



Ship Arrests in Practice, 5th Ed.

*The latest updates on ship arrest / release practices
in 37 major world jurisdictions by members
of www.shiparrested.com network*

FOREWORD

Welcome to the fifth edition of Ship Arrests in Practice.

This guide provides a legal analysis of ship arrest practices in 37 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.

Written by members of the shiparrested.com network, the papers follow a questionnaire issued by the editors, in a wish to offer a treatment at a glance on how the maritime rules are interpreted in each country.

The idea of Felipe Arizon, the sole founder of www.shiparrested.com, back in the year 2000 was that arrest practices could increase much more provided the information and transparency on ship arrest would rise.

Today, you will find online articles on how to arrest / release a ship in 61 jurisdictions on the www.shiparrested.com network.

Thanks are due to our members-contributors, to P&I Clubs for their stimulus to keep that trend and to the sponsorship of this edition by Arizon Abogados SLP.

The law is stated as at November 1, 2010.

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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 do 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 QUESTIONNAIRE

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SHIP ARREST IN ARGENTINA



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

Ship arrest in Argentina is a practical and legal alternative designed to ensure that credit holders against national or foreign vessels should collect their debt. Embargo involves the possibility of banning sailing of embargoed vessels, thus ensuring collection preventively while leaving open the possibility of foreclosure. The formality is usually swift and simple, matching the pace of foreign trade and the eventual change of jurisdiction of vessels liable to be embargoed. Let it be noted that embargo can be requested in advance to arrival of a vessel to an Argentine port.

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

The Argentine Republic has not subscribed any international conventions that regulate ship embargo or arrest. However, these institutions are present in its legislation, namely in Navigation Act N° 20,094 of 1973, published on February 2, 1973, which reflects some provisions of the Brussels Convention of 1952. According to the provisions of the Argentine Navigation Act, ship arrest in Argentine territory is fast, swift and favorable to the creditor's interest.

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

There are two ways of obtaining an embargo and banning navigation: preventive embargo and foreclosure. Both options require action on the part of a judge with jurisdiction over the issue giving rise to credit justifying the embargo. Both can and should bring about interdiction of sailing. The difference between them is that the former requires court order and the latter requires court ruling following due judicial process.

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

Under Argentine legislation we see two types of unavailability, namely: a) legal unavailability – embargo – and/or b) physical unavailability – detention or arrest. Thus our legislation provides the tools to obtain not only legal but also physical unavailability of a ship.

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

In order to answer this question we must first ascertain that no matter the origin of the credit, any claim can lead to ship arrest, following court order or court ruling. Any credit, ordinary or privileged, stemming from a maritime claim or not is valid to request ship arrest or embargo. Requirements for the embargo or arrest to be granted depend on credit origin. Our Act, in sections 531 et al., as well as in section 482, draws the relation between the credit involved and the ship liable to be embargoed or arrested.

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

Absolutely: ship arrest is irrespective of her flag for privileged credits. Foreign (non Argentine) ships can be arrested due to: i) debts incurred in Argentine territory with respect to the ship involved or to another that belongs or belonged at the time of the credit origin to the same owner (principle drawn from the Brussels Convention of 1952) and ii) debts stemming from ship activity or from credits alien to it when they are recoverable before Argentine courts. This last option widens the chances of arrest and embargo of a ship when it is moored in Argentine territory. Regarding national vessels, the conditions for embargo and arrest are three. I) privileged credits; ii) other credits at the port of the owner's domicile or main facility; iii) credits alien to the ship, in which case the ordinary legal requirements must be filled.

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

Yes. A ship may be arrested irrespectively of the debtor. The prohibition to embargo or arrest does not fall on the character of the debtor but of the ship. According to the provisions of section 541, there is an absolute prohibition to embargo or arrest: a) war ships, national or foreign; ships under construction with a view to join military forces of a State; ships at the service of national, provincial or municipal governments; and there is a relative prohibition to embargo or arrest ships belonging to national, provincial or municipal governments and ships loaded and ready to depart.

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

There is no mention of sister ships in our legislation. Regarding associated ownership, our legislation says that a ship belongs or belonged to the same owners when all and every part of it belongs to the same owners. E.g. Supposing I intend to embargo or arrest ship Z by virtue of a credit generated by ship Y, which at the time of credit origin belonged to A, B and C, the cautionary measure on Z will be relevant provided Z belongs to A, B and C.

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

Our legislation deals with this issue under the category "Buque locado". If the ship that caused the credit was at the time chartered, operated by its shipowner/builder or by a time freighter, any other boat owned by the shipowner or the time freighter is liable to embargo, but not another ship belonging to the same owner. In this case the law restricts the possibility of issuing cautionary measures with respect to a ship different from the one that originated the credit owned by somebody who did not have direct or personal intervention in the original obligation.

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

According to the provisions of the Argentine law, the court, more specifically the judge, who is dealing with the request for embargo or arrest will assess the need or otherwise of requiring counter security. This is in answer to two clashing interests, both relevant. On the one hand is the advisability of clearing obstacles to navigation, which is the main purpose of a ship; on the other hand, releasing the ship to navigate freely would eventually jeopardize the credit generated by its own activity. Let it be noted that the counter security that is customarily is responsibility of the intervening Court.

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

From a procedural point of view there are no significant differences, except in cases when credit stems from matters alien to the ship activity. In these cases the parties must appear before the court that has jurisdiction in the matter of the credit, e.g. credit stemming from a bank loan to the ship owner, or credit for compensation for damages generated by a car crash due to fault or negligence of the owner of the ship.

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

Yes. Our country recognizes lien with respect of debt or credit that is relevant to move on to ship embargo.

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

Once in possession of the relevant documents, the time to draw an embargo or arrest will vary depending on the next port of call. The possibility of application in the port of Buenos Aires should

take a reasonable time period, in the understanding that we must file the claim before the competent court, and provided that the ruling is issued before the ship leaves Argentine port.

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

To act in the name and representing an individual or a legal entity we need a POA apostilled by The Hague.

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

The documents required to embargo or arrest a ship are those that prove the existence and nature of a credit (contracts, invoices, etc) in the original and/or notarized, apostilled copy and the POA mentioned above. They must all be submitted at the time of request of arrest, which means that this firm should have access to them in advance.

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

The Argentine court dealing with the arrest must take the substantive claim, which means that the preventive embargo must be followed by foreclosure.

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

There is no term, only the terms provided for in the context of the statutes of limitation.

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

No. Both embargo and arrest are legal remedies and call for immediate compliance, both on the part of the court and the law enforcing agency, in this case the Coastguards.

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

Argentina has a lengthy sea coast, and Argentine judges have long experience in maritime law. Judges have been in office for many years and are well acquainted with the particulars of the activity. They will bear in mind the best interest of the claimant as well as the rights of the defendant.

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

The option to sell a boat for the purpose of collecting the credit that gave way to the embargo involves a court procedure that the parties have to follow. Both parties are entitled to procedural tools which may speed or slow the process of liquidation. The final duration of the process may be influenced by many factors, both intrinsic and external, so much so that we are not in a position to estimate a term.



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SHIP ARREST IN BELGIUM



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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. The ship arrest will also not be allowed if the captain of the ship had previously agreed with the arrestor that the latter waived its right to claim against the owner for a debt of a third party.

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?

The counter-security has fallen into disuse in Belgian law. It is therefore uncommon 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 your 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 jurisdictionis’.

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.

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D’Hoine & Mackay is a specialised law firm based in Antwerp offering the full range of legal services in the commercial area, with a focus on maritime and transport law, other port related areas and specie and fine art insurance. D’Hoine & Mackay primarily renders services to insurance companies, P&I Clubs, carriers, freight forwarders, logistics providers and trading companies. D’Hoine & Mackay also acts as correspondent on behalf of many law firms abroad for services in Belgium, as well as for Belgian law firms searching for specific services in their specialised field.

Steven D’Hoine has been appointed as a recognized mediator. He is a member of the Belgian Maritime Law Association, the Royal Belgian Association of Maritime Insurers and various transport related organisations.

SHIP ARREST IN BRAZIL



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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. Brazil has not ratified any international convention regarding the arrest of ships (neither the International Convention to the Arrest of Sea-Going Ships 1952 nor the International Convention on Arrest of Ships 1999 has been ratified and promulgated).

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” (the arrest is in rem); and b) the arrest is grounded on credits qualified by the Commercial Code as “not privileged” (the arrest is in personam).

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 vessel wherever it may be. Therefore, the arrest based on such type of credit is enforceable only at the port where the vessel 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 irrespective of her flag?

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

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

If the above listed requirements are contemplated, the credits have in rem effects and follow the vessel, not the debtor, being possible to arrest the vessel, whether Brazilian or foreign, in a Brazilian court.

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, i. e., if the arrest is in personam, it may be possible to file a precautionary lawsuit against the shipowner, in order to detain a sister ship and request security, even if the debt is not directly related to such vessel.

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 letter of credit issued by a first-line bank headquartered in Brazil 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 recognize maritime liens? Under which International Convention, if any?

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

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 notarization 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 actions 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 which the plaintiff did not properly prove that its credit gave rise to the remedy of arrest, i. e., if it is ruled that the debt does not exist.

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).

As per article 50, the application of the disregard of the legal entity doctrine is allowed only upon evidence and verification by the court that the legal entity has been involved in a so-called “abuse of corporate personality”.

The abuse of corporate personality, according to this provision, can be characterized when at least one of two requirements is present:

- a) The legal entity is not used for the purposes for which it was set up by the legal system (the so-called “deviation of purposes”); and/or
- b) There is confusion between the partner’s or subsidiaries’ or associated companies’ assets and those of the company whose veil is expected to be pierced (the so-called “confusion of patrimony”).

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 (for instance: a letter of credit issued by a first-line bank headquartered in Brazil). It can be done in a couple of days.



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SHIP ARREST IN CAMEROON



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

In Cameroon, ship arrest as a conservatory measure is to ensure the satisfaction of a final judgment in a future action.

Cameroon has 3 (three) major sea ports (Douala, Limbe and Kribi). To these must be added the Tiko and Idenau sea ports and Garoua river port.

The competent authority to order ship arrest is the petition judge (see article 15(2) of Law n° 2006/015 of 29/12/2006 on Judicial Organisation of Cameroon) who happens to be the President of the Court of First Instance. But in practice the President of the High Court in the English Common Law jurisdiction also entertains motions ex-parte.

Ship arrest could arise from several reasons to be enumerated in question 5 below. Ship arrest is commenced by a motion ex-parte after having sought the consultative opinion of the Department of Merchant shipping and Inland Waterways. The justifying documents are usually the bill of lading and maritime survey report.

Before this petition may be granted, the creditor must first satisfy the court that a notice to pay had been served on the debtor to no avail.

Applications in view of ship arrest are filed on clear days (Mondays-Fridays) during working hours (7.30am-3.30pm). Once the judge is of the opinion that the maritime debt is justified (if only in principle), s/he grants the application.

Ship arrest in Cameroon is effected in the hands of the captain via the services of a sheriff/bailiff who prepares a report thereof, a copy of which is addressed to the commander of the port, the competent maritime authority as well as the consul of the country of the flag of the ship.

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

The law governing ship arrest in Cameroon is the regional CEMAC Merchant Marine Community Code of 3rd August 2001 (the code) which had its inspiration predominantly from the International Convention of 1999 on the Arrest of Ships and the Brussels Convention of 1952 on the Unification of Certain Rules on the Arrest of Ships.

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

The code being a law of special application prevails over other laws on the attachment of personal property in Cameroon.

Although the code is the only law governing ship arrest in Cameroon, it however makes reference to the OHADA Uniform Act relating to Simplified Recovery Procedure and Means of Enforcement of Judgments relating to the procedure for the forceful sale of ships.

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

Article 114-126 of the code prescribes the modalities for "saisie conservatoire".

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

Article 119 of the code provides that a maritime debt which may give rise to ship arrest are those circumstances which in accordance with the terms of the International Convention of 12th March 1999 relating to conservatory arrest of ships, arise from any or all of the following causes, viz;

1. Material or corporal damage, including loss of human life, on-shore or off-shore, caused by a ship or due to its exploitation;
2. Assistance or rescue;
3. Chartering contracts or contracts on the use of a ship;

4. Contracts on the transport of goods by a ship;
 5. Loss or damage to goods and luggages transported by a ship;
 6. General average;
 7. Towing or piloting of a ship;
 8. Supply of products, materials or services to a ship in view of its exploitation or its maintenances;
 9. Construction, repairs, equipment of a ship or ship yard costs;
 10. Salary of ship captain or crew;
 11. Pre-financed expenses of the captain, charterer, shipper or maritime agent made on behalf of the ship or its owner;
 12. Commission(s) of the agent(s) of the ship;
 13. Contested ownership of a ship;
 14. Rights of co-ownership of a ship or rights to exploitation of a ship, or the proceeds of exploitation of a ship under co-ownership;
 15. Allowance or any remuneration due on the basis of any measure or attempt aiming at preventing, avoiding or limiting a damage, attributable/imputable to a ship, including damage by pollution, by virtue (or not) of an International Convention, a legislative or regulatory text or a contract;
 16. Costs and expenses incurred in the course of removing the remains of a ship or its cargo;
 17. Any/all insurance premium(s) owing by a ship;
 18. Any litigation resulting from the contract of the sale of a ship.
- So far however, the following debt items, *inter alia*, have given rise to the arrest of ships in the Cameroonian jurisdiction; viz:
- a) Premiums owing as a result of insurance contracts of ships;
 - b) Salary of paint to ships;
 - c) Delivery of various products such as petroleum and food items to ships;
 - d) Supply of petrol, gas oil and advance payment to the owner of a ship;
 - e) Execution of a contract of representation and ship consignment;
 - f) Claim by the crew of a ship who prove they had been abandoned by the captain without any protection;
 - g) Damage caused to goods in transit, etc.

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

Article 1 of the code has broadened its scope of application to include the arrest of any ship irrespectively of her flag, provided such a ship is found within the CEMAC territorial waters. The only exception provided by article 114 refers to a ship belonging to a state or exploited by a state, which was doing exclusively a government (and not commercial) service at the time the maritime claim arose.

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

Article 119 of the code prescribes different circumstances whereby a ship can be arrested. This contemplates a situation where a ship can be arrested irrespectively of the debtor. That he is a national or foreigner is of no moment. He could also be a physical or moral person.

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

According to article 114 of the code, the ship which caused the maritime claim to arise or a sister ship, meaning any other ship belonging to the person who was owner of the ship which caused the maritime claim to arise, may be arrested as a conservatory measure. However, the code is silent on ships in associated ownership.

9. What is the position as regards bareboat and time chartered vessels?

The code, in its article 119(3) provides for the arrest of a ship as a conservatory measure, if the maritime claim arose from a chartering contract or contract on the use of a ship. Along the same lines, article 2(2) seems to have given a broader definition to chartering a ship to include bareboat and time chartered vessels. In effect, a ship can be arrested in Cameroon if the maritime claim arose from bareboat or time chartered vessel.

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

As soon as a maritime debt appears justified (if only in principle) a ruling may be granted for the arrest of ship as per article 120 of the code. By necessary implication there is no requirement for counter security. It is rather the debtor who shall be required to provide security under article 116

& 117 of the code if s/he desires to make one or two quick voyages for emergency purposes.

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

Article 119 provides a list of maritime claims for which a ship may be arrested. Arguably a lien may be given to secure the claim. In addition article 73 of the code provides a list of maritime claims which are privileged. If the maritime lien provides enough security, an arrest may not be necessary. Yet a maritime lien arising from a privileged maritime claim under article 73 is good reason to arrest a ship here and the procedure is the same.

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

Cameroon recognizes maritime liens under article 73-86 of the code and she is a signatory to this code which is an International Convention signed on 3rd August 2001 by the CEMAC member states.

