

# Ship Arrests in Practice

9th Ed.

84 jurisdictions covered  
by the ShipArrested.com members

2015

NetCorporate Manager

## FOREWORD

Welcome to the ninth edition of *Ship Arrests in Practice*, the yearly shiparrested.com updated guide covering 84 countries.

The aim of this publication is to assist the maritime community in the understanding of the procedures and practical issues arising from the arrest and release of a ship around the globe.

In a global world where the maritime transport operates 90% of the international exchanges, we are proud to offer a comprehensive treatment of the subject, so that one understands at a glance the way the maritime rules are interpreted in each country.

In this new edition, we have expanded the questionnaire with specific information on release procedures worldwide as an answer to stimulating contacts with London P&I Clubs and thanks to Dr. Felipe Arizon, Arizon Abogados SLP.

This publication owes its origin to [www.shiparrested.com](http://www.shiparrested.com), the global and professional lawyers network to defend your interests in a ship arrest or release. Displaying openly the most relevant information on ship arrest/release topics, it has become a must for the maritime industry.

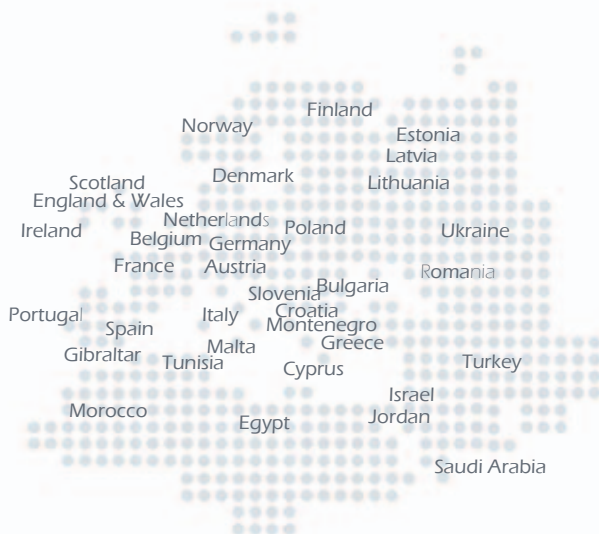
The law is stated as at 1<sup>st</sup> December 2014.

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N.B.: The information contained in this book is for general purposes, providing a brief overview of the requirements to arrest or release ships in the said jurisdictions, and do not contain legal or any type of professional advice. For a detailed synopsis, please contact the members' law firms.

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# SHIP ARREST IN ALGERIA



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

Algeria has a long tradition in maritime law, including maritime arrests. Algerian law is generally not restrictive in allowing conservatory and provisional measures. Algeria, and most specifically the ports of Algiers, Oran, Annaba as well as the oil and gas terminal of Arzew and Skikda has a favourable reputation for being a convenient place to arrest ships.

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

Algeria is since August 1964 member of the Brussels Arrest convention of 1952. Some general principles of the convention have been incorporated in the Algerian Maritime Code (hereafter called CMA).

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

In practice for the Algerian Courts, the provision of the CMA and the provisions of the Code of Civil procedure (hereafter called CPC) remain the major source of law for the arrest of ships.

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

No.

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

A ship can be arrested to secure a maritime claim Algerian law provides an open list, which may include claims of maritime nature like insurance premiums. A request to obtain authorisation to arrest a sea-going vessel has to be presented before the President of the court which has jurisdiction for the port of call. It is a unilateral request, and the President immediately grants or rejects authorisation. In theory, according to the CPC, the request can be submitted at any time, even out of court hours and during the weekend (in Algeria Friday & Saturday). In practice, the request can be submitted only from Sunday to Thursday.

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

In theory there are two regimes:

(i) A sea-going ship, flying the flag of a contracting State can be arrested in an Algerian port as a security for a maritime claim, as specified in littera a to q of Article 1.1 of the Brussels convention of 1952.

(ii) A sea-going ship, flying the flag of a non-contracting State can be arrested in an Algerian port as a security for a maritime claim, as specified in Article 151 CMA. Pursuant to this provision maritime claim means any claims arising out of a contract or an event in connection with the operation or the management of the ship, any loss or damage caused by the ship due to its exploitation. In practice, Algerian courts tend to apply the provision of Article 151 CMA without differentiation.

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

The ship can be arrested even if the owner of the ship is not the debtor of the maritime claim. The owner of the ship, in order to have his ship released from arrest, has to give a guarantee for the payment of the claim of the author of the arrest. This means that the owner of the ship will have to guarantee the payment of the claim, even if a third person (charterer, issuer of the Bill of Lading) is the debtor toward the arresting party.



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

Pursuant to Article 154 CMA, it is possible to arrest another ship, which is owned by the person who, at the time when the maritime claim arose, was the owner of the particular ship in respect of which the maritime claim arose.

However, to the difference of the jurisprudence of several European States, Algerian courts do not authorise the arrest of a ship owned by another company than the debtor of the claim. This even if the claimant has sufficiently established that the separate corporate personality is only a fiction that does not correspond to reality.

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

A vessel that is in the ownership of the charterer can be arrested for a maritime claim against a time charterer.

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

Algerian law impose on the claimant the deposit of a counter-security of ten per cent (10 %) of the amount of the maritime claim; to cover costs, charges, damages, fees or other expenses deriving from a potential wrongful arrest.

However the companies incorporated in countries that have signed a convention of judicial cooperation in civil and commercial matters with the Algeria are exempted from this requirement to provide security, are exempt from this obligation of companies incorporated the following countries: Belgium, Bulgaria, China, Italy, Portugal, Romania, Spain, United Arab Emirates, United Kingdom, Vietnam.

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

No.

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

Yes.

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

In practice, two days. Please note that Algeria does not have the universal week end. The Algeria week end is Friday & Saturday, during these days the court is closed.

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

No power of Attorney is requested from the attorney representing the claimant.

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 documents needed to arrest a ship are those evidencing the claim (such as contracts, bills of lading, letters requesting payments, protest or interim report of a surveyor, etc. Since the President will control very accurately the existence of a maritime claim, it is highly recommended to have as much documentary as possible to prove the alleged maritime claim.

In the first stage of the arrest procedure no original documents are needed.

The above mentioned documents can be filed electronically, notarisation and/or apostille is not required.

The documents shall be submitted along with their translation in Arabic.

If the translation is made outside Algeria the signature of the translator has to be authenticated by a public authority of his country and by the Algerian embassy territorially competent. The translation can be made in Algeria by an official translator; in that case no authentication is required.

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

Yes.

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

To obtain a ship's release, the relevant party must file for release with the interim relief application.

If the ship provides payment or otherwise satisfies maritime claims, and the courts accept this payment, then the court issues an order of release from arrest, which is delivered by a bailiff.

If there is a dispute as to what a sufficient payment is, then the courts will often make a decision.

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

The security for the release shall be agreed upon by the parties. If there is a dispute as to the security, then the courts may make a decision.

#### 19. Does security need to cover interest and costs?

This issue shall be agreed upon by the parties. If there is a dispute as to the interest and costs, then the courts may make a decision, in such cases the court may not consider the costs and the interests but only the amount of the unpaid maritime debt justifying the arrest..

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

If the parties agreed on payment / security, it will take around three working days to release the ship.

#### 22. Is there a procedure to contest the arrest?

The arrest can be contested with an interim relief application in the court.

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

Pursuant to Article 350 CPC, the claimant must institute a legal proceeding on the merits before the competent court, within 15 days from the day the Ordinance authorising the is issued, otherwise the arrest will be held null and void.

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

The arrestor bears the risk of arresting the ship. If he loses the contradictory summary proceedings or the case on the merits, his arrest may be considered wrongful and he could have to indemnify all costs and damages caused to the ship, as a result of such wrongful arrest.

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

However in practice, Algerian Judges are reluctant to countenance a claim for compensatory damages for wrongful arrest unless the bad faith or malice of the arrestor is established.

Algerian Courts do not acknowledge the piercing and lifting of the corporate veil.

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

It is possible to have a ship sold *pendente lite*; the timeframe depends on the circumstances of the case.

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# SHIP ARREST IN ARGENTINA



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

Ship arrest in Argentina is a practical and legal alternative designed to ensure that credit holders against national or foreign vessels should collect their debt. Embargo involves the possibility of banning sailing of embargoed vessels, thus ensuring collection preventively while leaving open the possibility of foreclosure. The formality is usually swift and simple, matching the pace of foreign trade and the eventual change of jurisdiction of vessels liable to be embargoed. Let it be noted that embargo can be requested in advance to arrival of a vessel to an Argentine port.

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

The Argentine Republic has not subscribed any international conventions that regulate ship embargo or arrest. However, these institutions are present in its legislation, namely in Navigation Act N° 20,094 of 1973, published on February 2, 1973, which reflects some provisions of the Brussels Convention of 1952. According to the provisions of the Argentine Navigation Act, ship arrest in Argentine territory is fast, swift and favorable to the creditor's interest.

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

There are two ways of obtaining an embargo and banning navigation: preventive embargo and foreclosure. Both options require action on the part of a judge with jurisdiction over the issue giving rise to credit justifying the embargo. Both can and should bring about interdiction of sailing. The difference between them is that the former requires court order and the latter requires court ruling following due judicial process.

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

Under Argentine legislation we see two types of unavailability, namely: a) legal unavailability – embargo – and/or b) physical unavailability – detention or arrest. Thus our legislation provides the tools to obtain not only legal but also physical unavailability of a ship.

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

In order to answer this question we must first ascertain that no matter the origin of the credit, any claim can lead to ship arrest, following court order or court ruling. Any credit, ordinary or privileged, stemming from a maritime claim or not is valid to request ship arrest or embargo. Requirements for the embargo or arrest to be granted depend on credit origin. Our Act, in sections 531 and 482 shows the relationship between the credit involved and the ship liable to be embargoed or arrested.

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

Absolutely: ship arrest is irrespectively of her flag for privileged credits. Foreign (non Argentine) ships can be arrested due to: i) debts incurred in Argentine territory with respect to the ship involved, or to another that belongs or belonged at the time of the credit to the same owner [principle drawn from the Brussels Convention of 1952], and ii) debts stemming from ship activity or from credits alien to it when they are recoverable before Argentine courts.

This last option widens the chances of arrest and embargo of a ship when it is moored in Argentine territory. Regarding national vessels, the conditions for embargo and arrest are three. I) privileged credits; ii) other credits at the port of the owner's domicile or main facility; iii) credits alien to the ship, in which case the ordinary legal requirements must be filled.

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

Yes. A ship may be arrested irrespectively of the debtor. The prohibition to embargo or arrest does not fall on the character of the debtor but of the ship. According to the provisions of section 541, there is an absolute prohibition to embargo or arrest: a) war ships, national or foreign; ships under construction with a view to join military forces of a State; ships at the service of national, provincial or municipal governments; and there is a relative prohibition to embargo or arrest ships belonging to national, provincial or municipal governments and ships loaded and ready to depart.

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

There is no mention of sister ships in our legislation. Regarding associated ownership, our legislation says that a ship belongs or belonged to the same owners when all and every part of it belongs to the same owners. E.g. Supposing I intend to embargo and arrest ship Z by virtue of a credit generated by ship Y, which at the time of credit origin belonged to A, B and C, the cautionary measure on Z will be relevant provided Z belongs to A, B and C.

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

Our legislation deals with this issue under the category "buque locado" (chartered vessel). If the ship that caused the credit was at the time chartered, operated by its ship owner/builder or by a time freighter, any other boat owned by the ship owner or the time freighter is liable to embargo, but not any other ship belonging to the same owner. In this case, the law restricts the possibility of issuing cautionary measures with respect to a ship different from the one that originated the credit owned by somebody who did not have direct or personal intervention in the original obligation.

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

According to the provisions of the Argentine law, the court, more specifically the judge, who is dealing with the request for embargo or arrest will assess the need or otherwise of requiring counter security. This is in answer to two clashing interests, both relevant. On the one hand is the advisability of clearing obstacles to navigation, which is the main purpose of a ship; on the other hand, releasing the ship to navigate freely would eventually jeopardize the credit generated by its own activity. Let it be noted that the counter security that is customarily is responsibility of the intervening Court.

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

From a procedural point of view there are no significant differences, except in cases when credit stems from matters alien to the ship activity. In these cases, the parties must appear before the court that has jurisdiction in the matter of the credit, e.g. credit stemming from a bank loan to the ship owner, or credit for compensation for damages generated by a car crash due to fault or negligence of the owner of the ship.

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

Yes. Our country recognizes lien with respect to debt or credit that is relevant to move on to ship embargo.

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

Once in possession of the relevant documents, the time to draw an embargo or arrest will vary depending on the next port of call. The possibility of application in the port of Buenos

Aires should take a reasonable period of time, in the understanding that we must file the claim before the competent court, and provided that the ruling is issued before the ship leaves the Argentine port.

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

To act in the name and representing an individual or a legal entity we need a POA apostilled by The Hague.

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 documents required to embargo or arrest a ship are those that prove the existence and nature of a credit (contracts, invoices, etc) in the original and/or notarized, apostilled copy and the POA mentioned above. They must all be submitted at the time of request of arrest, which means that this firm should have access to them in advance.

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

The Argentine court dealing with the arrest must take the substantive claim, which means that the preventive embargo must be followed by foreclosure.

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

The release of vessel can be by three elements: A) Warranty Substitution: With the presentation of warranty substitution in place of arrested ship; B) Pay Agreement with a warranty substitution and C) Payment of debt plus interest, cost and expenses.

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

For options A and B of point 17, it possible to be used: Caution Insurance Policy issued by a Local Insurance Co.; Bank guarantee or cash bank deposit in Court Bank Account.

19. Does security need to cover interest and costs?

Yes. It's really necessary. Regularly, Court determines the 30% of the debt as interest and cost.

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

Yes. It would be accepted by Judge but in some cases they request a NATIONAL P&I LOU or –as we said in point 18- Caution Insurance Local Policy.

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

It's take around 5 days since the interested present the warranty. After the Court authorization, the lift of ship is immediately.

22. Is there a procedure to contest the arrest?

Yes, in same arrest process, shipowner or any other interested can contest the arrest. To do this, we recommend that the contestation should have all proof, legal expositions, bases and documents that justify it.

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

There is no term, only the terms provided for in the context of the statutes of limitation.

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

No. Both embargo and arrest are legal remedies and call for immediate compliance, both on the part of the court and the law enforcing agency, in this case the Coastguard.

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

Argentina has a lengthy sea coast, and Argentine judges have great experience in maritime law. Judges have been in office for many years and are well acquainted with the particulars of the activity. They will bear in mind the best interest of the claimant as well as the rights of the defendant.

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

The option to sell a boat for the purpose of collecting the credit that gave way to the embargo involves a court procedure that the parties have to follow. Both parties are entitled to procedural tools which may speed or slow the process of liquidation. The final duration of the process may be influenced by many factors, both intrinsic and external, so much so that we are not in a position to estimate any specific period of time.

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# SHIP ARREST IN AUSTRALIA



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

Initial ship arrest in Australia is fast, simple and inexpensive. All that is required is a Writ, Application for Arrest Warrant, Arrest Warrant and a pro-forma affidavit. There is a filing fee and the court requires a deposit on account of its costs and expenses of the arrest (insurance, travel of court staff, vessel moves etc). Once the papers are filed a court officer or his/her delegate attends on the vessel to effect the arrest. Officers are available to travel to remote ports for that purpose.

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

None. Ship arrest is governed by the Admiralty Act 1988 (Cth) (the Act). However, there are many similarities between the Act and the 1952 Convention.

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

While freezing orders – which could extend to a ship – are available from Australian courts, they are considerably less attractive than ship arrest under the Admiralty Act. To obtain a freezing order it is generally necessary to demonstrate a strong prima facie case, establish a balance of convenience in favour of the injunction, and give an undertaking as to damages. None of those measures is required for ship arrest.

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

See above.

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

Arrest is available for maritime liens, proprietary maritime claims and general maritime claims.

### Maritime liens

Arrest can be made in respect of a maritime lien, being a claim for:

- (a) salvage;
- (b) damage done by the ship;
- (c) wages of the master or member of the crew of the ship; and
- (d) master's disbursements.

### Proprietary Maritime Claims

A proprietary maritime claim relates in broad terms to ownership of the vessel, and includes:

- (a) a claim relating to:
  - (i) possession of a ship;
  - (ii) title to, or ownership of, a ship or a share in a ship;
  - (iii) a mortgage of a ship or of a share in a ship; or
  - (iv) a mortgage of a ship's freight;
- (b) a claim between co-owners of a ship relating to the possession, ownership, operation or earnings of the ship;
- (c) a claim for the satisfaction or enforcement of a judgment given by a court (including a court of a foreign country) against a ship or other property in a proceeding in rem in the nature of a proceeding in Admiralty; or



(d) a claim for interest in respect of a claim referred to in paragraphs (a), (b) or (c).

### **General Maritime Claims**

A ship may be arrested for a general maritime claim, when the “relevant person” (see Question 8 below):

(a) was, when the cause of action arose, the owner or charterer of, or was in possession or control of the ship; and

(b) is, when the proceeding is commenced, the owner of the ship

A general Maritime Claim is:

(a) a claim for damage done by a ship (whether by collision or otherwise); or

(b) a claim in respect of the liability of the owner of a ship arising under Part II or IV of the Protection of the Sea (Civil Liability) Act 1981 or under a law of a State or Territory that makes provision as mentioned in subsection 7(1) of that Act; or

(b.a) a claim under:

(i) the applied provisions (within the meaning of the Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008); or

(ii) a law of a State or Territory of a kind referred to in subsection 10(1) of that Act; or

(c) a claim for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship; or

(d) a claim (including a claim for loss of life or personal injury) arising out of an act or omission of:

(i) the owner or charterer of a ship;

(ii) a person in possession or control of a ship; or

(iii) a person for whose wrongful acts or omissions the owner, charterer or person in possession or control of a ship is liable; being an act or omission in the navigation or management of the ship, including an act or omission in connection with:

(iv) the loading of goods on to, or the unloading of goods from, the ship;

(v) the embarkation of persons on to, or the disembarkation of persons from, the ship; and

(vi) the carriage of goods or persons on the ship; or

(e) a claim for loss of, or damage to, goods carried by a ship; or

(f) a claim arising out of an agreement that relates to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charterparty or otherwise; or

(g) a claim relating to salvage (including life salvage and salvage of cargo or wreck found on land); or

(h) a claim in respect of general average; or

(j) a claim in respect of towage of a ship; or

(k) a claim in respect of pilotage of a ship; or

(m) a claim in respect of goods, materials or services (including stevedoring and lighterage services) supplied or to be supplied to a ship for its operation or maintenance; or

(n) a claim in respect of the construction of a ship (including such a claim relating to a vessel before it was launched); or

(o) a claim in respect of the alteration, repair or equipping of a ship; or

(p) a claim in respect of a liability for port, harbour, canal or light tolls, charges or dues, or tolls, charges or dues of a similar kind, in relation to a ship; or

(q) a claim in respect of a levy in relation to a ship, including a shipping levy imposed by the Protection of the Sea (Shipping Levy) Act 1981, being a levy in relation to which a power to detain the ship is conferred by a law in force in Australia or in a part of Australia; or

(r) a claim by a master, shipper, charterer or agent in respect of disbursements on account of a ship; or

(s) a claim for an insurance premium, or for a mutual insurance call, in relation to a ship; or

(t) a claim by a master, or a member of the crew, of a ship for:

(i) wages; or

(ii) an amount that a person, as employer, is under an obligation to pay to a person as employee, whether the obligation arose out of the contract of employment or by operation of law, including the operation of the law of a foreign country; or

(u) a claim for the enforcement of, or a claim arising out of, an arbitral award (including a foreign award within the meaning of the International Arbitration Act 1974) made in respect of a proprietary maritime claim or a claim referred to in one of the preceding paragraphs; or

(v) a claim for interest in respect of a claim referred to in one of the preceding paragraphs.



As can be seen, the categories of general maritime claims are very wide, and substantially reflect arrestable categories of claim in other major jurisdictions and under the Arrest Convention.

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

Yes.

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

Yes, although foreign states are immune from the jurisdiction of Australian courts, unless engaged in commercial transactions.

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

There is a right to proceed against a sister ship (surrogate ship). A proceeding on a general maritime claim concerning a ship (Ship #1) can be commenced as an action in rem against some other ship (Ship #2) if:

- (a) a "relevant person" in relation to the claim was, when the cause of action arose, the owner or charterer of, or was in possession or control of Ship #1; and
- (b) that person is, when the proceeding is commenced, the owner of Ship #2. A "relevant person", in relation to a maritime claim, means a person who would be liable on the claim in a proceeding commenced as an action in personam.

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

A ship can be arrested for a general maritime claim, when the "relevant person":

- (a) was, when the cause of action arose, the owner or charterer of, or was in possession or control of the ship; and
- (b) is, when the proceeding is commenced, the demise charterer of the ship. Arrest is not available of a ship under time charter in respect of a liability of the time charterer.

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

No.

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

No.

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

Yes, see Question 5 above. Australia is not a party to any convention on maritime liens, and the Act provides an inclusive definition.

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

Provided the required information is provided, the arrest papers can be prepared and filed on the same day. The arrest itself is then in the hands of the court, and the time may depend on the availability of court staff and possibly the location of the ship (eg if there is a need for the Marshal to travel to a remote port). However, arrests can usually be effected within 48 hours.

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

No.

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

No original documents are required, other than the court documents themselves, which must generally be physically filed with the court (although electronic lodgement by email is permitted out of normal hours). Notarisation is not required.

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

Yes, although in some instances the court will recognise and enforce a valid forum clause if the dispute is contractually based.

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

There are two ways to release a ship from arrest. The first is by application to the Registrar which is the most frequent method of release. The second is by application to the Court.

Upon application to the Registrar (in accordance with the relevant form), a ship may be released from arrest if the Registrar is satisfied that:

- a) an amount equal to the amount claimed or the value of the ship or property has been paid into court, whichever is less; or
- b) a bail bond for the same amount as set out in a) above has been filed in the proceeding; or
- c) the party who applied for the ship's arrest has made arrangements for and consented to the ship's release.

Alternatively, upon application to the Court (in accordance with the relevant form), the Court has the discretionary power to order the release of a ship from arrest on such terms that are just. If the Registrar or Court orders the release of the ship, a notice will be given to the Marshal who will then proceed to release the ship. The Marshal may refuse to release the ship if satisfactory arrangements have not been made for payment of the Marshal's costs and expenses in respect of the custody of the ship while it was under arrest, including the costs and expenses associated with its release.

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

In order for a ship to be released, the owner must provide the plaintiff with an alternative security for the claim. This can be in the form of a bank guarantee, a letter of undertaking from a P&I club or insurer, a bail bond pursuant to Part VII of the *Admiralty Rules 1988* (Cth), or cash deposited with the Court.

#### 19. Does security need to cover interest and costs?

A plaintiff is entitled to obtain security for its claim in an amount equal to:

- (a) its "*reasonably arguable best case*" including interest up to the likely date of judgment and its costs in the proceeding; or
- (b) the value of the ship arrested, whichever is the lesser.

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

Yes.

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

Release times will vary depending on the location of the vessel. The more remote the location, the longer it may take the Marshal to reach the vessel.

#### 22. Is there a procedure to contest the arrest?

If the plaintiff's claim does not fall within the requirements of the *Admiralty Act 1988* (Cth) (being sections 15-19 of the Act), the claim can be challenged in Court for lack of jurisdiction.

In addition, a claim can be made for damages for unjustified arrest by a person with an interest in the ship (or who has suffered loss or damage as a direct result), when:

- a) a party unreasonably and without good cause:
  - i. demands excessive security in relation to the proceeding; or
  - ii. obtains the arrest of a ship; or
- b) a party or other person unreasonably and without good cause fails to give a consent for the release of the ship.

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

Australian courts will apply any legislative and contractual limitation periods applicable to the claim in question.

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

Yes.

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

Rarely.

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

Yes. The time period depends on how long the claimant takes to make an application, whether the application is contested, and the availability of a reasonable market for the ship.

