

# 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.*