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 the same day of filing the requisite court processes if pressure is put. So if the applicant through counsel, sees the private secretary or registrar-in-chief (and talk convincingly), the application could be put on top for the urgent attention of the President of the court who may also be interested in such a file.

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

There is no requirement to provide a POA. Article 120 of this code is to the effect that the claimant must produce justifying documents relating to the maritime claim to the competent court before such petition can be granted. These justifying documents would include the bill of lading, maritime survey report assessing the claim and a notice to pay addressed by the claimant to the debtor, which notice was either simply ignored, or, the claimant was not satisfied with any reaction the debtor might have shown.

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 code is silent as to whether originals of justifying documents should be to be filed, or whether they may be filed electronically, or whether any document need notarisation. However, practice and procedure in the Cameroonian courts require an applicant to either make and file certified true copies of justifying documents or produce and file the originals depending on the circumstances of each case. Yet in the English Common Law jurisdiction, mere photocopies are accepted. Whether they be originals, certified copies, or photocopies, justifying documents are required at the moment of filing the motion.

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

Yes. Cameroonian courts will assume jurisdiction over the substantive claim once a vessel has been arrested within its territorial waters. Indeed article 125 of the code provides that the creditor must file a substantive matter within a limited period if the arrest order would stand.

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

Article 125 of the code is unambiguous that under pain of forfeiture, the claimant(s) have a statutory period of 01 (one) month to institute legal action or file the necessary court processes leading toward obtaining an executory formulae.

18. Do the courts of your country recognize wrongful arrest?

Yes. Article 126 of the code gives its blessings to a ship owner whose ship was wrongfully arrested and he obtained a release order thereafter. Thus the ship owner is entitled to sue for damages if he has suffered loss as a result of immobilization of the ship.

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

Article 52-72 of the code provide for co-ownership of a ship, meaning the ship could be owned by a corporation. The OHADA Uniform Act provides for the piercing and lifting of the corporate veil and the courts here do enforce it.

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

It is logically unwarranted to sell a ship, the object of litigation, pendente lite. If that were to be the case, the litigation would commit abortion instantly after such a premature sale. However under some special circumstances yet to be contemplated by our legislations and practice and procedures, a ship may arguably be sold pendente lite.



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He gave up teaching in the University of Douala where he lectured law of Torts and civil procedure to concentrate on legal practice wherein he specializes in International Commercial and Corporate Law besides his day to day General Practice. The firm's clients say he is reliable.

SHIP ARREST IN CANADA



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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:

- Statement of Claim to commence the action briefly setting out the relevant facts to establish in rem jurisdiction.

- Affidavit to Lead Warrant, which can be sworn by the solicitor upon information and belief.

- 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:

- 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;

- any question arising between co-owners of a ship as to possession, employment or earnings of a ship;

- 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;

- 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 CHINA (Questions 1 to 9)



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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 and may vary from court to court: it can be 30 days hire of the ship to be arrested or a certain percentage of the claim amount (up to the full amount). 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 there 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 irrespectively 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 irrespectively 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.



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SHIP ARREST IN CHINA (Questions 10 to 20)



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

In principle, the maritime court, having entertained an application for ship arrest, may require the claimant to provide counter-security. The form and amount of counter-security are determined by the maritime court. In practice, such counter-security can be made in form of cash, negotiable instruments or a guaranty letter from a Chinese bank or other Chinese financial institution. However, in some circumstances the maritime courts do not require the claimant to provide counter-security, e.g. in the case of a crew wages claim or a personal injury claim.

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

Yes. There is a clear difference between claims which give rise to a maritime lien and other types of claim. The distinction is:

With regard to the claim with maritime lien, the arrest shall be allowed provided that it is against the ship giving rise to the maritime lien. As far as other types of claim are concerned, because there is not a concept of "action in rem" but "action in personam" in the Chinese legislation, the ship may not be arrested unless it is the property of the liable person.

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

Yes. There are five types of maritime claims for which maritime liens can be exercised:

- (1) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew members;
- (2) Claims in respect of loss of life or personal injury occurred in the operation of the ship;
- (3) Payment claims for ship's tonnage dues, pilotage dues, harbor dues and other port charges;
- (4) Payment claims for salvage payment;
- (5) Compensation claims for loss of or damage to property resulting from tortious act in the course of the operation of the ship.

China is not a party to any conventions on 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?

It depends on how fast the claimant may arrange for a required counter-security. If we are provided with all the documents evidencing the debt or claim, an arrest may be done within 48 hours. Usually, an application for arrest of a ship should be presented to the court within its normal working hours. However, in urgent cases the court may, at its discretion, decide and execute the arrest after normal working hours.

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

Yes, the following documents should be submitted to the maritime court:

- (1) A written application signed and affixed with a company stamp.
- (2) Preliminary and basic supporting evidence.
- (3) Counter security. This is what the maritime court gives the most weight to. In most cases the amount of the counter security should be equal to the hire or loss of earning of the ship on a one-month basis. The maritime court usually only accept the letter of guarantee issued by a Chinese bank or insurance company or P&I club rather than that of a foreign party.
- (4) Power of attorney.
- (5) Certificate of identity of legal representative.

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 maritime court will require the original application, POA and Certificate of identity of legal representative to be submitted. In the urgent circumstances, the court may be persuaded to accept a faxed application followed by the original.

Power of attorney and Certificate of identity of legal representative forwarded from outside the territory of China should be notarized by the notary public of the country of origin and the legalized by the Chinese embassy or consulate general in that country. However, our experience is in an urgent case, we may try to persuade the court to accept the original Power of attorney and Certificate of identity of legal representative first and then those in notarized and legalized form after the arrest has been done.

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

Yes. The claimant may bring an action in respect of the maritime claim in the maritime court ordering arrest, unless the jurisdiction agreement or arbitration agreement between the parties provides otherwise.

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

A time of 30 days will be granted by the Courts.

Where the claimants bring an action or applies for arbitration within 30 days, or where the claimants apply for arrest of a ship during legal proceedings or arbitral proceedings, the arrest of the ship is not subject to 30 days time limit.

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

Yes. However, there is no definition for wrongful arrest or unjustified arrest under Chinese laws, but it may include a situation, where, although the arrest is reasonable at the time of arrest, it later proves to be unjustified because the claims fail ultimately on their merits. Under Chinese judicial practice, a wrongful arrest exists where: (a) the applicant has no maritime claim for arrest; or (b) the owners of the ship arrest are not liable for the claim; or (c) security demanded by the applicant is unreasonably high. If the claimants' claim ultimately fails and constitute a wrongful arrest, the shipowner can bring a claim against the claimant for wrongful arrest and losses caused thereof, which can be secured by the counter-security provided by the claimant.

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

In principle, the piercing of the corporate veil is recognized at Chinese judicial practice. However, at Chinese laws, there is no specific provision for the concept of piercing of the corporate. The Chinese Company Law provides that where any of the shareholders of a company evades the payment of its debts by abusing the independent status of legal person or the shareholder's limited liabilities, if it seriously injures the interests of any creditor, it shall bear several and joint liabilities for the debts of the company. Under Chinese judicial practice, some courts have introduced the concept of piercing of the corporate to their cases from the angle of jurisprudence. However, it varies from court to court and from judge to judge how to determine the issue. Most courts commonly rely on the facts of mixture of assets between the shareholders and the corporation.

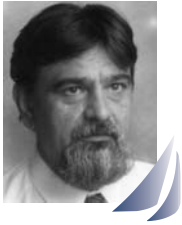
For your information, we have successful experience in dealing with such issues in Chinese Maritime Courts.

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

Where the respondent fails to provide security within one month, and it is not appropriate to keep the ship under arrest, the claimants, having brought an action or applied for arbitration, may file an application for sale of a ship *pendente lite* with the maritime court. The maritime court shall, after the receipt of a written application for sale of a ship, examine the application and make an order to allow or disallow the sale. Usually, it will take about two months for a forced sale of the ship.

** Mr. Wang has extensive experience in shipping and trade, including dry shipping, wet shipping, international sale of goods, international collection of debts etc. He particularly has extensive litigation experience in all Maritime Courts in China, the Appellate Courts and the Supreme Court in Beijing. He always finds the best way for resolving disputes on a cost-effective basis. At the same time, Mr. Wang is devoted to legal research. His papers are published in the Chinese shipping and law periodicals.*

SHIP ARREST IN CROATIA



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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.

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

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 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.

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Mr. Macesic has more than 33 years of professional experience, especially in maritime, banking&finance, insurance, energy and corporate law. He is listed correspondent to all major P&I Clubs (members of IG) and acts on case to case basis to other liability, H&M and cargo underwriters, insured interests, shipowners, operators and other maritime related interests. He assisted all major financings in Croatian shipping and shipbuilding industry by foreign banks, major bankruptcies and restructuring processes. He also acts as the trial lawyer in court, arbitrations and mediation proceedings. With Croatian EU membership admission process he focuses on EU law.

SHIP ARREST IN CYPRUS (Questions 1 to 9)



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

The Cypriot Legal system was developed on the basis of English Law from 1878 until its independence on 1960. Thereafter, even though new Cypriot Laws and regulations were enacted and Cypriot case law was applied, the Cypriot Legal System was to a large extent modelled on its English counterpart. Furthermore, although the divisions of the English courts are not binding to the Cypriot Courts, they are very persuasive. In order for a claimant to apply for a warrant to arrest the ship, he must bring an action in rem against the vessel or property in question or an action in personam (as the case may be).

The Cyprus Admiralty jurisdiction is exercised by the Supreme Court of the Republic of Cyprus which by virtue of rule 50 of the Cypriot Admiralty Jurisdiction Order gives an absolute right for arrest of the vessel or property once the Admiralty Court. However, by virtue of an amendment to the Courts of Justice Law (Law 136 of 1991), any admiralty case, irrespective of the amount of the claim, will be tried by the District Courts of Cyprus (together with the Supreme Court mentioned above referred to as the "Admiralty Court"), if the subject matter of the action relates "to loss of life or personal damage caused as a result of a defect in the vessel or its equipment..." In addition, where the claim is for less than EUR 17,086.01, the District Courts of Cyprus will also adjudicate claims:

- a) in respect of goods supplied to the vessel for its maintenance;
- b) for loss or damage to goods carried on board the vessel;
- c) in respect of construction, repair or supply of the vessel;
- d) for crew wages; and
- e) in respect of expenses incurred on behalf of the vessel by her captain or any other supplier.

It is necessary for the Admiralty Court to be satisfied that there is a serious matter of trial and that on the facts presented there is a probability that the claimant is entitled to relief. In the event that the application for the arrest of a vessel is successful, the Admiralty Court will require the following from the claimant:

- a) Lodgement of a deposit for the expenses which may be incurred by the Admiralty Marshal in connection with the custody and supervision of the vessel whilst under arrest;
- b) Lodgement of any other amount of money required by the Registrar for the expenses of the arrest; and
- c) Posting a security bond by way of a Cyprus bank guarantee.

Failure to comply with the above requirements will automatically result in the release of the vessel.

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

Cyprus is not a party to the 1952 Arrest Convention nor to the Brussels Liens and Mortgage Conventions. As the United Kingdom signed the said Arrest Convention in 1952 and the Administration of Justice Act Part 1 was subsequently passed in order to enable the United Kingdom to ratify the Arrest Convention. The above Administration of Justice Act is applicable in the Republic of Cyprus by virtue of its Constitution and section 29 of Law the Courts of Justice Act (14/60).

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

No, there is no other way to arrest the vessel with regard to the purpose of security of the claim. However, in cases where the claimant cannot proceed with the arrest of a vessel, for example due to the fact that Admiralty Court does not have jurisdiction, he may seek a "freezing" Mareva injunction which is normally granted when the defendants have no further assets in the Republic

of Cyprus and there is risk of alienation, dissipation of the assets. The application for a Mareva injunction is made ex parte.

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

As stated above a "freezing injunction" is an option.

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

The Admiralty Court has jurisdiction to hear any of the following claims or questions:

- a) any claim to the possession or ownership of a vessel or to the ownership of any share therein;
- b) any question arising between the co-owners of a vessel as to the possession, employment, or earnings of that vessel;
- c) any claim in respect of a mortgage of or charge on a vessel or any share thereof;
- d) any claim for damage done by a vessel;
- e) any claim for damage received by a vessel;
- f) any claim for loss of life or personal injury sustained in consequence of any defect in a vessel or in her apparel or equipment, or of a wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a vessel or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the owners, charterers, or persons in possession or control of a vessel are responsible, being an act, neglect or default in the navigation or management of the vessel, in the loading, carriage, or discharge of goods on, in, or from the vessel or in the embarkation, carriage, or disembarkation of persons on, in or from the vessel;
- g) any claim for loss or damage to goods carried in a vessel;
- h) any claim arising out of any agreement relating to the carriage of goods in a vessel or to the use or charter of a vessel;
- i) any claim in the nature of salvage;
- j) any claim in the nature of towage in respect of a vessel;
- k) any claim in the nature of pilotage in respect of a vessel;
- l) in respect of goods or materials supplied to a vessel for her operation or maintenance;
- m) any claim in respect of the construction, repair, or equipment of a vessel or dock charges or dues;
- n) any claim by a master or member of the crew of the vessel for wages and any claim by or in respect of a master or member of the crew of a vessel for any money or property which, under any of the provisions of the Merchant Shipping Acts 1894-1954, is recoverable as wages in the court or in the manner in which wages may be recovered;
- o) any claim by a master, shipper, charterer, or agent in respect of disbursements made on the account of a vessel;
- p) any claim arising out of an act which is or is claimed to be general average act;
- r) any claim arising out of bottomry; and
- s) any claim for the forfeiture or condemnation of a vessel or of goods which are being or have been carried, or have been attempted to be carried, in a vessel, or for the restoration of a vessel or any such goods after seizure, or for droits of admiralty.

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

You can arrest a ship in the Republic of Cyprus irrespective of her flag.

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

You can arrest a ship in the Republic of Cyprus irrespective of the debtor unless the debtor is in a position to claim sovereign immunity.

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

As mentioned in item 2 above, the Administration of Justice Act 1956 is applicable in the Republic of Cyprus. However, it should be noted that although section 3(3) of the Administration of Justice Act 1956 enables a claimant to arrest a vessel to which a maritime lien attaches, no provisions are contained therein in respect of the arrest of a "sister vessel". However, this situation is compensated by section 3(4) of the 1956 Act which provides that the admiralty jurisdiction of the High Court may be invoked (whether the claim gives rise to a maritime lien over the vessel or not) by an action in rem against "..... (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid". However, it should be distinguished that in such cases a person who possesses a maritime lien in respect of that "other ship" has no higher right or priority than that enjoyed,

under the circumstances by a statutory lien.

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

Bareboat Owners and Time Charterers are viewed as 'disponent owners' of vessels. Therefore, in the case of any of the claims mentioned in (d) to (r) above, being a claim arising in connection with the vessel, where the person who would be liable on the claim in an action in personam was, when the cause arose, the owner or charterer of, in possession or in control of, the vessel, the Admiralty jurisdiction of the Supreme Court may be invoked by an action in rem against:

- a) the vessel, if at the time when the action is brought it is beneficially owned in respect of all the shares therein by that person; or
- b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.



** Mr. George Zambartas holds a Bachelor of Arts degree in Law and Politics from the University of London's Queen Mary College and has over 20 years experience as a lawyer in England and in Cyprus.*

He has extensive experience in shipping encompassing ship financing, maritime claims (including ship arrest), ship management and purchase/sales of ships, including new builds. He has been instructed by leading international law firms and banks to provide legal opinions on high value shipping transactions on matters of Cyprus Law. He has undertaken ship registration, re-flagging, re-naming and parallel registration in all major registries around the world.

