Defendant in the following circumstances (Article 116.2 and 117 of the FML):

- a) in a dispute regarding the ownership of the vessel;
- b) in a dispute relating to the co-ownership of the vessel, or the possession or use thereof, or the right to profits arising out of the use thereof;
- c) in a claim arising from a maritime mortgage;
- d) whether vessel was chartered by demise.

In relation to a claim against a vessel not owned by the owner but by the demised charterer, the Plaintiff may arrest either the vessel in respect of which the claim arose or any other

vessel owned by the demisecharterer. The Plaintiff may not arrest other vessels owned by the owner of the vessel in respect of which the claim arose.

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

See question 8.

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

In Abu Dhabi an application for arrest before judgment is considered on its merits and the court usually does not ask for security from the Plaintiff. It has to be satisfied on the evidence that there are sufficient grounds to grant provisional relief. In all the other Emirates the court requires the Plaintiff to provide some form of security, usually in the form of bank guarantee equivalent to the full amount of the claim. In exceptional circumstances such security may be dispensed with. In the case of claims by crew members for their wages, the courts will not insist upon countersecurity being provided. If required, the guarantee must be from a bank in the UAE.

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

A vessel can be arrested only in respect of a maritime debt as defined by Article 115 of the FML (see questions 1 and 5). Strictly there is no distinction drawn between a claim and a lien.

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

The FML recognises debts which confer priority rights against a vessel. These include claims for judicial costs incurred in protecting and selling a vessel, port dues, pilotage fees, compensation for damage to port installations, debts arising out of contracts of the crew, claims in respect of assistance and salvage, compensation due for collisions, debts arising out of contracts concluded by the Master in respect of necessities, premiums in respect of hull insurance. Self-help remedies are however not recognised and a court order will be required to enforce priority rights.

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

This depends on the available documentation. Arabic is the official language of the UAE and its courts and all proceedings are conducted in Arabic. All documents that are filed in court must first be translated into Arabic by a translator licenced by the UAE Ministry of Justice. A power of attorney in favour of a local Arab advocate will be required. This must be signed before the relevant UAE Notary. If signed abroad, it must be duly notarised, attested by the Ministry of Foreign Affairs and authenticated by the UAE Embassy in the country in which it is signed. Thereafter it requires further attestation by the UAE Ministry of Foreign Affairs and, if not in Arabic, translation into Arabic by a licenced translator. Once the documentation and power of attorney is ready the application can be made and the court would ordinarily make an order on it on the same or the next working day.

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

Documents in support of the claim/debt must be filed with the application. A power of attorney is required (see question 13).

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

Original documents are generally not insisted upon at the first hearing. Documents cannot be filed electronically.

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

Article 122 of the FML provides that the civil court in whose area of jurisdiction the arrest took place shall be competent to decide on the subject matter of the claim in any of the following circumstances (in addition to those set out in the procedural laws of the UAE) even if the vessel does not fly the UAE flag:

- (a) if the claimant's usual address or main office is in the UAE;
- (b) if the maritime claim originated in the UAE;
- (c) if the maritime claim arose during the voyage upon which the vessel was arrested;
- (d) if the maritime claim arose out of a collision or assistance over which the court has jurisdiction; and
- (e) if the claim is secured by a maritime mortgage over the arrested vessel.

Under the CPC, the UAE courts have jurisdiction to hear actions against nationals and foreigners having a domicile or place of residence in the UAE. In respect of claims against foreigners who have no domicile or place of residence in the UAE, the UAE courts have jurisdiction in certain circumstances including where the cause of action accrued in the UAE.

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

The substantive suit must be filed within 8 days of the grant of the arrest order.

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

An arrest will generally be regarded as wrongful if it is subsequently held by the court that the Plaintiff obtained the arrest order maliciously, in bad faith and with the intention to cause damage to the defendant. The burden of proof in relation to these matters rests on the Defendant who claims damages for wrongful arrest. This is an uphill task.

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

The UAE courts are not generally inclined to lift the veil of corporate personality.

