

SHIP ARREST IN SWEDEN



By Karl Johan Dhunér*
DHUNÉR JÄRVENGREN ADVOKATBYRÅ
kj@djlaw.se
www.djlaw.se
Riddargatan 7A, SE-114 35 Stockholm
Tel: (+46) 8 667 6280
Fax: (+46) 8 663 7501

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?

No, if the debtor of the maritime claim is not the owner of the vessel at the time when the arrest shall be decided, it will have to be required that the claim is covered by a maritime lien or other title to the vessel. Otherwise the vessel may not be seized or in any other way be used for the claim.

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?

A vessel may also be arrested for claims against a charterer of the vessel if the claim is based on a maritime lien (cf. 5. B above).

Claims stated in 5. A items 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.

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 speedy handling procedure, preparing the application, etc., - by experience - a couple of days would at least be needed. However, as said in the above Overview in Section 1, once the complete application is lodged it is normally a matter of hours only for obtaining an interim arrest decision (i.e. without hearing the owner/debtor).

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.

It shall be noted that when applying for an interim arrest decision, which is the normal procedure for obtaining the arrest of a vessel, the court makes a prima facie assessment of the application. The court will thereafter make a final decision based on also the position by the owner/debtor.

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.

** Karl J. Dhunér is an advocate and Member of the Swedish Bar Association since 1980. As a business lawyer he has particular focus on shipping and transport, EU and competition, Swedish and international commercial disputes in litigation and arbitration. In the area of shipping Karl J. Dhunér represents cargo interests, ship owners and charterers, marine insurance companies etc. in settling of cargo claims in domestic and international transports in negotiations and legal actions. He also assists in other specific maritime matters relating to chartering of vessels, maritime accidents, arrest of ships etc. He represents Swedish ports in various legal matters. He has been recommended in Legal 500, Chambers Europe and Chambers Global for Shipping for several years.*