He has also given presentations on numerous shipping topics at various seminars. He moved to Cyprus in 1999 to take up the position as in house Legal Advisor of a global Shipping Company with a fleet of over 100 vessels. In August 2008 he set up his own law firm L.G. Zambartas LLC.

SHIP ARREST IN CYPRUS (Questions 10 to 20)



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

The Claimant is required to post a security bond by way of a Cyprus Bank Guarantee in respect of damages that the defendant vessel might suffer if the arrest proved to be wrongful. The amount of the security to be provided is at the discretion of the court which will take into account all of the circumstances of the case in assessing this amount.

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 between a maritime lien and a maritime claim. However, it should be noted that under Cyprus Law, Maritime Liens enjoy certain advantages over all other permitted actions in rem.

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

Under the English administration of Justice Act 1956, the following Maritime liens are recognised under Cyprus Law:

- Bottomry
- Salvage
- Wages
- Master's Wages
- Damage done by a ship

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

If you have all the information by the arresting party, then it will normally take one day to arrest a vessel.

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

No, a POA is required to bring the claim and present the Arrest Application 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?

All Admiralty actions whether in rem or in personam are instituted with the issue of a writ of summons.

The name, place of residence, occupation of every claimant and defendant and a concise statement of the claim made or the relief or remedy sought, should be included in the structure of the writ. The issue of the writ permits the claimant a right against the vessel, which originates from the courts of action in rem and materialises upon the arrest of the vessel.

The claimant should file with the court an affidavit appertaining to the nature of the claim and stating that the aid of the Court is required. The deponent to this Affidavit could be us in our capacity as the instructed law firm but this is not advisable as the respondent to the Arrest Application has the right to cross examine the deponent as to the subject matter of the Affidavit. For this reason, it is highly preferable that a representative of the claimant with direct knowledge of the claim comes to Cyprus to swear the Affidavit.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?
Once a vessel is arrested, Cyprus courts accept jurisdiction immediately.

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

That would depend on the Judge, the Lawyers and any delay by the court.

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

Cyprus courts do acknowledge the concept of wrongful arrest.

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

Cyprus courts will only pierce and lift the corporate veil in very exceptional circumstances (basically fraud).

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

It is possible to have a ship sold pendent lite; the court will order the sale of a vessel that remains under arrest and against which expenses are accumulating and which is deteriorating, if in the interest of all parties a speedy sale would appear to be desirable. Typical grounds for an application are that a vessel is costing a disproportionate amount in daily expenses or is deteriorating owing to being under arrest for a long time or that a cargo is perishable. Therefore, the continuing and mounting expenses of arrest and the fact that goods are deteriorating are among the good reasons that a court may consider in ordering the property to be sold pendent lite. It is very difficult to advise on the precise timescale involved as this will largely be determined on a case by case basis and any objection by the Respondent to the Application will greatly prolong the process.



** Alkisti Kannidou obtained a Bachelor of Arts Degree in Politics and International Relations from the University of Kent at Canterbury, UK. She then went on to earn a Bachelor of Laws Degree with Honours. She has many years of experience in shipping and she is dealing with all matters relating to ship registration, ship management, P&I Insurance, and operation of ships. She has also been closely involved with the handling of claims such as cargo claims in respect of loss or damage to cargo, and FDD Legal Affairs, such as claims under the Voyage and Time Charter. She has been extensively involved in Arbitration Proceedings. Mrs. Kannidou is presently dealing with various contract and corporate matters and she is also involved in the preparation of Legal Opinions under Cyprus Law. She is a member of the Cyprus Bar Association and a member of the Society of Trust and Estate Practitioners (STEP).*

SHIP ARREST IN DENMARK (Questions 1 to 9)



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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.



** Henrik Kleis is head of DELACOUR DANIA's department specialising in Transport and Trade which consists of 10 attorneys. What is distinctive about the department's size and the scope of tasks is that DELACOUR DANIA to a larger extent than other Danish law firms represents all imaginable businesses within transport and shipping.*

Henrik primarily deals with transport and shipping and international commerce, and is engaged in conventional transport law cases. Hence, he represents a large number of shipping agents, freight forwarding companies, ship brokers and road carriers. Furthermore, Henrik Kleis represents most of the Danish ports and handles a long line of varied cases for the ports. The Danish association Danish Ports has thus appointed Henrik Kleis as their representative in ESPO - European Seaports Organisation - Legal Committee.

As Henrik deals with matters of the business world, he therefore holds positions in a number of boards home and abroad. Moreover, he is Honorary British Consul.

SHIP ARREST IN DENMARK (Questions 10 to 20)



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

The courts have a discretionary right to demand counter security. Pursuant to the MSA such security should not exceed the equivalent of 5 days charter hire for the vessel in question. The courts invariably demand counter security equivalent to 5 days charter hire. In order to determine the relevant daily hire a shipbroker should be requested to provide an estimate. In this regard it is sufficient to provide an exchange of emails with a shipbroker.

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

The formal requirements are the same but as mentioned above arrest for a maritime lien can be made irrespective of the owner of the vessel.

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

Danish law recognises maritime liens. The rules regulating maritime liens are found in the MSA and are based on the 1967 Brussels Lien Convention.

In order to determine whether a claim creates maritime lien it may not be sufficient to resort to Danish law. The maritime liens may be determined according to the law of the flag of the relevant vessel. Scandinavian case law supports that the law of the flag is relevant in this regard although the issue is untested under Danish 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 can typically be obtained within a day. Certain local courts may need further time and may not be available for an arrest during the weekend or nights.

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

No POA is required. In order to establish the claim only copies of the pertinent documentation is required.

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

No original documents are required nor apostille. Documents can be faxed to the courts.

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

The courts will accept jurisdiction over the merits. However, if the underlying agreement supporting the claim is subject to arbitration or litigation in a foreign forum the courts will not assume jurisdiction. In such case validation proceedings must nonetheless be commenced as a formal requirement but they will immediately be postponed pending the outcome of the arbitration or foreign litigation. Arbitration or foreign litigation must be pursued without unreasonable delay.

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

Validation proceedings must be commenced within one week from the date on which the arrest has been granted.

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

Yes. The arrestor is liable for wrongful arrest on a strict liability basis for any loss caused by the arrest. There is no relevant case law regarding liability but it cannot be ruled out that the right to compensation is influenced by the fact that the owner can avoid the effects of an arrest by providing a guarantee for the amount in dispute.

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

The notion of piercing the corporate veil exists under Danish law but is limited to very special circumstances where there has been e.g. a mix of funds between the companies or where business has been otherwise conducted as if two companies were one.

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

If the claim is not paid and no security is lodged for the claim the arrestor may ultimately sell the vessel by way of forced sales proceedings. It is a prerequisite for an auction that the arrestor has obtained an attachment against the vessel. Such attachment can only be obtained once the validation proceedings (whether litigation or arbitration) have been completed. Arrest based on a mortgage does not require validation proceedings and an attachment can be obtained immediately. Depending on the case load of the relevant local court it may take from 3 months up to 1 year until forced sales proceedings have been carried out. Certain notification requirements exist in respect of auction of foreign vessels (notification to the flag state and advertisement in the flag state).



** Peter Schaumburg-Müller is a partner with HAFNIA LAW FIRM. Peter was born in 1950 and obtained his law degree from the University of Copenhagen in 1976. Additionally, Peter has studied maritime law with the Scandinavian Institute of Maritime Law in Oslo and studied international law at the University of Aix en Provence.*

Throughout his career Peter has been specialised in shipping related matters. Peter has worked with Skuld P&I Club. In 1981 Peter established the law firm of Schaumburg-Müller & Co. – the predecessor of HAFNIA LAW FIRM. Peter is a member of the board of Danish shipping companies including suppliers, ship owners and operators and he has an extensive network in the Danish shipping industry.

Hafnia Law Firm is a boutique law firm dedicated to shipping law. The firm acts in all types of disputes and transactions within the field of shipping and transportation.

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

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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.



** Lewis Moore has been a practising solicitor since 1976 and under his own account since 1987.*

Lewis specialises in ship sale and purchase, ship finance and all shipping related and contentious matters. Lewis acted for the (ultimately successful) charterers in the case of the ACHILLEAS and has been involved in a number of other reported cases. Lewis takes an active role in the management of the firm and was responsible for taking the firm through its Lexcel Accreditation in 2004. He is an accredited CEDR mediator.

Tony Swinnerton has been a practising solicitor since 1973 and set up Swinnerton Ashley-Claydon & Co. in 1980 specialising in arbitration and litigation of shipping, insurance and trade disputes.

Mr. Ashley-Claydon was obliged to retire on health grounds in 1993 and Tony Swinnerton continued practicing as Swinnertons until he merged with Lewis Moore in December 2001 and now practise under the name of Swinnerton Moore LLP.

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



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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*.



** Russell Kelly qualified as a solicitor in 1986 and worked for 12 years with a well known shipping law firm in London before moving to Southampton and establishing LA Marine, the shipping and marine law team at Lester Aldridge. Russell's practice encompasses both the commercial shipping and the leisure marine and yachting markets, advising in particular on vessel sale, purchase and finance and on new building and repair disputes as well as dealing with crew and passenger personal injury claims, vessel arrests and criminal prosecutions. He also conducts on board investigations following incidents on vessels, collecting evidence and advising owners and crew members in relation to investigations by the MAIB and MCA. Russell is a supporting member of the London Maritime Arbitrators Association (LMAA) and a regular speaker at various industry conferences and seminars.*

SHIP ARREST IN FINLAND



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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.

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 provisions of the Maritime Code concerning arrest do not apply for reasons explained in question 1, the general rules on precautionary measures incorporated in the Finnish Procedural Code, Chapter 7 apply.

4. Are these alternatives e.g. *saisse 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.

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, in certain cases the provisions set forth in the Convention do not apply. See question 1.

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.

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

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?

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, 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?

Yes, 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 Maritime Court may release the applicant from the obligation to provide security if the applicant cannot provide security and the applicant's claim is considered justified and well-founded. However, it is highly unusual that such release is granted.

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 the debtor, and it is not necessary to show any threat that the defendant will hide, destroy or dispose of his property.

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.

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. 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,

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. 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 nor apostille of a document are normally required. Parties are in principle allowed to deliver documents electronically to the authorities. 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?

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.

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

The applicant must commence legal proceedings against the defendant within one month from the day when the final arrest order is granted.

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

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.

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

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, 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.



** Ulla von Weissenberg advises on all aspects of international maritime and transport law and related insurance issues. She is also experienced in issues relating to shipbuilding and ship purchase. Ms von Weissenberg litigates frequently before courts and arbitral tribunals.*

Together with Jan Aminoff, Ms von Weissenberg heads the Shipping, Transportation and Insurance practises of Attorneys at Law Borenius & Kempainen Ltd.

Prior to joining Borenius & Kempainen, Ms von Weissenberg was a partner at Aminoff & Weissenberg, Attorneys Ltd. She has worked in the shipping industry with legal matters since 1994.

SHIP ARREST IN FRANCE



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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 (see parag.19 below).? 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 is relatively not costly and can be implemented rapidly.

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 incorporated 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 that the petitioner may have against the owner of the ship, provided it is proven that this claim is “grounded in principle”.

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 ships 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 irrespectively of the debtor?

Subject to the case of a maritime claim as identified in the Brussels Convention and 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 39 of the Law of 3 January 1967).

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

Yes. France ratified the Brussels Convention on Maritime Liens and Mortgages dated 10 April 1926, incorporated into French domestic law through articles 31 to 41 of the Law of 3 January 1967, bearing in mind that an additional maritime lien is provided under article 12 of the Law no. 69-8 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. Obviously, the petition must be substantiated with any document evidencing the existence and the cogency of the claim. When the petition is grounded on the Brussels Convention, the documents must also show the maritime character of the claim.

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?

Save when the Brussels Convention applies (art.7), 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 cancelled.

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

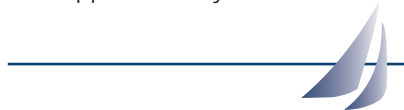
French judges are reluctant to accept a claim for compensatory damages for wrongful arrest, unless the bad faith or malice of the arrestor is clearly established.

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

Yes. In this respect, French judges have been relying on the concept of "Fiction" instead of the theory of "Appearance", i.e. one must establish that the company owning the ship is fictitious. To this end, various elements must be gathered: eg. 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 judicial sale of the arrested ship is possible when the petitioner holds an enforceable deed. In practice, the procedure of judicial sale lasts approximately three months.



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He represents P&I clubs, shipowners and various French, Spanish and US road carriers and freight forwarders, and has developed an expertise in the set-up of agencies and joint ventures worldwide.

Henri is author of an outline on the Events of the Sea: Collision, Salvage, Towage, General Average (Lexis-Nexis) and of various articles published in Lloyd's List, Bulletin des Transports and The Maritime Advocate.

He is member of the Association Française de Droit Maritime and the Instituto IberoAmericano de Derecho Marítimo, speaker at the International Maritime Committee, International Bar Association, Shiparrested and Containerisation International conferences and visiting lecturer at the Universidad del Salvador, Buenos Aires.

SHIP ARREST IN GERMANY



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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 irrespective of her flag?

An arrest may be applied for irrespective 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 irrespective 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.



** Thomas Wanckel is a Partner and Head of Shipping department at Segelken & Suchopar, Hamburg and Berlin. Born in 1953, he studied in Hamburg and Providence/Rhode Island, and was admitted to the Hamburg Bar in 1984 and also to all German Appeal Courts. In his career of more than 25 years in shipping and marine insurance law, Thomas specialized in subrogated cargo underwriters work, charter party disputes, collisions and GA. He advises major German and international Cargo Underwriters. He has been Lecturer at underwriters' in-house seminars and at the International Cargo Recovery Conferences in New York 2008 and London 2010, as well as at other Conferences in Istanbul, Odessa and St. Petersburg. Moreover, Thomas is Arbitrator, Member of the German Maritime Arbitration Association, the German Maritime Law Association, the Shiparrested.com network and the German Association for Transport Law.*

SHIP ARREST IN GIBRALTAR



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

Arresting a ship in Gibraltar is a relatively simple and straight forward process. In the first instance a Claim Form should be prepared with either brief particulars (which is just a brief summary) or Particulars of Claim together with a request for service of the Claim Form in rem, a declaration in support of the claim and a solicitor's undertaking to pay the Admiralty Marshal's costs and expenses.

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

The Supreme Court of Gibraltar has jurisdiction to try admiralty matters by virtue of the Colonial Courts of Admiralty Act 1890 and the Admiralty Jurisdiction (Gibraltar) Order 1997. The same provide the Supreme Court of Gibraltar which is a Colonial Court of Admiralty, shall have the like admiralty jurisdiction as that of the high court of England as defined by section 20 of the Supreme Court Act 1981. Give effect to the convention relating to the arrest of sea going ships, Brussels 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?

It is possible to obtain a Freezing order over a defendant's assets where the Gibraltar Court has in personam jurisdiction. In such cases if the Defendant has a vessel within Gibraltar territorial waters, the freezing Order can be enforced against the vessel thus preventing her departure from the jurisdiction.

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

In Gibraltar ships can only be arrested pursuant to a claim which gives rise to a right of action in rem. These are:

- (a) any claim to the possession or ownership of a ship or the ownership of any share therein.
- (b) any question arising between the co-owners of a ship as to the possession, employment or earning of that ship.
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein.
- (e) any claim for damage done by a ship. (maritime lien)
- (f) any claim for loss of life or personal injury in respect of a defect in a ship, neglect or default in navigation, management of the ship, loading, carriage or discharge of goods, embarkation, carriage or disembarkation of passengers,
- (g) any claim for loss or for damage to goods carried in a ship.
- (h) any claim arising out of an agreement relating to the carriage of goods in a ship or the use or hire of a ship.
- (i) any claim in the nature of salvage (including aircraft). (maritime lien)
- (j) any claim in the nature of towage in respect of a ship or an aircraft.
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft.
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance.
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues.
- (n) any claim by the master or a member of the crew of a ship for wages. (maritime lien)
- (o) any claim by a master, shipper, or charterer or agent in respect of disbursements made on account of a ship.