*\*Stephen leads K&L Gates' Transport, Logistics & Defence Group and practices exclusively in the transport and logistics sectors. Stephen's practice covers a wide range of transport and logistics activities, including:*

- mergers, acquisitions and disposals of companies, businesses and assets in the transport and logistics sectors;
- negotiating, drafting and advising on key operational agreements such as ship construction, sale and purchase agreements, charters; and contracts of carriage, stevedoring agreements, distribution arrangements, labour supply contracts, and marine fuel supply contracts;
- advising on risk management and contracting process improvement strategies;
- maritime and admiralty dispute resolution including ship arrest.

*Stephen's experience in relation to ship arrest includes acting in many of Australia's most significant Admiralty cases, including the "Iron Shortland", the "Skulptor Kononkov", the "Skulptor Vuchetich", the "Ionian Mariner", the "Zoya Kosmodemyanskya", the "Turakina" and the "Rangitata".*

# SHIP ARREST IN AUSTRIA



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

Since 1918 Austria, is a landlocked country. Ship arrest is limited to inland waterways, in particular the Austrian stretch of the Rhine-Main-Danube, Europe's most important waterway connecting the Atlantic with the Black Sea. The Austrian ports are as follows: Enns, Krems, Linz, and Vienna.

There is no developed maritime law practice in the courts. The arrest of inland waterway vessels follows the general rules of the Enforcement Code. The arrest takes the form of a court order for taking the vessel in the custody of the court. Vessels ready to sail must not be arrested.

The Enforcement Code provides for the attachment of a debtor's assets in circumstances where (i) either a judgment or an arbitral award are to be enforced or (ii) there is a risk that the debtor removes, destroys, depletes or hides assets with a view to prevent the enforcement of a future judgment or arbitral award.

In the latter case such a risk is assumed in case the claim is against a non-resident debtor and any future enforcement of a judgment or award would have to be carried out abroad. An inland waterway vessel sailing under a non-Austrian flag owned or chartered by a non-resident debtor would meet these criteria.

An application for the enforcement of a judgment or an award has to be filed with the court in whose district the vessel is currently staying. The same applies for arresting a vessel for securing the payment of a future judgment or award.

The arrest of a vessel for securing payment of future judgments or awards takes place in the form of a temporary injunction. It requires *prima facie* evidence of the existence of a claim as well as *prima facie* evidence of the risk that a future judgment or award may not be able to be enforced due to actions of the debtor to remove, destroy, deplete or hide the assets with the intention to frustrate the creditor. The mere possibility that the debtor may become insolvent, prior to a judgment or arbitral award becomes enforceable, is not sufficient for meeting this requirement. *Prima facie* evidence has to be submitted in the form of documentation and written statements of witnesses.

Their contact details have to be included in case the judge wishes to verify their statements. All documentary evidence which is not in German language has to be submitted in translations certified by Austrian court interpreters. It is advisable to offer together with the application payment of a counter-security for any damages the debtor may suffer as a result of an unjustified arrest.

Together with the application for an arrest by temporary injunction, a filing fee of approximately 0.7% of the value of the claim has to be paid to the court. The application together with all supporting documentation has to be filed electronically within the special electronic mail system between courts and lawyers.

If the judge has been pre-warned by the applicant lawyer of the incoming application and the judge is satisfied with the *prima facie* evidence submitted, the temporary arrest order may be issued on the day of application. As Austrian judges are dealing very infrequently with ship arrests this result may not be achieved easily.

As a general rule, applications for temporary injunctions for ship arrest are *ex parte* proceedings. The debtor is served with the arrest order by the bailiff together with a copy of the application. The debtor may file within a non-extendible period of 14 days objections or an appeal against the court order. Objections are filed in case of the court order being based on factual errors and will result in a hearing before the court having issued the order. An appeal will deal with errors in law and will be decided by the appeal court. It is advisable to combine both remedies.

In case the judge dealing with an application for ship arrest is not fully satisfied about the merits

and the prima facie evidence submitted, he or she may serve the application on the debtor giving the debtor an opportunity to provide comments or objections within a short period of time. At the judge's discretion a hearing may be ordered. While this would result in a delay of time, there is a risk that the vessel leaves the Austrian stretch of the inland waterway. However, an unscheduled departure may persuade a judge that there is prima facie evidence of the intention of the debtor to remove the vessel from the jurisdiction of the Austrian court with a view to frustrate the enforcement of a future judgment or award.

Together with the order for a temporary injunction, the court will set an extendible time limit for filing a court action or a request for arbitration for justifying the temporary injunction. If no action is filed by the creditor the order will elapse and the arrest lifted. At any time the debtor may deposit with the court a security for lifting the arrest. The security has to cover the claim plus interest and costs. The security is either a payment into court or placing with the court a guarantee by a prime Austrian bank. Guarantees of foreign banks or P&I Clubs will only be accepted as sufficient security in case the creditor does not object.

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

Austria is not a member of any arrest conventions.

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

No, unless the lien holder has the vessel under control and refuses to release the vessel.

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

No. The temporary injunction for taking the vessel into the custody of the court is a saisie conservatoire or freezing order.

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

Arrests can be made for any types of claims including payment of debt, ownership of vessel or cargo, rights under charter party, damage caused by the vessel, etc.

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

The flag does not matter when applying for arrest.

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

A ship can be arrested irrespective of the debtor, always provided the vessel is in the possession of the debtor. It is then up to the third party ship owner to prove title of ownership.

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

An arrest of a sister ship is possible provided she is in the possession of the debtor.

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

Bareboat and time-chartered vessels may be arrested for claims against bareboat charterers and/or time-charterers with a view either to have the charter party carried out under the supervision of a court or to obtain security from the charterer.

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

While there is no legal precondition for obtaining an arrest to provide a counter-security the judge may be more easily persuaded to grant the order when the applicant is offering a counter-security.

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

There is no difference whether an arrest is for a claim or a lien.

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

Maritime liens properly established will be recognized irrespective that Austria is not a member of any international conventions.

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

On the assumption that all documents are in the file together with the court filing fee an arrest order may be obtained on the same day. However, if the documents are not in German a few days

may be required for obtaining certified translations into German by a court sworn interpreter. The arrest order will be executed by the court's bailiff under an order issued by the court. We would liaise with the bailiff to expedite the immediate enforcement.

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

A POA is not required as it is sufficient for an Austrian lawyer to state in the application that he has been properly authorized by the client. As a matter of legal practice the lawyer is likely to ask for a POA for his own files. But the POA is not required for filing the application.

Together with the application documents have to be filed which provide *prima facie* evidence of the identity of the debtor and the vessel to be attached, the existence of the claim and the actions or behavior of the debtor to frustrate the collection of a future judgment or award. Documents should be available in originals. If this is not feasible, copies can be submitted. While there is no legal requirement of copies of documents to be certified as conforming and apostilled, it is advisable to do it in order to avoid the risk that the judge queries their authenticity.

Statements of witnesses should be signed but do not have to be notarized. However, they should indicate addresses and telephone numbers in case the judge wishes to contact the witness directly. Documents in languages other than German have to be submitted together with a certified translation. For the sake of speed it is sufficient to translate the parts which may be relevant for the judge to grant the order. Also documents in English have to be translated irrespective a judge's knowledge of English as the court file has to be kept in the German language. For the sake of speed we sometimes submit together with the application English documents together with the undertaking to deliver certified translations a few days later.

#### 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 documents required as set out in Section 14 above have to be filed online with the electronic document archive of the court. The number allocated by the archive to the document file will be quoted in the application. As a result the judge deciding on the application has online access to the document supporting the application.

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

The arrest of a vessel does not result in the Austrian court assuming jurisdiction over the substantive claim. The Austrian court will only have jurisdiction if there is jurisdiction according to the Austrian rules on jurisdiction and civil procedure. Arbitration clauses deprive Austrian courts of their jurisdiction but not of their power to issue arrest orders.

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

Upon application of the debtor/ship owner a ship will be released from arrest provided the security or bank guarantee is deposited with the court is sufficient to cover the claim together with interest and cost.

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

The best form of security is payment of cash into the court as this would not result in any further queries by the court. The same applies to an abstract and unconditional bank guarantee issued by a leading Austrian bank. Guarantees issued by other banks might raise queries on part of the judge or objections by the applicant. The same applies for P & O Club letters. In case the applicant is agreeable with these types of security the court will accept that as well.

#### 19. Does security need to cover interest and costs?

Yes, the security should also cover interest and costs incurred in case the creditor-applicant is successful in the litigation or arbitration on the merits of the case.

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

The judge will not accept P&I LOUs as a sufficient security to lift the arrest unless the creditor-applicant agrees to it.

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

The court practice is to structure a release order in such a manner that the release is contingent on proving the deposit of the security. Once the condition is met the ship can be released imme-



## 22. Is there a procedure to contest the arrest?

The debtor/ship owner has the following procedures available to contest the arrest:

- (i) Objections on the basis that the facts on which the arrest order has been based are incorrect or incomplete. The debtor/ship owner will submit, with his objections, documentation as a *prima facie* evidence and/or witness statements together with their contact details and apply for a hearing, if he deems a hearing to be useful.
- (ii) Appeal to a higher court on the basis that the order is based on errors in law and/or procedure.
- (iii) Combining objections and appeal which may be the preferred way to have the arrest order removed depending on the circumstances.

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

The usual court practice is to grant a period of 6 (six) months for taking legal action on the merits. Depending on the circumstances the court might grant a longer or shorter time limit. If legal action on the merits has already initiated a copy of the claim filed with the court or the request for arbitration should be included amongst the documents filed together with the application for an arrest. This would serve as an additional *prima facie* evidence of the existence of the claim. In case the arrest court is also the court of jurisdiction over the substantive claim it is advisable to combine the application for arrest with the substantive claim for saving court filing fees.

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

In case the arrest proves to be wrongful, the defendant can claim compensation for all damages resulting from the wrongful arrest whereby payment is to be made out of the claimant's counter security deposited with the court.

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

Austrian courts acknowledge the piercing and lifting of the corporate veil in special circumstances such as in insolvency situations where the application for insolvency has been unduly delayed or where special circumstances are present such as fraud. There is a court practice of enhanced liability of directors in case of their misconduct or negligence in management of the company.

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

With the consent of all parties concerned, in particular creditor, debtor and ship owner, it is possible to sell the ship *pendente lite*. The agreement would involve the requirement that the proceeds of the sale are paid by the buyer directly to the court and thereby replace the arrested ship. At the same time an order from the court could be sought to lift the arrest whereby such order becomes operative once the payment of the proceeds of the sale into the court has been effected and duly acknowledged.

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# SHIP ARREST IN BAHAMAS



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

A simple arrest of a vessel would involve the commencement of proceedings providing an overview of the claim with supporting documents exhibiting any documents relevant to the claim. The application for the arrest of a vessel will usually be an ex parte application. Once the arrest warrant is executed the Admiralty Marshall will proceed with the arrest.

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

The Bahamas is party to the 1952 Arrest Convention (ratified 1979). The Convention applies to all vessels flying the flag of states which are signatory to the Convention, and (under article 8 of the convention) to vessels flying the flag of states which were not signatory to the Convention where there is a claim for which the contracting state permits a vessel arrest.

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

All ship arrests are carried out under the terms of the 1952 Arrest Convention (which is followed by the Supreme Court Act [SCA] and Rules of the Supreme Court). In order to arrest a ship, it is necessary to prove the vessel is connected to the claim, as required by s8 of the SCA.

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

(Not applicable; see above)

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

There is a huge range of claims for which a vessel might be arrested. These include:

- Claims for possession or ownership of a vessel, including disputes between co-owners and charterers;
- Claims for damages either suffered by the ship, or caused by it;
- Claims for injury (including fatal injury) caused by negligent behaviour of owners or crew, or defects in the vessel;
- Claims for loss of or damage to cargo;
- Claims relating to an outstanding mortgage or debt secured against the ship;
- Payment of outstanding wages to crew members and others employed on the vessel;
- Payment for repair, equipment, construction and dock charges;
- General costs such as towage and pilotage;
- Claims relating to salvage; and
- Claims for payment relating to use of the ship, such as chartering the vessel.

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

Yes. It is not necessary for the vessel to be flying the flag of a state which is party to the 1952 Arrest Convention.

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

Yes, with the possible exception of ships which are under the ownership of another State. Under these circumstances, the vessel may be considered immune from arrest. It will be for the Bahamian courts to make a decision in these cases.

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

Under the 1952 Arrest Convention, sister ships (ie vessels which are deemed to be in the same ownership as an arrested vessel) may also be arrested, until a satisfactory outcome is achieved. Sister

ships constitute a significant financial asset, and are often very important to the settlement of a claim.

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

Section 3.4 of the Convention provides that in the case of claims made against a Bareboat or Time-Chartered vessel the charterer – and not the owner – is liable. Vessels under the ownership of the charterer may be arrested – but no other ship under the ownership of the registered owner.

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

It is not necessary to post counter-security in order to undertake a vessel arrest. It is at the discretion of the courts whether the claimant should be required to post counter-security in the event of a wrongful vessel arrest. The courts are more likely to request a counter-security payment if there are substantive doubts that the claim is made on good grounds, and is therefore unlikely to be successful.

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

The procedures by which a vessel may be arrested for either a maritime claim or a maritime lien are the same, and governed by the 1952 Arrest Convention. A maritime lien holder may have a priority to any funds generated for example by the sale of the vessel but it would depend on whether there are other lien holders whose liens rank in priority.

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

Yes. The Bahamas recognises maritime liens, under the 1952 Convention.

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

Instructions to the firm should ideally arrive no more than 48 hours before an application to make a ship arrest is submitted. It is best practice to file applications early in the day, with the aim of making a successful arrest of the vessel on the same date. Speedy action is essential because of the nature of maritime law, in which vessels are by their nature likely to move out of port at any time.

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

Applications are made by virtue of a Power of Attorney.

Once a Claim Form has been issued, a number of documents in support of the claim should be supplied to the court. These must include:

- Details of the nature of the claim or counterclaim, including compensation sought
- The name of the vessel for which arrest is being sought
- Full details of the vessel to be arrested, including the name and port of registry and the ownership of the ship

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

It is not necessary to submit any original documentation in order to undertake a ship arrest. Notarisation is only required to secure Power of Attorney.

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

Yes. Under the terms of the 1952 Arrest Convention, the Courts of those states signatory to the Convention have jurisdiction over the claim. However, there are instances when forum is argued and the Courts have selected not to allow the substantive proceedings to be adjudicated where there is a more suitable forum.

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

The procedure required will depend on whether a caveat against release has been filed. Where a caveat has been filed it is a requirement to seek the consent of the Caveator or provide notice to the Caveator of the application for release. The Court will then make a determination on the application.

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

In most cases the party who has obtained the arrest warrant will only agree to the release of the vessel where an LOU or bank guarantee has been provided.

#### 19. Does security need to cover interest and costs?

It is best for the security to cover interest and costs.

## 20. Are P&I LOU's accepted as sufficient to lift the arrest?

It will depend on whether the party with the warrant for arrest is willing to accept a P&I LOU. However, this is usually acceptable.

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

The release of a Ship can be done within 24 hours of filing an application with the Court for the release.

## 22. Is there a procedure to contest the arrest?

Yes a party can contest an arrest by filing an application with the Court in the proceedings.

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

Once the courts have confirmed that an arrest is to be made, the applicant will have a maximum of up to 60 days (the precise deadline to be set by the Court) within which to complete the vessel arrest.

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

Claims for wrongful arrest are not specifically covered by the 1952 Arrest Convention, but will be governed by local state law. There are provisions for handling claims for wrongful arrest within Bahamian Law, which will have jurisdiction over the claim. However, it is important to bear in mind that claims for wrongful arrest will generally be based on issues which are hard to prove, such as bad faith or gross negligence.

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

Recent cases in the Bahamas have demonstrated that the Courts are acknowledging the piercing and lifting of the corporate veil. This matter refers to company owners seeking to conceal their identity by hiding behind the 'veil' of the creation of a corporation, which in effect separates an individual (and their liability) from the corporate entity. Where the Courts decide that this separation of the individual (usually the company owner) and the incorporation should not be maintained, the 'veil' is said to be lifted. Under these circumstances the owner or director of a company may be held liable for the debts of the company, which goes against the usual principle that such individuals would be immune from liability, since the corporation would instead be liable. There is no single legal principle under which the 'corporate veil' might be lifted, but the Bahamian courts will act when it is held to be in the interests of justice to do so – including in cases relating to ship arrests.

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

It is possible to sell a vessel pending the outcome of a judgment, but it is usually necessary to make a strong case for a *pendente lite* sale. Generally, this kind of sale will be sought when the value of the vessel is decreasing dramatically, so that it is in the best interests of the claimant to make a sale as soon as possible in order to maximise the asset. If a sale is made *pendente lite*, the proceeds are likely to be frozen under the direction of the Courts until the judgement is made.

*\*Kenra Parris-Whittaker, partner, is a seasoned young litigator with an exceptional track record across all practice areas. Her dedicated and rigorous approach has been crucial to the Firm's success.*

*The Nassau-born, Canadian-educated litigator attributes her success to thinking a few steps ahead of her opponent.*

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*With her reputation for securing successful outcomes for clients across a broad range of practice areas, Mrs. Parris-Whittaker is a wise investment- whether for small firms, major corporations or individuals.*

# SHIP ARREST IN BELGIUM



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

Belgium, and most specifically the port Antwerp, has with reason a favourable reputation of being a convenient place to arrest ships. The fact that Antwerp is one of the biggest and busiest ports of the world is not the only reason. The arrest of a ship and the accomplishment of the required formalities are well-organised: a simple, fast and short procedure, an experienced Antwerp Maritime bar, local representation of all P&I Clubs of the world, excellent shipping signalling services and, last but not least, several Judges of Seizure who are at the disposal of the parties at every moment 24 hours a day, 7 days a week for all urgent matters related to the arrest of a ship.

A vessel can be arrested within a few hours after having received instructions. No power of attorney or original documents are required.

The owner of a ship may demand immediate release of the ship upon issuing an acceptable Bank or P&I Club Letter of Guarantee, covering the amount of the claim plus 30% as a retainer for costs and interests. The formalities to lift the arrest are minimal, and can be fulfilled within the hour. The owner of a ship may also request for the withdrawal of the judgement, granting authorisation to arrest the ship. This request has to be filed before the same Judge of Seizure who granted the authorisation. This request is heard on a contradictory basis in summary proceedings. Moreover, in Belgium some rather unique possibilities with respect to arrest of a ship are available. For instance, a vessel can be arrested for certain maritime claims, even if the owner of the vessel is not the debtor of this claim (see further under n° 7).

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

All arrests of sea-going ships are subject to the Brussels Convention 1952 relating to the Arrest of Sea-Going Ships, as enacted in the Belgian legislation.

## 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?

Not applicable.

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

A sea-going ship can be arrested in Belgian territorial waters as a security for a maritime claim, as specified in littera a to q of art. 1.1 of the Brussels Convention 1952. It is generally accepted that the claimant only has to present an allegation of right or claim. As soon as the claimant proves that his maritime claim is 'sufficiently probable', i.e. when the judge accepts 'prima facie' evidence presented to him on an ex parte basis, his request for authorisation to arrest a ship will be granted.

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

A sea-going ship can be arrested in Belgian territorial waters, whatever the flag it is flying.

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

The ship in respect of which the maritime claim arose, can be arrested, even if it is not the owner but another person who is liable for the maritime claim, such as a bareboat charterer, voyage or



time charterer or any other third party.

The owner of the ship shall, in order to have his ship released from the arrest, have to give security that guarantees the payment of the claim of the arrestor. In other words, the owner of the ship will have to guarantee the payment of the claim, even if a third person is the debtor towards the arresting party.

The only restriction is that the ship to which the maritime claim relates may not be arrested if it changed ownership between the moment the claim arose and the moment of arrest, unless the claim is secured by a maritime lien or mortgage. The transfer/change of ownership of the vessel is however only opposable against the seizing party when such transfer is opposable to third parties in accordance with the applicable law. If the conditions for the opposability of the transfer against third parties are not fulfilled at the time of the arrest, the arrest shall be allowed.

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

If the owner is liable for the maritime claim not only the ship, in respect of which the maritime claim arose, may be arrested but also all other ships in the same ownership. Ships will be deemed to be in the same ownership when all the shares therein are owned by the same person or persons (see also under n° 25).

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

The ship in respect of which the maritime claim arose can be arrested, irrespective whether the vessel is Bareboat – or Time Chartered. See above under n° 7.

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

The counter-security has fallen into disuse in Belgian law. It is therefore uncommon that Belgian courts impose a counter-security on the arrestor.

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

There is no procedural difference.

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

Belgium incorporated the Brussels Convention on Maritime Liens and Mortgages of 10 April 1926 in its internal law through Articles 19 to 45 of the Maritime Code. The maritime liens or privileges are listed in Article 23 of the Maritime Code.

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

Upon receipt of the instructions to arrest the ship, the arrest of the ship can be effected within approx. 4 hours. The unilateral request to obtain authorisation to arrest a sea-going ship can be submitted at any moment of the day, even out of office hours and during the weekend or holidays.

A ship under arrest will not obtain the services of a pilot. More specifically in the port of Antwerp an arrested ship will not be able to leave the port since also the lockkeepers are informed.

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

No POA is needed. Belgian counsels represent the client without needing to present power of attorney.

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

No original documents are required.

It is not required either to have documents notarised or apostilled.

Furthermore, in practice, no complete file of documents of evidence on the merits of the claim is needed in order to obtain an authorisation to arrest a ship. A claimant, requesting authorisation, only has to make his allegation of the existence of the maritime claim reasonably certain.

Given the fact that at the time of the request the claim often just arose, the Judges of Seizure do grant authorisations for claims only scarcely documented.

It is advisable – but therefore not always necessary - to have a copy of the Bill of Lading, an invoice, a (general) protest and/or an interim report of a surveyor available.



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

Art. 7 of the Brussels Arrest Convention 1952 provides that the Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits in certain circumstances. This article has not been incorporated in the Belgian Code on Civil Procedure, but is applicable in Belgium as it is Belgian Private International Law as a result of the ratification of the Brussels Arrest Convention 1952. This implies that the Belgian Commercial Courts will in principle not refuse jurisdiction. In practice however, claimants rarely make use of the possibility of 'Arresto fundatur jurisdictio'.

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

The arrest may be lifted by putting up a security (see question 18) or after obtaining order of the Judge of Seizures deciding to set aside the original order for arrest (see also question 22).

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

A cash deposit and/or a bank guarantee are accepted to obtain the release of the ship. In practice an undertaking of a first class P&I Club is also mostly accepted (although the claimant may refuse such undertaking and ask for a cash deposit or bank guarantee). In case of disagreement, the Judge of Seizures may settle any dispute related to the nature of security.

#### 19. Does security need to cover interest and costs?

Yes, the security should cover the principal amount of the claim, costs and interest. The global amount of interest and costs is normally determined at 30 or 40 per cent of the principal amount. In case of disagreement, the Judge of Seizures may determine the amount of the security.

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

See question 18.

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

If the parties agree upon the lifting of the arrest, the court bailiff may release the ship within the hour as from the instructions by the arresting party. In case proceedings are initiated to have the ship released, the release will take longer as such proceedings are often slowed down by the desire of the parties to develop their arguments in written submissions.

#### 22. Is there a procedure to contest the arrest?

The shipowner (or a third party) may file opposition proceedings with the Judge of Seizures within one month of service of the order of arrest for such order to be set aside or varied; if such application fails, appeal is possible before the Court of Appeal.

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

a) The arrest is valid during three years. The arrest can be renewed for a second period of three years. b) The arrest of a ship does not impose upon the arrestor the necessity to start legal proceedings on the merits of the case; nor does Belgian law impose Belgian Jurisdiction for the claim on the merits after an arrest in Belgium.

Obviously, since an allegation of a maritime claim has to be shown, it is necessary to start legal proceedings on the merits before the competent court within the time bar limits related to the claim itself.

