

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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Mr. Chen specializes in bill of lading, charterparty, ship sale & purchase, shipbuilding, collision, personal injury, international sale of goods, and insurance matters. Mr. Chen has been working for the world's major shipowners, charterers, P&I clubs, insurance companies and traders for more than 10 years and is one of the most highly recommended shipping lawyers in China.

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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. However, if the shipowner proves that the amount of counter-security is obviously low, they may apply the court for increasing it. 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 has published in the Chinese shipping and law periodicals.*