

# SHIP ARREST IN INDIA



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

(i) The Admiralty jurisdiction is exercised by the Coastal States in India under the Colonial Courts of Admiralty (India) Act, 1891. There is no domestic legislation touching the subject of maritime claim in India and therefore the Hon'ble Supreme Court of India in the decided cases have held that Arrest Convention, 1952 as well as Arrest Convention, 1999 could be looked into for the purpose of ascertaining whether a particular claim is a maritime claim.

(ii) Application for arrest of the ship is made ex-parte unless Caveat is filed against the arrest. If the court is prima facie satisfied ship would be ordered to be arrested and generally the quantum of security would be based on the best arguable case of the Claimant.

(iii) The ship would be released from arrest provided security in the form of Bank Guarantee or cash deposit is made with the Registry. Ship could also be released from arrest if on an application made on behalf of the ship; the Court holds that the arrest is not maintainable.

(iv) If the security is not furnished the Claimant is entitled to take steps to sell the ship. The Court would order sale of the vessel through public auction after the ship is valued by a professional surveyor. Once the ship is sold, the sale proceeds are deposited in Court. If the sale proceeds are insufficient to satisfy the claim of all Claimants, the Court would decide the priorities in which the sale proceeds would be distributed. The Statutory dues would have the first priority followed by Wages of the crew and Master, Salvage, Mortgage and all other claims would thereafter rank *pari passu*.

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

International Convention relating to Arrest of Seagoing Ships, 1952, and International Convention of Arrest of Ships, 1999 would be considered by the Courts.

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

Claimant could seek arrest of a ship in execution of decree passed by any Superior Court of any reciprocating territory of a foreign country against the Owner of the ship; subject however the original claim was a maritime claim.

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

There is no separate freezing order other than arrest of a ship.

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

A ship could be arrested for the following claims:

- a. Loss or damage caused by the operation of the ship.
- b. Loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship.
- c. Any claim towards salvage.
- d. Damage or threat of damage caused by the ship to the environment, coastline, measures taken to prevent, minimize, or remove such damage including compensation for such damage.
- e. Costs or expenses relating to the raising, removal, recovery, destruction of a ship which is sunk, wrecked, stranded or abandoned.
- f. Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise.
- g. Any agreement relating to the carriage of goods or passengers on board the ship, whether

contained in a charter party or otherwise.

h. Loss or damage to or in connection with goods (including luggage) carried on board the ship.

i. General Average

j. Towage

k. Pilotage

l. Goods or materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance.

m. Construction, reconstruction, repair, converting or equipping of the ship,

n. Port, canal, dock, harbour and other waterway dues and charges.

o. Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf.

p. Disbursements incurred on behalf of the ship or its owners.

q. Insurance premiums (including mutual insurance calls) in respect of the ship payable by or on behalf of the shipowner or demise charterer.

r. Any commissions, brokerage or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer.

s. Any dispute as to ownership or possession of the ship

t. Any dispute between co-owners of the ship as to the employment or earnings of the ship.

u. A mortgage or a "hypothèque" or a charge of the same nature on the ship.

v. Any dispute arising out of a contract for the sale of the ship.

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

Yes

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

As long as the maritime claim arises or is founded on commercial dealings between the parties, ship could be arrested even if the ship belongs to Government or a Foreign State.

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

A sister ship i. e. any ship of the same owner could be arrested. Ships in associated ownership cannot be arrested.

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

If the ship is on bareboat charter and if the Claimant asserts maritime claim against the disponent owner, the ship could be arrested nevertheless to enforce the maritime claim. So also if the Claimant asserts maritime claim against the registered owner, ship could be arrested even if it is on time charter.

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

Countersecurity is not required to be furnished at the time when the Court orders the arrest of a ship. However, when an application is filed by the ship owner claiming that the arrest is wrongful and that the owner is in a position to establish *prima facie* that as a result of the order of arrest the owner has suffered monetary loss the Court in its discretion may direct the Claimant to furnish countersecurity.

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

Yes. Maritime lien survives transfer of ownership of a ship while a maritime claim does not.

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

There is no domestic statute dealing with the concept of maritime lien. However, judicially it has been held that the maritime lien extends only to the following five heads of claim.

a. Damage done by a ship

b. Salvage

c. Seamen's wages

d. Master's wages and disbursements

e. Bottomry and Respondentia

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

Order of arrest of a ship could be obtained within 24 hours (excluding holidays) on receipt of documents in support of the maritime claim including Power of Attorney duly executed by the client, which is either notarized or attested before the Indian Consulate.

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

POA, Plaint, all documents in support of the claim, affidavit in support of the arrest and affidavit of undertaking to pay damages, have to be filed in the Court.

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

Power of Attorney in Original which is notarized before a Notary Public or attested by the Indian Consulate. All documents in original or photocopies (if originals are not available) in support of the maritime claim including exchange of correspondence between the parties. Original documents would have to be filed at a later date unless leave is granted by the Court to produce photocopies.

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

Once the Court orders arrest of a ship, it retains jurisdiction to adjudicate the substantive claim unless the order of arrest itself is vacated upon the Court being satisfied on an application made on behalf of the owner of the ship that the arrest is not maintainable.

The Court shall also vacate the order of arrest in case the agreement under which the dispute arose provide for reference of disputes to Arbitration in a foreign country in which event the security may or may not be retained.

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

Security in the form of Bank Guarantee or cash deposit needs to be made and the order for release from the Court needs to be obtained thereafter. The original order of the Court releasing the ship needs to be served upon the Port and Customs authorities.

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

Bank Guarantee or Pay Order issued by a nationalized Bank in favour of the Registry or cash deposit.

19. Does security need to cover interest and costs?

Yes. If the order so directs.

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

P & I LOUs are not accepted unless consented by the Claimants.

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

Once security is furnished order for release of the ship could be obtained during Court working hours.

22. Is there a procedure to contest the arrest?

Order of arrest could be contested by filing a written application supported by an affidavit stating the grounds for such contest.

23. Which period of time will be granted by the Courts in order for the Claimants to take legal action on the merits?

It could take anywhere between two to four years to adjudicate the disputes on merits.

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

Yes. If the arrest is held to be wrongful, Claimant would be held liable for damages.

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

Yes. In order to pierce corporate veil one need to establish that ship owner has created multiple entities only in order to avoid legal liabilities.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Ship can be sold pendente lite. The process of sale could be completed within 3 to 6 months from the date of the order of arrest. It could take longer period if either the order of arrest or the order of sale is contested before the same Court or Superior Court.

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