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

Although the Belgian courts acknowledge wrongful arrest, they are rather reluctant to grant such claims. An unjustified arrest is not sufficient. Proof of a fault/bad faith on behalf of the arrestor is required. A claimant will only be considered as having acted at fault by arresting the vessel if he obtained and put the arrest in a thoughtless and reckless way knowing that he would cause damages (e.g. when the arrestor consciously hid important information from the Judge of Seizures).

If the arrestor loses the contradictory summary proceedings or the case on the merits, this does not automatically result in the arrest being wrongful.

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

On several occasions Belgian courts have accepted the piercing and lifting of the corporate veil

within the frame of conservative arrest proceedings. If the owner is liable for the maritime claim not only the ship in respect of which the maritime claim arose, may be arrested but also all other ships in the same ownership (see our reply to question 8). This rule can be circumvented easily by creating 'single ship companies'. In this respect Belgian Courts occasionally authorised the arrest of a ship owned by another company than the debtor of the claim. The courts thus lifted the corporate veil and treated ships owned by different companies as if they were in the same ownership as soon as it was sufficiently evidenced that the separate corporate personality is only an artificial screen that does not correspond to reality.

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

Belgian case law accepts that a ship under arrest may be sold as soon as the claimant disposes of an enforceable title. This will also be the case if the judgment is not rendered against the owner of the ship but against another person who is debtor of the claim.

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# SHIP ARREST IN BENIN



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

The procedure relating to the arrest of sea-going ships is made easy in Benin by the entry into force of a new law namely the Act No 2011-11 dated March 7, 2011 laying down the Maritime Code in the Republic of Benin.

On the basis of that Code, all sea-going ships may be arrested, even ships already set to sail, unlike the previous act.

Among the provisions enabling an arrest of a ship, the condition relating to the claim is outstanding. The creditor must show evidence of a claim that is certain and maritime as well, with a connecting link with the implicated ship, or with the owner of the vessel to be arrested.

For the issuance of the arrest order, judges are very particular about the maritime nature of the claim which must be part of the list of maritime claims provided by Article 156 of the Maritime Code.

Upon reception of instructions, the order for arrest may be obtained within the next twenty-four (24) hours.

Submitting original documents is not necessary unless questions arise on the lawfulness of the arrest, and more specifically on the ownership of the vessel.

The release of an arrested ship may be obtained within a few hours after the issuance of a bank or P&I Club letter of guarantee accepted by the creditor.

By the way, the judge may also allow the ship to leave upon deposit of moneys equal to the principal amount of the claim plus costs and incidental expenses.

Withdrawal of the arrest order may be granted by the enforcement judge dealing with the case in summary proceeding.

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

Arrests of sea-going ships are subject to the May 10, 1952 Brussels Convention for the unification of certain rules relating to the arrest of Sea-Going Ships, signed by the Republic of Benin, and part of the legal instruments therein available.

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

No, the law only provides that way for the arrest of sea-going ships.

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

There are no alternatives to the arrest of ships. However a ship may be seized upon requisition of a CID police officer, when that ship is involved in any criminal facts or is carrying goods from criminal origin. This will be the case of a ship carrying goods acquired upon perpetrating an international piracy act.

Such a vessel may be kept under the custody of port authorities to assist in the on-going investigation on the committed crime.

On another lane, in due enforcement of their police powers, the maritime authorities may confine a ship to port, should they notice any discrepancy in endorsements of documents on board, should these documents are lacking, or should they notice that the condition of the ship is a threat of pollution or might be the cause of marine casualties.

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

Claims allowing ship arrest must be certain and bear the characteristics of maritime claims. Maritime Claim shall mean a claim arising out of one or more of the following: -Damage caused by any ship either in collision or otherwise;

- Loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
- Salvage;
- Agreements relating to the use or hire of any ship whether by charter party or otherwise;
- Agreements relating to the carriage of goods in any ship whether by charter party, a Bill of Lading or otherwise;
- Loss of or damage to goods including baggage carried in any ship;
- General average;
- Towage;
- Pilotage;
- Goods or materials wherever supplied to a ship for her operation or maintenance;
- Construction, repair or equipment of any ship or dock charges and dues;
- Wages of Masters, Officers, or crew;
- Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- Operation or title to earnings of that ship;
- Any maritime mortgage or hypothecation of any ship or more generally any claim arising from any the causes allowing the application of the limitation of owners or charterers liability.

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

The Law provides for the arrest of any vessel irrespectively of her flag. All it takes is that the claim must be connected with the concerned ship.

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

Arrest of a ship can be made irrespectively of the debtor, whether the latter is the ship-owner or the charterer.

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

Benin case-law does not make any distinction between sister ships and ships in associated ownership. Once the claim is sufficiently evidenced against a ship or her owner, that ship and all other ships of his (the owner) fleet can be arrested.

The law provides that the creditor has a general possessory lien over all of the debtor's properties. It is then up to the creditor to seize any of the debtor's asset.

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

There is no implication as regards to Bareboat and Time-Chartered vessels as far as arrest of ships is concerned. Ships bareboat or time-chartered can be indiscriminately arrested for the same claim.

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

Counter-security is not required for the issuance of an arrest order of a ship.

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

There is no procedural difference.

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

The Benin Maritime Code caters for Liens in its Art 114 through 124. Liens are listed in Art 114 of the Code. This listing is inspired by the International Convention for the Unification of certain Rules relating to Maritime liens and mortgages.

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

Upon reception of the file (meaning instructions and documents), the order for arrest may be obtained within twenty-four (24) hours. The request may be lodged immediately and the judge may be involved to help having the order quickly signed.

The arrest occurs after that with a bailiff serving the order and the immediate consequence is the confinement of the ship.

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

No POA is required, the counsel aptly standing for his client without the need to produce any proxy.

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

No original documents are required and no notarisation and/or apostille is necessary for documents. And all documents can be sent electronically for filing provided they are readable and such as to evidence the claim.

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

Once a vessel has been arrested, the Courts of Benin always accept jurisdiction to hear the withdrawal of the arrest order and/or its lawfulness.

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

An arrested ship may be released upon a release order from the Court or upon a Court decision allowing the ship to leave after depositing moneys with the Court registrar as security, the amount of which is set by the Judge according to Art 153 of the Benin Maritime Code.

Release can also occur voluntarily after parties have reached an amicable settlement in terms of acceptance of a letter of guarantee by the creditor.

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

In most cases, a bank guarantee payable at first demand is preferred. However P&I LOUs are also accepted.

19. Does security need to cover interest and costs?

The security is placed as to cover the debt's principal amount, interests and costs. However everything may be negotiated.

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

P&I LOUs are perfectly accepted as sufficient to lift the arrest.

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

There is no time necessarily taken to release the ship. It can occur immediately upon issuance of the release order from the Court or upon the agreement reached by the parties.

22. Is there a procedure to contest the arrest?

The arrest may be challenged by referring it to the enforcement judge.

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

The claimant has eight (8) days to refer the case to the Civil Tribunal of the place where the arrest occurred to have the arrest confirmed. Failing to do that results in the arrest voided.

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

The arrest may be declared wrongful when it has been conducted without any claim or when the provisional requirements for such an arrest were not met. In such circumstances, the arrestor incurs liability for costs and damages.

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

Considering Memoranda of Association and shares held by an individual in a Company presented as owning/operating a ship, the Courts may point out the actual owner of the ship, lift the corporate veil and authorize the arrest of that ship supposedly owned by a company other than the debtor of the claim.

It only takes, apart from endorsements on the vessel ownership certificate, to clearly show the connection between the debtor and the concerned ship.

It is then possible to arrest any ship belonging to the owner once the link is sufficiently evidenced.

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

A ship under arrest may be sold *pendente lite*: (8) days after the arrest, the arrestor may take action on the merits to have his arrest confirmed.

The decision sets a base price and conditions for such an auction.

Actual auction occurs fifteen (15) days after auction notices have been posted and published in the gazette.

Bids are received ten (10) days after the sale order by the court.

The successful bidder is compelled to pay the price within seventy-two (72) hours following the auction. Failing to honour his payment, the ship is reset for sale and auctioned (3) three days after a new notice of sale by auction.



# SHIP ARREST IN BRAZIL (Questions 1 to 9)



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

Under Brazilian law, the arrest of assets is a provisional or interim remedy that may be granted by a court so as to ensure satisfaction of a judgment in a present or future action of law brought to enforce the collection of a debt. It results in a preventive and provisional seizure of assets of a value deemed to be sufficient for providing security to the debt.

The circumstances in general in which such provisional remedy may be granted are listed in Articles 813 and 814 of the Brazilian Code of Civil Procedure. The granting of the arrest also requires evidence of an indisputable and strongly grounded credit.

Specifically in relation to the arrest of ships, pursuant to Article 479 of Brazilian Commercial Code, the arrest may be granted with grounds upon one of the credits that are qualified as "privileged" by Brazilian law. Under the same legal provision, said "privileged" credits have in rem effects, constituting a maritime lien on the vessel.

Thus, the arrest of a ship essentially takes into account whether the claim is grounded on one of the credits that give rise to a maritime lien on the vessel.

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

Brazil is only part to the "International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages", signed in Brussels, on April 10, 1926. Such Convention is in force in Brazil by virtue of Decree No. 351, dated October 10, 1935, and, as a matter of Brazilian law, has the same status of any other Brazilian federal laws.

Although the Brussels Convention of 1926 does not dispose about the arrest of ships, its enactment in Brazil not only confirmed but also complemented the list of credits that, under Brazilian Law, are considered to result in a maritime lien on a vessel.

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

Brazilian law provides for the arrest of ships as a provisional or interim remedy for the obtaining of security. As a general rule, there are no other ways of arresting a ship under Brazilian law.

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

Based on Article 804 of the Brazilian Code of Civil Procedure, the arrest may be ordered by court as an injunctive relief, even before Defendant is serviced of process and has the opportunity of filing its defense. For such, there must be strong evidence of the satisfaction of the legal requirements for the arrest, as well as reasonable arguments supporting that the granting of the arrest is a matter of utmost urgency.

As a condition for granting said injunctive relief the court may, however, order the posting of counter-security. The requirement or not of said counter-security relies on court's discretion.

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

The list of credits that gives rise to a maritime lien on the vessel is provided by Articles 470 and 471 of the Brazilian Commercial Code, as amended and complemented by Article 2 of the Brussels Convention of 1926.

Amongst others, the following credits are considered to have in rem effects in relation to a ship,

making it possible for the arrest to be required irrespective of the debtor:

- i. Taxes due to the State;
  - ii. Salaries or payments due for services rendered aboard ship or in the benefit of the ship;
  - iii. Expenses incurred with the ship's costs and maintenance;
  - iv. Expenses with depositaries, as well as storage costs relating to the ship's instruments;
  - v. Shortages on delivery of cargo and damage thereto;
  - vi. Debts deriving from the contracts for construction and purchase of the ship;
  - vii. Debts deriving from costs incurred in the repair of the ship and its installations and equipment;
  - viii. Salvage indemnity claims;
  - ix. Obligations assumed by the master while exercising the powers conferred upon him by law;
  - x. Claims for general average;
  - xi. Claims for marine accidents;
  - xii. Credits secured by marine mortgage;
  - xiii. State or private port operators' credits;
- Even credits that do not constitute a maritime lien may give rise to the arrest of a ship, however, not irrespective of the debtor. Additionally, the arrest based on such type of credit is enforceable only at the port where the vessel has been registered and, even so, only upon the posting of a bond and after the filing of the applicable collection action.

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

Pursuant to the Article 482 of the Brazilian Commercial Code, a foreign flag vessel should not be arrested in Brazil unless it is due to: (i) a maritime lien originating in Brazil; or (ii) even if originating abroad, a maritime lien that is grounded in a title that may be considered enforceable in Brazil.

Nevertheless, it has long been a controversial matter whether such Article is still in full force, there being grounds to sustain that it was barred by the Federal Constitutions that superseded the Brazilian Commercial Code.

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

Provided that there is a valid maritime lien, the ship may be arrested irrespective of the debtor.

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

Such arrest is only admitted when the credit is opposable upon owners and not solely upon the ship. As a consequence thereof, for said purpose it is only admitted the arrest in personam (unless there are grounds for claiming the lifting of the corporate veil of the companies or individuals involved, pursuant to Article 50 of Brazilian Civil Code).

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

As mentioned above, a ship may be arrested irrespective of the debtor. Thus, subject to the qualifications contained herein, bareboat and time-chartered vessels may be arrested.

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# SHIP ARREST IN BRAZIL (Questions 10 to 26)



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

Brazilian Courts may require counter-security in order to arrest a ship in cases where the plea of arrest is lodged as a preliminary or precautionary measure to guarantee a future action of collection or indemnity.

Pursuant to article 804 of the Brazilian Code of Civil Procedures, it falls within the discretion of the Judge to require counter-security either to issue an *in limine* arrest order, i.e. without prior hearing of the defendant party, or to secure an eventual claim for wrongful arrest. In accordance with article 816, II, the Judge shall grant the arrest order without prior justification when the party offers counter-security. Usual means of counter-security are cash deposit or bank guarantees.

Brazilian Courts may also require a security from foreign claimants who do not have assets or branch companies in Brazil, in order to guarantee the satisfaction of judicial costs and legal fees, usually up to 30% of the value of the claim.

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

Yes. The arrest for a maritime lien is an action *in rem*, and to this effect it can be exercised against a specific vessel regardless of the fact that the debt was incurred by the owners, charterers or operators of the vessel. Claimant needs only to prove that it holds a valid maritime lien against the vessel.

The arrest for a maritime claim is an action *in personam*. It is subject to proof of the claim (*fumus boni iuris*) and evidence that the debtor does not have other assets in Brazil to satisfy the claim (*periculum in mora*). The arrest for a maritime claim – or for claims of any other nature – is filed against the owner of the vessel for owner's debts only, and it may be addressed against a sister ship.

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

Yes. Brazil is signatory to the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, 1926, which is in force by Decree nr. 351/35.

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

From 24 hours to 48 hours, depending on the location of the ship.

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

Yes. A POA is required, together with the company's articles of incorporation, written evidence of the claim and ownership of the vessel.

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

Some Brazilian Courts accept electronic based lawsuits, and digital documents can be filed on these Courts. Other Courts will only accept paper-based claims.

A written evidence of the claim and ownership of the vessel must be presented at lodging of the plea of arrest.

The POA needs to be notarised and it can be presented up to fifteen days after the filing of the arrest.

Every document that is not written in Portuguese must be translated by a sworn translator.

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

The arrest of ships in Brazil is only possible in cases where Brazilian Courts have jurisdiction over the substantive claim, in one of the following cases: (i) Defendants are Brazilians or have subsidiaries in Brazil; (ii) the obligation has to be fulfilled in Brazil; (iii) the claim originates from facts or acts occurred in Brazil.

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

The shipowner has to plea in court and offer a proper security as replacement for the arrest usually in the value of the claim plus 20 to 30% to cover fees and costs.

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

Usually a money deposit, but a real estate, and bank guarantees are also commonly accepted.

19. Does security need to cover interest and costs?

Yes, as a rule between 20 and 30% but may be reduced or enlarged at Judge's discretion.

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

May be accepted at Judge's discretion; however, experience tells that P&I LOUs are frequently not accepted in Brazil.

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

Depends on the kind of security offered; for instance, less than one day for money security.

22. Is there a procedure to contest the arrest?

Yes, the arrest and the substantive claim can be contested in court by means of a written defence subscribed by a Brazilian lawyer; all legal and factual defences are available to defendants.

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

Claimants must file a substantive claim within thirty (30) days of the issuance of the arrest order. Claimants may file the substantive claim and plea the arrest at the same time.

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

Yes. As a general rule, a wrongful arrest will be acknowledged in cases where the substantive claim is ruled against claimants.

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

As a matter of law, Brazil acknowledges the piercing and lifting of a company's corporate veil. However it is unlikely that a Brazilian Court would investigate a foreign company and lift the corporate veil to the effect of granting an arrest order.

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

Yes, in cases where the ship is damaged or abandoned, or it is too onerous to maintain the ship afloat. A judicial sale of a ship may take from two to three months.

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*Chambers 2015: "Well-regarded practice with extensive experience of representing P&I clubs, most notably in shipping, commerce, customs, corporate and environmental issues. Arthur Rocha Baptista is highly recommended by peers and clients alike for his extensive knowledge and experience."*



# SHIP ARREST IN BULGARIA (Questions 1 to 9)



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

In principal, the arrest of a ship according to the Bulgarian law is a procedure which provides pre-judgment security for future claims or already brought proceedings. The arrest of a ship shall be allowed, if without it, it will be impossible or difficult for an eventual future court decision to be executed, until the necessary guarantees are provided by the shipowner. Notwithstanding the relatively formal character of the procedure according to the Bulgarian law, after the country became a party to the International Convention on Arrest of Ships, 1999, the number of applications for security of maritime claims through an arrest was increased, as well as the terms and condition for allowance of such applications were unified.

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

The Republic of Bulgaria is a State party to the International Convention on Arrest of Ships, adopted on March 12, 1999 at the United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships, held in Geneva ("The Convention"). The Republic of Bulgaria has signed the Convention on July 27, 2000 and ratified it in accordance with the constitutionally established procedure.

In accordance with its Article 14 (1), the Convention went into force on September 14, 2011, six months after the Republic of Albania became the 10th State to accede it. State parties include Albania, Algeria, Benin, Bulgaria, Denmark, Ecuador, Estonia, Finland, Latvia, Liberia, Norway, Pakistan, Spain and the Syrian Arab Republic.

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

The merchant ship, which is located at a Bulgarian sea port, regardless of its flag, can be arrested only for securing a maritime claim for the purposes of Art. 1, para. 1 of the The Convention. Besides the above procedure, the Bulgarian Merchant Shipping Code envisages a specific procedure for the arrest of ships sailing in inland waterways, as a prejudgment security for future claims or already brought proceedings. The grounds for arrest of ships sailing in inland waterways are identical to those provided in the Convention.

Arrest of a ship, according to the domestic law might be allowed:

By the district court at the location of the ship (the respective port) in a procedure for securing of a claim, including a future claim, by imposing of a collateral measure "arrest of a ship" under the provisions of the Bulgarian Civil Procedure Code for a claim arisen in connection with the ship.

In addition to the above, the Bulgarian Merchant Shipping Code provides for a specific procedure concerning the arrest of a ship and cargoes only for unpaid sums of customs, port and other fees, taxes and fines. The Executive Director of the Bulgarian Maritime Administration or the captain of a port may arrest Bulgarian or foreign ships for such claims, if the request is made on behalf of governmental and judicial authorities, by the State Enterprise "Port Infrastructure" or by a foreign maritime administration.

The arrest shall continue until elimination of the grounds for it.

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

Such instruments are not provided and applicable according to the Bulgarian law.

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

Grounds for arrest of a ship, according to the Convention are maritime claims, as defined in Article 1 (1) of the Convention. The competent authority is the Court.

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

The Bulgarian Merchant Shipping Code does not specify exceptions to this general rule, stipulating that authorities “may arrest Bulgarian or foreign ships and cargoes”.

Article 8, para 1 of the International Convention on Arrest of Ships, 1999 states that the rules and regulations set by the Convention apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party. Article 8, para 2 however makes an exception, declaring that said rules and regulations do not apply to any warship, naval auxiliary or other ships owned or operated by a State and used only on government non-commercial service.

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

The general rule, according to the Bulgarian law is that a ship arrest is admissible for maritime claims against the persons who are responsible under the maritime claim. The ship-owner is the owner of the ship, entered in such capacity in the register of the ships or any other person who utilizes the ship on other legal grounds (by example on the ground of a bareboat charter agreement) at the time when the maritime claim arose and the arrest is effected. In order for the arrest of the vessel to be allowed the debtor should be responsible under the maritime claim as well as a person specified in Art. 3 of the Convention.

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

The Bulgarian Merchant Shipping Code stipulate that the sister ships and ships in associated ownership may be arrested for claims arisen from other ship, according to the Convention, under certain terms and condition. In this procedure, the arrest is admissible for any other ship or ships which when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose: (a) owner of the ship in respect of which the maritime claim arose; or (b) demise charterer, time charterer or voyage charterer of that ship.

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

##### 9.1. Regarding the Bareboat- Chartered vessels

Arrest is permissible of any ship in respect of which a maritime claim is asserted if the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or the claim is against the demise charterer and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

##### 9.2. Regarding the Time-Chartered vessels

The Vessels which are used on the grounds of concluded contract for Time-Chartered, may be arrested only as a security for a maritime claim for which the owner is deemed responsible. The arrest of a ship as security marine claim against Time-Charter is permitted for ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime and who was, when the claim arose, time charterer.

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# SHIP ARREST IN BULGARIA (Questions 10 to 26)



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The procedure for a ship arrest is regulated in the Bulgarian Merchant Shipping Code, whereby the latter could be enacted within an administrative procedure before the Maritime Administration or within a securitization procedure before the competent court. Under the administrative procedure the ship arrest would take between one to three days. For this purpose a fee of Euro 1,000 should be paid to the administration, which is applicable notwithstanding the type and freight capacity of the vessel.

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

Depending on the specific judge's discretion a guarantee (usually up to 20 % of the claimed amount) might be requested.

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

There are not exact provisions in the Bulgarian law concerning maritime claims and maritime liens.

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

No.

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

Usually 2 to 3 days upon receipt of the documents needed.

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

The following documents will be needed in general for the ship arrest procedure in Bulgaria:

- a. a copy of the carriage contract or the contract for the services;
- b. invoices regarding the deliveries (copies would suffice at first time);
- c. certificate of good standing of the creditor of the vessel;
- d. excerpt from the Maritime Register about the vessel's owner;
- e. power of attorney.

## 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 document under the item "c" should be verified with apostille as per the requirements of the Hague Convention of 1961, in order to be officially translated and legalized in Bulgaria. The documents under the other items should be officially translated in Bulgarian language, which may be accomplished in Bulgaria upon their receipt.

The set of the documents should be presented to the court as attachments to the claim.

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

No.

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

The release from arrest is regulated under the terms and provisions of Art. 4 of the International Convention on the Arrest of Ships from 12 march 1999.

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

No specific type of security is provided for, but the most common case in practice is to provide a bank guarantee.

19. Does security need to cover interest and costs?

The exact amount of the provided security is also not determined specifically, whereby our experience in such cases shows that the minimal amount of security should match the amount of the creditor's claim. Interest in cases of delay or the expenses for effecting the arrest itself could also be included in the amount of required security.

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

Bulgarian law does not regulate this particular form of security.

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

Usually 2-3 days after the provision of a security.

22. Is there a procedure to contest the arrest?

The arrest of a ship is allowed by the respective district court as a first instance and may be appealed before the respective court of appeal as second instance, whereas the decision of the latter is then final.

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

The court order for the arrest of a ship is valid for a term of up to 30 days, unless a lawsuit is filed against the debtor, whereby the effect of the order could last throughout the court procedure. If the claim is not filled within the deadline given by the court, the arrest shall be lifted.

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

In case of groundless arrest the liability shall be borne by the person to the request of whom the arrest is imposed.

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

No.

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

According to the Bulgarian Law is not possible to sell the arrested ship during the time of the court proceedings. After the court decision the creditor may apply for an enforced sale of the ship.

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# SHIP ARREST IN CAMBODIA



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

During the years following the adoption of the 1952 Brussels Convention, Cambodian courts have occasionally dealt with ship arrests. Currently, an arrest of ship in Cambodia shall be subject to either the "Book Six on Compulsory Execution," or "Book Seven on Preservative Disposition" of the Code of Civil Procedure ("CCP"), promulgated on 6th July, 2006 and effective from 6th July, 2007. In addition to the enforcement of a final and binding Court Judgment or Arbitration Award<sup>1</sup>, in which any ships under the same ownership can be seized for the benefit of creditors against the ship-owner as the debtor, the competent court may grant an order to provisionally attach or dispose of the ship upon an application submitted by the claimant.

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

Cambodia has been party to International Convention relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) since 1957.

