

# SHIP ARREST IN CHILE

By Pablo Rogers\*  
Araya Y Cía Abogados  
progers@araya.cl  
www.araya.cl  
Santiago, Chile  
Tel: 56 (2) 2208 2993  
Fax: 56 (2) 2208 9802



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

The arrest of a ship can take place in a limited number of cases.

These cases are contained in articles 844 to 846 of the Code of Commerce. The title holder of one of these privileged credits it is entitled to request the arrest of a vessel.

As stated in article 1231 of the Code of Commerce, the holder of a privileged credit can require from competent tribunal to issue an arrest order against a vessel that it is expected to berth. The requirement must concisely contain the arguments and background information supporting the alleged right to arrest, enclose all the founding documents and announce the type of lawsuit that will be presented in the near future.

If, in the opinion of the tribunal, there is sufficient merit it will issue the arrest order and proceed to notify the navy authority.

It must be pointed that the competent tribunal can be the tribunal that has jurisdiction over the territory the port is placed in, or the tribunal that has jurisdiction to review the main or remedial action, in which case this tribunal will issue a rogatory letter to the tribunal that has jurisdiction over the port in which the vessel has arrived.

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

No International Convention applies in this procedure, only the Chilean Code of Commerce and the Code of Civil Procedure.

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

There is no other procedure other than the one described.

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

As stated above, there are no alternatives. In respect to this question, and in my opinion, in the Chilean legal system there is not a discernible distinction between these two terms.

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

In first order the liens are (with preference over mortgages):

*First group of cases: (Article 844 of the Code of Commerce)*

- Legal costs and other disbursements caused by a suit, in the common interests of the creditors, for the preservation of the vessel or for its forced sale.
- Remunerations or other benefits, derived from the labour contracts with seamen, and the remunerations indebted to the pilots in the service of the vessel.
- This same privilege will apply to the indemnities related to death or bodily injuries of the dependants, whether they have happened on land, on board or on the sea, provided that they arose from accidents related with the operation of the vessel.
- Rates and fares of ports, channels and navigable ways. Also, the rates and fares related with signaling and piloting in ports, channels, navigable ways and interior waters.
- General expenses caused by salvage services and contributions due to general averages.
- The same will apply to disbursements and sacrifices that the authorities or third parties may have incurred in order to prevent or minimize the damages caused by pollution or oils spills and other harmful substances to the environment or third party's property, in the cases that a fund of liability has not yet been established.
- The Indemnities caused by damages, losses or averages caused to other ships, ports, docks or navigable channels or damages to the cargo or luggages, as a consequence of ships collisions to other navigations accidents, when the respective civil action can not be founded in a contract, and the bodily injuries caused to the passengers and crew involved.

*Second group of cases: (Article 845 of the Code of Commerce)*

- The credit mortgages and the pledges constituted in respect to minor vessels will have preference over the following list.

*Third group of cases: (Article 846 of the Code of Commerce)*

- The credit derived by the sale, construction, repair and equipment of a vessel.
- The credits related to the supply of products or material that are indispensable for the operation or conservation of a vessel.
- The credits derived for the contract of carriage of passengers, charter parties or goods transportation, including the indemnities caused by damages, decreases and missing portions of luggages and cargo, and the credits derived by the damages caused by pollution, or spills of fossil fuels and other harmful substances.
- The credits of the disbursements made by the captain, agents or third parties, on account of the owner, made in order for the operation of the vessel, including agencies services.
- The credits derived by insurance premiums, regarding hull and machinery and civil liability insurances.

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

The flag is irrelevant.

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

As a general overview it will depend on the nature of the credit and its origin and its relation with the specific vessel. The article number 1234 of the Code of Commerce provides a general rule: (Free translation)

“A vessel may be object of the special precautionary measure described in this section in the following cases:

When the vessel itself is the material object upon the privilege is exercised.

When the creditor is the holder of a privileged credit over other vessel that belongs to the same owner or is under the same administration or operated by the same person/entity”

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

The relation of “sisterhood” between two specific vessels, in view of the applicable legal norm, is very wide, as it can be considered that two vessels are related, not only if they are owned by the same person/entity, but also operated and managed by the same person/entity.

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

There are no specific legal norms regarding the bareboat and time-chartered vessels. The arrest of a ship can be made regardless of these circumstances, provided of course they fall under the possible scenarios where a title holder can arrest a ship.