(p) any claim arising out of an act which is or is claimed to be a general average act.
(q) any claim arising out of bottomry. (maritime lien)
(r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure or for droits of admiralty.”

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

Yes.

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

Save for claims which give rise to a maritime lien where the ship can be arrested irrespective of the debtor all other actions in all other actions that give rise to an in rem a ship can only be arrested if when the cause of action arose the person who would be liable on a claim in an action in personam was other the owner or the Charterer or in possession or in control of the ship.

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

True sister ships can be arrested in Gibraltar. For vessels to be deemed to be sister ships they must be owned by the same entity be it a company or a physical person. With the increasing use of one ship owning companies it is increasingly rare to encounter sister ships. It is not possible to arrest associated ships in Gibraltar.

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

Bareboat chartered vessels can be arrested. Time-chartered vessels cannot be arrested.

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

No counter-security is needed in order to arrest a vessel in Gibraltar. However a deposit of between £10,000 and £20,000 must be placed with the Admiralty Marshal at the time of the arrest in order to cover the expenses of the arrest together with a solicitor's undertaking in respect of the cost of the arrest. If the arrest is successful all costs are normally recovered from the owners of the vessel or in default from the process of sale of the vessel.

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

An arrest for a maritime lien can be effected irrespective of who the owner of the vessel is and in circumstances whether the vessel may have been sold after the claim arose. An arrest for a maritime claim not being in the nature of a lien can only be carried out in the circumstances set out at 7 above.

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

Gibraltar recognises maritime liens in respect of claim for crew wages, salvage, masters wages and disbursements, damage done by a vessel and bottomry and respondentia.

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

Provided full instructions with the supporting documents are received enabling us to prepare a general endorsement of the claim form together with the declaration in support, an arrest may be carried within hours of receiving instructions. The Admiralty marshal is on call 24 hours a day 365 days a year and therefore in urgent cases a ship may be arrested at almost any time.

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

No Powers of Attorney are needed in Gibraltar in order to arrest a vessel. As regards documentation in support of the claim, in order to enable the solicitor to prepare the claim form and declaration in support of the arrest, documentation should be provided setting out the nature of the claim, the name of the ship to be arrested and its port of registry.

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 the purposes of the arrest no original documents need be sent. Provided we receive pdf copies

of all documents we can prepare the original claim form and original declaration to be filed in Court. However original documents or certified copies of the same should follow as soon as reasonably practical.

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

Once the vessel has been arrested pursuant to an in rem claim, the courts will accept jurisdiction to hear the merits of that in rem claim. However it might be possible for a party to seek to stay the proceedings in Gibraltar and the hearing of the merits of the case if there is a foreign jurisdiction clause that the parties have previously agreed.

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

As discussed previously a claim form setting out the details of the claim has to be filed at the time the arrest documentation is lodged. Once the claim form is lodged the Defendant will have 14 days in which to acknowledge service and a maximum of 28 days in which to file the defence.

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

Although it is possible to claim wrongful arrest in Gibraltar it is extremely rare for this to happen given that the parties would have to prove that the arrested party has acted in bad faith or has been grossly negligent in carrying out the arrest.

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

Gibraltar law as English law recognises the principal of separate legal entities. As such, instances of piercing the corporate veil are extremely rare and, in practice, will only happen in cases where there are allegations of fraud.

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

In Gibraltar ships may be sold and then pendente lite. Although in theory this can be done at any point after the arrest, given the fact that the Court will only grant such an application for very good reason and in instances where there is a real risk that the vessel will seriously diminish in value during the arrest, such applications will only be made in instances where it is clear that the Defendant does not intend to post security and the cost of arrest are significant.



** Christian is a Partner at ISOLAS, the oldest and one of the largest law firms in Gibraltar. He is acknowledged as a leading lawyer in Gibraltar in admiralty and shipping law. Christian is involved in the majority of shipping cases in Gibraltar and has been named as a leading individual by Chambers and Partners, the European Legal 500 and Global Counsel 3000 amongst others. His clients include the ITF, P&I Clubs, banks and shipowners.*

What they say about Christian:

"He is noted for expertise in non-contentious and disputes work in the admiralty area." CHAMBERS & PARTNERS 2007
"Hernandez is well known for his expertise in ship arrest and has a strong track record for his handling of shipping cases." THE LEGAL 500, 2007

"Isolas remains a leading player in the shipping sector under the leadership of Christian Hernandez." THE LEGAL 500, 2008
"Christian Hernandez, head of the firm's admiralty and shipping team, is 'undoubtedly one of the heavyweights in the sector'" THE LEGAL 500, 2009

SHIP ARREST IN GREECE

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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 INDIA



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

The Origin of the Admiralty Jurisdiction can be traced to the Colonial Courts of Admiralty Act, 1891. The British parliament had earlier enacted the Colonial Courts of Admiralty Act, 1890. Section 2 of the Colonial Courts of Admiralty Act, 1890 inter alia provided that “every court of law in the British possession which for the time being declared to be so in pursuance of the said Act to be a Court of Admiralty with Original Unlimited Civil jurisdiction” and that the Colonial Courts would exercise the same jurisdiction as Admiralty Court of High Court in England whether existing by virtue of any statute or otherwise. Section 3 of the Colonial Courts of Admiralty Act, 1890 vested power with the legislature of a British possession to declare any Court of unlimited Civil Jurisdiction to be the Colonial Court of Admiralty. By the Colonial Courts of Admiralty (India) Act, 1891 the High Courts of Calcutta, Bombay and Madras were declared the Court to be “Colonial Courts of Admiralty” with unlimited jurisdiction. Until the year 1992 various High Courts in India were exercising Admiralty jurisdiction only in respect of such claims enumerated in the Admiralty Courts Act, 1861 and the Admiralty Courts Act, 1840 being the statutes which were then in force in England until the year 1890.

However, in the year 1992, in the case of *m. v. Elizabeth (m.v.Elizabeth & Ors. v/s. Harwan Investment and Trading Pvt. Ltd.1993 Supp (2) SC433)*, the Supreme Court of India scanned through the history of Admiralty jurisdiction, took cognizance of the fact that Indian Parliament had not enacted any legislation on the subject of Admiralty jurisdiction and gave liberal interpretation to the words “whether existing by virtue of any statute or otherwise” in the Colonial Courts of Admiralty Act, 1890. By such liberal construction Supreme Court held that the Admiralty jurisdiction of the High Court would be considered to have been progressed at least upto the level of (English) Supreme Court of Judicature (Consolidation) Act, 1925 which was the last of the series of enactment in England on the subject prior to the year 1947 when India became independent. The Supreme Court further took cognizance of the Arrest Convention, 1952 and held that such Convention itself has been enacted based on the felt necessities of the International trade and therefore made it applicable in India for the enforcement of maritime claims against foreign ships. In the year 2003 the Supreme Court of India in the case of *m. v. Sea Success (Liverpool & London S. P & I Association Ltd. v/s. m. v. Sea Success JT 2003 ((9) SC 218)* widened the Admiralty jurisdiction to include application of Arrest Convention 1999.

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

The Arrest Convention of 1952 and the Arrest Convention of 1999 would be considered by the Courts for the purpose of seeking arrest of the vessel.

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

Ship could also be attached/arrested to enforce a decree which is obtained in a foreign country through execution proceedings.

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

There is no separate freezing order other than the form of an Arrest in the Admiralty Suit or in execution proceedings.

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

A ship could be arrested for the following 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 connection 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 agents 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 earning of that ship;
- q. The mortgage or hypothecation of any ship.

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

Ship could be arrested irrespective of any flag.

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

If the ship belongs to Government of Foreign State, in that event consent of the Central Government in India would be required to proceed against the vessel and its owners.

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

A sister ship could be arrested. There is no separate concept as "associated ownership". As long as the ship is a sister ship and the Directors and the shareholdings are common, the Court would enforce the arrest of the ship.

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

If the maritime claim is against the disponent owner and if the bareboat charter is still in force, the ship could be arrested. Likewise if the maritime claim is against the registered owner of the ship, the ship could be arrested even if it is on time charter.

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

Countersecurity is not required to be furnished at the time of arrest of a ship. However, when the ship owner files an application for release of the ship on the ground that the order of arrest is not maintainable or the Claimants have obtained the order of arrest by suppressing material facts and that the owner has suffered monetary loss as a result of the order of arrest or that the ship owner has a counterclaim, the Court may direct the Claimants to furnish countersecurity to the extent of the counterclaim or such amount the Court may deem fit and proper. However, Court would direct the Claimants to provide countersecurity only in exceptional circumstances.

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

A ship could be arrested in respect of a maritime claim or to enforce a maritime lien. Maritime lien is extended only to following five heads of claims. They are:

- a. Damage done by a ship
- b. Salvage
- c. Seamen's wages
- d. Master's wages and disbursements
- e. Bottomry and Respondentia

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

There is no domestic statute dealing with the concept of maritime lien. However, only those claims mentioned hereinabove have been recognized judicially.

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

Order could be obtained within 24 hours (excluding Public Holidays) on receipt of all the documents/papers including a Power of Attorney. The Power of Attorney has to be executed in favour of any person in India who is not the lawyer dealing with the subject matter. The order of arrest could also be obtained even if the Court is not working.

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

The Power of Attorney is required and it has to be either notarized or attested before the Indian Consulate and has to be in original.

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

Original Power of Attorney which is either notarized or attested before the Indian Consulate is required. All other documents (photocopies) which are the basis of claim including the exchange of correspondence are required to be produced at the time of filing the suit. However, at the time of the trial or if so ordered by the Court earlier the original documents are required to be produced.

In the application for arrest the entire facts of the case based on which the claim is made has to be stated apart from stating legal grounds on which the arrest is sought.

All the papers including the undertaking in the form of an affidavit to pay damages in the event of any party sustaining prejudice by the order of arrest would have to be signed either by the Claimants themselves or by the duly Constituted Attorney. The Court Fees is required to be paid based on the value of claim at the time of filing of the suit. However, Court fees could be paid at a later date by furnishing an Undertaking.

The amount of Court Fees varies from State to State in India.

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

Once the Court orders the arrest of the vessel, it retains its jurisdiction to adjudicate the substantive claim. The only event when the Court does not retain its jurisdiction to adjudicate the substantive claim is when the ship Owner claims that the dispute is referable to Arbitration in a foreign jurisdiction. In such a case the Court shall stay the suit but in its discretion may order that the security furnished by the ship owner be retained until the Award is passed.

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

It could take anywhere between two to four years to adjudicate the disputes on merits.

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

The Court do acknowledge the concept of wrongful arrest. However, in order to establish wrongful arrest the ship owner must show and establish malice and willful conduct on the part of the Claimants.

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

The Courts are slow in acknowledging the concept of lifting of the corporate veil at the time of the arrest. In order to obtain arrest by piercing the corporate veil, one need to establish that it is a deliberate attempt on the part of the ship owner to create different entities to avoid legal liabilities.

If independent legal entities have been established in the normal course of business the Court would be reluctant to pierce the corporate veil for the purpose of issuing an order or arrest.

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

Ship can be sold pendente lite. The process of sale could be completed within 6 to 9 months from the date of the order of arrest. It could take longer period if any of the parties challenges the order and the sale before the superior Court.



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SHIP ARREST IN IRAN



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

The Maritime Law of Iran of 1964 does not provide specific rules for the arrest of ships. Thus, there is no special procedure as to arresting a ship. In other words, it is arrested like any other property by resorting to a combination of other laws such as Civil Procedure Code and Commercial Law of Iran. Although Iran has a long coast line both on the south (along the Persian Gulf and the Sea of Oman) and on the north (along the Caspian Sea which is the largest land-locked lake of the world and which is shared between Iran and four other states emerging after the collapse of the former Soviet Union), maritime legislation is lagging behind and has failed to keep pace with the expansion of Iran's merchant fleet (the largest in the Middle East) or the volume of its foreign trade (including oil and the accompanying oil super tankers traffic). For substantive issues (on the merits of the case), an application in writing for ship arrest should be submitted to the courts of the coastal provinces in whose jurisdiction the target vessel lies, stating the claim, the course of action, the ship's name along with relevant supporting evidence and their official translation into Persian (Farsi) language upon filing of which the Court shall grant a ruling. In the past, the 1st Div. III of Tehran was actively involved in arrest cases, it used to issue letters rogatory to courts in coastal provinces in whose jurisdiction the ship was moving or lying. The order for ship arrest shall be enforced forthwith. The claimant shall be liable for any loss sustained by the respondent or any other interested party due to a wrongful arrest.

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

It is Brussels Conventions of 1952 relating to arrest of seagoing ships.

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

Yes, by applying provisions of Iran's Maritime Law (1964) together with those of Iranian Civil Procedure Code and Commercial Code. It can also be arrested by port authorities on administrative or criminal grounds (such as infringing anti-pollution laws or posing health or safety hazards or refusing to pay state dues or taxes)

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

These steps can be assimilated to saisie conservatoire or freezing order.

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

In brief, they could be rather wide-ranging: In a nutshell whatever claim which is approved by courts of law including those stemming from privileged claims (crew's pay and others originating from labour relations) but also involving claims by third parties (action for recovery of debt...) and of course at the initiative of port authorities intervening to collect dues and levies or over incidents (collisions, pollution...), carrying illegal goods or passengers engaging in smuggling, posing health hazards with or without casualty.

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

In principle yes, if you choose to apply either provisions of the 1952 Brussels Convention or those of Iranian laws in dealing with ships belonging to member or non-member states.

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

Although this is left to the discretion of the court ruling on the basis of the evidence which the claimant produces, nonetheless, in principle, it is possible to arrest a ship owned by the debtor only. In other words, an arrest will not be granted if the debtor is the time charterer or the voyage charterer.

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

Sister ships can be arrested in application of Iranian laws and not of provisions of the 1952 International Arrest Convention. It is not possible to proceed to arrest of ships in associated ownership.

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

A time - chartered ship may not be arrested for a claim against the time-charterer. As regards bareboat and for the purpose of an arrest in rem, the liability which is sought to be enforced has to be, in principle, established by the court through examination of the relevant documents and it is not taken for granted but rather ruled on a case by case basis in recognition of precise circumstances.

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

In most cases yes unless the claim is of other nature (for example crew pushing for payment of its arrears of pay or when the supporting evidence produced to the court is a deed such as a notarized mortgage agreement or assimilated to deeds such as bank checks).

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

There is a clear difference. Furthermore, while maritime lien is recognized to certain parties and dealt with under Iranian Maritime Law, it is basically a combination of provisions of Civil Procedure Code and Commercial law which is invoked and applied to arrest a ship.

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

Yes, in this respect Iran is signatory to a number of international conventions including the one signed at the Hague.

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

It depends on the availability of judges and court congestion and whether intended submission of application does not coincide with public holidays (and Iran is notorious for having one of the largest number of off days in the world as well as a record of protracted holidays specially during festivities marking the beginning of the Iranian New Year on or around 21 March!). Furthermore, it depends on how fast the claimant may arrange for the mandatory counter-security. Usually, if we are provided with all the documents evidencing the claim or debt, an arrest can be effected within three business (as distinct from calendar!) days.

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

Yes, absolutely!. And, under Iranian laws, they must be legalized by an Iranian consular officer in the country where the claimant resides or in a country where Iranian consular mission has jurisdiction over (such as accredited consuls covering states neighbouring the country they are primarily stationed in) such legalization issues in the absence of a separate mission there.