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

The provisions of CCP remain the major source of law for the arrest of ships. Just like other executions, the execution against ships requires a title of execution, which includes a final and binding judgment<sup>2</sup>, enforcement of real security rights against ships<sup>3</sup>, and provisional attachment against ships<sup>4</sup>.

- **Final and binding judgment:** in principle, this title of execution is necessary for execution judge to issue a ruling for ship arrest. This means that if the judgment is not yet binding, it is not executable and thus cannot arrest the ship of the debtor in execution. However, in some cases even if the judgment is not yet binding, the declare of its provisional execution can also be used as title of execution to arrest a ship<sup>5</sup>;

- **Enforcement of real security rights:** upon the request from the creditor, the execution judge or bailiff can issue a ruling for a ship arrest if there is a final and binding judgment or other documents having the same effect or even the notarized documents certified by a notary proving the existence of real security rights;

- **Provisional attachment:** the execution of a provisional attachment against a ship must be performed through the method of registration for a provisional attachment and/or by the method of ordering the bailiff to confiscate the Certificate of Registry of the concerned ship and submit this certificate to the Preservative Disposition Execution Court.

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

According to Article 568 of CCP, when the ship is not arrested in rem, the creditor can also demand for the execution of provisional attachment carried out by means of ordering the confiscation of the Certificate of Registry of Vessels.

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

Firstly, no matter the origin of the credit, any claim can lead to ship arrest, following a court ruling.

- Under the Brussels Convention, ships may be arrested for any of the "maritime claims"<sup>6</sup>

- Under domestic law<sup>7</sup>, any other credit, ordinary or privileged, arising from a maritime claim or not is a valid request demanding court decision for ship arrest.

1 Book six of CCP

2 Article 454 to Article 486 of CCP

3 Article 521 to Article 523 of CCP

4 Article 568 of CCP

5 Article 350 and 455-3 of CCP

6 Article 1 of the 1952 Brussels Convention

7 Article 1 of the 1952 Brussels Provision of Prakas 2003 on resolution of ships registration, and provision relating to provisional attachment against ships (Article 568 of CCP of CCP) and compulsory execution against ships (Article 521 to Article 523 of CCP)

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

Cambodian law doesn't distinguish the ships arrests according to theirs flags. However, in the practice, the nationality of a ship may be an obstacle for the court because court may need to inform the ship's embassy in case the ship is subject to provisional attachment by means of Code of Civil Procedure. Besides that, there are not any privileges, except governmental ships, whose immunity is protected by international law.

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

If a maritime claim has arisen, ships can be arrested, even if it is a person, other than the ship-owner, is liable for the maritime claim, such as a bareboat charterer, voyage or time charterer or any other third party<sup>8</sup>. The owner of the ship shall, in order to have his ship released from the arrest, provided security that guarantees the payment of the claim of the debtor. In other words, the owner of the ship will have to pay the security amount to release the ship, even if a third person is the debtor<sup>9</sup> towards the claimant.

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

Under Brussels Convention<sup>10</sup>, any ship belonging to the debtor may be arrested even where the claim is not related directly to the ship unless the claim is related to the title or ownership of a particular ship or related to disputes between co-owners or the mortgage or hypothecation of this ship.

A ship owned by an associated company of the debtor may be arrested only if associated company is deemed to be jointly responsible for the claim such as the case of the responsibility of general partnership<sup>11</sup>.

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

Under the Brussels Convention<sup>12</sup>, the creditor of a maritime claim against the bareboat or time charterer of a ship is entitled to arrest the ship in question or any other ship under the same ownership of the charterer.

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

Before court issues the ruling to provisionally attach ships, the court may request creditor to deposit money<sup>13</sup>. The amount of deposit will depend on whether the court thinks that damage of debtor will occur after the court has attached the ship. Sometimes, a court may order the creditor to deposit the amount of price of ship. However, article 542 of CCP explains on what conditions the court will order a deposit or not. It depends upon the quality of preliminary showing; if the creditor has good evidence which convinces the court to of an existing fact, the court may not require the creditor to deposit money. A preliminary showing shall be made based on evidence that permits of an immediate examination<sup>14</sup> such as agreement of management or the report of creditor explaining that a debtor has a lot of debt.

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

There is no difference in the procedure of ships arrest in either the case of maritime claim or maritime lien. In addition to maritime liens, ships might also be arrested under the provisions in Cambodia's Civil Code relating to general liens<sup>15</sup> and special liens<sup>16</sup>. However, a maritime lien has the priority over any other rights or claim<sup>17</sup>.

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

Even though Cambodia has not acceded to any international conventions relating to maritime liens, Cambodia has adopted its own regulation relating to maritime lien since 2003.

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

We would need a couple of days after our law firm has obtained all the required documents of the claim and sufficient information (ship's movements, etc.). However, once the complete application is handed to competent court, it normally only a matter of days before we are able to obtain an interim arrest decision.

<sup>8</sup> Article 4(1) of international convention relating to the arrest of sea-going ships (1952)

<sup>9</sup> Article 5 of international convention relating to the arrest of sea-going ships (1952)

<sup>10</sup> Article 3(1) of international convention relating to the arrest of sea-going ships (1952)

<sup>11</sup> Chapter 2 "General Partnership" of law on commercial enterprises, adopted 19 June 2005

<sup>12</sup> Article 3(4) of international convention relating to the arrest of sea-going ships (1952)

<sup>13</sup> Article 542 of CCP

<sup>14</sup> Article 131 of CCP

<sup>15</sup> Article 783 of Civil Code

<sup>16</sup> Article 788 to 815 of Civil Code

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

There is no need to provide a POA. The claimant must provide document<sup>18</sup> evidencing the existence and the cogency of the claim. The necessary documents, according to each case, are listed in CCP. In addition, when the claim is grounded on the Brussels Convention, the documents must also show the maritime nature of the claim.

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

A notarized copy of the Title of Execution is required in case of the execution of a final court judgment<sup>19</sup> and the execution of security rights against ships<sup>20</sup>.

In practice, there have not been any documents filed electronically with the court; all required documents<sup>21</sup> must be handed directly (in hard copy form) to the competent court.

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

Any substantive claims that fall under the general provision of article 8 and 9 of CCP (General provision of competent court) can be accepted by a Cambodian court. In addition to domestic procedure, Cambodian judges may accept jurisdiction over the substantive claim listed in article 7 of Brussels Convention. Beside those cases, the judges may not rule on merit on the sole ground that the ship was arrested within court area of jurisdiction.

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

Procedure to release a ship can be divided into two cases:

First, the ship arrested to satisfy final and binding court judgement can be released under the following procedures:

- **Money guarantee for the ship release:** the debtor-in-execution shall provide a money guarantee equivalent to the total amount of the claims of the creditor-in-execution, the claims of the creditors who have made demands for distribution, and the execution costs. The court shall, upon motion and prior to the making of any offer for purchase, cancel all of the compulsory execution proceedings<sup>22</sup> except for the distribution proceedings. This is to ensure that if the debtor still fails to fulfil his duty, the creditors in execution can be paid with the money guarantee following the distribution proceeding already determined.

- **Permission to sail:** the court may, upon a motion by the debtor-in-execution, grant permission for the ship to sail if the court finds that business necessity or other good grounds exist, and if the consents of each creditor, and the highest bidder or the purchaser have been obtained<sup>23</sup>.

- **Cancellation of compulsory sale proceedings:** if the bailiff is unable to confiscate the Certificate of Registry of ships within 2 weeks of the issuance of the ruling for commencement of compulsory sale, the execution court shall cancel the compulsory execution proceedings<sup>24</sup>.

Lastly, in the case of provisional attachments against ships, the debtor can file a motion of objection to the provisional attachment. If it is established by a *prima facie* showing that clear circumstances constituting grounds for canceling the ruling of preservative disposition exist and that there is a risk that execution of provisional attachment would cause irreparable damage, the court may order a stay or a cancellation of provisional attachment with the requirement of security<sup>25</sup>.

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

As prescribed by the CCP, security for the release does not need to be cash money. It can be any negotiable instruments, as deemed appropriate by the court<sup>26</sup>.

#### 19. Does security need to cover interest and costs?

In case of ship arrest to satisfy final and binding court judgment, the security shall be equal to total amount of claims of creditors and execution cost<sup>27</sup>, in which might also include the interest and costs depending on the parties and/or judge.

17 Article 52 of Prakas 2003

18 Article 541 of CCP

19 Article 350 of CCP Chapter 2 "General Partnership" of law on commercial enterprises, adopted 19 June 2005

20 Article 521 of CCP

21 In case of execution of final judgment against ships (Article 455 of CCP), execution of security rights against ships (Article 521 of CCP), and provisional attachment against ships (Article 568 of CCP)

22 Article 461 of CCP

23 Article 462 of CCP

24 Article 464 of CCP

25 Article 551 of CCP

26 Article 536 of CCP

27 Article 461 of CCP



However, upon issuing a court ruling on provisional attachment against ships, the court shall stipulate the monetary amount the debtor is required to place as a court deposit in order to have the execution of the provisional attachment rescinded<sup>28</sup>. Thus, whether the interest and costs are covered, it would be the court who appreciates.

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

P&I LOUs can be considered as negotiable instruments under the CCP's provisions. Therefore, depending on the value of LOUs, the court might accept this security. In addition, it might also depend on the agreement between parties. If claimant agrees to accept the LOUs, he/she has to forfeit the claim; as a result, the court ruling against ships shall be cancelled<sup>29</sup>.

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

After depositing the security for ship release, it is only a matter of days for obtaining the court ruling of cancellation the attachment against ships. That court ruling shall come into effect only when it becomes final and binding. However, the court may, if it finds particularly necessary, declare that the ruling shall come into effect immediately<sup>30</sup>.

## 22. Is there a procedure to contest the arrest?

It is possible to contest the arrest. The debtor may file a motion of objection to a ruling of attachment against ship at the court that issued such ruling<sup>31</sup>. In such cases, it is important that the debtor prepared the entire related documents proving the reason of contest, such as nonexistence of such claims or other good grounds.

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

According to article 557 of CCP, in case of provisional attachment against ships, the claimants must take legal action on the merit within a period deemed reasonable by the Court<sup>32</sup> after the said ships have been arrested; otherwise the arrest will automatically be held cancelled.

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

Cambodian judges rarely accept a claim for compensatory damages for wrongful arrest, unless the bad faith or malice of the arrestor is clearly established.

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

Piercing the corporate veil is not common. Therefore it is not normally possible to arrest the property of owners associated with the debtor. The exceptions are general partnerships, since the general partners are personally liable for the debts of the company. If the piercing of corporate veil concerns limited companies, Cambodian judges might reply on the general principal of law of theory of "fiction" instead of the theory of "appearance". The company owning the ship must be proved fictitious. The court may take into consideration various elements of fictitiousness, such as unity of management, absence of participation to the profits and/or debts, unequal distribution of the dividends, the same beneficiaries or associated owners.

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

Yes, if property is subject to rapid deterioration or expensive to keep in custody has been arrested but the court has not yet given a judgment, the bailiff is entitled to sell such property at the request of the claimant. In theory, these provisions<sup>33</sup> may apply also to ships under arrest. In practice, lapse of time of the procedure of judicial sale depends on the complexity of the case.

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28 Article 547(1) of CCP

29 Article 557(4) of CCP

30 Article 549 of CCP

31 Article 550 of CCP

32 This period shall not be less than 2 weeks.

33 Article 565, and article 568 of CCP.



# SHIP ARREST IN CAMEROON



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

In Cameroon, ship arrest as a conservatory measure is to ensure the satisfaction of a final judgment in a future action.

Cameroon has 3 (three) major sea ports (Douala, Limbe and Kribi). To these must be added the Tiko and Idenau sea ports and Garoua river port.

The competent authority to order ship arrest is the petition judge (see article 15(2) of Law n° 2006/015 of 29/12/2006 on Judicial Organisation of Cameroon) who happens to be the President of the Court of First Instance. But in practice the President of the High Court in the English Common Law jurisdiction also entertains motions ex-parte.

Ship arrest could arise from several reasons to be enumerated in question 5 below.

Ship arrest is commenced by a motion ex-parte after having sought the consultative opinion of the Department of Merchant shipping and Inland Waterways. The justifying documents are usually the bill of lading and maritime survey report or any other document(s) justifying the maritime claim. Before this petition may be granted, the creditor must first satisfy the court that a notice to pay had been served on the debtor to no avail.

Applications in view of ship arrest are filed on business days (Mondays - Fridays) during working hour (7.30 am -3.30 pm). Once the judge is of the opinion that the maritime debt is justified (if only in principle), s/he grants the application.

Ship arrest in Cameroon is effected in the hands of the captain via the services of a sheriff/bailiff who prepares a report thereof, a copy of which is addressed to the commander of the port, the competent maritime authority as well as the consul of the country of the flag of the ship.

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

The law governing ship arrest in Cameroon is the regional CEMAC Merchant Shipping Community Code of 3rd August 2001 (the code) which had its inspiration predominantly from the International Convention of 1999 on the Arrest of Ships and the Brussels Convention of 1952 on the Unification of Certain Rules on the Arrest of Ships.

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

The code being a law of special application prevails over other laws on the attachment of personal and real property in Cameroon.

Although the code is the only law governing ship arrest in Cameroon, it however makes reference to the OHADA Uniform Act relating to Simplified Recovery Procedure and Means of Enforcement of Judgments relating to the procedure for the forceful sale of ships.

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

Article 114-126 of the code prescribes the modalities for "saisie conservatoire".

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

Article 119 of the code provides that a maritime debt which may give rise to ship arrest are those circumstances which in accordance with the terms of the International Convention of 12th March 1999 relating to conservatory arrest of ships, arise from any or all of the following causes, viz;

1. Material or corporal damage, including loss of human life, on-shore or off-shore, caused by a

ship or due to its exploitation;  
 2. Assistance or rescue;  
 3. Chartering contracts or contracts on the use of a ship;  
 4. Contracts on the transport of goods by a ship;  
 5. Loss or damage to goods and luggages transported by a ship;  
 6. General average;  
 7. Towing or piloting of a ship;  
 8. Supply of products, materials or services to a ship in view of its exploitation or its maintenance;  
 9. Construction, repairs, equipment of a ship or ship yard costs;  
 10. Salary of ship captain or crew;  
 11. Pre-financed expenses of the captain, charterer, shipper or maritime agent made on behalf of the ship or its owner;  
 12. Commission(s) of the agent(s) of the ship;  
 13. Contested ownership of a ship;  
 14. Rights of co-ownership of a ship or rights to exploitation of a ship, or the proceeds of exploitation of a ship under co-ownership;  
 15. Allowance or any remuneration due on the basis of any measure or attempt aiming at preventing, avoiding or limiting a damage, attributable/imputable to a ship, including damage by pollution, by virtue (or not) of an International Convention, a legislative or regulatory text or a contract;  
 16. Costs and expenses incurred in the course of removing the remains of a ship or its cargo;  
 17. Any/all insurance premium(s) owing by a ship;  
 18. Any litigation resulting from the contract of the sale of a ship. So far however, the following debt items, inter alia, have given rise to the arrest of ships in the Cameroonian jurisdiction; viz: a) Premiums owing as a result of insurance contracts of ships; b) Supply of paint to ships; c) Delivery of various products such as petroleum and food items to ships; d) Supply of petrol, gas oil and advance payment to the owner of a ship; e) Execution of a contract of representation and ship consignment; f) Claim by the crew of a ship who prove they had been abandoned by the captain without any protection; g) Damage caused to goods in transit, etc.

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

Article 1 of the code has broadened its scope of application to include the arrest of any ship irrespectively of her flag, provided such a ship is found within the CEMAC territorial waters. The only exception provided by article 114 refers to a ship belonging to a state or exploited by a state, which was doing exclusively a government (and not commercial) service at the time the maritime claim arose.

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

Article 119 of the code prescribes different circumstances whereby a ship can be arrested. This contemplates a situation where a ship can be arrested irrespectively of the debtor. That he is a national or foreigner is of no moment. He could also be a physical or moral person.

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

According to article 114 of the code, the ship which caused the maritime claim to arise or a sister ship, meaning any other ship belonging to the person who was owner of the ship which caused the maritime claim to arise, may be arrested as a conservatory measure. However, the code is silent on ships in associated ownership.

#### 9. What is the position as regards bareboat and time chartered vessels?

The code, in its article 119(3) provides for the arrest of a ship as a conservatory measure, if the maritime claim arose from a chartering contract or contract on the use of a ship. Along the same lines, article 2(2) seems to have given a broader definition to chartering a ship to include bareboat and time chartered vessels. In effect, a ship can be arrested in Cameroon if the maritime claim arose from bareboat or time chartered vessel.

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

As soon as a maritime debt appears justified (if only in principle) a ruling may be granted for the arrest of ship as per article 120 of the code. By necessary implication there is no requirement for counter security. It is rather the debtor who shall be required to provide security under article 116 & 117 of the code if s/he desires to make one or two quick voyages for emergency purposes.

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

Article 119 provides a list of maritime claims for which a ship may be arrested. Arguably a lien may be given to secure the claim. In addition article 73 of the code provides a list of maritime claims which are privileged. If the maritime lien provides enough security, an arrest may not be necessary. Yet a maritime lien arising from a privileged maritime claim under article 73 is good reason to arrest a ship here and the procedure is the same.

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

Cameroon recognizes maritime liens under article 73-86 of the code and she is a signatory to this code which is an International Convention signed on 3rd August 2001 by the CEMAC member states.

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

An arrest order can be obtained within the same day of filing the requisite court processes if pressure is put. So if the applicant through counsel, sees the private secretary or registrar-in-chief (and talk convincingly), the application could be put on top for the urgent attention of the President of the court who may also be interested in such a file.

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

There is no requirement to provide a POA. Article 120 of the code is to the effect that the claimant must produce justifying documents relating to the maritime claim to the competent court before such petition can be granted. These justifying documents would include the bill of lading, maritime survey report assessing the claim and a notice to pay addressed by the claimant to the debtor, which notice was either simply ignored, or, the claimant was not satisfied with any reaction the debtor might have shown.

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 code is silent as to whether originals of justifying documents should be filed, or whether they may be filed electronically, or whether any document need notarisation. However, practice and procedure in the Cameroonian courts require an applicant to either make and file certified true copies of justifying documents or produce and file the originals depending on the circumstances of each case. Yet in the English Common Law jurisdiction, mere photocopies are accepted. Whether they are originals, certified copies, or photocopies, justifying documents are required at the moment of filing the motion.

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

Yes. Pursuant to article 7 of the Brussels Convention of 1952, Cameroon courts will assume jurisdiction over the substantive claim once a vessel has been arrested within its territorial waters. Indeed article 125 of the code provides that the creditor must file a substantive matter within a limited period if the arrest order would stand.

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

a) By the debtor: He shall, within one month of the arrest, file a motion on notice before the same court for the discharge of the arrest order. If successful, the release order is served on the creditor (who has the right to appeal) and the Maritime Authority (who issues an authorization to sail in the absence of an appeal) and the Port Authority.

b) By the creditor: Once he has received payment or sufficient guarantee, he shall immediately file a motion ex parte before the same court for the release of the ship or simply instruct the sheriff/bailiff to release same. Either way, he shall serve the Maritime Authority (who shall issue an authorization to sail) and the Port Authority.

c) Temporary release upon emergency: Upon the application of the debtor, the court may order a temporary release of the vessel (carrying perishable goods...) for a specific voyage (or voyages) upon deposit of sufficient guarantee.

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

In the case of a) above, no security is required. In the case of b) above, a Letter of Understanding issued by the P&I Club or endorsed by the P&I Club is sufficient. In the case of c) above, the law talks of sufficient guarantee which we interpret to mean funds enough to cover the debt.

19. Does security need to cover interest and cost?

Yes.

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

Yes.

21. How long does it take to release a Ship?

If the application for release is initiated by the debtor in a disputed case it may take from one month to two years or more depending upon whether there are appeals or not.

If on the other hand the application for release is initiated by the creditor, it may take between a couple of hours to couple of days. In the case of temporary release it takes a couple of hours.

22. Is a procedure to contest the arrest?

Yes. The debtor may, within one month of the arrest, file a motion on notice before the same court contesting the arrest. If he succeeds he may claim damages for unjustified arrest.

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

Article 125 of the code is unambiguous that under pain of forfeiture, the claimant(s) have a statutory period of 01 (one) month to institute legal action or file the necessary court processes leading toward obtaining an executory formulae.

24. Do the courts of your country recognize wrongful arrest?

Yes. Article 126 of the code gives its blessings to a ship owner whose ship was wrongfully arrested and he obtained a release order thereafter. Thus the ship owner is entitled to sue for damages if he has suffered loss as a result of immobilization of the ship.

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

Article 52-72 of the code provide for co-ownership of a ship, meaning the ship could be owned by a corporation. The OHADA Uniform Act provides for the piercing and lifting of the corporate veil and the courts here do enforce it.

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

It is logically unwarranted to sell a ship, the object of litigation, *pendente lite*. If that were to be the case, the litigation would commit abortion instantly after such a premature sale. However under some special circumstances yet to be contemplated by our legislations and practice and procedures, a ship may arguably be sold *pendente lite*.

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*He gave up teaching in the University of Douala where he lectured law of Torts and civil procedure to concentrate on legal practice wherein he specializes in International Commercial and Corporate Law besides his day to day General Practice. The firm's clients say he is reliable. As Maritime Lawyer, he arrests up to 20 ships per year.*

# SHIP ARREST IN CANADA



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

Ship arrest in Canada is usually simple and relatively inexpensive. Three documents are required:  
a. Statement of Claim to commence the action briefly setting out the relevant facts to establish *in rem* jurisdiction.

b. Affidavit to Lead Warrant, which can be sworn by the solicitor upon information and belief.

c. Warrant for Arrest issued by the Court to the Sheriff.

In Canada, it is not required that the Sheriff go into possession of the ship following arrest, unless specifically ordered by the Court. Therefore, the only costs to arrest are disbursements to the Court and Sheriff and the legal costs to prepare the documentation. If the matter is straightforward, arrest can be done for as little as Cdn.\$2,500 to \$3,500.

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

Canada has not acceded to any of the Arrest Conventions. The grounds for arrest are found in domestic legislation.

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

There is no other way to arrest a ship but it may be seized through other processes described in the next answer.

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

In appropriate circumstances, Canadian Courts may grant Mareva Injunctions with respect to seizure of a defendant's assets within the jurisdiction. A vessel may also be seized and sold as an asset of a judgment debtor to satisfy a debt.

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

Arrest is available for a wide range of claims for which there is *in rem* jurisdiction including, per s. 22(2) of the *Federal Courts Act*, claims for or involving:

- (a) possession or ownership of a ship or proceeds of sale of a ship;
- (b) questions between co-owners of a ship with respect to possession, employment or earnings of a ship;
- (c) mortgage or other charges, bottomry or respondentia;
- (d) damage, or loss of life or personal injury, caused by a ship;
- (e) damage to or loss of, a ship including its cargo or equipment;
- (f) carriage of goods on a ship under a through bill of lading;
- (g) loss of life or personal injury occurring in connection with the operation of a ship;
- (h) loss of or damage to goods carried in or on a ship including loss of or damage to passengers' baggage;



- (i) agreements relating to the carriage of goods or charter parties;
- (j) salvage;
- (k) towage;
- (l) pilotage;
- (m) necessities for the operation or maintenance of the ship including stevedoring and lighterage;
- (n) contracts relating to the construction, repair or equipping of a ship;
- (o) wages of master, officer or crew of a ship;
- (p) claims by master, charterer or agent of a ship or shipowner in respect of disbursements, or by a shipper in respect of advances, made on account of a ship;
- (q) general average contribution;
- (r) marine insurance; and
- (s) dock charges, harbour dues or canal tolls.

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

Yes, although the Canadian Courts will recognize sovereign immunity but not for government-owned commercial ships.

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

As a general principle, other than for maritime liens and certain statutory rights in rem, the ship owner itself must be liable for the debt in order to arrest. One exception is if the charterer acts as the ship owner's agent when incurring the debt. Additionally, if the law of the contract governing the supply of ship's necessities grants a maritime lien to the supplier, then the supplier can arrest in Canada to enforce the lien even if that same claim would not otherwise constitute a maritime lien under Canadian law. Canadian suppliers of goods, materials or services (other than stevedoring and lighterage) to foreign ships may also claim a maritime lien even if the debt was incurred by the charterer of the ship. See also the answer to Question 9 below.