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

The ship cannot be sold pendente lite. An order for the sale of a vessel is made once a final judgement has been rendered against the vessel and an order for the arrest of such vessel has been confirmed. The order stipulates the price at which the vessel is to be sold, and the date on which the sale is to take place. The FML contains provisions concerning the conditions upon which the vessel can be sold, the public auction for the sale, including requirements as to publication of the notice of the auction, the information to be contained in it, service of the same, time limits for the sale, the number of auctions to be held to achieve a sale for the reserve price determined by the court etc.



SHIP ARREST IN UKRAINE (Questions 1 to 9)



By Arthur Nitsevych, Nikolay Melnykov & Vyacheslav Lebedev
INTERNATIONAL LAW OFFICES
nitsevych@interlegal.com.ua
www.interlegal.com.ua
2/4, Observatorny lane, Suite 57,
Odessa, 65014, Ukraine
Tel. +38 (048) 715-58-55
Fax +38 (0482) 49-69-25



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

Ship arrest in Canada is usually simple and relatively inexpensive. Three documents are required:

- a. Statement of Claim to commence the action briefly setting out the relevant facts to establish in rem jurisdiction.
- b. Affidavit to Lead Warrant, which can be sworn by the solicitor upon information and belief.
- c. Warrant for Arrest issued by the Court to the Sheriff

In Canada, it is not required that the Sheriff go into possession of the ship following arrest, unless specifically ordered by the Court. Therefore, the only costs to arrest are disbursements to the Court and Sheriff and the legal costs to prepare the documentation. If a straightforward matter, it can be done for as little as Cdn.\$1500 to \$2000 in all.

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

No international conventions apply to arrest of ships in Ukraine.

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

1. There are some other ways to arrest a ship in a Ukrainian port. As a rule vessels are arrested in Ukraine by means of:

- a) administrative arrest by the harbour master;
- b) preliminary arrest in security of a maritime claim pursuant to the order of Commercial court;
- c) arrest in accordance with Court or arbitration award;
- d) arrest of a ship under a criminal matter.

Commercial courts and courts of general jurisdiction are the state courts which exercise jurisdiction over maritime disputes. The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine is a domestic arbitral institution with a panel of arbitrators specializing in maritime arbitration.

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

These measures are similar to saisie conservatoire or freezing order.

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

A vessel can be arrested regardless whether claims are maritime or not, in principle. Nevertheless, according to the maritime law of Ukraine the vessel may be arrested only upon at least one of the following conditions:

- a claim referred to the category of privileged claims, particularly:
 - * claims arising out of labour relations, claims for reimbursing damage inflicted by injury, other impairment of health or death;
 - * claims arising out of nuclear damage and maritime environment pollution as well as elimination of said pollution consequences;
 - * claims regarding port and channel dues;
 - * claims regarding salvage and payment of general average contribution;
 - * claims for reimbursement of losses resulting from collision of vessels or from other sea casualty, or from damage to port facilities and other property located in the port as well as to navigational aids;
 - * claims for reimbursement of losses related to cargo or baggage;
 - a claim based upon the vessel's registered mortgage;
 - a claim referring to the rights of vessel ownership or possession;
 - a claim not indicated hereinabove and referring to the person that is the vessel owner by the moment of origination of the said claim and is responsible for this claim by the moment of starting a procedure connected with vessel's arrest;
 - charterer of the vessel on bareboat charter is liable for the said claim and is the vessel's bareboat charterer or her owner by the moment of starting a procedure connected with vessel's arrest.
- These rules shall not concern the vessels flying the State Flag other than Ukrainian. Such vessels are treated as a res in general legal sense.

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

It is possible to arrest a ship irrespectively of her flag in Ukraine, in principle.

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

There is no proceeding in rem in Ukraine, so it is possible to arrest a ship owned by the debtor only.

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

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the proprietor/owner of the vessel to which the said claim has arisen.

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

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the charterer of her on bareboat, time or voyage charter basis.