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

Iranian courts are not known to be electronics-friendly!. Furthermore, producing a legalized (by an Iranian consular officer) power of attorney together with all the supporting evidence in original or certified true by the competent consular officer is a must as provided for under Iranian Civil Code and Civil Procedure Code , bearing in mind this caveat that legalization does not necessarily mean apostille if the laws in the relevant country (state of residence of the claimant) lay down alternative arrangements (notarization, authentication by courts or chambers of commerce...) conducive to their subsequent legalization by Iranian consular officers. Furthermore, in accordance with Art. 58

of Civil Procedure Code, all those documents destined to be submitted to the court should have been translated into Farsi (Persian) language by a sworn/licensed translator.

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

Yes, however, while over the last ten years , Div. III of Tehran Public Courts used to serve as the de facto maritime court of Iran (provided for under Iranian Maritime Law but yet to emerge officially), nowadays it is courts based in Iran's coastal provinces (in whose jurisdiction the ship is found) which tend to hear such cases on their merits.

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

By virtue of Art. 318 of Iranian Civil Procedure Code, the Claimant has twenty days after issuance of a "freezing order" to refer to competent court in order to submit application and file a certificate thereof with the court having issued the temporary (freezing) order failing which the latter court will proceed to release the ship at the request of the adversary. The period granted by the Courts to the Claimants will be, however, ten days if the matter involves attachment of relief (saisie conservatoire) as laid down under Art. 112 of Iranian Civil Procedure Court.

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

Yes, the counter-security demanded from the Claimants is intended to cover and protect the ship owners from exposure to frivolous or vexatious actions or claims . Any losses, as established by the Courts, respondents may have suffered as a result of such wrongful arrests shall be compensated and paid for out of the proceeds of the said counter-security.

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

No as the concept of piercing and lifting the corporate veil is not recognized under Iranian law (notwithstanding the abuse this lacuna gives rise to!)

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

If the defendant provides alternative security in replacement of the arrested or attached ship and such a replacement of security is approved by the court or is agreed to by the claimant, a ship may be sold pending final outcome of the ongoing litigation.



** Dr. Hassan Amirshahi, (LLB, MBA, PhD) from Université de Nanterre [Paris-X], having also completed studies at Middle Eastern universities, has, in addition to his background as a jurist and a corporate law consultant, over 20 years of experience as a senior expert and researcher in state and semi-governmental organizations directly involved with economy, foreign trade and investment . He is a member of Iran's Central Bar Association as well as International Bar Association.*

Dr. Amirshahi has excellent knowledge of Iranian socioeconomic parameters and issues thereto relating; knowledge which, together with his long-standing jurist background, gives him a unique asset as a corporate lawyer. Languages Spoken: French, English and Arabic (dialectal); mother tongue being Persian.

SHIP ARREST IN ISRAEL (Questions 1 to 9)



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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.



** John Harris graduated from the University of Cape Town. Having emigrated to Israel he established the legal firm of J. Harris & Co. which is dedicated to the practice of Maritime and Admiralty law. The firm represents major Israeli shipping concerns and acts as the correspondent of a number of prominent London law firms.*

The firm regularly receives a "highly recommended" rating from Legal 500.

John Harris is an Associate member of the London Maritime Arbitrators Association.

Yoav Harris is a regular contributor to the leading Israel shipping publication "Cargo" and to international publications. The firm has established a number of important shipping law precedents in the Israel Supreme Court, the highest Court of Appeal.

SHIP ARREST IN ISRAEL (Questions 10 to 20)



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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 line?

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 (Questions 1 to 9)



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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.



SHIP ARREST IN ITALY (Questions 10 to 20)



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

No security is required as a preliminary condition to seek an arrest of ship. The Judge may order the applicant to tender a countersecurity, although this is rather uncommon at the time of the filing of the application, and a security is normally requested only where the Court considers that the arrest is controversial, or the merits of the claim have not been assessed with sufficient depth.

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

If the claim is secured by a maritime lien, this may operate to allow the arrest of a vessel even if it has changed ownership, the doctrine being that the lien attaches to the property at the time the cause of action arises and remains so attached until satisfied or time barred. Maritime liens take priority over registered mortgages, yet need not be registered themselves.

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

Italy is a signatory to the 1926 Liens and Mortgages Convention, and recognizes a list of maritime liens under article 552 of the Italian code of navigation, which largely coincide with the list contained under article 1 of the 1926 Convention. The existence of a lien over the ship is determined by the law of the flag of the ship at the time the claim or credit arose, pursuant to art. 6 of Italian Navigation Code.

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

Instructions should be received possibly 48 or 24 hours before the moment of the presentation of the application. It should be considered in this respect that it is crucial to file the application early in the morning in order to try to have the case heard the same day, and in many Courts it is impossible to file the arrest application after noon.

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

The presentation of an application as well as any legal activity before major Italian Courts are made by a solicitor by virtue of a power of attorney. Powers of attorney issued outside Italy must be legalized and apostilled pursuant to Hague Convention 5 October 1961, or alternatively legalized by the Italian Embassy or Consulate in the country of issuance. The apostille is unnecessary, though, for powers of attorney released in countries party to the Brussels Convention 1987 which abolished the need of the apostille for deeds issued inside the EU; the apostille may be furthermore excluded by virtue of bilateral agreements.

Italian solicitors have the authority to legalize powers of attorney, provided that they have had the opportunity to identify the party signing the deed. (1) In arrest or urgent proceedings an option is furthermore provided by article 77 c.p.c. which permits the possibility of an agency appointment, generally made in practice by appointing (by fax or e-mail) as agent for urgent matters (including the one for which the measure is sought) a lawyer who in turns appoints (usually) another lawyer of the firm as attorney in law. A formal duly legalized power of attorney is often disclosed at a later stage in order to prevent exceptions and technicalities.

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 not required, and could be disclosed in case the defendant contest the

(1) Cassazione n. 5840/2007, Alpina Versicherung A G c. Royal & Sun Alliance.

truthfulness of the copy disclosed. The notarization and/or apostille are required only for the POA.

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

Arrest is admitted regardless of the fact that Italian Courts have jurisdiction for the merits of the case: the Italian Court competent for the arrest is the Court of the port of call, and the application is subject to the condition that the vessel is within Italian territorial waters.⁽²⁾ Italian Courts however do not acknowledge jurisdiction on the substantive claim unless they have jurisdiction by virtue of the application EU Regulation on jurisdiction, or jurisdiction exists pursuant to article 7 of the 1952 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?

Where the arrest is confirmed, the applicant is compelled to commence the proceeding for the merits (unless one is already pending) before the Court having jurisdiction within a deadline which is set by the Court up to a maximum of 60 days.

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

Damages for wrongful arrest are uncommon and awarded only when it is clear that the applicant sought the arrest acting in bad faith or with gross negligence, disregarding the evidence available, or intentionally providing the Court with partial or misleading background information.

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

Italian Courts have started in the last few years (and in very few cases) to recognize the possibility of lifting the corporate veil, but this is quite exceptional, and the burden of proof resting on the applicant is severe. Italian law is indeed very strict in the definition of ownership in the context of companies and in applying the principle of autonomy of companies which are distinct and separate entities. As a result Italian Courts are reluctant to pierce the corporate veil, and the applicant intending to do so must be able to prove that the company structure has been actually created or employed with the purpose to frustrate creditors' actions.

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

The sale of the ship *pendente lite* has been authorized in few instances where the applicants successfully proved that the value of the ship under arrest was dramatically deteriorating and the costs (custody, berth and port dues, maintenance of the ship and so forth) were being disproportionate compared to the likely sale value. The proceeds of the sale are of course in this case frozen until the applicant obtains a judgment.



** Claudio Perrella's main areas of practice are commodities, marine cargo and goods in transit claims (charterparties, bills of lading, CMR and multimodal transports, GAFTA, FOSFA and Incograin contracts) and related insurance disputes in both court and arbitration proceedings. Fluent in English and French, he assists some among the major traders, marine insurers, carriers and freight forwarders in Italy and Europe, and has represented clients in court proceedings and arbitrations in several jurisdictions; he is an accomplished and well-known lecturer, both nationally and internationally, on the legal aspects of shipping and trading. Claudio is the author of a two widely used handbooks on cargo insurance and international sale of soft commodities. He is a regular contributor of Il Diritto Marittimo and is member of the editorial board of Diritto e Trasporti.*

SHIP ARREST IN JAPAN



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

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

Arrest by Lien or Mortgage – A ship can be arrested to execute a maritime lien on the arrested ship or enforce a mortgage on the arrested ship. The arrestor can arrest the ship without putting up any counter-security. To release the arrested ship the shipowners are usually requested to put up security (although we have recently experience to release the arrested ship without security ~ “Fairwind 308”).

Provisional Arrest (Real Arrest) – A creditor of shipowners can arrest the ship owned by the shipowners to obtain the security of their claim (regardless of such claim is maritime or not). In order to arrest by this provisional arrest the arrestor shall put up counter security. To release the arrested ship the shipowners are usually requested to put up security which is usually the same amount of the arrestor's claim amount.

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

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

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

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

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

No.

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

By the provisional arrest he claimant can arrest a ship under any monetary claim of whatsoever nature against the shipowner. In order to arrest by lien or mortgage the arrestor shall have a maritime lien or a mortgage on the arrested ship.

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

Yes.

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

In case of the provisional arrest the debtor shall be the shipowners. In case of the arrest by lien or mortgage, the holder of the maritime lien or mortgage can arrest the ship irrespectively of the debtor.

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

Not impossible but not easy.

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

In case where a bareboat charterer is the debtor the creditor may arrest the ship based on our special provision. In case of time charter there is some argument.

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

In case of an arrest by a lien or mortgage, a claimant does not need to put up counter-security. In case of the provisional arrest a claimant must deposit counter-security.

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

Yes. If a claim gives rise to a maritime lien, the claimant can arrest the ship by lien. If not the claimant shall arrest the ship by provisional arrest only.

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

Yes. Japan is not member of any International Conventions. But a Japanese court can recognize the 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?

It depends on how complicate your claim is. We have several experience to arrest ships within 48 hours from the instruction.

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

Yes we need a POA. Several documents are required as the Japanese courts like paper.

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

Originals of POA and corporate certificates are required. But some courts accept a copy. It depends on the discretion of the judges.

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

It depends upon a case.

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

In case of the provisional arrest it is minimum two weeks.

With respect to an arrest by lien or mortgage there is no need to take legal action on the merit.

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?

Yes but not easy.

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

No. During proceedings, the ship can only be sold by a public auction at the Court.

** Takayuki Matsui graduated with a LL.B. degree from the Hitotsubashi University in 1986. After graduation, he practiced for five years in a Hull Section of a Maritime Claim Department of a Japanese Insurance Company. He was admitted to the bar in 1993. He is now a partner of MLO (Maritax law Office) specializing in shipping laws in Japan.*

Matsui's focus has been collisions, cargo defense, arrest, and maritime disputes in court and TOMAC arbitration. He also has substantial experience in ship mortgage enforcement. He is qualified as Maritime Proctor in the Japanese Maritime Court. In 1999 he earned a LL.M. in Admiralty from Tulane Law School, New Orleans. He is a board member of the Documentary Committee of the Japan Shipping Exchange. He is an author of Time Charter Party, published in 2004. His hobby is arrest of a ship.

SHIP ARREST IN LATVIA



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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 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, translation of supporting documents are required. To save time on initial stage we usually ask our principals to provide us with all appropriate documents as soon as possible to start translation by sworn translators. It usually takes 2-3 days to translate depending on amount of documents.

The court's resolution may be issued maximum within seven days after petition of the plaintiff and all supporting documents are delivered to the court.

On practice regional courts are 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

and all supporting documents are delivered to the court.

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.



** Before joining in 2007 as a partner to Marine Legal Services Edward Kuznetsov spent several years as manager of private Russian ship owning company with fleet of 12 vessels, then he spent twelve years as manager of Legal Dept. of Lloyd's agency in Latvia and of local correspondent for P&I Clubs.*

As a lawyer Edward has experience in resolution of a wide range of both dry and wet shipping matters. Edward represents clients in courts and in arbitrations in Latvia, Russia, Germany, UK. He is a member of the Saint-Petersburg Bar Association in Russia and is a practicing arbitrator with experience to decide disputes in maritime law.

In May 2008 Edward was one of the key persons who hosted 5th Shiparrested.com meeting in Riga. In 2010 Edward has been selected as being among the world's pre-eminent shipping and maritime lawyers (Who'sWhoLegal).

Edward is a well-known speaker on different maritime law conferences held in Latvia, Russia, Ukraine and is an author of several articles regarding maritime law practice in Latvia.

SHIP ARREST IN LITHUANIA



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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 Klaipėda or to the County Court of Klaipėda. The city court deals with the claims in the amount up to 100 000 Litas only. When the amount of claim is higher, then an arrest application should be made to the County Court of Klaipėda. There is no specialized maritime court or judges in Lithuania. Majority of ship arrest cases are dealt by the County Court and less by the City Court of Klaipėda. The County court is also the court of appeal for the decisions of the City Court. The judges of the County court of Klaipėda are well experienced with the ship arrest practices and an Order for Ship's arrest can be obtained without serious problems. For smaller cases (in the amount up to 100 000 Litas) a ship arrest application should be presented to the City court of Klaipėda. That court has about 30 judges and they are less experienced with the ship arrest practices. However generally the ship's arrest order can be obtained quickly from both Courts.

There is a stamp duty payable on the civil claims that are to be pursued in the Lithuanian Courts. 50% of the stamp duty to be paid before an arrest application is presented to the Court. The amount of stamp duty payable is calculated on basis of the claim amount. No stamp duty for ship arrest application to be paid when a ship arrest is needed as security of maritime claim that is to be pursued in Arbitration or in foreign court.

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?

A Ship that is registered and flying the State flags of the State that is a Member to the 1952 Arrest Convention can be arrested only in respect of the claims enumerated in the Article 1 of the Convention. Other ships can be arrested in respect of maritime and non-maritime claims. In accordance with the Article 12(1) on the Law of Klaipėda State Sea Port the Harbour Master may refuse clearance of the vessel in case that there are unpaid port charges or fines in respect of that vessel or the vessel has damaged the port's infrastructure, until such charges, fines and/or claims have been paid or secured..

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

No.

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

The types of claims in for which a ship can be arrested are enumerated in the Arrest Convention Para a) to q) of Article 1(1).

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. A Ship that does 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.

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

Until now, the practice is such that we can arrest a ship irrespectively of the debtor. Several appeals filed on behalf of the arrested ship owners trying to challenge such arrest have been unsuccessful so far.

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

Under provision of the Arrest Convention a 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 the same persons beneficially own them. 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 later if appealed against it.

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

No counter security is required before arresting the vessel. The court on request of the ship's interest 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 then. Against 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. Otherwise, there is no difference.

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

Lithuania does recognise maritime liens as per 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?

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 deliver their translation within few days. Therefore an arrest application can be submitted to the Court on the same day when the instruction to apply ship's arrest is received by our firm. The Courts rarely issues 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. No ship arrest is possible then.

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 a Client. Faxed or emailed copy of the legal service agreement is sufficient to present a ship arrest application to the court on behalf of a 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 to 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 if so requested by the judge. A ship arrest application normally should be supported by:

- a copy of legal service agreement between the lawyer and the Client;
- a copy of an extract from the Companies' Register of the Client's State, confirming that the Client exists as a legal entity. It must also show the names of the persons who are entitled to bind legally the Client;
- 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 an 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 accept 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 Code of Civil Proceedings of Lithuania the Court may allow not more than 14 days from the day of ship arrest to commence legal action on the merits of the claim with the competent court. Normally the courts allow 14 days.

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

The court can order the Plaintiff to pay damage for wrongful ship's arrest in case that:

- a) 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.

The ship's interest would have to prove what loss has suffered due to arrest of the ship. This can be not an easy task.

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

There is no relevant practice yet.

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

Not yet, we try to change the position.