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

Section 43(8) of the Federal Courts Act permits sister ship arrest. However, absent fraud, the ownership interests of the two ships must virtually be identical to establish the right to claim against a sister ship. A claimant may arrest the offending ship or a sister ship but not both. However, a creditor cannot enforce a maritime lien as against a sister ship and still rank ahead of any mortgage because section 43(8) provides only a statutory right *in rem* against sister ships.

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

Subject to the exceptions described in 8, above, in the instance of both bareboat and time chartered vessels, and claims for necessities, the claimant bears the onus to prove that the charterer was acting as agent of the owner in order to advance a claim *in rem*. This is easier to establish with bareboat chartered vessels. As well, with respect to stevedoring services, it is deemed by domestic legislation that the creditor may arrest the ship for unpaid services incurred by a bareboat charterer, so long as the ship remains under charter to the bareboat charterer.

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

Countersecurity is not required for the arrest. However, if the plaintiff is a foreign entity without any assets in the jurisdiction, security for costs of the litigation, should that party lose the case and be ordered to pay costs to the defendant, is often ordered (if such an order is sought by the defendant).

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

The procedure is the same. However, in the case of a maritime claim which does not give rise to a maritime lien, if ownership of the ship has changed subsequent to the cause of action *in rem* arising but before commencement of the action, the *in rem* liability of the ship is extinguished (subject to certain statutory exceptions).

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

Canada recognizes the traditional English maritime liens but is not a party to a Convention with respect to them. Canada also recognizes maritime liens for pilotage and for the Canadian supply of goods, materials or services to, or a contract for repair or equipage (but not construction) of, a foreign vessel. If a foreign claim constitutes a maritime lien under the applicable foreign law, Canada will recognize the lien even though the same claim would not constitute a lien under Canadian law.



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

If we are provided with all the documents evidencing the debt or claim enabling the solicitor to swear the Affidavit to Lead Warrant, and the vessel is located in the port of Vancouver during normal business hours we can arrest in as little as 90 minutes. Otherwise, it can require up to 24 hours depending on the ship's location in Canada.

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

No, but to swear the Affidavit to Lead Warrant, we need written or oral advice from the claimant or his representative of the specific amount owing and the reason for the claim.

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

No original documents are required to arrest. Should the matter eventually proceed to a trial, original documents may then be required.

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

Subject to an application from the defendant on the basis of *forum conveniens*, the Court will generally keep jurisdiction. If the Court agrees to stay the proceeding in favour of *forum conveniens*, it will generally require that the arrest security be transferred to that alternate jurisdiction so that the plaintiff is not prejudiced. In the instance of an arbitration agreement, the Court may order a stay to enforce the arbitration agreement, but again the arrest security should stand wherever the arbitration is taking place. For cargo claims, Canada exercises Hamburg Rules - style jurisdiction, subject again to arguments of *forum conveniens*.

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

Unless a caveat against release from arrest has been filed, arrested property may be released by 1) consent of the arresting party, 2) discontinuance or dismissal of the related action, or 3) upon: a) payment into Court of the amount claimed; b) the appraised value of the arrested property; or c) where cargo is arrested for freight only, the amount of the freight.

Alternatively, bail may be posted, the amount of which shall be agreed between the parties or set by the Court. Upon service of a release from arrest document issued by the Court to the sheriff and payment of any related costs or fees of the sheriff, the property is released. The Court may also, upon motion, order the release the ship at any time, without bail.

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

Unless the parties privately agree upon a P&I LOU as security, the Rules of Court provide that security or bail may be in the form of a bank guarantee, surety company bond or bail bond in the Court approved form, or cash paid into Court.

19. Does security need to cover interest and costs?

The appropriate security is based on the plaintiff's "best arguable case" including interest and costs, but limited by value of the arrested property. Typically the allowance for interest and costs is 25% to 50% of the claimed amount.

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

While technically not sufficient under the Rules of Court in Canada, P&I LOUs are routinely negotiated and accepted by plaintiffs as sufficient security to prevent or release an arrest.

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

Practically, an arrested ship can be released forthwith upon the express consent of the plaintiff and is free to sail. However, the Court must issue a release from arrest document and the Sheriff be paid all fees in full before the release is technically effective. If the arrest is contested and a motion to Court to release the arrest warrant is sought, it can take at least 1-2 days or more depending on the urgency and the Court's schedule and willingness to hear it on a rush basis.

22. Is there a procedure to contest the arrest?

Yes, the contesting party may bring a motion in Court seeking an order to quash or set aside the arrest and release the property on the basis that the arrest was done without proper jurisdiction or grounds, or was otherwise wrongful. On occasion the parties will agree upon an interim

vessel may sail and to mitigate any possible claim for damages for wrongful arrest.

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

Except as where otherwise provided, Canada's *Marine Liability Act* requires that claims for all maritime matters be commenced no later than three years after the day on which the cause of action arose. By statute Canada applies the *Athens Convention*, *LMCC*, *Hague Visby Rules*, *Bunker Convention* and others. These specific time limitations will trump the general 3 year provision. The effect of contractual limitation periods under the *Marine Liability Act* is not yet clear.

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

Canadian law on wrongful arrest follows that of the UK. Damages for wrongful arrest can be awarded only when the owner of the arrested ship proves that the action was commenced with malice or gross negligence.

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

Canadian Courts will generally respect the corporate veil except in the instances of fraud.

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

The Court will consider sales *pendente lite*, especially if the ship is a deteriorating asset that the interested parties are not maintaining, and is likely to be sold in any event. The length of time to sell is largely determined by the degree of resistance from the ship interests. It can be done in as little as two months – the Court order must be obtained for the sale, the ship appraised, the sale advertised and bids accepted and Court approval of the specific sale granted.

*\*Shelley has practiced maritime law for more than 20 years and has been involved in dozens of ship arrests and priority disputes. Her practice includes all aspects of maritime law. She is the Western Vice President of the Canadian Maritime Law Association and is recognized by Best Lawyers, LEXPERT and Who's Who in Shipping as one of the top maritime lawyers in Canada. She is ranked Band 1 for Shipping law in Canada by Chambers Global, as is the firm's maritime practice group.*

*\*Jason is a partner at Bull, Housser & Tupper LLP in Vancouver, Canada and has practiced maritime and transportation law for over 13 years. He acts for clients in a wide range of commercial maritime, transport and insurance matters. He has given presentations in Canada, the United States and Europe on arrest practice and enforcing maritime claims in Canada. He is a Member of both the Canadian and US Transportation Lawyers Associations. He is a Member of Canadian Maritime Law Association and has been ranked as a leading lawyer in Canada in the field of maritime law.*

# SHIP ARREST IN CHILE



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

The list of privileged credits (i.e. credits which enjoy a special status and may be deemed to be statutory lien) is contained in Articles 844 to 846 of the Code of Commerce. The creditor or title-holder of a listed privileged credit may request the duty Civil Court of the port where the vessel presently is or is expected to arrive to place the vessel under arrest.

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

Chile has neither ratified nor acceded to any of the International Conventions regulating the arrest of ships. However, according to the *"travaux préparatoires"* of Book III of the Code of Commerce, the drafting committee took into consideration the International Conventions of 1926 and 1967 on maritime liens and mortgages. In any event, the grounds for arrest are found in Book III of the Code of Commerce.

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

There is no other way to arrest a ship other than through the process described in the next answer.

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

Under the Code of Civil Procedure it is possible to obtain a court ruling ordering the retention of goods. The retention (in this case, of a vessel) requires counter-security from the petitioning party as well as evidence for the petition to be granted. In addition, only a vessel under the ownership of the debtor may be retained.

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

In Chile a vessel may be arrested in order to exercise a privileged credit or to enforce a final judgment that may result in the judicial sale of a vessel. The list of privileged credits is contained in articles 844 to 846 of the Code of Commerce.

These are:

Art. 844: The following credits enjoy the privilege over the vessel, with preference over the mortgages and in the order set down hereunder:

1. - Legal costs and other disbursements caused by reason of a suit, in the common interest of the creditors, for the preservation of the vessel or for its forced alienation and distribution of the yield;

2. - The remunerations and other benefits arising from the contracts of embarkation, in accordance with labour and civil law, which regulate the concurrence of these credits, together with the emoluments paid to the pilots at the service of the vessel.

This privilege shall apply to the indemnities which are due for death or personal injuries of the servants who may survive ashore, on board or in the water, and always provided that they arise from accidents related directly from the trading of the vessel;

3. - The charges and rates of ports, channels and navigable waters, together with fiscal charges in respect of the signaling and pilotage;

4. - The expenses and remunerations due in respect of salvage services rendered and general

average contributions. This same privilege shall be applied to the reimbursement of expenses incurred by the authority or third parties, in order to prevent or minimize pollution damages or oil spills of polluting substances to the environment or third party property, when the fund of limitation of liability has not been constituted as established in Title IX of the Law of Navigation, and

5. - The indemnities for damages or losses caused to other vessels, to port works, piers or navigable waters or to cargo or luggage, as a consequence of the collision or other accidents during navigation, when the respective action is not susceptible to be founded upon a contract, and the damages in respect of personal injury to the passengers and crew of these other vessels.

Art. 845: Mortgage credits shall be preferred to those detailed in the following article and shall be regulated by the provisions contained in paragraph 5 of this Title. This same preference shall be applicable to the pledge of minor vessels.

Art. 846: Moreover, the following shall enjoy privilege over the vessel in the order numerated, but in subsequent degree to those indicated in article 844:

1. - The credits in respect of the sale price, construction, repair and equipment of the vessel;
2. - The credits concerning the supply of products or materials, which are indispensable for the trading or conservation of the vessel;
- 3.- The credits arising from contracts of carriage of passengers, charter parties or carriage of goods, including the indemnities for damages and short delivery of cargo and luggage, and the credits deriving from damages in respect of pollution or other polluting substances.
- 4.- The credits in respect of disbursements incurred by the master, agents or third parties, on account of the owner, for the purpose of trading the vessel, including agency services, and
5. - The credits in respect of insurance premiums concerning the vessel, be the hull & machinery or third party liability insurance.

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

Yes, the flag a ship flies is irrelevant provided that the requisites for granting the arrest are met.

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

In the event the vessel is arrested in order to exercise a privileged credit, yes. In case of a retention under the Code of Civil Procedure, no; since only vessels under the ownership of the debtor may be retained.

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

It is possible to arrest a sister ship provided she is under the same ownership, management, or is operated by the same person. In few words, with regard to liability *in rem* under Chilean law, there is no need to have the connection between the relevant person (the person liable *in personam*) who also owns the ship to be arrested. As a creditor, you only need to have a credit that falls within the list of privileged credits, which is the basis for arresting a vessel according to the Code of Commerce. Provided that you have a privileged credit, you can arrest either the offending vessel or any sister ship. Under Chilean law, the definition of a sister ship is wider than that under English law. Sister vessels are not only those under the same ownership (as if both vessels are owned by the debtor) but also vessels under the same management and/or operation. Consequently, it is possible to successfully arrest vessel "x" as a sister ship of vessel "y" on condition that both vessels are managed or operated by the same company, and even if they are owned by different companies.

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

In Chile there is no special position in regards to Bareboat and Time - Chartered Vessels. The title holder of a privileged credit may arrest a vessel provided that she is the material object on which the privilege is exercised or if she falls within the definition of a sister ship as mentioned in N° 8 above.

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

No, Courts do not normally require counter-security in order to arrest a ship to exercise a privi

leged credit. However, the Court may ask for security. In the case of a retention under the Code of Civil Procedure, the Court will require counter-security.

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

Yes, since in Chile it is only possible to arrest invoking a privileged credit or to enforce a final judgment that may result in the judicial sale of the vessel.

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

The maritime liens recognized by Chile are only those listed in N° 5 above.

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

All things considered (preparation of the application, preparing free translations of the supporting documents, filing the application for arrest with the Court, notifying the Harbor Master the Court ruling placing the vessel under arrest, etc.), it may take at least two days, and this is subject to N° 14 below.

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

Yes, a POA is mandatory. This occasionally proves to be a problem if the arresting party does not have permanent legal representation in Chile, or if none of its vessels have called at Chilean Ports (in which case the port agent or the master of the vessel may grant the POA.) In this scenario, the POA needs to be granted abroad before a Notary or the Chilean Consulate, and in either case the legalization of a POA may be quite lengthy thereby defeating the natural quickness required in case of an arrest.

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

In general, provided that the petitioning party attaches sufficient documents or evidence that "constitutes a presumption of the right being claimed", the Court must accede to the petition without further formalities. As a result, provided the petitioning party has same evidence, which the Court may deem to be a good presumption of the privileged credit, the Court should grant the arrest. Consequently, other than the POA, no particular original documents need to be attached. However, if original documents are available they should be used.

Chile has ratified the Apostille Convention, but internally its application has not been implemented yet.

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

Yes, the substantive claim will normally go to arbitration unless there is an agreement (usually an arbitration clause) submitting disputes to a foreign Court and provided that such an agreement resulted to be enforceable according to Chilean law. In that situation, the Court will not assume jurisdiction.

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

The procedure to release a vessel from arrest is to either present to the Court the exact guarantee (nature and amount) ordered by the Court, in which case the Court has to lift the arrest immediately, or with the agreement of the arresting party, present an alternative guarantee, for instance, an LOU, for the amount ordered by the Court or for a different amount negotiated with the claimant. Alternative guarantees may be presented, but whether they are suitable substitutes is decided by the Court, who will normally submit the situation to the arresting party.

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

Normally claimants will ask for and the Courts will order a Bank Guarantee or equivalent, such as, a cash deposit.

19. Does security need to cover interests and costs?

The security requested by the arresting party will be an estimation of the amount that they will claim, which normally includes interests and costs.

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

As mentioned before, normally the only condition to lift the arrest of a vessel is to present the



exact guarantee (nature and amount) requested in the petition to arrest. These guarantees will be a Bank Guarantee or equivalent. LOUs can be presented, and are accepted by the Tribunals, if they have been agreed with the arresting party to be an acceptable guarantee. The presentation of an LOU as an alternative guarantee without the arresting party's consent will normally result in that the Court will submit the situation to the arresting party, who will have 3 working days to consider their decision.

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

If the guarantee produced is exact in nature and amount as the one requested in the petition to arrest, the Court must lift the arrest immediately. However, sometimes problems are experienced with the bureaucracy of some Courts.

#### 22. Is there a procedure to contest the arrest?

Yes, however this will give rise to an "incidental proceeding" in which the Tribunal will submit the situation to the arresting party, who will have 3 working days to consider the answer, and then the issue will be finally resolved by the Tribunal, which is something that will not happen immediately. In addition, during all this time the ship will remain under arrest until the issue is resolved.

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

Once the arrest has been granted, there is a 10 working day time limit (which may be extended to a maximum of 30) to present the lawsuit along with the petition for the appointment of an arbitrator, as referred in N° 16, and request the arrest to be maintained. This may present a substantial problem when the arrest is obtained in Chile to secure the enforcement of a future judgment or award issued abroad. Namely, if the creditor wants to start substantive proceeding abroad, within the time limit of 10 or eventually 30 working days the creditor will need to prove to the satisfaction of the Chilean Court that granted the arrest, that the relevant substantive proceeding has been started abroad. For this the documentation required abroad to start the proceeding will need to be legalized up to the Chilean Consul abroad. Subsequently, the documentation will need to be sent to Chile to complete its legalization and then presented (duly translated) to the Court which granted the arrest. If the arrest has been obtained to enforce a foreign judgment or award the exequatur from The Supreme Court is sufficient to comply with this requirement.

#### 24. Do the courts of your country acknowledge wrongful arrest?

Yes, especially in case of failure to commence substantive proceedings within the time limit of 10 or eventually 30 working days, this results in the immediate cessation of the arrest and in liability for the arresting party.

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

The possibility to pierce that corporate veil exists. However, there is some very incipient case law that could be invoked to try to pierce the corporate veil.

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

No, it is not possible to sell the ship pendent lite, unless the Court authorizes it or the claimant provides his consent.

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# SHIP ARREST IN CHINA (Questions 1 to 9)



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

China is one of the major maritime jurisdictions in the world. It is certainly not a ship arrest haven, but it is a convenient place to arrest a ship at reasonable costs and relatively rapid speed.

A ship can be arrested either for the enforcement of a judgment or arbitral award, or far more frequently, for obtaining security for a maritime claim. The application can be made either before an action on merits has been commenced or thereafter. A Chinese maritime court has jurisdiction to arrest a ship which is located within its jurisdiction even if the parties have agreed to refer the substantive claim to a foreign court or arbitral tribunal.

The law governing the arrest of ships is mainly the Maritime Procedure Law, 2000 ("MPL"). According to the MPL, to obtain an arrest order, the claimant shall file with the relevant maritime court a written application together with supporting documents and a prima facie maritime claim has to be made out. More importantly, counter security will usually be required. It can be cash deposit or guarantees issued by local banks or insurance companies. The amount of the counter security is at the discretion of the court and may vary from court to court: it can be 30 days hire of the ship to be arrested or a certain percentage of the claim amount (up to the full amount).

The courts will immediately release the ship when security is posed by the respondent which can likewise be in cash deposit or guarantees issued by local banks or insurance companies or in other forms acceptable to the claimant.

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

China is not a party to the 1952 or 1999 Arrest Convention. However, Chinese law on the arrest of ships is generally in line with the provisions of the 1999 Arrest Convention.

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

A ship may also be arrested for a non-maritime claim, however, such an arrest will be granted only after the claimant has obtained a final and enforceable judgment or arbitral award. Furthermore, although the application for arrest may be filed with an ordinary court, the arrest shall normally be executed through a maritime court (or its superior court in appropriate cases).

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

Arrest of a ship is a special type of property preservation measures. Other measures include the attachment of other properties (tangible or intangible) and the freezing of bank accounts etc. These measures can be applied for alternatively or in addition to the arrest of a ship if the value of the ship to be arrested is insufficient to secure the claim.

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

The MPL lists 22 types of maritime claims which are qualified for arrest of a ship. These 22 types of claims correspond almost identically to the 22 categories of maritime claims defined in Article 1.1 of the 1999 Arrest Convention as to which arrest of ship is permissible. This list has probably included almost all kinds of maritime claims that may be encountered in real life.

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

Yes. What flag a ship flies is immaterial and as long as the relevant conditions for arrest are met the ship can be arrested.

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

Basically, a ship can only be arrested if her owner is the debtor of a maritime claim. There are essentially two exceptions:

The first is related to the arrest of a ship under a bareboat charter — such a ship can be arrested if the bareboat charterer of the ship is liable for the maritime claim and is the bareboat charterer of the ship when the arrest is effected.

The second exception is related to maritime liens. In respect of claims which enjoy maritime liens, e.g. claims for crew wages, port charges, salvage, loss of life or personal injury or other claims in tort (e.g. loss of or damage to property arising from a ship collision), the ship which gave rise to the maritime liens can be arrested even if she has changed hands (i.e. in the hands of an innocent party).

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

Sister ships can be arrested. A “sister ship” means any ship (other than the particular ship giving rise to the maritime claim) which is owned by the ship-owner, bareboat charterer, time charterer or voyage charterer who is liable for the maritime claim. However, the arrest of sister ships is not available to claims with respect to ownership or possession of a ship.

The arrest of associated ships is not allowed, unless in the very extraordinary cases where the court is prepared to pierce the corporate veil and to find that the relevant companies have lost their separate corporate personalities (i.e. they are in effect one entity).

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

As to ships under bareboat charters, please see the comments under Question 7. Time chartered ships are normally not subject to arrest.

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# SHIP ARREST IN CHINA (Questions 10 to 26)



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

In principle, the maritime court, having entertained an application for ship arrest, may require the claimant to provide counter-security. The form and amount of counter-security are determined by the maritime court. However, if the shipowner proves that the amount of counter-security is obviously low, they may apply the court for increasing it. In practice, such counter-security can be made in form of cash, negotiable instruments or a guaranty letter from a Chinese bank or other Chinese financial institution. However, in some circumstances the maritime courts do not require the claimant to provide counter-security, e.g. in the case of a crew wages claim or a personal injury claim.

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

Yes. There is a clear difference between claims which give rise to a maritime lien and other types of claim. The distinction is: With regard to the claim with maritime lien, the arrest shall be allowed provided that it is against the ship giving rise to the maritime lien. As far as other types of claim are concerned, because there is not a concept of "action in rem" but "action in personam" in the Chinese legislation, the ship may not be arrested unless it is the property of the liable person.

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

Yes. There are five types of maritime claims for which maritime liens can be exercised:

- (1) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew members;
- (2) Claims in respect of loss of life or personal injury occurred in the operation of the ship;
- (3) Payment claims for ship's tonnage dues, pilotage dues, harbor dues and other port charges;
- (4) Payment claims for salvage payment;
- (5) Compensation claims for loss of or damage to property resulting from tortious act in the course of the operation of the ship. China is not a party to any conventions on maritime liens.

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

It depends on how fast the claimant may arrange for a required counter-security. If we are provided with all the documents evidencing the debt or claim, an arrest may be done within 48 hours. Usually, an application for arrest of a ship should be presented to the court within its normal working hours. However, in urgent cases the court may, at its discretion, decide and execute the arrest after normal working hours.

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

Yes, the following documents should be submitted to the maritime court:

- (1) A written application signed and affixed with a company stamp.
- (2) Preliminary and basic supporting evidence.
- (3) Counter security. This is what the maritime court gives the most weight to. In most cases the amount of the counter security should be equal to the hire or loss of earning of the ship on a one-month basis. The maritime court usually only accept the letter of guarantee issued by a Chinese bank or insurance company or P&I club rather than that of a foreign party.

- (4) Power of attorney.
- (5) Certificate of identity of legal representative.

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 maritime court will require the original application, POA and Certificate of identity of legal representative to be submitted. In the urgent circumstances, the court may be persuaded to accept a faxed application followed by the original. Power of attorney and Certificate of identity of legal representative forwarded from outside the territory of China should be notarized by the notary public of the country of origin and the legalized by the Chinese embassy or consulate general in that country. However, our experience is in an urgent case, we may try to persuade the court to accept the original Power of attorney and Certificate of identity of legal representative first and then those in notarized and legalized form after the arrest has been done.

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

Yes. The claimant may bring an action in respect of the maritime claim in the maritime court ordering arrest, unless the jurisdiction agreement or arbitration agreement between the parties provides otherwise.

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

The arrested ship should be released immediately after the respondents provide security, or after the arresting party acting on reasonable grounds withdraws his application for arrest. The arrested ship should also be released or the security provided should be returned if the arresting party has not commenced legal proceedings or arbitration proceedings within 30 days from the arresting date.

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

The parties can now negotiate on 'the form and amount of security' at any stage; the courts will intervene only when the parties cannot reach an agreement. Usually, a cash deposit or a guarantee letter issued by local banks or insurance companies is acceptable.

19. Does security need to cover interest and costs?

Yes, the claimants usually request a security covering interest and costs.

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

Unless agreed by the applicant, the courts do not accept a letter of undertaking of a foreign P&I Club. However, it is nice to see some Chinese claimants have realized that most P&I Clubs are financially strong and stable, and are keen to safeguard their credibility and to see their Letters of Undertaking being honored.

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

There are no specific rules for it, but in experience, the ship arrest is usually lifted within 24 hours.

22. Is there a procedure to contest the arrest?

Yes. If the respondents are dissatisfied with a ship arrest order, they may apply for review not more than once within 5 days after receipt thereof. The courts shall give the result of the review within 5 days. Execution of the ship arrest shall not be suspended during the period of the review. Where a ship arrest is objected by an interested person, the courts shall examine the objection and lift the arrest if the reasons therefor are justified.

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

A time of 30 days will be granted by the Courts. Where the claimants bring an action or applies for arbitration within 30 days, or where the claimants apply for arrest of a ship during legal proceedings or arbitral proceedings, the arrest of the ship is not subject to 30 days time limit.