SHIP ARREST IN UKRAINE (Questions 10 to 20)



By Vagif Mallayev
CHECHEL MALLAYEV & PARTNERS
mallayev@cmlaw.com.ua
www.cmlaw.com.ua
27 Degtyarnaya Str, ap.1
65020 Odessa, Ukraine
Tel: +38 048 2362581
Fax: +38 048 7845875

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

The Courts may require counter-security as a prerequisite for arrest of a ship, but in practice it happens rarely. The better evidences are arranged and presented with the claim to the court the more chances to avoid the payment of counter-security.

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

There is no procedural difference in respect to arresting a ship for maritime claim and a maritime lien.

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

Yes, Ukraine ratified the International Convention on Maritime Liens and Mortgages (Geneva, 1993) on 22.11.2002.

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

Two-three business days will be required in order to arrest a ship.

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

As a rule a POA duly legalized/apostilled and translated into Ukrainian is to be presented to the Court and the State Enforcement Service of Ukraine. However at the initial stage of a case a copy of the POA is sufficient. In case the arrest petition is submitted to a court of common jurisdiction a local attorney-at-law is not required to present the POA (Art. 42 (4) of the Civil Procedure Code of Ukraine).

We need all documents relating to the claim which are in possession of the plaintiff, - the presence of the evidences may help to avoid a payment of counter-security to the Court.

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

The Court may require an original or its notarized and legalized copy of any document the plaintiff referred to in his claim.

We recommend arranging of most important evidences (contracts, BLs, charter parties etc) in original or its notarized and legalized/apostilled copies. Other copies can be certified by the plaintiff's corporate seal and signature. In case your Ukrainian attorney received a document in original he may hold the original in his office and present the copy certified by him to the court.

Documents can not be filled electronically. Original Power of Attorney has to be notarized, duly legalized/apostilled and translated into Ukrainian.

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

No, they will not. At present there is an important prerequisite that must be met to get an arrest of a ship – a Ukrainian court has jurisdiction on the claim on merits. So it is impossible to arrest a vessel without having a jurisdiction over the substantive claim.

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

Proceedings within civil jurisdiction: The petition to arrest a ship has to be submitted to a court of common jurisdiction on the same day of filling a statement of claim, or later during the civil proceedings.

Proceedings within commercial jurisdiction: Pursuant to the Art. 43-3 (3) of Commercial Procedure Code of Ukraine the plaintiff must commence legal actions on the merits within 10 (ten) days from the day of obtaining the arrest order.

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

Yes, the Ukrainian Courts on request of defendant acknowledge a wrongful arrest in case of:

- (a) The arrest is cancelled by the decision of court.
- (b) The claimant fails to commence proceedings on the merits within the given time.
- (c) The claimant recalled his claim.
- (d) The claimant fails in his legal action on the merits.

In case a wrongful arrest is acknowledged defendant may claim to an initiator of arrest to cover all losses and damages incurred.

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

No, Ukrainian Courts do not acknowledge the pierce and lift of the corporate veil. The basic principle of civil law is that a shareholder or director/officers of a corporation could not be held liable for any debts or liabilities of the corporation.

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

No. A vessel's auction will take place only after the end of court proceeding as an enforcement of the final court decision entered into force.



SHIP ARREST IN USA



By Don Soutar
NATIONAL MARITIME SERVICES INC.
dons@vesselarrest.com
www.vesselarrest.com

1915 Southwest 21st Avenue, Fort Lauderdale
FL 33312, United States of America.
Tel: 954 990 1290
Fax: 954 602 9127



By Patrick Novak
Horr, Novak and Skippe

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

The structure of the US Judicial system is such that the Constitution is the supreme law of the land in the United States. It creates a federal system of government in which power is shared between the federal government and the state governments. Due to federalism, both the federal government and each of the state governments have their own court systems. There are 13 U.S. Courts of Appeals, and 94 U.S. District Courts. Each of the states belongs to one of the 11 federal circuits. There is only one Supreme court and this is the court of last resort in the federal system. There are no special courts in the state or federal system to hear admiralty matters, although most arrests are in federal court. It is also possible to arrest in state court at much less cost. There is therefore, a myriad of courts both state and federal applying the law and early consultation with your local contact is important as rules and practice vary widely.