SHIP ARREST IN MOROCCO



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

Legally speaking, Morocco is certainly one of the most attractive forums for vessel arrests:

- the procedure is simple, fast and flexible: no power of attorney required, application is heard under summary and non adversary procedure, no original documents required,
- an alleged maritime claim is sufficient,
- a vessel can be arrested whoever is the debtor (even if Owner is not the debtor),
- no counter security is required
- no preliminary claim on the merits required and no obligation to start legal procedure on the merits
- no impact on jurisdiction

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

1952 Brussels convention (for the unification of certain rules relating to the arrest of sea going ships) is applicable in Morocco. It was ratified on 11.07.1990 and came into force on 11.07.1991.

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

Moroccan vessels and notably fishing boats can be arrested by Moroccan creditors in application of the national law instead of Brussels Convention.

In the meantime, vessel detention can be carried out by port state control authorities or by Royal Navy in case of violation of administrative or criminal law; however this has nothing to do with an arrest under Brussels convention.

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

Under Moroccan law, arrest is a conservatory seizure aiming to secure a claim. It is called "saisie conservatoire".

"Saisie execution" requires an enforceable title and can lead to the judicial sale of the arrested vessel.

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

Vessels can be arrested as security for any maritime claim among those listed under article 1.1 of Brussels Convention.

On top of this, Moroccan courts accept, through an extensive interpretation of article 1.1, to grant an arrest order even in relation with claims arising out of provision of services (such as claims of ship classification companies ...).

In any case, it is sufficient to prove an alleged maritime claim; thus, it is not necessary to prove at the arrest stage that the arrestor has a valid claim which is bound to succeed on the substantives merits. So, a prima facie evidence of a claim is enough.

In the meantime, if both parties (applicant and owner of the vessel) are Moroccans, Moroccan law would be applicable. In that case that there is no restriction an per the nature of claims in relation of which arrest can be granted.

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

Yes. A ship can be arrested whatever the flag she is flying.

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

Yes. The ship in relation of which the maritime claim arose can be arrested whoever is the debtor; thus, vessel can be arrested even if :

- she is under charterparty whilst the debt is related to Owners or previous charterers
 - she is operated by Owners whilst the debt is related to previous charterers
- In any case, security has to be put up on behalf of Master of the vessel as representative of Owners and/or Charterers

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

Claimants are entitled to arrest either the vessel in relation of which the maritime claim arose (whoever is the debtor) or any other vessel in the same ownership that the said vessel. Thus, it is possible to arrest sister ship vessels (i.e owned by the same person who was the owner of the ship in connection with which the claim arises at the time the claim arose). As per associated vessels, please see Q. 19 "lift of the corporate veil".

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

The vessel in respect of which the maritime claim arose can be arrested even though she was under bareboat charterparty or time-chartered.

In the meantime, as per article 3.4 of Brussels convention, in case the debtor is the charterer, claimant can arrest either the vessel in respect of which the maritime claim arose or any other vessel owned by charterer but not other vessels owned by registered owners.

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

Even though Moroccan law provides such a possibility, practically speaking, counter security is never required.

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

No. From a procedural point of view, there is no difference.

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

Maritime liens are recognized by Moroccan law that provides a list of the privileged debts. Morocco has not ratified any international convention on 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?

Upon receipt of instructions and relevant documents, arrest order can be carried out within 24 hours (during week days and court opening time).

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

No power of attorney is required under Moroccan procedure law.

Arrest application should just be supported by relevant documents proving the alleged maritime claim and the relation with the vessel the arrest of which is sought.

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 this arrest stage, no original documents are required.

However, court is sometime reluctant to take into consideration documents printed from internet (such as equasis website ..); thus, it is preferable to disclose copy of original documents in whichever form of transmission they are obtained.

In the meantime, when documents are drafted in English, some judges familiar with English language, accept to consider same. However, judges may require at least an informal translation. However, if a proceeding for judicial release is filed by Opponents, Arrestors could be obliged to disclose translation into Arabic of relevant supporting documents.

As per the procedure on the merits, court or Opponents are entitled to demand original documents or certified copies.

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

Moroccan court would accept jurisdiction only in the cases listed in article 7 of Brussels convention or if parties agree to provide competence to Moroccan court.

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

There is no legal obligation for arrestor to start legal action on the merits within a specific time (in so far as time bar limits are respected).

For the sake of completeness, it should be specified that a couple of years ago Casablanca court was used to impose to arrestors the obligation to start a legal action on the merits within 30 days from the date of the arrest order. However, court stooped to do so on the grounds that as per article 7.4 of Brussels Convention such an obligation can be imposed only in case the court in which the arrest was made has jurisdiction to decide the case on the merits.

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

A claim seeking remedies for wrongful arrest supposes that the arrest was made knowingly that it was unlawful.

Thus, Moroccan courts are very reluctant to accept to grant remedies for wrongful arrest unless malice of arrestor is evidenced.

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

As principle, sole the vessel in relation of which maritime claim arose or any other vessel in the same ownership can be arrested.

However, given single ship company practice, Moroccan courts accept to pierce corporate veil considering vessels owned by distinctive company as being under the same ownership if applicant can prove that both vessels pertains in fact to the same economical entity (same addresses, same management, same shareholders ...).

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

Conservatory arrest can be converted into an executory arrest in so far as arrestor gets an enforceable title (e.g a definitive court condemnation on the merits).

This procedure including judicial sale is rather long and complicated. It would take not less than a couple of months.



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SHIP ARREST IN NETHERLANDS



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

The procedure for obtaining permission to 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 after office hours or on weekends. The petition should contain the full style of the claimant and debtor, the grounds for the arrest and the amount of claim. The court's decision is placed on the arrest petition. 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. If the ship leaves anyway, the master commits a crime under the Dutch Criminal Code. 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. The proper court or arbitrators can be located 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 immediately once the claim has been settled or in case sufficient alternative security is offered. The latter 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. The ship owner may also 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. Re- or multiple arrests, if the claimant has not yet obtained full security for his claim, are generally allowed. If however the Brussels Arrest Convention of 1952 applies, a re-arrest is allowed only under exceptional circumstances. Practice reveals that in most cases repeated arrests on a ship for the same claim are maintained.

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 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. In such case the vessel can be arrested more than once for the same claim (which is not allowed under the 1952 Brussels Arrest Convention).

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

A distinction can be made between 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 be followed by public sale if the debtor is, despite the arrest, not willing or able to comply with the judgment or award. (see further in answer to question 20).

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

It depends on which law applies. In case the Brussels Arrest Convention 1952 applies, the ship can only be arrested for maritime claims as defined in article 1 of the convention. If Dutch law applies, the ship can be arrested for any type of claim.

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 not be arrested. There exists 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. However, due to the privatization of state owned shipping companies, this treaty has mostly lost its function.

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

In principle, a ship may be arrested only for a claim against the (legal) owner of the ship and 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 can attach to the ship such as 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. Where the claim is against debtors who can not be considered as 'owners', like a time-charterer, an option could be an attachment on the ship's bunkers/fuel reserve (rather than a ship's arrest). This so-called 'bunker-attachment' can be a useful tool to enforce payment for delivered bunkers ordered, for example, by the time charterer of the ship. Under Dutch law, it is presumed bunkers are owned by the time-charterer.

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". If a ship is owned by more than one owner, the ship can still be arrested for a claim against one of these "associated" owners.

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 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 attached to 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 attached to 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?

Provided it concerns a straight forward matter, it may take no more than 3 hours to have a ship arrested. The petition will be dealt with by the court immediately. After the arrest is permitted, the bailiff, if put on stand-by, will execute the arrest forthwith.

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

Neither 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 a language other 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?

Although the Dutch Code of Civil Procedure does not require that supporting documents, including original documents, be submitted with the arrest petition, submitting such documents with the arrest petition may be helpful to convince the court to allow the 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 petition cannot be filed electronically. Sending the petition to the Court by fax, however, is allowed.

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. In case the creditor needs more time for filing suit, or in case the parties are still negotiating a settlement, the creditor can submit a request for an extension of the initial time limit to the Court. The grounds for the extension of the time limit need to be mentioned in the request otherwise it will be rejected by the Court.

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. In a case of wrongful arrest, strict liability applies. This means 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 (all amounts to be increased with statutory interest). This is premised on the condition that the ship owner renders sufficient evidence of the damages and losses incurred. Furthermore, 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 in principle do not allow a ship arrest for a claim against a third party which has close links to the ship owner. Even in cases that concern a claim on a ship owner that is operating a fleet of separately owned single-ship companies or 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 is very limited case law on this subject applying to 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 is obtained in which the creditor's claim was adjudicated.



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SHIP ARREST IN NIGERIA



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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-Charters. 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.



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Mr Anga's practice is in banking, finance and insurance, energy, aviation and maritime. He appears as counsel before all courts in Nigeria and has acted as a party appointed arbitrator on several arbitration panels. Mr. Anga also represents major state owned and private oil and gas production, marketing and distribution companies in a range of matters. He advises clients from around the world on foreign direct investment in Nigeria and on related on tax issues.

SHIP ARREST IN NORWAY (Questions 1 to 9)



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

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

The claimant must submit an application for arrest to the District Court where the ship is located or is expected to arrive, alternatively to the District Court in the judicial district where the debtor (the owner of the vessel) resides, if the ship owner is Norwegian. The application has to specify the claim, the size of the claim, the arrest ground and provide an outline of the allegations of the applicant. Documentation supporting the allegations is not mandatory, but should be provided. A well presented case with supporting evidence increases the probability of obtaining an arrest award ex parte. The Courts will however normally accept documentation in English.

The applicant must further prove upon a balance of probability that he has a maritime claim, that an "arrest ground" is present and that the averments for arrest are fulfilled. This is a requirement that is not found in the Arrest Convention and it is imposed in addition to the rules of the Arrest Convention. What constitutes an arrest ground is set out in the Norwegian Dispute Act section 33-2 (1) which reads: "Arrest of assets of economic value can be decreed when the behavior of the debtor gives reason to fear that the enforcement of the claim otherwise will either be made impossible or made substantially more difficult, or has to take place outside the Kingdom". In short this means that the Norwegian Courts is provided with the discretion as regards whether or not an arrest shall be granted.

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

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

The 1952 Arrest Convention applies. The convention is incorporated in the Norwegian Maritime Code, the Enforcement of Claims Act and the Dispute Act. Norway has also signed the 1999 Arrest Convention, but this convention has not been ratified pending international acceptance.

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

If a vessel is flying Norwegian flag, it may be arrested by way of so called "register arrest". This is practical if the claim is not a maritime claim, as this is not an arrest of the vessel as such, and section 92 of the Maritime Code is not applicable. A register arrest means that instead of physically seizing the vessel, the arrest is registered as an encumbrance in the ship register. If a creditor fears that the vessel may be sold, and thereby he loses the only object that may provide security for the claim, this can be an effective alternative to arresting the vessel. A register arrest prevents a sale of the vessel but may not provide an offer of immediate security.

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

In addition to the rules of arrest, there are two other important sets of rules under which a vessel may become legal security for a claim. Firstly, there are the ordinary rules on liens and mortgages. Under these rules a claim is secured by a right in the ship. Such security can have its legal basis in contract, a decision by the enforcement authorities or statute. Secondly, there are rules that may give a creditor a right of retention, e.g. a yard retain a vessel until the bill is paid. The right of

retention may be based in contract or law.

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

All maritime claims as listed in article 1 (1) of the Arrest Convention, with the addition of compensation for wreck removal, may be the basis for an arrest of the ship. These different maritime claims are listed in section 92 of the Norwegian Maritime Code.

However, a register arrest (see section 3 above) and arrest of other assets than the vessel, e.g. bunkers and insurance proceeds, may be granted for any type of monetary claims.

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

Yes.

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

No, the debtor has to be the owner of the vessel that is being arrested, cf. the Maritime Code section 93(4). Norwegian legislators have deviated from the Arrest Convention on this point, as claims against bareboat charterers may not give raise to arrest of the vessel itself as per article 3(4) of the Arrest Convention. However, as mentioned in section 9 below, claims against the bareboat charterer and the time charterer may give raise to arrest of other assets, e.g. the bunkers onboard the vessel.

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

In principle, the only ship that may be arrested is the one out of which the claim arises. However, in accordance with the Arrest Convention, Norwegian law recognizes the right of sister ship arrest. If vessel A and B are owned by the same legal entity, and this legal entity is the debtor for the claim, either of the vessels may be arrested, even if the claim only arises out of vessel A. It should be noted that both the vessels in principle must be owned by the same legal entity in order to enable an arrest of the sister ship. If the ownership of vessels is organized with a holding company and single purpose companies as the registered owner of each vessel, arrest of a sister ship will in principle not be possible under Norwegian law.

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

As mentioed above, claims against time- or bareboat charterers do not give the right of arresting the vessel, as the vessel is not owned by the charterers. The legal principle that the debtor has to be the owner of the ship is set out in section 93 (4) of the Maritime Code: "Arrest can only be effected if the ship can serve as an object for the enforcement of a claim according to the general provisions of the Enforcement of Claims Act." Turning to the Enforcement of Claims Act, section 11-4 and 7-1, it is clearly said that the debtor must be the legal owner of the asset that is being arrested.

This means that an arrest of the vessel is not a remedy at hand where the Claimant has a claim against the bareboat charterer or the time charterer of the vessel. However, on bareboat chartered vessels, the bunkers onboard are normally owned by the charterer. This is often also the case under a time charter, and arresting the bunkers onboard may be an effective remedy where the claim is not against the owner of the vessel.



** Ingar Fuglevåg was born in 1970, and has been with Vogt & Wiig since 1999, a firm which is constantly ranked in the 1st category of shipping lawyers in Norway in the Legal 500. He became a partner of the firm in 2005. Ingar is one of the partners of the shipping department of Vogt & Wiig, and specialises in shipping/admiralty law and insurance law. Ingar litigates insurance disputes, casualty disputes, including P&I and cargo disputes both in arbitration proceedings and before the Courts in Norway. Ingar has given lectures on Maritime law to Lloyds Maritime Academy as well as at Norwegian forums, such as Nor Shipping, The Norwegian Maritime Law Association and the Norwegian School of Management – BI.*

SHIP ARREST IN NORWAY (Questions 10 to 20)



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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 your 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



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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 in cases where the law of the flag or the law of a particular country applies to the dispute.

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 via an in rem action.

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 or freight belonging to the defendant 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 irrespective 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 irrespective 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 addition, where the applicable foreign law permits the arrest of "associated" ships Panama will recognize it.

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 determination of the applicable law under which the controversy is to be decided.

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 few hours only, notice is to be taken that Maritime Courts in Panama are available 24/7/365. 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 as well as a certificate of corporate good standing if the plaintiff is a corporation.

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 (full colors advisable) 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. Once the vessel is arrested, the complaint is served. 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. There is no such a procedure about arresting a vessel and later taking legal action on the merits, in Panama both are done simultaneously with the arrest of the vessel.

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 36-48 hours, so any possible claim for wrongful arrest damages is limited since the vessel has a waiting period at the Canal, regardless of the arrest.

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)



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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 through 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 overlap or restrict 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 underlying 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.



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SHIP ARREST IN PORTUGAL (Questions 10 to 20)



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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 thereof.



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SHIP ARREST IN ROMANIA



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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 you 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.



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Starting with 2005, Augustin Zabraitanu and his colleagues had successfully represented numerous and various clients (both of domestic and international companies), in a broad array of maritime issues, including arrest of ships. Augustin speaks English and Romanian.

SHIP ARREST IN RUSSIA (Questions 1 to 9)



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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.

Arrest Procedure



SHIP ARREST IN RUSSIA (Questions 10 to 20)



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

In accordance with article 393 of the Code of Merchant Shipping, the court or arbitration which considers the application on arrest of a ship, may (but is not obliged to) order an applicant for arrest to provide security against any damages which may be caused by arrest and for which the applicant may be held liable. Amount and terms of such security shall be determined by the court. In practice, courts often require such counter-security as a condition for imposition or continuation of arrest of the ship.