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

Yes. However, there is no definition for wrongful arrest or unjustified arrest under Chinese laws, but it may include a situation, where, although the arrest is reasonable at the time of arrest, it

later proves to be unjustified because the claims fail ultimately on their merits. Under Chinese judicial practice, a wrongful arrest exists where: (a) the applicant has no maritime claim for arrest; or (b) the owners of the ship arrest are not liable for the claim; or (c) security demanded by the applicant is unreasonably high. If the claimants' claim ultimately fails and constitute a wrongful arrest, the shipowner can bring a claim against the claimant for wrongful arrest and losses caused thereof, which can be secured by the counter-security provided by the claimant.

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

In principle, the piercing of the corporate veil is recognized at Chinese judicial practice. However, at Chinese laws, there is no specific provision for the concept of piercing of the corporate. The Chinese Company Law provides that where any of the shareholders of a company evades the payment of its debts by abusing the independent status of legal person or the shareholder's limited liabilities, if it seriously injures the interests of any creditor, it shall bear several and joint liabilities for the debts of the company. Under Chinese judicial practice, some courts have introduced the concept of piercing of the corporate to their cases from the angle of jurisprudence. However, it varies from court to court and from judge to judge how to determine the issue. Most courts commonly rely on the facts of mixture of assets between the shareholders and the corporation. For your information, we have successful experience in dealing with such issues in Chinese Maritime Courts.

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

Where the respondent fails to provide security within one month, and it is not appropriate to keep the ship under arrest, the claimants, having brought an action or applied for arbitration, may file an application for sale of a ship pendente lite with the maritime court. The maritime court shall, after the receipt of a written application for sale of a ship, examine the application and make an order to allow or disallow the sale. Usually, it will take about two months for a forced sale of the ship.

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# SHIP ARREST IN COLOMBIA



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

The ship arrest practice in Colombia is a procedure known by few judges. Unfortunately, in our country there is not a proper Maritime Jurisdiction, like in Panamá, where this kind of processes can be guided, therefore the arrest petitions are known and decided by residual Judges who award at Civil Circuit Courts, so it is the duty of the attorney not only to file the petition itself, but also to educate the Judge about its nature and urgency.

In order to achieve a successful arrest there are several variables like the immediacy to obtain the documents to file the petition, the accurate information about the ETA and departure of the vessel and the pressure given to the local authorities to proceed with the decree of the arrest, its execution and final lift.

It is very important to mention that a preventive arrest petition is not a lawsuit and its main purpose is to obtain a satisfactory security over a maritime credit/lien, so it not will constitute itself as an action to define in the merits of the credit claimed, under any circumstance.

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

The Decision 487 of 2000 of the Andean Community of Nations

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

Yes, there is.

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

No, the alternatives given by the Colombian Civil Procedure Code are the precautionary measures that are derived from the lawsuit that contains the substantive claim (the merits); these are the attachment of the vessel and the sequestration.

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

These are included in the article 1 of the Decision 487 of 2000, there are 22 kinds of maritime credits, which are all related to the use of vessel: losses and damages caused by her, death and injuries, salvage, tugging and piloting operations, environmental damages, fees of the shipping agent, general average, charter parties, wages of the master and crew members and others.

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

Yes, it is possible.

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

Article 41 of the Decision 478 of 2000 establishes that the arrest of any vessel that has an outstanding maritime credit will proceed if:

- The person who is her owner at the moment of birth of the credit is obliged to pay it and is also the current owner at the moment that the arrest is executed.
- If her bareboat charterer at the moment of birth of the credit is obliged to pay it and is also the current bareboat charterer at the moment that the arrest is executed.
- If the credit is based on a mortgage or lien of the same nature over the ship.
- If the credit is guarantee by a maritime lien of the Article 22 of Decision 478 of 2000 and if it is owed by the owner, bareboat charterer, manager

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

According to Article 42 of the Decision 478 of 2000, it is possible to arrest sister ships and ships in associated ownership.

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

According to articles 41 and 42 of the Decision 478 of 2000 it is possible to proceed against Bareboat, Time-Chartered and Voyage-Chartered vessels.

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

Yes, they do, according to the Colombian Civil Procedure. These are an insurance policy issued by a local insurer, a bank guaranty or a cash deposit; these counter securities must cover the 10% of the amount claimed.

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

No, the arrest petition/procedure is the same for both cases.

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

Yes, the maritime liens are recognized under the rules of the Decision 478 of 2000 of the Andean Community of Nations.

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

There is not a specific time; everything depends on the ETA of vessel and her date of departure. The attorneys in charge of the filing the petition must "chase" the judge in order to obtain the quick decree of the arrest order. Few judges in Colombia understand the nature of this kind of petition; therefore the attorneys have to be as explicit as possible at the moment of explaining it to the judge. Once the arrest order is issued this must be sent to the Harbor Master Office of the Port where the vessel is berthed.

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

Yes, a POA is required to file an arrest petition as attorney; it must be accompanied by a document that certifies that the undersigned has the faculty to submit it (This could be the certificate of incorporation or the certificate of incumbency of the creditor).

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 POA and the document that certifies that the undersigned has the faculty to submit it must have an apostille or the seal of a Colombian consul. This last one must be obtained if the Country where the POA is submitted has not ratified the Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents. Documents related with the credit alleged can be present in copy and or send via electronic.

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

Yes, The article 51 of Decision 478 of 2000 of the Andean Community of Nations establishes that the Court that orders the arrest is entitled to accept jurisdiction over the substantive claim, unless the parties have agreed any litigation before another State's Court or Arbitration.

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

Once the parties agree about the given security and the claimant party accepts and receives a satisfactory security for its claim, the creditor must proceed ASAP at the Judge's office to inform about it and to ask the lift of the arrest. Usually, and in order to obtain the release order quickly, the petition is submitted for both parties. Once the Judge issues the writ releasing the arrested vessel, this must be immediately informed to the Harbor Master Office of the Port where the vessel is berthed. If there is not agree between the petitioner and the debtor (vessel) in respect the type of warranty, the judge, according to the local rules of procedure, has 3 options, to require or local bank guaranty, local insurance bond and/or cash depot in a local bank.

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

The security must be satisfactory for the claimant party and it must be negotiated with the debtor. If such parties do not achieve a settlement regarding the security issue, the Judge may

have the power to choose a proper security and its amount. The judge will be entitled to choose between an insurance policy issued by a local insurer or a bank guaranty. As above, some cases and depending the nature of the credit, the judge can require a cash depot in a local bank

19. Does security need to cover interest and costs?

Yes, it could cover interest and costs if the parties agree so.

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

Yes, they are, but the claimant party must consider them as satisfactory, otherwise they will not be accepted.

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

There is not a specific time limit to release the ship, everything depends on the time taken for the negotiations between the parties and the speed of the Court to issue the writ that ceases the arrest order.

22. Is there a procedure to contest the arrest?

Once the debtor is notified of the writ that orders the arrest, there is a right to challenge such decision if the arrest is considered wrongful.

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

The article 53 of Decision 478 of 2000 entitles the Judge that decrees the arrest to fix a deadline to file the lawsuit on the merits, however, this is not specified in such treaty and the Colombian Laws do not have an analog rule, therefore the fixation of such is deadline is subjected to the Judge's legal reasoning.

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

Yes, they do. Therefore, it is request a counter-security to the claimant party before the arrest order is decreed.

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

Yes, the Courts acknowledge the piercing and lifting of the corporate veil.

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

Any procedure that result in a Ship's auction, must be supported in a execution title and after an execution procedure with a final judgment that order the auction.

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# SHIP ARREST IN COSTA RICA



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

Arresting a ship in Costa Rica represents a valuable tool to enforce maritime claims against ship owners and other related operators due to a lengthy process, which in turn, obligates actual Maritime Debtors to react quickly in order to release a detained vessel.

The whole process is regulated and governed under the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) and is executed as a preventive or precautionary attachment. This preventive attachment, which also constitutes a physical arrest of the ship, operates in the absence of a valid title claim with plaintiff's right of execution (Referred in our laws as "Título Ejecutivo"). Under the precautionary attachment process, the creditor holding in his favour a legitimate maritime claim, is compelled by law to post a cash bond equal to 25% of the total value of the claim or 50% for none monetary pledges (Such as a Letter of Credit or Bank Warranties). The holder of a "Título Ejecutivo", together with a formal ruling from a Court of Law, exonerates the Creditor to post any type of bonds or warranties.

It is imperative to take into consideration that the creditor filing a preventive attachment shall file the merits of the claim within a month following the precautionary arrest, providing that its non-compliance would result in losing the posted bond in benefit of the alleged debtor.

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

The International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952).

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

Yes. With a valid Maritime Lien as provided by the Maritime Commercial Code of 1853. However take into account that this Code is integrated by many outdated laws and regulations.

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

Not as a legal institution per se. However, the precautionary attachment as regulated by our Procedural Civil Code has the same effects and consequences as a "saisie conservatoire", freezing order and a Mareva Injunction, but not as extensive as the United States Federal Rule B Attachment.

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

- (a) Damage caused by any ship either in collision or otherwise;
- (b) Loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
- (c) Salvage;
- (d) Agreement relating to the use or hire of any ship whether by charter party or otherwise;
- (e) Agreement relating to the carriage of goods in any ship whether by charter party or otherwise;
- (f) Loss of or damage to goods including baggage carried in any ship;
- (g) General average;
- (h) Bottomry;
- (i) Towage;
- (j) Pilotage;
- (k) Goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) Construction, repair or equipment of any ship or dock charges and dues;

- (m) Wages of Masters, Officers, or crew;
- (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- (o) Disputes as to the title to or ownership of any ship;
- (p) Disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
- (q) The mortgage or hypothecation of any ship.

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

Yes, the vessel can be arrested irrespectively of her flag.

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

Not in all cases. There has to be a legal and economic link between the claim and the debtor. Proof of ownership or use rights (for chartered vessels) shall be presented to the Court within a month following the precautionary arrest.

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

Yes, sister ships and ships in associated ownership can be arrested as long as there is a legal and economic link between the claim and sister ship and associated ship debtor. Proof of ownership or use rights (for chartered vessels) shall be presented to the Court within a month following the precautionary arrest.

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

Any owner, bareboat charterer, operator and/or time charterer can be subject to the arrest of their vessel if there is a link between the claim and the debt. Proof of ownership or use rights (for chartered vessels) shall be presented to the Court within a month following the precautionary arrest.

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

Yes. A creditor can only file a preventive or precautionary arrest by posting a cash bond equal to 25% of the total value of the claim or 50% for none monetary pledge (Such as a Letter of Credit or Bank Warranties).

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

No. From a procedural point of view, there is no difference. However, no counter-security is required if the arrest is made based on a legitimate maritime lien.

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

Yes. Costa Rica recognizes maritime liens. The Maritime Commercial Code of 1853 provides list of the privileged maritime liens. Costa Rica has not ratified any international convention on maritime liens.

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

It may take up to 7 working days after taking into consideration the preparatory steps, e.g. drafting the claim, translating supporting documents, if any, filing the arrest claim with the Court, notifying the Harbour Master and placing the vessel under arrest.

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

Yes, we require a POA duly apostilled in order to act on behalf any Legal Entity or Person.

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

Since Costa Rica follows a preventive or precautionary attachment, in which posting a bond or counter-security is mandatory, the initial filing only requires sufficient evidence to create a presumption of the alleged maritime claim. However, within a month following the precautionary arrest, the creditor must file the merits of its claim and all the evidence, proof and documentations has then to be presented with all the formalities of the Law e.g. notarized, apostilled and translated into Spanish.



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

Not necessarily. Costa Rica ratified the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) with an expressed reserve over article 7 and as such the competent Court to address the substantive claim is the court in which the plaintiff is domiciled or the court of the vessel's flag. The reserve does not include disputes as to the title to or ownership of any ship; disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship and the mortgage or hypothecation of any ship.

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

The parties involved in the precautionary arrest have to file a joint motion to release the vessel. Otherwise, the ship-owner or its agent will have to post a counter security deposit. In either case, the physical release of the vessel should not take more than 24 hours.

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

A cash bond or non-monetary pledges such as a Letters of Credit or Bank Warranties.

19. Does security need to cover interest and costs?

Usually it has to cover the total amount of the claim plus 50% for interests, costs and fees. However the Judge has full discretion to establish the final counter security amount.

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

Generally yes and as long as the parties involved in the precautionary arrest file a joint motion to release the vessel. A self-filing of an LOU is not sufficient; the acceptance of the claimant is mandatory.

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

No more than 24 working hours, excluding weekends and holidays.

22. Is there a procedure to contest the arrest?

Yes. The ship-owner or its agent can file a claim for a wrongful arrest if the claimant does not file the merits of the claim within a month after requesting the precautionary arrest.

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

One month.

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

Yes. Plaintiff bears the risk of arresting the ship. If he loses the preventive attachment or the case on the merits, his arrest may be considered wrongful and he could have to indemnify all costs and damages caused to the ship, as a result of such wrongful arrest.

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

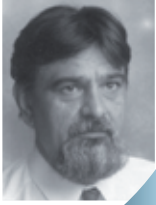
Yes but it is a rarely practice. The burden of proof is very high in order to lift the corporate veil.

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

If a ship has been arrested and the arrest is not lifted in injunction proceedings or by way of alternative security, the arrest will be maintained until the creditor has obtained a title (judgment or arbitration award). Once such title is obtained, the conservatory arrest will automatically be transformed into an executory arrest. This may be followed by a judicial/public sale of the vessel before the court, if so requested, in which case the court will determine the pre-conditions for such auction.

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# SHIP ARREST IN CROATIA



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

According to Croatian law the arrest of ships is one of the “interim measures of security of a claim” that ensures future collection of the outstanding debt that is in dispute. Apart from the arrest of ships other interim measures of security of a claim on ships are possible, but in practice are very rare.

The objective of the arrest of a ship is to make available to the creditor assets of the debtor for future enforcement. Therefore, arrested ships may be released if another security is given as replacement. The other security may be a monetary deposit, bank guarantee, P & I Club or other corporate letter of undertaking or other values that are available for enforcement if accepted by the creditor. If the creditor does not accept the offered security, the acceptability of the offered security will be decided by the court. Monetary deposits and bank guarantees are always accepted, while P&I Clubs/corporate letters of undertaking and other values on a case to case basis.

Because of various issues with international elements, and in particular the applicability of foreign laws, that are involved in the arrest of ships there are sometimes inconsistencies in the interpretation of the rules of law and in-court practice. However, such cases are exemptions, and it may be said that it is possible to obtain the arrest of a ship or obtain the release of an arrested ship in accordance with accepted international standards.

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

Croatia has adopted the continental legal system. It is a member-state of the Arrest Convention 1952. The Enforcement Act applies as a subsidiary source of rules of law to the Maritime Code that regulates arrest of ship proceedings. There is significant court practice and number of books and articles that deal with various relevant issues with regard to the arrest of ships. Maritime Code applies if there is no direct applicability of the Convention. Maritime Code Amendments in few provisions slightly differ from the Convention.

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

No, there is no other way to arrest a ship with the purpose of security of the claim. According to the Paris Memorandum the Harbour Master Office Inspectors, exercising Port State Control authorities, can order the detention of a ship. The Custom authorities and the Criminal Court can hold the ship in temporary seizure for customs clearance or criminal proceedings purposes, but in practice very rarely and under very restricted terms.

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

Not in the sense of these alternatives and as these alternatives are known internationally. However, the Maritime Code provides that every interim measure that would achieve the objective of security of a particular claim may be granted. In other words, subject to the nature of the claim,

various injunctions with regard to the ship are possible, but rare in practice.

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

A ship can be arrested for:

- maritime claims as provided by Art. 1 of the Convention; apart from bottomry and ownership claims, that are not provided in the Maritime Code, when Convention is not applicable,
- maritime liens as maritime privileges (separately provided in the Maritime Code),
- claims secured with mortgage, pledge or other similar registered encumbrances on the ship according to the laws of flag (separately provided in the Maritime Code).

For all other claims notwithstanding to the nature, if there is no reciprocity between Croatia and the state of flag.

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

Yes, there are no limitations for the arrest of ships with regard to the flag of the ship. The Flag of ship affects to the applicability of the Convention or the Maritime Code, the existence of maritime privileges (liens) and registered encumbrances. It also possibly affects some other underlining issues subject to particular matters.

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

For maritime privileges (liens) and registered encumbrances, yes.

In the case of direct applicability of the Convention, the answer is yes, as it is provided in the Convention.

For maritime claims depends on the applicable law for merits of the matter.

The main principal of Maritime Code as regard to the debtor and the arrested ship is that the arrested ship as an asset is the property of the debtor. In Croatia there is no "*in rem*" proceedings, but only "*ad personam*".

If the foreign law that applies to the merits of the matter provides "*in rem*" liability, and the debt is born with regard to the ship, the answer is yes. In this case the opposing party in the application for arrest should be the debtor who is not the owner of the ship.

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

Sister ship and ship in associated ownerships may be arrested although in these cases the Maritime Code also slightly varies to the Convention.

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

According to the Maritime Code ships in Bareboat or Time Charter may be arrested if there is direct applicability of the Convention, or if applicable foreign law for merits of the matter provides "*in rem*" claim, or if the principal debtor is the owner of the ship in Bareboat or Time-Charter (see answer under point 7.).

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

No, the Courts do not require a counter-security in order to arrest a ship. However, the ship's interests may apply for counter-security in case of wrongful arrest as condition for maintenance of already ordered arrest. If the application is accepted and the counter-security is not placed within the ordered time period, the arrest will be lifted and the arrested ship released.

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

No, from the procedural point of view there is no difference.

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

Yes, Maritime Code defines maritime liens as maritime privileges. Provisions on maritime liens of the Maritime Code correspond to the International Convention on Maritime Liens and Mortgages, Geneva 1993. Croatia has not ratified any convention relating to maritime liens. However, since Maritime Code provides that a ship may be arrested for maritime liens and since according to the conflict of law rules the law of flag applies to maritime liens, a ship can be arrested for maritime liens.

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

In principal several hours are needed for the preparation of the application, translation of supporting documents by a licensed court interpreter (one is part of our office staff) and to file the

application for arrest with the Court. The Court will check with the Harbour Master Office the expected time of sailing and will decide on the application urgently before sailing, if in pressure of time. Arrest matters are always considered urgent and in most cases the Court will decide within one or two days. The ship is arrested when the Harbour Master Office serves the Master with the arrest order and takes away the Ship's documents which remain in custody of Harbour Master Office during the arrest.

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

Yes, the POA is a mandatory requirement of the arrest proceeding. For the arrest application a faxed or e-mailed copy is sufficient, while the original must be submitted to the Court within few days. No special form or legalization is required to grant a POA to an attorney at law. The applicant must make the claim probable. Probability is a lower level of proof. The difference between a claim made probable and a proven claim is qualitative. Therefore it is recommendable that as stronger as possible evidences of the claim are provided.

The applicant should make probable that the ship in question can be arrested, usually meaning evidence of ownership. There is no need to submit an extract from the Ships' Register, but any other public or private document, including electronic data is sufficient.

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

No original documents are required, copies are sufficient, apart from the application for arrest that must be in original, as well as POA that must be submitted within reasonable time after the filing of the application. Electronic filings with the Court are not possible for time being, but there are preparations in course and electronic filings with the Courts will be possible in the future. There are no documents that should be notarized or with apostille.

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

Yes, unless there is agreed or exclusive jurisdiction of another country, or if no arbitration is agreed between the parties. In latter cases the courts will accept that the arrest is properly justified if the litigation or arbitration are initiated in other jurisdictions.

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

The ship will be released from the arrest if; (1) the applicant withdrew the motion for arrest, (2) if the applicant agreed to replacement security, (3) if the Court accepted replacement security, or (4) the opposing party's remedy was accepted and Arrest Order set aside.

In the first two cases the Court will issue Release Order within one or two hours from the receipt of respective parties' submissions.

In the two latter cases Release Order will be included in the Court's decision on acceptance of replacement security or acceptance of the legal remedy.

In all case Release Order will be granted as the matter of urgency.

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

General provision of Maritime Code is that the security must be available and transferable to the applicant. Further, the applicant should notify the Court whether agreed to the security. If the applicant notified the Court that it agreed to offered security, the Court will immediately release the vessel from arrest.

When the applicant did not agree with the security, the Court will decide whether offered security is accepted or not. If yes, the vessel will be released immediately.

In the court practice it is clarified that monetary deposit and domestic bank guarantee (usually granted against foreign bank counter-guarantee) are always accepted by the Court. P&I LOUs are mostly accepted (see also answer under point 20). Other corporate guarantees, LOUs and other values are considered on case to case basis, but rarely acceptable.

#### 19. Does security need to cover interest and costs?

Yes, the security must cover the interests and costs. Usually, security amount is approximately 25 percent higher than the amount of the principal claim.

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

P&I LOUs issued by the Clubs members of IG and highly ranked by reputable rating company are always accepted by the Courts. Other P&I LOUs are considered on case to case basis.

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

Release of the ship is always considered by the Courts with urgency. It takes one to two hours for the Court to issue Release Order and serve it to the Harbor Master Office.

## 22. Is there a procedure to contest the arrest?

Yes, the opposing party may place the remedy.

Since the Arrest Order is granted "*ex parte*" the first instance Court may reconsider the matter on the ground of the remedy and set aside the Arrest Order if it found remedy grounded. Otherwise the remedy will be decided by the Court of Appeal. The Courts should decide on remedy as matter of urgency.

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

As a matter of law it is mandatory that the arrest is justified by initiating the proceeding in the merits within 15 days from the service of the Arrest Order. In case the applicant fails to undertake legal action within the time limit, or notify the Court accordingly, on motion of the ship's interests the Court will set aside the Arrest Order and release arrested ship.

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

Yes, the Courts acknowledge the wrongful arrest. In case of a wrongful arrest the ship's interests are entitled to claim indemnity from the applicant who wrongfully arrested the ship. The claim for indemnity should be placed in the same arrest proceedings if it is still in course. If the arrest proceedings is terminated the claim should be placed in a separate litigation proceedings.

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

Piercing (lifting) of the corporate veil is known to domestic law, however there is not sufficient and proper court practice that acknowledges this institute. The same is in arrest matters. There have been very few cases with regard to the piercing of corporate veil. However, it may be expected that in future there will be more cases that will clarify this institute and the terms of applicability.

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

Maritime Code has no provisions on *pendente lite* sale. Enforcement Act, that is subsidiary source of law in arrest of ships proceedings, provides *pendente lite* in certain circumstances that might be applied also in the case of arrested ships. It may be said that there a legislative frame for *pendente lite* sale exists. It is also an issue that should be clarified in future.

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# SHIP ARREST IN CURACAO



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

In Curacao, as in the other (is) lands of the Netherlands Caribbean and in the Netherlands, the procedure for arresting a vessel is straightforward and quick. When petitioning for an arrest a claimant can suffice with only a brief substantiation of its claim. Normally the Curacao Court will allow the arrest for the principal increased by 30% for interest and costs. The attachment is made on board the ship by the bailiff. Ships under arrest in the Port of Curacao will not be able to sail without the cooperation of local authorities (pilot service, towage etc.), which cooperation will not be given without confirmation from the arrestor that the arrest has been lifted. A conservatory arrest is to be lifted against sufficient guarantee. In summary proceedings the arrestee may demand lifting of the arrest. In case of wrongful arrest the arrestor will be liable for damages. A conservatory arrest will establish local jurisdiction in case elsewhere a judgment executable in Curacao cannot be obtained.

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

Curacao is party to the 1952 Brussels Arrest Convention. The Convention is not incorporated in Curacao Law and only applies when a conservatory arrest is sought of a ship flying the flag of a country being a party to this convention.

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

In case the 1952 Brussels Arrest Convention does not apply conservatory arrest of a vessel is allowed for all claims recoverable on the vessel including any claim against the owners. Executory arrests are allowed with regards to judgments rendered within the Kingdom of the Netherlands.