Art III sec. 2 of the Constitution confers admiralty and maritime jurisdiction. The authority of the court is limited to geographical limits. 28 USC sec. 566 provides the authority for the court to involve the US Marshal. As such, the US Marshal's Service (USMS) authority to arrest is limited to vessels or cargo within the territorial jurisdiction of the district in which the property is found. The arresting party will issue a warrant of arrest which will direct the marshal to arrest, attach or garnish the vessel or property and hold it pending further order of the court. Once issued by the court, the marshal will serve the order of the court on the vessel or property. Seizure of a vessel and tangible property in the US is exclusively the duty of the USMS. Supplemental Rules of Admiralty and Maritime Claims, do provide for others named in a court order to seize other property, eg: to attach bank accounts under Supplemental rule B, which can be done by anyone named, but with vessels or property thereon, only a Marshal is authorized to do this. Once the documents are served and due to the particular requirements of court rules that the Marshal shall keep the property, it is customary and in many cases, cheaper to use the services of a substitute custodian to hold the vessel as the agent of the Marshal. This is what National does in large part.

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

None.

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

No.

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

Yes, Rule B Attachment of the ship if the owner cannot be found in the district for purposes of service of process.

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

Maritime liens giving rise to in rem claims.

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

Yes.

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

Yes, with one caveat, the arresting party must be a "stranger" to the ship. That is, an owner, part owner or joint venturer cannot arrest its own ship.

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

No sister ship arrest.

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

Pursuant to the personification theory, the ship is the offending "person" and is therefore liable in rem irrespective of charter status.

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

No.

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

The "maritime claim" must give rise to a maritime lien.

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

Yes, under U.S. law – The Commercial Instruments and Maritime Lien Act 46 U.S.C 31301 and under the General Maritime Law of the United States.

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

Twenty four to forty eight hours.

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

For tort claims no. if contract claims, a copy of the contract or mortgage and promissory note.

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

No original documents required. The in rem complaint must be verified by the claimant, or if the claimant is not in the District by the claimants attorneys, and the verification must be notarized. The initial complaint must be filed with the clerk of court and thereafter all documents must be filed electronically.

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

Yes, the court will apply the procedural law of the forum and the substantive law governing the tort or contract.

Forum selection and arbitration clauses will be enforced, with the court maintaining jurisdiction over the security and choice of law clauses.

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

A person or entity asserting a right of possession or ownership of the ship must file a Claim of Owner within 10 of the arrest and serve a response to the complaint within 20 days of filing a claim of owner

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

Yes, but only in the most extraordinary circumstances where it is clearly established the claimant acted in bad faith, i.e. the claimant knew it had no maritime lien or right of arrest and nonetheless proceeded with the arrest.

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

Yes, when it can be shown the corporate entity was used for an improper purpose.

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

Yes, the court can order the "interlocutory" sale of the ship prior to judgement if (1) the property is perishable or liable to deterioration, (2) the expense of keeping the property is excessive or disproportionate to its value, or (3) there is an unreasonable delay in securing the release of the property.



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 benefits 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.



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.



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 expiration 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.



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 protect 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.



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The Legal Guide, Ship Arrests in Practice

This fourth edition of the "Ship Arrests in Practice" guide published by www.shiparrested.com network provides a comprehensive and practical survey of the law relating to ship arrests worldwide by updating and incorporating the latest procedures in 34 major world jurisdictions.

Written by members of the network, top-practising shipping lawyers, this new edition continues to be the most readable and user-friendly guide to ship arrests worldwide and will be, with no doubt, a must for all practitioners in this area.



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 Eivissa
 Escombreras
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 Mahon
 Málaga



Marín y Ría de Pontevedra
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