However, counter-security may not be required from the applicant which demands arrest of a ship on the basis of a claim for amounts due to the master or crew of the ship for their work on board.

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

In accordance with the Code of Merchant Shipping [article 388], a ship may only be arrested on the basis of a maritime claim. However, all types of claims which are, under the Russian law, secured by a maritime lien are, at the same time, included in the list of maritime claims provided by the CMS.

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

Yes it does - by the Federal law of 17/12/1998, Russia acceded to the International Convention on Maritime Liens and Mortgages of 1993.

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

In practice, and in an optimistic scenario, it takes 4-5 days from the date of arrival of the full package of necessary documents is the shortest term to have the vessel arrested: (a) on day 1 the documents arrive and [if the documents come from abroad] - a certified translation of foreign documents is arranged; (b) on the evening of day 1 or the morning of day 2, the authorized lawyer leaves for the city where the territorially competent court is located (normally – the arbitration (commercial) court of the), (c) on day 2, the application for arrest with attachments is filed to the competent court; (d) on day 3, the court considers the application and grants the arrest, (e) on day 3 or 4, the court issues an executive order on the basis of its decision by which arrest is granted, (f) on day 4 or 5, executive order is submitted to the bailiffs service which commences executive procedure and filed the executive order to the harbor-master of the port where the vessel is located.

It must be noted, though, that in order for the above-mentioned time-frames to be observed and for the arrest to be successfully obtained, coherent work between the clients and the lawyers is required at the preparatory stage, so as to ensure that the correct information is provided for drafting of an application and the necessary support documents are also supplied.

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

Yes, the POA is necessary. Documents which confirm the existence of a maritime claim must also be provided in order to confirm the existence of grounds provided in the law for imposing the arrest.

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

Of the documents filed together with the application, only the POA needs to be in original (or a

copy certified by the notary public). Other documents may be presented in copy certified by the applicant (an endorsement saying 'true copy of an original', a signature of a director and a company stamp). A general requirement of the law is that documents in the foreign language must be accompanied by a certified translation into Russian and that a document obtained abroad must be legalized, unless such requirement is abolished by an international treaty to which Russia is a party (for example, the Hague convention of 05/10/1961 and other multi-lateral or bilateral treaties, including the ones with CIS countries, Baltic countries, India, Argentina, Poland, Spain, etc.). In practice, commercial documents are not required to be apostilled but do require a certified translation.

Electronic filing of documents is envisaged by the legislation which entered into force this summer and became applicable from 01/11/2010. However, those provisions are not practically applicable at present.

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

When an arrest over the ship has been imposed in Russia, the Russian courts may accept jurisdiction over the substantive claim in cases provided for by the 1952 Convention:

- if a person which is a creditor under such claim has its main place of residence or business in Russia;
- if the substantial claim arose in Russia;
- if the claim relates to the voyage during which the arrest was imposed;
- if the claim arose from a collision or from other damages caused by one vessel to another vessel, or to people or goods on board of such a vessel;
- if the claim arose from salvage;
- if the claim is based on mortgage of the arrested vessel.

Alternatively, Russian courts may accept jurisdiction over the substantive claim on one of the general grounds which the procedural legislation provides for Russian courts to consider matters with foreign element. They include, i.a.:

- defendant having a place of residence, place of business or property located in Russia;
- the dispute arising from the contract which was intended to be fulfilled on the territory of Russia;
- the dispute arose out of damage to property, if such damage was caused or arose on the territory of Russia.

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

If arrest will be treated as a preliminary security measure for the purposes of commencing the main suit in the Russian court, than such period will be determined by the court in its ruling by which arrest will be granted. But in any event, it should not exceed 15 days.

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

Russian courts have a right to refuse application of arrest. When the judge considers the application, he/she refuses or satisfies it on the basis of its internal conviction. Also, as mentioned above, it is possible for the court to order the applicant to provide counter-security against any damages which may be caused by the arrest, including wrongful arrest and to determine the extent of applicant's liability in such case.

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 pendent lite; if so how long does it take?

No.

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SHIP ARREST IN SOUTH AFRICA



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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 irrespectively 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 irrespectively 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.



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He has specialized in Maritime Law since he joined the firm and has been involved in most, if not all, of the many major shipping casualties along the Southern African coast in the last 40 years. He is recognized as one of the leading international transport lawyers in South Africa and has been published widely on both maritime and air law in numerous international publications.

SHIP ARREST IN SPAIN



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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 *suspectio 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.

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

(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

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 irrespectively of her flag?

In Spain the 1952 arrest Convention applies irrespectively of the ship's flag.

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

Not in all cases, but in the great majority. This question needs to be paid careful attention. The response is to be positive where the claim is based upon a maritime lien. Equally, the same result can be reached by application of Article 586 of the Spanish Commercial Code, which reads "The shipowner and the ship operator, "navier" shall be civilly liable of the acts of the Master and of the obligations undertaken by the latter to repair, habilitate, and supply the ship, provided that the creditor proves that the amount claimed was invested in benefit of the ship". This article provides creditors with a generous safety net to collect their claims arising from time charterer, voyage charterer, or even a ship manager. The ship owners will be held under this article responsible for the claims against the other parties.

Moreover, where the ship is under a time charter or a voyage charter, or operated under the management of a third Company, Art. 3(4ii) of the 1952 Brussels Convention establishes the possibility of arresting a ship for those cases in which a person different to the owners shall respond of the maritime claim. Therefore, to undertake the arrest itself, the claimant by pleading the aforesaid provision, will be entitled to obtain from the Court the arrest order. 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 line?

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.



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Dr. Arizon acts before many international and domestic arbitration forums including ICC, Gafta, Fosfa, CAP and RSA. He is a well-know barrister before Spanish Courts, including High Courts, Appeal Courts and Supreme Courts. According to The Legal 500 Felipe "is well liked and supported by the main players of the Spanish market".

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Felipe is lecturer at the Spanish State Institute for International Trade and has lectured widely in Spain and abroad: England (Newcastle University; Lloyd's Maritime Academy), Russia, Ukraine, Netherlands, France, and Turkey. He has been engaged on seminars at the Nautical Institute (England). Felipe is member to the International Bar Association and supporting member of the LMAA.

SHIP ARREST IN SWEDEN



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

Ship arrest actions in Sweden must be said to be very efficiently pursued. The courts and the enforcement authorities are, particularly in case of interim arrest applications, acting very swiftly. Often it is only a matter of hours from lodging the application to the court to enforcing the arrest decision of the ship. Information of the movements of the target ship within the jurisdiction is normally easily obtained from the relevant port authorities and ships' agents. The most time consuming element is rather the preparation of the arrest application with relevant facts and proof of the claim and in particular the obtaining of the required counter-guarantee through the banks. This calls for efficient collaboration with the claimant, his lawyers and the local lawyer at the arrest jurisdiction.

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

The 1952 Arrest Convention. The Swedish Maritime Code Chapter 4 'On arrest of ships in international legal matters' incorporates the rules of the Convention.

The 1967 International Convention on Maritime Liens and Ship Mortgages. Chapter 3 of the Maritime Code 'On maritime liens' incorporates this Convention.

The Maritime Code thereby contains specific provisions for arrest of ships, however, in conjunction with the application of the ordinary provisions of arrest of property covered by the Code of Court Procedure.

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?

N/A

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

A. A ship may be arrested for a maritime claim based on the following:

1. Damage caused by a ship by collision or any other way.
2. Death or personal injury caused by a ship or occurred in connection with the running of a ship.
3. Salvage.
4. Bareboat chartering.
5. Contract for carriage of goods with a ship based on a charter party, bill of lading or similar.
6. Loss of or damage to goods including personal goods under carriage by ship.
7. General average.
8. Bodmeri [does not exist in Swedish law].
9. Towage.
10. Pilotage.
11. Delivery of goods or material for the running or maintenance of a ship.
12. Building, repairing or equipping a ship or costs for docking.
13. Salary or other compensation to the master or other crew member in connection with his employment on the ship.
14. Outlays made by the master or by a sender, charterer or shipper or agents on account of the ship or its owners.
15. Dispute of the ownership of the ship.

16. Dispute between part owners to a ship of the ownership or possess to the ship or the running of it or the income of it.

17. Lien based on mortgage or other contractually based lien.

B. A ship may be arrested for a maritime lien as follows.

1. Salary or other compensation to the master or other crew member in connection with his employment on the ship.

2. Harbour-, canal- and other waterway fee and pilotage.

3. Compensation due to personal injury having occurred in direct connection with the running of the ship.

4. Compensation due to damage to property having occurred in direct connection with the running of the ship, provided the claim is not based on contract.

5. Salvage reward, compensation for wreck removal and contribution to general average.

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

Yes, the Maritime Code is applicable to ships entered into the Swedish ship's register or a similar foreign ship's register. However, the provisions are not applicable for Swedish ships, if the applicant is residing in Sweden or has his principal place of business there.

Foreign state owned ships as well as ships owned or used by the Swedish state may not be subject to arrest.

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

If someone else than the owner of the ship is responsible for the claim, either the ship to which the occurrence of the claim refers or another ship which belongs to the debtor at the time of that occurrence may be arrested.

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

A ship may be arrested to which the maritime claim refers. If a claim is based on any of the cases covered by Sec. 5 items A. 1 – 14 above, arrest may instead be made of another ship which at the time of the occurrence of the maritime claim is owned by the same owner.

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

What is said in relation to owners of a ship should cover also bareboat charterers. Claims stated in Sec. 5 items A. 11. and 14. above will be applicable also in relation to time-chartered vessels. Hence, a claim i.a. for unpaid bunkers delivered to a ship ordered by the time-charterer may be arrested both in relation to him and the owner as well.

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

Yes, counter-security by way of a bank guarantee, normally issued by a Swedish bank, will be needed. The normal practice is that it shall be for an amount roughly covering one month's chartering hire of the ship or type of ship (cf. Sec. 17 below).

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

An arrest for a maritime claim, in accordance with the ordinary provisions of arrest of property generally, will require, apart from that the claimant has demonstrated likely reasons of having a valid claim against debtor, that the debtor may be expected to evade his payment obligation by hiding, removing property for execution or otherwise acting in a blameworthy way. Normally the evasion of a clear and due debt against the debtor will be sufficient for arresting easily moving property out of the jurisdiction such as a foreign vessel. However, it has happened that a court has considered that it has not been sufficiently demonstrated that the debtor did attempt to evade payment, so that requirement has to be addressed in the arrest application. The Maritime Code Chapter 4 incorporating the Arrest Convention is silent on this issue and accordingly is assumed not to contain such a requirement.

On the other hand Chapter 3 of the Maritime Code contains a provision explicitly stating that an arrest may be granted for a claim based on a maritime lien even without risk of the debtor is evading payment.

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

Yes, the 1967 International Convention on maritime liens and ships mortgages.

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

For obtaining sufficient information and documentation of the claim, for providing information of the arrest procedure to the client, to obtain information of the ship's movements, power of attorney and - in particular - the bank guarantee, preparing the relevant court and enforcement authority on a forthcoming arrest application for a smooth handling procedure, preparing the application, etc, - by experience - a couple of days would at least be needed.

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

Yes, a POA together with extracts of a trade register or similar proving authorisation to sign for the signor/s of the POA, documentation proving the claim, other relevant background documentation.

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

Apart from the POA there are no requirements for originals. Nor are there any requirements for notarisation and/or apostille.

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

It depends. The courts will respect a dispute clause covered by a contract to which the claim refers prorogating disputes to a court in another country. It shall be noted, however, that a judgment by such court must be enforceable in Sweden. Accordingly, this requirement must be considered already upon the time of application of the arrest. Judgments within EU are covered by the Regulation on Recognition and Enforcement of Judgments 2001 (Brussels Regulation) and hence fully enforceable in Sweden. Judgments from countries outside EU need bilateral agreements for enforcement. Arbitration agreements will also be respected and awards may be enforced based on the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. With no prorogation on contractual claims and for claims in tort Swedish Courts will accept jurisdiction, normally at the court having rendered the arrest decision.

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

One month after the arrest decision.

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

Yes, in the sense that a defendant ship owner may claim compensation for damages incurred, which the counter-guarantee provided by the applicant claimant is supposed to cover.

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. In case the ship owner, or his P&I-club, does not put up a counter guarantee for the claim in order to release the ship, which of course is the normal practice, the claimant will have to pursue the case in the merits in order to obtain a judgment based on which he can apply for an enforced sale of the ship by the Enforcement authority. Depending on the circumstances this may take several months.



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SHIP ARREST IN TUNISIA



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

In Tunisia the Code of Maritime Commerce (Code de Commerce Maritime) and the provisions of the Code of Civil procedure remain the major source of ship arrest.

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

No international convention applies in Tunisia. Tunisia has not ratified any of the International Conventions related to Ship Arrests.

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

There are some other ways to arrest ship in Tunisian ports

- Arrest in accordance with court or arbitration award
- Arrest of ship under a criminal matter
- Arrest of ship under a safety matter, pollution, clandestine immigration.

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?

Maritime claims mentioned in article 71 of the Tunisian Code of Maritime Commerce (Code de Commerce Maritime)

- (a) The legal costs payable to the State and the expense incurred in the common interest of creditors, to preserve the vessel or to procure the sale and distribution of the prize.
- (b) Tonnage or harbour dues or expenses incurred by the administration to move the ship.
- (c) Creditors arising from the employment contract of the captain and crew
- (d) Remuneration for rescue and assistance
- (e) Compensation for collision, bodily injury to passengers or crew, cargo or baggage loss.
- (f) Claims arising from contracts awarded by the captain for operations to preserve the vessel.

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

In Tunisia the mere presence of any vessel at Tunisian waters gives the court jurisdiction in rem over the vessel and in personam over the owners, operators and charterers.

Tunisia does not recognize governmental immunity for state owned commercial trading vessels.

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

In Tunisia, the claims subject to Tunisian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer. Under Tunisian Law anyone with authority binds the vessel in rem, if the supplier is not timely notified otherwise. The ship can be arrested even if the owner of the ship is not the debtor of the maritime claim. The owner of the ship, in order to have his ship released from arrest, has to give a guarantee for the payment of the claim of the author of the arrest.

This means that the owner of the ship will have to guarantee the payment of the claim, even if a third person (charterer, issuer of the Bill of Lading) is the debtor toward the arresting party.

8. What is the position as regards sister ships and ships in associated ownership?
Sister-ship arrests may be effected in Tunisia in limited cases . Exp the same owner ship

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

A vessel that is in the ownership of the charterer can be arrested for a maritime claim against a time charterer.

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

Tunisian law practice does not impose on the claimant the deposit of a counter-security to cover costs, charges, damages, fees or other expenses deriving from a potential wrongful arrest But under the provisions of Article 104 of the Code of Maritime Commerce (Code de Commerce Maritime) , the seizure may be subject to the condition that a bond or guarantee is validated from Applicant

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

There is no substantial difference between arresting a ship for a maritime claim and a maritime lien.

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

Tunisia recognizes maritime liens under the dispositions of the Code of Maritime Commerce (Code de Commerce Maritime) , not under any Convention.

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

Usually two working day is enough for our law office to arrest a ship.

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

No power of Attorney is requested.

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

According to Tunisian Law, the arrest of a vessel is made through an order on request. For this purpose, all documents proving the debt and the expenses are required (please note here that all the documents to be presented to the judge must be translated into Arabic language). Documents filed electronically are accepted.

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

Tunisian Courts will accept jurisdiction over the substantive claim once a vessel has been arrested within Tunisian 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?

We must introduce a case validation within a period of one month if the arrest is lifted once this period surpassed.

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

In an only case if the claimant knew it had no maritime lien or right of arrest and nonetheless proceeded with the arrest 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.