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

No.

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

In case the 1952 Brussels Arrest Convention is applicable arrest of a ship is only allowed for maritime claims as defined in the Convention. If Dutch law applies a ship may be arrested for any type of claim.

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

Except for Russian State Owned vessels; yes.

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

In principle, according to Curacao Law, if according to applicable law a claim is recoverable on the vessel, then an arrest is allowed. In certain cases recovery on a vessel is possible for claims against others than the owner, for instance the bare boat or time charterer, or for claims that attach to the vessel irrespectively of the identity of the owner.

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

According to Curacao law in principle any asset of a debtor may be arrested in order to obtain security for a claim, and thus, according to Curacao law, a sister ship may be arrested. If a ship is owned by more than one owner, the ship can still be arrested for a claim against one of the associated owners.

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

Vide answer to question 7.

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

The Curacao Court may require counter-security, in practice this rarely happens.

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

The common law concept of "maritime lien" is unknown in Curacao law. However, if a maritime lien means that according to the applicable law a certain claim attached to a vessel irrespective of the question in whose hands (under whose control) that ship may be, arrest for such claim is possible.

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

Curacao is not party to any convention on maritime liens. Claims having the legal status of being attached to the ship, may qualify for an arrest.

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

In straight forward matters it may take no more than one or two hours to have a ship arrested.

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

To petition for conservatory arrest, claims are only to be demonstrated summarily. POA is not required. In ensuing injunction proceedings further substantiation might be required.

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

In principle original or notarized documents are not required.

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

The arrest establishes local jurisdiction which serves as a residual jurisdiction in case elsewhere a judgment which is executable in Curacao cannot be obtained.

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

The arrestor orders the bailiff to lift the arrest, the bailiff notifies the vessel as well as the harbor authorities.

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

Curacao procedure only prescribes that the ship is to be released against "sufficient guarantee"

19. Does security need to cover interest and costs?

The security is to cover the amount estimated by the Judge who allowed the arrest. His estimate normally includes 30% of the principal amount for interest and costs.

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

Depending on circumstances.

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

1-2 hours.

22. Is there a procedure to contest the arrest?

Arrest can be contested in summary proceedings. A Judge in such summary proceedings will order the release of the vessel if nullifying facts have not been observed, if the arrested summarily demonstrates that there is no merit whatsoever to the claim, or if sufficient guarantee is or has been provided.

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

Standard period is 2 weeks, but normally longer or prolonged periods can be obtained without

much difficulty.

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

Yes

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

In very limited circumstances; yes

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

After an executory title has been obtained which is immediately enforceable, by operation of law a conservatory arrest will transform into a nexecutory arrest, also pending continuation of the proceedings in for instance appeal.

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# SHIP ARREST IN CYPRUS



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

The Cyprus Admiralty jurisdiction is exercised by the Supreme Court which by virtue of rule 50 of the Admiralty Jurisdiction Order gives an absolute right for arrest of the vessel or property. However, by virtue of an amendment to the Courts of Justice Law (Law 136 of 1991), any admiralty case, irrespective of the amount of the claim, will be tried by the District Courts.

It is necessary for the Admiralty Court to be satisfied that there is a serious matter of trial and that on the facts presented there is a probability that the claimant is entitled to relief. In the event that the application for the arrest of a vessel is successful, the Admiralty Court will require the following from the claimant:

- a) Lodgement of a deposit for the expenses which may be incurred by the Admiralty Marshal in connection with the custody and supervision of the vessel whilst under arrest;
- b) Lodgement of any other amount of money required by the Registrar for the expenses of the arrest; and
- c) Posting a security bond by way of a Cyprus Bank Guarantee.

Failure to comply with the above requirements will automatically result in release of the vessel.

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

Cyprus is not a party to the 1952 Arrest Convention nor the Brussels Liens and Mortgage Conventions. The United Kingdom signed the said Arrest Convention in 1952 and the Administration of Justice Act Part 1 was subsequently passed in order to enable the United Kingdom to ratify the Arrest Convention. The said Act is applicable in Cyprus by virtue of its Constitution and section 29 of Law the Courts of Justice Act (14/60).

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

No, there is no other way to arrest the vessel. In cases where the claimant cannot proceed with the arrest of a vessel, he may seek a "freezing" Mareva injunction which is normally granted when the defendants have no further assets in Cyprus and there is risk of alienation/ dissipation of assets. The application for a Mareva injunction is made *ex parte*.

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

A "freezing injunction" is an option.

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

The Admiralty Court has jurisdiction to hear the following claims:

- a) claim to possession or ownership of a vessel or to ownership of any share therein;
- b) question arising between the co-owners of a vessel as to possession, employment, or earnings of that vessel;
- c) claim in respect of a mortgage of or charge on a vessel or any share thereof;
- d) claim for damage done by a vessel;
- e) claim for damage received by a vessel;
- f) claim for loss of life or personal injury sustained in consequence of defect in a vessel or in her apparel/ equipment, or of a wrongful act, neglect, or default of owners, charterers, or persons in possession or control of a vessel or of master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults owners, charterers, or persons in possession or control of a vessel are responsible, being an act, neglect or default in navigation or management of the vessel, in loading, carriage, or discharge of goods or in embarkation, carriage, or disembarkation of person;
- g) claim for loss or damage to goods carried in a vessel;
- h) claim arising out of any agreement relating to carriage of goods in a vessel or to use/charter;
- i) claim in nature of salvage;
- j) claim in nature of towage in respect of a vessel;
- k) claim in nature of pilotage in respect of a vessel;
- l) in respect of goods or materials supplied to a vessel for her operation or maintenance;
- m) claim in respect of construction, repair, equipment of a vessel, dock charges/ dues;
- n) claim by a master or crew for wages and claim by or in respect of a master or crew for any money or property which, under any provisions of the Merchant Shipping Acts 1894-1954, is recoverable as wages at Court or in the manner in which wages may be recovered;
- o) claim by a master, shipper, charterer, or agent in respect of disbursements made a vessel's account;
- p) claim arising out of a general average act;
- r) claim arising out of bottomry; and
- s) claim for the forfeiture or condemnation of a vessel or of goods

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

You can arrest a ship in Cyprus irrespective of her flag.

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

You can arrest a ship in Cyprus irrespective of the debtor unless the debtor is in a position to claim sovereign immunity.

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

The Administration of Justice Act 1956 is applicable in Cyprus. Although section 3(3) of the said Act enables a claimant to arrest a vessel to which a maritime lien attaches, no provisions are contained therein in respect of the arrest of a "sister vessel". This situation is compensated by section 3(4) of the Act which provides that the admiralty jurisdiction of the High Court may be invoked (whether the claim gives rise to a maritime lien over the vessel or not) by an action *in rem* against "..... (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid". It should be distinguished that a person who possesses a maritime lien in respect of that "other ship" has no higher right or priority than that enjoyed, under circumstances by a statutory lien.

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

Bareboat Owners and Time Charterers are viewed as 'disponent owners' of vessels. In the case the claims mentioned in (d) to (r) above, where a person who would be liable on claim in an action in personam was, when the cause arose, owner or charterer of, in possession or in control of, the vessel, the Admiralty jurisdiction of the Supreme Court may be invoked by an action *in rem* against:

- a) the vessel, if at the time when the action is brought, she is beneficially owned in respect of all the shares therein by that person; or
- b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

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

The claimant is required to post a security bond by way of a Cyprus Bank Guarantee in respect of damages that the defendant vessel might suffer if the arrest proves to be wrongful. The amount of the security to be provided is at the discretion of the Court which will take into account all circumstances of the case. Usually, 10% to 15% of the claimed amount will need to be put up although in a few exceptional cases we have seen the court order as much as 50% of the claimed amount.



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

There is no difference in the procedure between a maritime lien and a maritime claim. However it should be noted that under Cyprus Law maritime liens enjoy certain advantages over all other permitted *actions in rem*.

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

Under the English Administration of Justice Act 1956, the following maritime liens are recognised under Cyprus Law:

- a) Bottomry;
- b) Salvage;
- c) Wages;
- d) Master's Wages;
- e) Disbursements and liabilities; and
- f) Damage done by a ship.

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

It will normally take between 2 - 4 business days to arrest the vessel from the moment we receive supporting documents and instructions.

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

No POA is required to bring the claim and present the Arrest Application to the relevant Court.

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 admiralty actions whether *in rem* or *in personam* are instituted with the issue of a writ of summons. Name, place of residence, occupation of every claimant and defendant and a concise statement of the claim made or relief/ remedy sought, should be included in the structure of the writ.

The issue of the writ gives the claimant a right against the vessel which originates from the cause of action *in rem* and crystallizes upon the arrest of the vessel.

The claimant should file with the Court an affidavit appertaining to the nature of the claim and stating that the aid of the Court is required.

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

The substantive claim must be issued in the Admiralty Court by writ of summons for the arrest to be granted. In an action against the vessel, her physical presence within the jurisdictional waters of Cyprus is essential for the foundations of the Court's jurisdiction *in rem*.

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

The procedural rule sets out that any person may file an application for releasing a vessel under arrest and that the Court may order the release of such vessel upon such conditions, after lodging a security or payment of any estimated costs with regard to the removal of the vessel. Thus, any application for the release of a ship should be conducted through the submission of an autonomous action for such release. There are instances whereby a confirmation by the Registrar of the Court to the Admiralty Marshal will be adequate for the ship to be release from arrest, after the security is paid.

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

The type of security is usually in the form of a Cyprus Bank Guarantee.

19. Does security need to cover interest and costs?

When evaluating the amount requested for security, it is usually the case that the security cannot be more than what the ship is worth.

A claimant will also ask for interest and costs, however the initial arrest expenses are paid by the arresting party to the Admiralty Marshal who is responsible for the maintenance of the vessel, while it is under arrest.

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

P&I & LOUs are not recognised by Courts; Courts require the Bank Guarantee in order to lift the arrest.

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

It depends on the circumstances of each case. If security is paid, and the Court orders for such release, usually within a day the vessel can be released.

22. Is there a procedure to contest the arrest?

Yes, wrongful arrests are recognized under Cyprus Law and test for wrongful arrest is primarily “bad faith”.

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

Under Cyprus Law, in an action *in rem*, the writ of summons must be served at least 21 days, and in an action *in personam*, at least 10 days, before the date named in the writ of summons for the appearance of the parties before the Admiralty Court.

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

Cyprus Courts acknowledge concept of wrongful arrest, hence the requirement for the claimant to post security.

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

Cyprus Courts will only pierce and lift the corporate veil in very exceptional circumstance (basically fraud).

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

It is possible to have a ship sold *pendente lite*.

Typical grounds for an application are that a vessel is costing a disproportionate amount in daily expenses or is deteriorating owing to being under arrest for a long time or that a cargo is perishable. Therefore, the continuing and mounting expenses of arrest and the fact that goods are deteriorating are good reasons which a Court may consider in ordering the property to be sold *pendente lite*.

It is very difficult to advise on the precise timescale involved as this will largely be determined on a case by case basis and any objection by the Respondent to the Application will greatly prolong the process.

*\*Mr. George Zambartas holds a Bachelor of Arts degree in Law and Politics from the University of London's Queen Mary College and has over 20 years experience as a lawyer in England and in Cyprus. He has extensive experience in shipping encompassing ship financing, maritime claims (including ship arrest), ship management and purchase/sales of ships, including new builds. He has been instructed by leading international law firms and banks to provide legal opinions on high value shipping transactions on matters of Cyprus Law. He has undertaken ship registration, re-flagging, re-naming and parallel registration in all major registries around the world.*

*He has also given presentations on numerous shipping topics at various seminars. He moved to Cyprus in 1999 to take up the position as in house Legal Advisor of a global Shipping Company with a fleet of over 100 vessels. In August 2008 he set up his own law firm L.G. Zambartas LLC.*

*\*Dr. Sonia joined L.G. Zambartas LLC in February 2010. In 2003 she graduated from the Law Faculty of the University of Matej Bel in Slovakia where she obtained her Master's degree in Law.*

*In 2005 she also obtained academic title doctor of law with her major subject being International Law. In 2007 she obtained the Postgraduate Diploma in Maritime Law at the London Metropolitan University and in 2014 she obtained an LLM in maritime law.*

*She predominantly deals with commercial, contract, companies laws, maritime claims, maritime and admiralty law, alternative dispute resolution in Cyprus as well as intellectual property law.*

*In 2011 Sonia became a vice-president and director of Women's International Shipping and Trading Association Cyprus and secretary general of the Cyprus Arbitration and Mediation Centre.*

*\*Anthia holds an LLB with American Legal Studies graduating with First Class Honours. She then continued her studies earning an LLM in International Commercial Law specialising in Shipping from the University of Birmingham and was admitted to the Cyprus Bar Association in June 2011. She has previously worked as an intern in an American Law Firm dealing with complex issues of personal injury and wrongful death claims. Anthia's current areas of practice include civil litigation representing clients in a wide range of cases including maritime claims, property disputes, commercial and banking matters.*

*Anthia has also advised clients on a variety of complex commercial matters including the application of EU Directives into Cyprus law, preparing detailed advice in relation to the risk of piercing the corporate veil in Cyprus and in respect to many other various corporate, commercial and shipping matters.*

# SHIP ARREST IN DENMARK (Questions 1 to 9)



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

Arrest of vessels in Denmark can be made very fast and on an informal basis, i.e. without POA, original invoices and notarized and authenticated documents. The rules are quite flexible and the Danish court system works efficiently. The costs of an arrest in Denmark are low.

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

Denmark is party to the 1952 Arrest Convention and the provisions of this convention have been implemented in Chapter 4 of the Danish Merchant Shipping Act. The Danish law on arrest of vessels thus to a high extent reflects the provisions of the Arrest Convention.

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

Yes. An arrest according to the Danish Administration of Justice Act prevents the owner from transferring title to the vessel or issuing new mortgages when the arrest is registered in a Ship Register but the vessel is not detained in a port or otherwise prevented from operating. Therefore, an arrest of a vessel according to the Administration of Justice Act is often of no interest; however, it may be applied when there is no maritime claim or when an arrest is made in cargo, freight, or bunkers etc.

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

No. The only alternative is an arrest according to the Danish Administration of Justice Act which the courts only grant in rare circumstances.

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

Maritime claims are the basis for arrests according to the Merchant Shipping Act and are defined in accordance with the Arrest Convention. For a list of the individual maritime claims reference is made to Arrest Convention art. 1.

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

Yes.

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

Contrary to the Arrest Convention and the laws of some other countries, arrest in Denmark requires that execution of the claim can be levied against the owner of the vessel, meaning that the registered owner of the vessel must be liable for the claim/the debtor of the claim, unless the claim is secured by a maritime lien. Consequently, claims for which a charterer of the vessel is liable, do not form basis for arrest of the vessel as the owner of the vessel is not liable and no execution of the claim against the owner is possible. However, assets owned by the charterer, e.g. bunkers, may be arrested in accordance with the Administration of Justice Act.

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

Sister ship arrest is possible, i.e. vessels that are owned by the same legal entity. Arrest of vessels in associated ownership is not possible as the vessel is not owned by the same legal entities.

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

Arrest of a vessel under a bareboat or time charter party is not possible as the registered owner is not liable for the claim/the debtor of claim. Only in case the owner is found to be the debtor of the claim an arrest is possible.

*\*Henrik Kleis is head of DELACOUR's department specialising in Transport and Trade which consists of 6 attorneys. What is distinctive about the department's size and the scope of tasks is that DELACOUR to a larger extent than other Danish law firms represents all kinds of businesses within transport and shipping.*

*Henrik primarily deals with transport and shipping and international commerce, and is engaged in conventional transport law cases.*

*Hence, he represents a large number of shipping lines, freight forwarding companies, ship brokers/agents and road carriers.*

*Furthermore, Henrik Kleis represents most of the Danish ports and handles a long line of varied cases for the ports. The Danish association Danish Ports has thus appointed Henrik Kleis as their representative in ESPO - European Seaports Organisation - Legal Committee.*

*As Henrik deals with matters of the business world, he therefore holds positions in a number of boards in Denmark and abroad.*

*Moreover, he is Honorary British Consul.*

# SHIP ARREST IN DENMARK (Questions 10 to 26)



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

The courts have a discretionary right to demand counter security. Pursuant to the MSA such security should not exceed the equivalent of 5 days charter hire for the vessel in question. The courts invariably demand counter security equivalent to 5 days charter hire. In order to determine the relevant daily hire a shipbroker should be requested to provide an estimate. In this regard it is sufficient to provide an exchange of emails with a shipbroker.

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

The formal requirements are the same but as mentioned above arrest for a maritime lien can be made irrespective of the owner of the vessel.

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

Danish law recognises maritime liens. The rules regulating maritime liens are found in the MSA and are based on the 1967 Brussels Lien Convention. In order to determine whether a claim creates maritime lien it may not be sufficient to resort to Danish law. The maritime liens may be determined according to the law of the flag of the relevant vessel. Scandinavian case law supports that the law of the flag is relevant in this regard although the issue is untested under Danish law.

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

An arrest can typically be obtained within a day. Certain local courts may need further time and may not be available for an arrest during the weekend or nights.

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

No POA is required. In order to establish the claim only copies of the pertinent documentation is required.

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

No original documents are required nor apostille. Documents can be e-mailed to the courts.

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

The courts will accept jurisdiction over the merits. However, if the underlying agreement supporting the claim is subject to arbitration or litigation in a foreign forum the courts will not assume jurisdiction. In such case validation proceedings must nonetheless be commenced as a formal requirement but they will immediately be postponed pending the outcome of the arbitration or foreign litigation. Arbitration or foreign litigation must be pursued without unreasonable delay.

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

There is no formalized procedure and a petition to release the ship can simply be sent to the court by e-mail.

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

The only requirement is that the security must be adequate to cover the debt including ex



pected interests and the cost of the arrest, the cost validation proceedings and the cost of the proceedings on the merits.

19. Does security need to cover interest and costs?

Yes.

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

Yes.

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

Generally speaking, the release can be done within one work day.

22. Is there a procedure to contest the arrest?

The arrest can be contested during the validation proceedings.

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

Validation proceedings must be commenced within one week from the date on which the arrest has been granted or two weeks if the forum of the validation proceedings is not Danish.

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

Yes. The arrestor is liable for wrongful arrest on a strict liability basis for any loss caused by the arrest. There is no relevant case law regarding liability but it cannot be ruled out that the right to compensation is influenced by the fact that the owner can avoid the effects of an arrest by providing a guarantee for the amount in dispute.

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

The notion of piercing the corporate veil exists under Danish law but is limited to very special circumstances where there has been e.g. a mix of funds between the companies or where business has been otherwise conducted as if two companies were one.

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

If the claim is not paid and no security is lodged for the claim the arrestor may ultimately sell the vessel by way of forced sales proceedings. It is a prerequisite for an auction that the arrestor has obtained an attachment against the vessel. Such attachment can only be obtained once the validation proceedings (whether litigation or arbitration) have been completed. Arrest based on a mortgage does not require validation proceedings and an attachment can be obtained immediately. Depending on the case load of the relevant local court it may take from 3 months up to 1 year until forced sales proceedings have been carried out. Certain notification requirements exist in respect of auction of foreign vessels (notification to the flag state and advertisement in the flag state).

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# SHIP ARREST IN DOMINICAN REPUBLIC



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

The Dominican Republic (DR), 2/3rds of “Hispaniola” Island, surrounded by sea but at West, does not have Maritime Law (ML) tradition. Most ML issues are ruled by DR Commerce Code, the same 1804 Napoleon Code, which DR adopted since 1845, revised (1882), and few other especial laws. The Arrest of Ships (AOS) = “Embargo de Naves” in Spanish, is regulated on Title II, Second Book, Articles 197-215, DR Commerce Code, but since vessels are assets (“bona mobilia”), they are also subject to other type of arrests: “Executory Arrest” (“*saisie-exécution*”) and “Conservatory Arrest” (“*saisie conservatoire*”) regulated by DR Civil Procedure Code (CPC), which is same 1806 Napoleon CPC, with few adaptations (1884 translation) and some modifications by laws non-related to AOS. To perform the latter, authorization from judge must be obtained. Hence, the AOS in the DR is ruled by over 200 year old laws, unmodified, except by Law No. 845 of 15th July 1978, on “Conservatory Arrest”. Moreover, Decree-Law No. 222-92 (7.Jul.1992) establishes, to perform a temporary arrest (“Conservatory Arrest”), that “if the vessel is loading cargoes or is already loaded with transit shipments or other cargoes destined to other ports, the Dominican Port Authority (DPA) will require the arresting party to provide, at its cost and expense, the necessary funds for the transshipment and transportation of said cargoes on board another vessel, ensuring that said shipments continue, without any delays, towards their intended destination, and the international maritime commerce is not interrupted”. Therefore, this makes the arrest of a loading or loaded vessel economically unfeasible. Hence, one must ensure the vessel is not loading, is completely unloaded or laden without cargo on board or must provide sufficient funds as stated above. While two new DR Commerce Code Projects have been proposed, none has been yet approved. Nevertheless, a strong initiative for DR Maritime Code is being considered and seems might be approved in the near future. If positive, it will change AOS in DR.

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

None.

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

Not under DR Commercial and Civil Law, but there some other non-orthodox manners to detain a ship, influenced by circumstances surrounding the case, the arresting party/its lawyer(s) and their relationship with DR port and naval authorities. Some “Opposition or Embargo Retentivo” (an embargo of assets, documentation or cash owned by the debtors in hands of third parties, normally used to freeze bank accounts) per DR CPC, Articles 557-582, have succeeded in withholding sailing permits at DPA or Harbourmaster, not passed unto vessel’s Master, impeding sailing of vessel. An Executory Title, from a Notary Public or private, or Judge Order must be obtained.

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

Yes, as explained above (1 and 3).

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

Any maritime debts (privileged or not), ship’s mortgage, true commercial or civil credits due by debtors may entitle creditors to arrest a ship. However, non-judged claims, as cargo claims where shipowners’/vessels’ liability is to be determined very seldom give grounds to judges to grant order to AOS, vis-à-vis a Conservatory or Retentive Embargo. Nevertheless, should a ship be illegally held or withheld by a non-owner, a “Recovery Embargo”, “Embargo en Reivindicación” in Spanish (“*saisie-revendication*”) under Judge Order, may be performed.

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

Certainly, any ship of any flag can be indeed subject to DR AOS.

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

Yes.

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

The DR laws are mute in respect to sister ships. However, if creditors can establish that another ship is indeed a sister ship or in associated ownership of debtor; judge may authorize AOS. Even with different official registered owners, from our experience, the judges have maintained/confirmed/ordered AOS when the connection has been properly proven.

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

AOS can be performed for debts incurred by owners or charterers. Should AOS is for debts of shipowners, charterers would have a hard time releasing same, unless settling shipowners' debts or reaching amicable agreement with arresting party.

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

Article 48 of DR CPC, provides that judge may or may not require arresting party to present proof of sufficient solvency, guarantor or bond. Counter-security may also be requested by the defendant. Same seldom exceeds the amount being claimed, and can be a bond purchased from a local bonding company for a premium. However, local bonding companies always require counter guarantee or security from local representatives/agents of claimants (i. e., local lawfirm, ships' local agents or alike). Sometimes, when knowledgeable, judges may accept L. O. G./L. O. U. from IG P & I Clubs. Moreover, DR Civil Code, Article 16, establishes the "ludicatum Solvi" bond/counter-security for non-local residents, guaranteeing legal/procedural costs and eventual counter lawsuits for damages which could rise from original lawsuit/ship arrest, when the plaintiffs/arresting parties do not own any properties ("*bonna inmobilia*") within DR territory, which value guarantees payment of eventual judgments against the foreign arresting party. Nevertheless, this is a general provision, not applicable to commercial matters and never granted when a foreigner is filing suit/arresting a ship of another foreigner. Also, same cannot be granted by judges unless requested by defendants/debtors, and recent DR Supreme Court of Justice rulings have decided that same is not justifiable when becoming an obstacle for a plaintiff to exercise its/his/her rights on same basis as a local one.

