

# 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 (1) handled maritime claims at the Panama Canal. Since then, as a result of the Panama Canal Treaty Torrijos-Carter, Panama took over its maritime jurisdiction and the Maritime Court of Panama was created by Law 8 of 1982, which also adopted procedural rules closely patterned following the U.S. Rules of Civil Procedure. Since 1982 Maritime Court of Panama functioned as a specialized tribunal where the Judge is required by law to bear maritime law expertise; today there are two specialized maritime courts, being a direct consequence of a growing practice in the maritime litigation field.

Furthermore, the National Assembly of Panama adopted a bill amending the existing procedural rules for admiralty claims. The Maritime Code of Panama amended 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, whether transiting the canal or calling any port, 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 maritime 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. Panama adopted a statutory provision for the determination of the applicable law.

## 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.

A variety of an administrative arrest is also available to plaintiffs. Under an Article 206 of the Panama Maritime Code, any Panamanian Vessels' Registration can be blocked at the Shipping Registry so as to prohibit its sale, deletion, transfer or registration of a mortgage 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

126 (1) President Franklin D. Roosevelt on July 26, 1937, signed into law Executive Order 7676 which created the Panama Canal Zone Judiciary Exec. Order No. 7676, 2 FR 1579, 1937 WL 2827 (Pres.)

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 as they are known in France or in the United Kingdom. However, the same results are obtainable under the arrest procedure established by the Maritime Code.

#### 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.

The amended maritime Law of 2009 also permits the filing of “mixed” or combined actions in rem and in personam, where the applicable law sets in rem and in personam liability for the underlying claim.

Claims that have been tried in the Panamanian Courts involve Personal Injury claims, Seaman labour claims, Longshore workers claims, Insurance litigation, P&I direct actions, Collisions & allisions, Charter party disputes, Contractual claims, Cargo claims, Necessaries, Bunkers, Maritime claims based on negligence, Vessel property disputes, Mortgage executions, Towage, Limitations of liability procedures, Salvage, General Average and Arbitration.

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

Yes, in Panama the mere presence of any vessel at Panamanian waters, whether to transit the Panama Canal or to call any Panamanian port, gives the maritime court jurisdiction in rem over the vessel and in personam over the owners, operators and charterers. Panama does not recognize governmental immunity for state owned commercial trading vessels.

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

In Panama, the claims subject to Panamanian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer. Under Panama Law anyone with authority binds the vessel in rem, if the supplier is not timely notified otherwise.

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

There are two separate matters here. If the applicable law to the claim permits the arrest of sisterships or associated ownership vessels, Panama will recognize it. In cases where Panama Law is applicable sistership arrest is permitted if the vessel are owned by the same company in an in personam claim. If the claim is in rem, the action has to be directed against the same vessel.

However, Panama permits mixed or combined claims, where there is a maritime lien or a statutory right in rem and there is in personam liability upon owners, operators or charterers. In 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.

Notice should be taken that under Panama law there is a system of registration of bareboat charters, which sets the liability of the charterer for operative liability of the vessel, keeping ownership issues in the original registration.

**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 evidence to support 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. The in rem procedure in Panama permits the filing of claim based on foreign liens or foreign statutory rights in rem.

**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. The Maritime Courts are organized to have court officers and clerks on duty at all times and contacting them is rather easy. 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, but not necessarily to arrest a vessel, however a bond depending on the amount in controversy is required where no POA is available. 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; both duly apostilled or legalized by the closest Panama Embassy or Consulate.

**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. Since Panama adopted procedural rules following the American System, there are procedures such as motions recognition of documents, admissions or production of documents which give the pdf copies originally filed the status of originals, once accepted by opposing party.

**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 detailed 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 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 in-existent 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, or the arrest is not lifted and the vessel is deteriorating or diminishing in value due to insufficient maintenance, 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.



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