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

Theoretically, provided that the actor enclose along with the petition of an arrest with sufficient documents that can prove a reasonable presumption of the existence of the credits invoked the judge will grant the arrest without further petition or delay.

But if the judge deems these documents or background information/evidence insufficient, or the actor does not present any document or background information/evidence, a counter security can be required, in order to cover the costs that may arise if, in the end, it is proven that the arrest petition was unfounded.

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

Yes, in Chile the arrest of a vessel can only take place if it is invoked a privileged credit or to enforce a judgement that involves the judicial sale of a ship.

Regarding a maritime claim, the only way to enforce it via a ship arrest is to have a final and firm judgment of a tribunal, that declares the liability of an owner/operator/management regarding the claim.

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

The only maritime liens are the ones listed between articles 844 and 846 of the Chilean Code of Commerce.

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

Provided that the claim has been written and all the pertinent founding and background documents are already translated, the lapse of days between filing the arrest petition and its actual enforcement can take a few days, usually two at least.

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

In first instance no, as the general procedure rules that can be applied allows to act as a kind of "de facto attorney", provided that in short time your principal will ratify the action presented and will send the relevant PoA in order to be presented before the judge. All of this will be assessed discretionally by the judge, who can require a sufficient security.

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 relevant PoA must be apostilled and sent via courier (Nowadays the Apostille Convention is in full force in Chile).

As for other documents (founding documents and background information) can be presented digitally, but it is advisable that these digital copies be notarized.

Finally, there is no specific requirement as for original copies when it comes to the documents that must be presented as evidence for the petition of arrest.

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

Provided that there is not an arbitration clause that hands the jurisdiction of the dispute to a foreign tribunal, the Chilean tribunals will assume jurisdiction.

17. What is the procedure to release a ship from arrest?

The ship interest must present a pecuniary guarantee that satisfies what was ordered by the tribunal, usually this will take form as a LOU.

18. What type of security needs to be placed for the release?

Usually the actor will ask the tribunal to order the vessel interest to present a bank guarantee (a Bank Warranty Bill or Ballot)

19. Does security need to cover interests and costs?

The arrest request always asks for the coverage of due interests and costs, so the security requested will have to satisfy that coverage.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

As long as the tribunal deems them sufficient (taking into account its own criteria and what was demanded by the actor in this respect), yes.

21. How long does it take to release the ship?

If the security ordered by the tribunal is presented swiftly the tribunal must lift the arrest immediately.

22. Is there a procedure to contest the arrest?

Yes, the vessel interest can raise a number of issues that can paralyze the immediate execution of the arrest, for example, they can contest that the arresting party is not the real credit holder, or that the arrested vessel is not related, via ownership or common operation/management, to the vessel that caused the privileged credit in the first place.

23. What period of time will be granted by the Courts in order for the claimants to take legal actions on the merits?

Every time one credit holder wants to start an arrest procedure it is necessary to indicate that a lawsuit will be presented promptly. In this case it will be granted a period of ten business days, that can be extended to 30 business days under special circumstances that may justify that extension, for example the need to start a judicial procedure abroad, and its subsequential evidence of its initiation to the tribunal that granted the arrest in the first place.

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

Yes, this can be the case when the arresting party fails to present the announced lawsuit in the period of time granted by the tribunal, or in the case that, via an incidental procedure, the tribunal declares that there is no merit in the request, as can be the case when the supposed credit holder is no such one or or that the arrested vessel is not related, via ownership or common operation/management, to the vessel that caused the privileged credit in the first place.

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

Yes, but in not an constant manner. The reception of this theory has taken place after the tribunal reviews and checks some doctrinary criteria or requirements. It must be stressed that there is no judicial precedent system, so the piercing or lifting of the veil must be ruled case by case.

26. It is possible to have a ship sold pendent lite, if so how long does it take?

No, there is no possibility of that.

**\*Pablo Rogers Neckelmann**, Lawyer by the Diego Portales University (Santiago, Chile) and Diploma in "Law of the Sea and Admiralty Law) from the Universidad Católica of Valparaiso. Associate lawyer in Araya y Cía Abogados since 2015, and currently head of the "Transportation and Insurance" area of practice of the firm. Specialized in International commerce; maritime and aerial claims; maritime transportation, ground transportation and aerial transportation related arbitration and litigation; transportation and logistics related contracts.