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

The Tunisian courts are not generally inclined to lift the veil of corporate personality.

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

In Tunisia, Seizure execution immobilize the ship, by result, the procedure of sale of the ship arrested is made through a public auction and it generally takes three to six months.



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SHIP ARREST IN TURKEY (Questions 1 to 9)



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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 encated, under the provisions of the Draft TCC.

7. Can you arrest a ship irrespectively 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.



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SHIP ARREST IN TURKEY (Questions 10 to 20)



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

The arrest of ships under Turkish law is in general terms, the relevant provisions of Enforcement and Bankruptcy Code (EBC) and Turkish Procedural Code will apply to the arrest of ships. For the normal arrest procedure Turkish Procedural Code is applicable and under TBC the Courts are entitled to ask for counter-security, under EBC (which is rarely applicable), they have to ask. Turkish Courts generally require 15 % (of the claim amount) counter-security in order to arrest a ship. Determining the amount of the counter-security is at the sole discretion of the Court. On very rare occasions the counter-security may go up to 40 %. The counter-security can be by way of cash deposit or Turkish Bank Guarantee.

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

In theory there is no difference. In practice, it is easier to obtain an arrest order for a maritime lien.

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

Turkey is a signatory to Brussels Convention on the Unification of Certain Rules Relating to Maritime Liens and Mortgages. However, under Turkish Practice Maritime Liens are mainly dealt by Article 1235 of Turkish Commercial Code of which a free translation is as follows:

Article 1235: "The following claims give "maritime lien rights" to the creditors:

1. Where the vessel is sold by writ of execution, the expenses that have been incurred after the vessel has entered the final port and the expenses that are incurred for watchkeeping and safeguarding the vessel but which are not considered to be bailiff's expenses.
2. Port dues, buoy, lighthouse, quarantine and port expenses.
3. Crew claims arising under contracts for services and employment.
4. Pilotage fees, and fees and expenses of salvage, assistance, ransom and costs of objection against confiscation.
5. The general average contributions owed by the vessel.
6. Claims for respondentia and claims that have arisen from services rendered and supplies provided to the master, for the maintenance of the vessel or the completion of the voyage in the event of necessity, when the vessel is not in her port of registry.
7. Claims for non-delivery or delivery in a damaged condition of cargo or luggage (mentioned in the 2nd paragraph of Article 1128) and claims for the return of the pre-paid freight due to the non-compliance or partial compliance with the contract of carriage.
8. Claims that have arisen from the legal acts carried out by the master, not as a private individual, but based on his legal authority as the master of the vessel and claims arising from the non-compliance with a contract concluded by the owner and to be performed by the master.
9. Claims arising from the fault / neglect of a member of crew, even if he is the whole or part owner of the vessel.
10. All credits that can be claimed by the Social Security Department from the owners in accordance with Insurance laws relating to labour activities. This provision excludes the amounts personally owed by the owner to the Social Security Department under the Insurance and Labour Laws."

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

All documents in support of the claim need to be translated to Turkish. The application can be filed after the completion of the translation and it is possible to obtain the arrest order within the same or next working day of the application.

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

We need to provide a POA to the court. The POA has to be notarised and apostilled (or attested by the Turkish Consulate) However, in urgent situations, it is possible to make the application with a fax copy of a POA signed by the arresting party with undertaking to provide the notarised and apostilled POA within the quickest possible time. We also need to provide all documents 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?

It is possible to obtain the arrest order with fax or electronic copies of the documents in support of the claim. Only the POA requires notarisation and apostille. However, should the counter party files an objection against the arrest order there may be a requirement for submission of the originals of the major supporting documents depending on the nature of the objection. All the documents are required before filing the application.

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

Turkish Courts generally accept jurisdiction over the substantive claim provided the claim is of maritime lien nature and the substantive claim is filed with a request of recognition of the maritime lien over the vessel.

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

Under Turkish Procedural Code, the legal action on the merits has to be taken within ten days after obtaining the arrest order. If there is a provisional attachment obtained under EBC the main enforcement proceedings have to be commenced within seven days. Otherwise, the arrest order will become null and void.

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

If the arrest is wrongful, the arresting party will be liable for all loss and damages suffered by the defendant. This can be raised by the defendant during the legal proceedings on merits by way of counter-claim or in a separate court case. The loss and damages arising out the wrongful arrest may be satisfied from the counter-security if sufficient (if not enforcement proceedings have to be initiated against the arresting party)

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

The task of piercing the corporate veil under Turkish law is extremely difficult. Some research is carried out into recent case law to see if there has been material change in the courts' attitude on this subject in recent times. That is, before the corporate veil can be lifted the following facts must exist: (a) The persons vested with authority to represent and bind both companies are the same; (b) Both companies have the same shareholders and board of directors/managers; (c) Transfer of the shares of the relevant company to a third party with the intention of escaping its liabilities i.e. bad faith.

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

Under Turkish Law, it is under the Court's sole discretion to have ship sold *pendente lite* provided; 1. The ship causes danger for herself or third parties or environment, 2. Cost of maintaining the ship is excessive i.e. higher than the value of the ship. For the first possibility, in practice, the Courts prefer to appoint trustee crew on board. For latter, in very rare occasions the court decide to have the ship sold *pendente lite*. There is no certainty regarding the time for this issue.

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SHIP ARREST IN UNITED ARAB EMIRATES



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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 irrespectively of her flag?

Yes.

7. Can you arrest a ship irrespectively 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)



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

Ship arrest in Ukraine 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)



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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 within the civil and commercial court proceedings it is sufficient to present a warrant that was issued by a corresponding Bar of Association along with extract from a contract certified by an attorney and his client. 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 a plaintiff must commence legal actions on the merits within 5 (five) 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 judgment entered into force.



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SHIP ARREST IN USA



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

The Federal Rules of Civil Procedure (F.R.C.P.)'s Supplemental Rules for Certain Admiralty and Maritime Claims (hereinafter "the Supplemental Rules") govern the procedure for arresting or attaching a vessel in the United States. The Supplemental Rules apply to all admiralty and maritime claims within the meaning of F.R.C.P. 9(h). Rule C of the Supplemental Rules (hereinafter "Rule C") is the procedural mechanism used to arrest property (i.e. – a vessel) that is subject to a maritime lien or other U.S. statute that creates an in rem cause of action. Once the arresting party has obtained a warrant of arrest from the Court, the U.S. Marshal Service will serve the Court's warrant on the vessel to affect the arrest. Rule C(3)(b) provides that only the marshal may serve the warrant to seize the vessel.

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?

Supplemental Rule B (hereinafter "Rule B") provides for the pre-judgment attachment of a defendant's property (including a vessel) if the claimant has an in personam maritime claim against the owner of the vessel, provided that the defendant/owner cannot be "found" in the district where the attachment is sought.

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

Under the applicable U.S. law, a vessel may either be arrested (under Rule C) or attached (under Rule B).

Rule C arrest: Procedural mechanism used to arrest property subject to maritime lien or where U.S. statute provides for maritime action in rem

- Property arrested must be related to the Plaintiff's claim

- Maritime lien claims include: ship repairs; ship supplies; towage; use of dry dock or maritime railway or other necessities to any ship; crew wages; tort claims arising from a collision; personal injury claims (excluding Jones Act claims against employer); wharfage; stevedoring; cargo damage/loss; certain maritime contracts (e.g. – breach of charter party); preferred ship mortgages; salvage; claims for maritime pollution.

Rule B attachment: Allows a party to obtain quasi in rem jurisdiction over a defendant's property for any debt arising out of a maritime claim, when the defendant "cannot be found within the district."

- The property attached may be unrelated to the events giving rise to the claim, and the Plaintiff need not have a maritime lien on the vessel

- Maritime claims include maritime torts and any claim arising from breach of a "maritime contract" such as a charter party or bill of lading. Under U.S. law, "maritime contracts" generally do not include shipbuilding contracts; vessel sale and purchase contracts; brokerage or other preliminary service contracts; or commodities sale and purchase contracts.

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

Yes.

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

Yes, except that you cannot arrest a vessel owned by a government or other foreign sovereign, as per the Foreign Sovereign Immunities Act.

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

Arrest of sister ships/associated ships is not possible, unless you can show an alter-ego relationship or other common ownership of assets.

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

A Rule C arrest can only be made for an in rem claim, as an arrest is made against the ship, not its owner or charterer.

However, a Rule B attachment can only be sustained where there is a valid prima facie claim against a party in personam (including the bareboat or time charterer).

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

U.S. Courts do not require countersecurity in order to arrest or attach a ship. However, Rule E(7) provides that when a Defendant who has posted security for damages in an action asserts a counterclaim arising from the same transaction, a Plaintiff must post countersecurity in the amount of damages demanded in the counterclaim (unless the Court, for good cause shown, directs otherwise).

Additionally, Rule E(2)(b) allows the Court to require any party to post security, in an amount directed by the Court, to pay all costs and expenses that shall be awarded against the party by any interlocutory order, final judgment, or on appeal.

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

Under the applicable U.S. law, a vessel may either be arrested under Rule C (which requires a maritime lien) or attached under Rule B (which simply requires a maritime claim).

Rule C: Procedural mechanism used to arrest property subject to maritime lien or where U.S. statute provides for maritime action in rem

- The property arrested must be related to the Plaintiff's claim
- The U.S. Marshal must be engaged to arrest the property

Rule B: Allows a party to obtain quasi in rem jurisdiction over a defendant's property for any debt arising out of a maritime claim, when the defendant "cannot be found within the district."

- Property attached may be unrelated to the events giving rise to the claim, and the Plaintiff need not have a maritime lien on the vessel
- A special process server may be appointed by order of the Court to attach the property, instead of a U.S. Marshal

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

Yes.

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

Ordinarily, an attachment and/or arrest order can be obtained within a few hours, when filing an emergent motion. Rule C(3)(a)(ii) and Rule B(1)(c) require the Clerk to issue the summons and warrant for arrest of the vessel or process of attachment and garnishment, respectively, where the Claimant's attorney certifies that exigent circumstances exist that make court review impracticable.

The Claimant has the burden of demonstrating at a post-arrest/post-attachment hearing that exigent circumstances existed.

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

A POA is not required to arrest or attach a vessel. The documents to be submitted to U.S. Courts vary depending on the type of proceeding commenced.

For Both Rule C arrests and Rule B attachments:

1. Verified Complaint asserting that the Claimant's underlying claim is an admiralty/maritime claim within the meaning of Rule 9(H) of the Federal Rules of Civil Procedure, accompanied by supporting claim documentation
2. Summons
3. Agreement of Indemnity, agreeing to hold the Marshal harmless for damages if the arrest/attachment is later found to have been wrongful
4. Form USM-285/U.S. Marshal Service Process Receipt and Return
5. A bank or certified check (for an amount which varies by jurisdiction) as a deposit to cover insurance, guard services, and other costs related to arresting/maintaining the vessel
- Motion for appointment of substitute custodian, with supporting declaration of proposed substitute custodian and proposed order (not mandatory) - reduces the costs that must be deposited with the Marshal

For Rule C Arrests: To commence a Rule C proceeding, the following additional documents are required:

- Affidavit containing the grounds for arrest
- Motion for Issuance of Warrant for Arrest
- Proposed Order for Issuance of Warrant Arrest – authorizing Clerk of the Court to issue a Warrant of Arrest providing the U.S. Marshal with authority to arrest the vessel
- Motion to Permit Vessel to Continue Cargo Operations and to Shift Berths (not mandatory) – requests authorization for the vessel to continue cargo operations during the period of arrest and to move within the district
- Proposed Order Allowing Vessel to Shift Between Berths – allows the Marshal or substitute custodian to move the vessel without petitioning the Court
- Warrant of Arrest
- Notice of Arrest – accompanies Complaint and Warrant of Arrest when the Marshal physically arrests the vessel

For Rule B Attachments: To commence a Rule B proceeding, the following additional documents are required:

1. Affidavit certifying that the defendant cannot be found within the district
2. Application for Order issuing writ of maritime attachment
3. Proposed Order authorizing writ of maritime attachment
4. Writ of maritime attachment, which is issued to the Marshal and provides authority to attach the defendant's property located in the district
5. Notice of Attachment (to accompany writ of maritime attachment)

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 Complaint must be verified by the Claimant, but if the Claimant resides outside the district where the arrest application is filed, the Complaint must be verified by the Claimants' attorneys. This verification must be notarized.

The original documents required by each Court and the documents which may be electronically filed vary by jurisdiction. Most Courts require an original signature on all initiating documents, but require electronic filing of subsequent documents. Other Courts permit a claimant to commence an action by filing the Complaint and all related documents electronically.

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

Yes. Once a vessel has been attached/arrested, U.S. courts will assume quasi in rem or in rem jurisdiction, respectively, up to the amount of the claim. Accordingly, the courts will have jurisdiction over the substantive claim, unless a forum selection clause requires that the claim be brought in a foreign jurisdiction.

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

Although there is no set period of time in which a Claimant that has caused a vessel to be attached/arrested must commence substantive proceedings, the answer to this question will depend largely on the judge assigned to the case. Many judges require that such proceedings be commenced as soon as possible.

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

Yes; however, an arrest will only be set aside as wrongful in exceptional circumstances (i.e. – if the Defendant shows that the claimant acted with bad faith, malice or gross negligence).

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

Yes. In arresting a vessel under Rule C, a Plaintiff need not pierce the corporate veil because the action is in rem against the vessel. However, in a Rule B attachment action, the corporate veil may be pierced. Although there are no mandatory requirements, the U.S. Courts consider ten (10) factors in determining whether the corporate veil may be pierced, including: disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors, and personnel; common office space, address & telephone numbers of corporate entities; the degree of discretion shown by the allegedly dominated corporation; whether the dealings between the entities are at arms length; whether the corporations are treated as independent profit centers; payment or guarantee of the corporation's debt by the dominating entity; and intermingling of property between entities.

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

Rule E(9) authorizes a Court to Order the marshal to conduct an interlocutory sale of a vessel if the property is perishable or subject to deterioration, decay, or injury by being detained in custody pending the action; the expense of keeping the property is excessive or disproportionate; or there is an unreasonable delay in securing the release of the property. The time frame for conducting the interlocutory sale of a vessel varies by jurisdiction/judge.



** George M. Chalos is the founding member of Chalos & Co, P.C.-International Law Firm and is experienced in all facets of maritime civil and criminal litigation. Mr. Chalos regularly acts as lead counsel in high profile Federal and State court matters throughout the United States, and has assisted in presenting claims before the London High Court of Justice. Additionally, Mr. Chalos is recognized as a leading attorney with respect to Marpol and other environmental pollution matters, including and particularly the defense of criminal pollution cases, as well as the complex third-party litigation arising from a pollution incident. Mr. Chalos is a published author with respect to the United States' vessel initiative program targeting suspected Marpol violators for criminal prosecution, as well as the presentation of claims to the Oil Spill Liability Trust Fund. For more information about vessel arrests or other questions of U.S. law, please feel free to contact Mr. Chalos.*

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.



The Legal Guide, Ship Arrests in Practice

This fifth 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 37 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.



Arizon Abogados SLP arrests ships at the following Spanish Ports:

Arinaga
Arrecife
A Coruña
Alcudia
Algeciras-La Línea
Alicante
Almería
Avilés
Barcelona
Bilbao
Cádiz
Carboneras
Cartagena
Castellón
Ceuta
Eivissa
Escombreras
Ferrol
Gandia
Gijón-Muse
Huelva
La Savina
Las Palmas
M. de la Cabezucla
Mahon
Málaga



Marín y Ría de Pontevedra
Melilla
Motril
Palma de Mallorca
Pasajes
Sagunto
San Cibrao
San Sebastián de la Gomera
Santa Cruz de la Palma
Santa Cruz de Tenerife
Santa María
Santander
Sevilla
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