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

Yes, there is. While maritime claims for debts are recognized causes of arrest, most maritime liens contemplated in Anglo-Saxon laws are not admitted by DR laws. The exact legal figure of "lien" does not exist in DR Law. Nevertheless, from a procedural point of view, there are no differences.

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

As stated above, most maritime liens on vessels are not recognized by DR laws. Hence, said liens must be analyzed on a "case to case basis" to determine whether or not they may give grounds to AOS in DR jurisdiction. Should such lien correspond to a local legally recognized maritime or commercial privileged credit, the AOS would be achievable. The DR is not signatory to any International Convention on maritime liens.

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

The time frame is undefined, cannot be accurately foreseen or determined. It would depend on the following factors:

- a) Nature and circumstances of each case.
- b) Quantity of documentary proof, evidence documents provided by the arresting party and the skills of the local Judicial Interpreter, since all documents must be in Spanish, official language of DR, translated by such local Interpreter, if not originally in Spanish, in order to be accepted by DR courts.
- c) Nature or type of arrest, whether Executory, Retentive, Conservatory or Revindicatory (Revindication).
- d) Ability of the arresting party's lawyer to convince the judge of the urgency in collecting the subject credit, in the cases where the type of arrest requires a prior Order from judge.

Nevertheless, from our praxis and experience, one may advise that it could take any time between 5 days to 2 months, and earlier results would be very difficult indeed and extremely fortunate for any arresting party. Therefore, is sound advice to request creditors to contact their DR law firm or

lawyer(s) as early as possible and provide them with all necessary documentary evidence so they may submit the arrest application soonest, prior to the arrival of the subject vessel, especially when her schedule/DR port of call is known.

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

Yes. A proper Power of Attorney (POA), either in Spanish language or duly translated into Spanish by a DR Judicial Interpreter must be furnished. While the judge may or may not require the same, if the AOS is contested by the defendants, upon their request, judge will require same. Then, if not presented, judge may decide that the acting lawyer has not established his/her legal capacity as to act on behalf of the AOS party. The said POA must be "apostilled" as per the XII International Convention of The Hague (5.Oct.1961) or if issued at a non-signatory country, notarized by the nearest DR Consul.

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

All the documentary evidence proving the debt should be furnished as originals or certified/notarized copies of same, duly apostilled as above mentioned (same as the POA). All e-mail exchanges between creditors and debtors are very useful and filed as "Original print-outs or printed versions of e-mails exchanges", a great support to the original or notarized copies of the other documents proving the debt.

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

Yes. In fact, except the Executory Arrest, all the other types of embargoes/arrests must be followed by a "Lawsuit in Validation" of the said arrests, with judge knowing the merits of the substantive claim/debts. Same DR court/judge ordering the AOS must know the merits of the claim, meaning that these temporary or preventive ship arrests must be followed by lawsuits for collection of monies (debts) towards foreclosure.

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

As per DR CPC, pending on the type of arrest performed, the defendant can request the overturning or cancellation of the AOS before same judge that ordered same or before the Judge of the "referimientos" ("*referee*", in French), which is the judge of an especial expedited procedure. However, the judge of the referimientos only knows these urgent cases once or twice a week (i. e.: Tuesdays and Thursdays, or just Fridays); thus requiring a few days, even up to a week to obtain the first hearing under referimientos. Said first hearing is of a complete preliminary nature, the judge ordering both parties (plaintiffs and defendants) to communicate (exchange) their respective documents (like a discovery phase), via depositing at the Court Secretary's Office, which both parties must visit within the time frame ordered by the judge, who also grants time to both parties to review same, normally running jointly (i. e.: two (2) days to both to deposit and review said documentation). Therefore, withholding the vessel at port is inevitable, causing losses to the debtors. DR Laws also provide for the presentation of a bond, guarantor or counter-security to the judge that ordered the AOS, which –if accepted by the judge– would order the release of same, but its issuance does not automatically release the vessel. Once said overturning or reversing the AOS order is obtained, same has to be served through Bailiff's Act to the counter-party and others involved, such as Vessel's Master, DPA, Harbourmaster and alike.

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

A cash deposit, bond from a local bonding company, bank/bankers' guarantee, sworn statement (Affidavit) from local guarantor or similar security, such as a P & I LOU or LOG must be presented. It is always advisable to obtain the previous agreement from the debtor concerning said counter-security, so it is not refused or contested by the creditor at the hearing to reverse the AOS. If an amicable agreement has been reached between the parties, it can be presented before the judge and same will authorize the release of the vessel. The arresting party can also voluntarily withdraw the AOS by simply notifying same through Bailiff's Act to a. m. parties, without the intervention of any judge.

#### 19. Does security need to cover interest and costs?

Since usually the orders for AOS are granted for up to double the amount of the debt/claim (to guarantee all procedural costs, legal fees and expenses), if requested by the applicant, the security would need to cover the same amount, unless a lower amount has been already agreed with the creditor.

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

As stated in above 1., DR does not have a ML tradition neither has Maritime Courts. Thus, all ML matters are known by Commercial & Civil Law Judges. Therefore, most judges ignore what a P & I Club is. Hence, P&I LOUs or LOGs are usually not accepted, especially if rejected by debtors. Hence, same might not be sufficient to lift the AOS in the DR.

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

It is much easier and faster to arrest a vessel than to release same. Subject to acceptance by the creditor of the provided security, it may take between two (2) to five (5) days if no objection is presented; and over a month if the security is not accepted by the judge or the release is harshly legally contested and opposed by the creditor.

## 22. Is there a procedure to contest the arrest?

Absolutely, as previously indicated, through the procedure of *referimientos* ("referee"), the defendant/debtor, may obtain the overturning of the arrest or its Order.

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

It depends on the time frame requested by the applicant of the AOS Order, but usually the judges grant thirty (30) days. In any event, such time period is clearly stated in the Order of Arrest itself.

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

We do not really understand this question as posted, but would reply as follows:

a) If referring to whether a judge may or not grant an order to wrongfully arrest a ship, it is possible. Judges could be tricked, especially because they are not too knowledgeable of Maritime matters. However, they are very cautious to order AOS.

b) If regarding whether or not DR courts will acknowledge counter-claims or lawsuits from debtors for wrongful arrests, they would indeed, based upon the "*actur sequitur forum rei*" Roman Law principle, since the place of the arrest was the DR and the damages caused to the debtors by the wrongful arrest were generated and caused to the same in DR. Thus, there would be strong grounds for DR jurisdiction.

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

Very rarely. Nevertheless, should one be able to proof the financial or corporate nexus, which nowadays can be sometimes be as easy as to entering into a website and printing the information contained therein, such as a common management of sister ships' owning corporations and alike, it can happen.

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

No, it is not possible.

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# SHIP ARREST IN ECUADOR



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

For the last 15 years, Ecuador has seen its rules for ship arrest being fully revisited and updated by reference to the most recent international conventions on maritime liens and arrest of ships.

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

The arrest of ships in Ecuador is enforced under the Decision No. 487 issued by the Commission of the Nations Andean Community (in its acronym "CAN") labelled under the name of "Maritime Claims (Ship Mortgages and Maritime Liens) and Arrest of Ships" ("Decision 487"). The Decision in its background states to have been drafted inspired on the International Convention on Maritime Liens and Mortgages, 1993 ("MLM Convention, 1993"), and the International Convention on Arrest of Ships, 1999 ("Arrest Convention, 1999"). For all material purposes, (i) the provisions of the Decision 487 are substantially the same as those of the International Convention on Arrest of Ships, 1999 and (ii) the list of maritime liens and their ranks as regulated by the Decision 487 are substantially the same as those of the International Convention on Maritime Liens and Mortgages, 1993.

On February 2004, Ecuador adhered to the International Convention on Maritime Liens and Mortgages, 1993. This Convention was published in the Official Gazette in April 2004, and ultimately entered into force in September 2004.

On March 2014, Ecuador ratified the International Convention on Arrest of Ships, 1999, which entered into force in March 2014.

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

No, there is no other way to arrest a ship in Ecuadorian ports other than following the framework contained in the above mentioned International Conventions.

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

Our Code of Civil Procedure regulates "preventive measures" as a procedural means to permitting the attachment of goods to secure payment of a pending debt through its seizure and subsequent auction. This procedure is very similar to the *saisé conservatoire*. However, this title is virtually deemed as the domestic procedural framework under which the Arrest Convention, 1999 and the Decision 487 are enforced.

Freezing orders are not available under Ecuadorian Law.

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

In Ecuador, it is possible to arrest a ship in so far as the creditor avails any of the maritime claims listed under article 1 of the Arrest Convention, 1999 (which is materially the same to the list of maritime claims under article 1 of the Decision 487):

- a) loss or damage caused by the operation of the ship;
- b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such

damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);

e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

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 of or damage to or in connection with goods (including luggage) carried on board the ship;

i) general average;

j) towage;

k) pilotage;

l) goods, 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, brokerages 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, it is possible to arrest a ship irrespective of her flag as provided by article 8 of the Arrest Convention, 1999, and article 54 of the Decision 487.

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

Generally, the arrest is permissible in so far as the conditions set forth in article 3(1) of the Arrest Convention, 1999 and article 41 of the Decision 487 (for which purposes are substantially the same) are fully met.

Particularly, if the maritime is not secured by a maritime lien, the Court must be satisfied that either:

a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or

c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

d) the claim relates to the ownership or possession of the ship.

If the maritime claim is secured by a lien, the arrest can be effected against the debtor (i.e. the shipowner, the demise charterer, the manager or the operator of the ship) irrespective of the fact that it may or may not have proprietary title on the offending ship.

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

Sister ships cannot be arrested without having regard to the identity of the debtor. Sister ships may be arrested under article 3(2) of the Arrest Convention, 1999 (for all material purposes, the said conditions are substantially the same as those stated in article 42 of the Decision 487) as long as (i) they are under the ownership of the debtor at the time when the arrest is effected

and (ii) at the time when the claim arose the offending ship was owned, bareboat or time chartered by such debtor. Subject to the same articles, these conditions do not apply to claims in respect of ownership or possession of a ship.

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

The offending ship if chartered on a bareboat basis may be arrested under article 3(1)(b) of the Arrest Convention (which is substantially the same as article 41(b) of the Decision 487).

If the offending ship is chartered on a time basis and the claim in question is not secured by a maritime lien she cannot be arrested neither under the Arrest Convention, 1999 nor under the Decision 487. If secured by a maritime lien listed in article 4 of the MLM Convention 1993 (which for these purposes is materially the same as article 22 of the Decision 487), the time chartered ship can be arrested under article 3(1)(e) of the Arrest Convention, 1999 (which is materially the same as article 41(e) of the Decision 487).

Under the Arrest Convention 1999 and the Decision 487, it is not possible to arrest sister ships if bareboat or time chartered by the debtor.

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

As a matter of law, although rather unlikely, the courts are allowed to require counter-security prior to granting a writ of arrest under article 6(1) of the Arrest Convention, 1999 (which is materially the same as article 50 of the Decision 487).

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

The main difference resides in that a maritime claim, if secured by a lien, travels with the ship and may be enforced regardless of whom has proprietary title on the ship at the time when the arrest is effected, for it lies in the nature of a maritime lien to attach (for a limited time) to the offending ship and survive any change of her ownership, flag or registration (article 21 of the Decision 487).

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

Yes. Ecuador recognises the list of maritime liens described in article 4 of the International Convention on Maritime Liens and Mortgages, 1993 (which for material purposes is the same list provided by article 22 of the Decision 487).

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

Should the procedural conditions set forth in the Arrest Convention, 1999 or the Decision 487 are fully met, an application of arrest is to be filed in the Civil and Commercial Court of the Ecuadorian port where the ship has or is about to call. Upon submission of the application, it can take between 3-5 days for the Court to process the application and grant the writ for arrest.

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

Under our law, the submission of a POA is not a prerequisite for the granting of a writ for arrest; however, the court will provide a term within which the claimant is expected to file the POA (usually 10-15 days counting from the date when the arrest is effected).

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

Under article 1 of the Decision 487, the condition of a shipowner must be evidenced on the basis of the public records filed in the primary ship registrar, e.g. a certificate of ownership and encumbrances.. Since normally a ship registrar is run by a public office, such a certificate should be legalised by an Apostille. It is not strictly necessary that the application of arrest be accompanied with this certificate; however, the Court will expect its presentation during the probatory stage (which is open for 3 days upon execution of the order of arrest).

Generally, any document issued by foreign public entities must necessarily be legalised by an Apostille.

The POA will need to be notarised and legalised by an Apostille.

Under our law, it is not possible to file in Court documents electronically.

Under our law, any document written in a language other than Spanish must be translated into Spanish to be considered as valid evidence in Court.

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

It depends on whether the parties have agreed to submit their disputes/differences to arbitration or to the decision of a foreign court.

Should they have agreed so, the local Courts would be prevented from acknowledging jurisdiction to hear the principal claim on the merits under article 2(3), 7(1) of the Arrest Convention, 1999 (which is materially the same as article 38 and 52 of the Decision 487). However, under article 7(3) of the Arrest Convention, 1999 (which is materially the same as article 53 of the Decision 487), the Courts would be allowed to determine a period within which the claimant should file its principal claim before the competent Court or the relevant arbitral tribunal, failing which the local Court is allowed to order the release of the ship.

However, in the absence of such an agreement for the resolution of disputes, local Courts are allowed to acknowledge jurisdiction to hear the principal claim under article 7 of the Arrest Convention, 1999 (which is materially the same as article 52 of the Decision 487). Under section 923 of the Code of Civil Procedure, the claimant is required to file the principal claim on the merits within 15 working days counting from the moment the writ of arrest was enforced, failing which the Court is allowed to order the release of the ship and condemn the claimant to pay damages.

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

The defendant must provide sufficient security covering the amounts matter of the claim (pursuant to sections 905, 919 of the Code of Civil Procedure, section 44 of the CAN Decision No. 487 and section 4 of the International Convention on the Arrest of Ships 1999).

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

The security can be filed in the form of a mortgage, or in the form of a bond issued by an insurance company or a bank domiciled in Ecuador. Bonds issued by insurance companies or banks not domiciled in Ecuador are not accepted.

#### 19. Does security need to cover interests and costs?

Since under sections 905 and 919 of the Code of Civil Procedure courts must ensure that the security sufficiently covers the credit, courts are allowed to fix the value of the security by including potential interests accruing to the debt and the costs.

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

Since P&I LOUs are not provided by companies domiciled in Ecuador, they usually do not qualify as sufficient security to release the ship.

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

The law does not provide terms for the release of the ship; however, as a matter of practice, once security is posted in court, it takes 2-3 days to the court to issue the writ of release.

#### 22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest and is regulated under sections 897 to 923 of the Code of Civil Procedure.

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

If the parties have not submitted their disputes to arbitration or to the resolution of a foreign court, under section 923 of the Code of Civil Procedure the courts are allowed to grant a term of 15 working days for the claimant to file the principal claim on the merits.

If the parties have agreed to submit their disputes to arbitration or to the decision of a foreign court, the Courts have the discretion to determine a period within which the claimant must submit its principal claim before the competent Court or the relevant arbitral tribunal.

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


Yes. Ecuadorian Courts are allowed to determine the extent of damages which a claimant may be condemned to pay if found to have applied for an arrest without legal justification. This is regulated by article 6 of the Arrest Convention, 1999 (which for this purposes is materially the same as articles 50, 51 of the Decision 487). As regards the measure of indemnity, under our law damages may include loss of profits and loss of chance.

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

Although our Companies Law allow the courts in certain circumstances to pierce and lift the corporate veil of companies, this possibility is restricted to Ecuadorian companies and subject to the results of a substantive trial pursued for this specific purpose. Therefore, Ecuadorian Courts will not be ready to pierce or lift the corporate veil in arrest procedures.

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

Under our law, Courts are not allowed to order the sale of a ship pendente lite.



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# SHIP ARREST IN EGYPT



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

To proceed with an arrest order against an owing vessel in Egypt, in accordance with the Egyptian Maritime Trade Law No 8/1990, Article No 60, it's required to prepare some steps such as filling an arrest application (an arrest petition) to the competent court by their jurisdiction, this petition must explain the matter. A brief of the relation between the claimant and defendant, and the nature of debit which must be one of the debits indicated in the Article No 60, of the Egyptian Maritime Trade Law No 8/1990.

The required documents relating to these debits in order to arrest a vessel as indicated in clause no (1) must be presented and attached to a certified translation into Arabic for all documents, for example (In case the arrest application was relating to outstanding invoices for insurance installments issued by a marine insurance policy, We have to present all outstanding invoices, Insurance Policy and other documents such as mutual correspondents, faxes, e-mails and other agreements which prove this debits).

A legalized power of attorney must be granted by the client (The claimant) who is filling an arrest application. This power of attorney must be signed by the client, certified by the Apostil then legalized by the Ministry of Foreign Affairs and by the Egyptian consulate in the client's country. This power of attorney must be translated into Arabic by the Ministry of Justice in Egypt.

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

The 1952 Brussels' Convention of the ship arrest is applied on the ship arrest in Egypt.

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

The first applicable law for the arrest procedures is the Egyptian Maritime and Trade Law No 8/1990, In addition to the Egyptian Commercial law and the Egyptian substantiation law, Otherwise, There are some other applicable laws can be applied on the ship arrest in Egypt such as the Egyptian administrative law which allows the governmental authorities and public establishments to arrest a ship if it has been owed to them as example for a port dues or any other governmental debits, Then the governmental authority or the public establishment has the legal right to arrest the vessel directly by their order and without getting an arrest order from the judge.

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

No, these alternatives do not saisie conservator or freezing the ship arrest order but both procedures are compatible with them.

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

The legal recognizing liens in Egypt as indicated in the Egyptian Maritime and Trade Law No 8/1990, the Article No 60, as follows:

- (a) Port and water courses duties.
- (b) Expenses outlaid for removal, pick up, or lifting the wrecks and merchandise.
- (c) Damages caused by the ship by cause of collision, pollution or other similar marine incidents.
- (d) Casualties of lives or bodily injuries caused by the ship, as a result of using and exploiting it.
- (e) Contracts and deeds for using or renting the ship.

- (f) Insurance on the ship.
- (g) Contracts for transport of goods by virtue of a rental contract or bill of lading.
- (h) Destruction of goods and luggage which transported by the ship, or their damages.
- (i) Salvage and rescue works.
- (j) Joint losses.
- (k) Tugging the ship.
- (l) Piloting works.
- (m) Supplies of materials or tools necessary for operating the ship or its maintenance, whatever the source of supplies being obtained.
- (n) Ship-building, repairing or furnishing the ship, and expenses incurred for the ship in dry-docks and dockyards.
- (o) Incurred salaries and wages for captain, ship-officers and the crew members by the shipping agencies.
- (p) Incurred money by the captains, Ship-forwarders, Ship-Charterers, or shipping agencies for the account of ship or ship-owners.
- (q) Disputes about the ownership of ship.
- (r) Disputes about the common ownership of ship, or about holding or exploiting and operating it, or the rights of ship-owners in common to the amounts resulting from using and exploiting the ship.
- (s) Marine mortgage.

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

The arrest procedures are applicable irrespective of the flag of the ship whatsoever, also irrespective of the claimant or debtor's residency.

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

The arrest procedures are applicable irrespective of the Debtor's residency or nationality.

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

The procedures are also applicable on the sister-ship and a ship associated with the same ship-owners. The sister ship of the owing vessel is allowed to be arrested in Egypt in accordance with the Egyptian Maritime and Trade Law No 8/1990, Article No 61, which allows the claimant to arrest the sister ship through the same procedural requirements as mentioned above. The referred Article No 61 stated that:

"Whoever holds any of the debits specified in the previous article, can levy an arrest on the ship with which the debit is connected or any other ship owned by the debtor if such ship was in hispossession at the time of instituting the debit". However, no attachment may be levied on another ship than the one to which the debit is related if the debit is one of those prescribed in items Q, R and S of the previous article".

These referred items as indicated in the article No 60 are as follows:

- (q) Disputes about the ownership of vessel.
- (r) Disputes about the common ownership of vessel or about holding or exploiting and operating it, or the rights of ship-owners in common to the amounts resulting from operating and exploiting the ship.
- (s) Marine mortgage.

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

These arrest procedures are also applicable for the bareboat charters, Yachts, Fishing boats, Submarines and time-chartered or Voyage chartered vessels as explained.

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

A counter security is not required under the new Egyptian Maritime and Trade Law No 8/1990.

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

There is no difference between the maritime claim and the maritime lien in respect to arresting a ship which is subjected to the same procedures.

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

The maritime liens are recognized by the Egyptian Maritime and Trade Law No 8/1990, also, the 1952 Brussels' Convention of the ship arrest is applied on the ship arrest in Egypt.

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

The required time to arrest a ship starting from the moment of the referred documents arrival to our law firm is 24 hours.

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

A legalized power of attorney must be granted by the client (the claimant) who fills the arrest application. This power of attorney must be signed by the client and certified by the Apostil or the local authentication office then legalized by the Ministry of Foreign Affairs and by the Egyptian consulate in the client's country. This power of attorney must be translated into Arabic by the Ministry of Justice in Egypt which takes from three to five days to be finished.

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

The required documents relating these debits as indicated above in clause no (1) must be attached with the arrest application in addition to a certified translation into Arabic for all documents (Our law firm usually advises clients to send the documents by e-mail first to start the translation process urgently in order to save time for preparing the arrest application in proper time), for example (In case the arrest application relating to outstanding invoices for insurance installments issued by a marine insurance policy. We have to present all outstanding invoices, Insurance Policy. And other documents such as mutual correspondents, Faxes, E-mails and other agreements which prove this debit).

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

The Egyptian courts accepts jurisdiction over the substantive claim once the vessel has been arrested. Also all claims against the arrested vessel will be accepted in respect to the jurisdiction.

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

In according to the Egyptian Maritime Trade Law No 8/1990, Article No 63, in order to release a ship from arrest, an application of release a ship from arrest must be submitted by the defendant to the chief of judge or his representative on his jurisdiction attached with a bail or guarantee letter to be sufficient for settlement of debit.

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

In spite of the article No 63, of The Egyptian Maritime Trade Law No 8/1990, didn't explain definitely the required type of security of bail or guarantee letter however the practical practice is indicated that a bank guarantee letter must be submitted by a known bank to be acceptable, Also, a deposit of cash money equivalent to the total debit will be acceptable too.

19. Does security need to cover interest and costs?

The security must cover the interest and 10% for the costs in case of the judge was included to the capital debit in the arrest warrant.

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

As referred the practical actual is indicated that P&I LOUs are not acceptable at all.

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

It's usually takes about from one to two days to release a ship from arrest starting from the date of submitting the application of release the ship from arrest to the chief of judge.

22. Is there a procedure to contest the arrest?

The defendant has a right to contest against the arrest warrant before the summary execution court whether the arrest was executed or not yet. The defendant also has a right to consent against the plenary trade court through 10days starting from the date of commencement of execution of the arrest, So, the judge can cancel the arrest warrant or amend it, Article No 197, of the Egyptian procedural law.

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

The Egyptian Maritime and Trade law No 8/90 gives the claimant 8 days exactly to take the legal action on the merits starting from the day of arrest, or otherwise the arrest will be cancelled by law. The Egyptian courts usually take time approximately one year to issue her award in the legal action of merits.

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

The claims for wrongful arrest are allowed and organized by the Egyptian Civil Law No 131/1948, article No 163, which indicated as follows:

“Every fault was caused damages to the others shall required the indemnity” So, the wrongful arrest is protected by the Egyptian Civil Law, and if someone arrests a vessel by wrong or by false documents. The claimant will be claimed by the ship-owners, Charters or operators to pay them all damages incurred as a result of the wrongful arrest. These damages will be determined by the court which has all rights and free to assume the value of damages including fines, Incurred port dues and all other incurred expenses caused by this wrongful arrest.

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

As a basic rule, the shareholders of a company with limited liability are not personally liable for the obligations of the company, but, the Egyptian maritime and trade law is organizing this point on the basis that rules of the Egyptian trade law which is depend on the type of company, so, If the ship-owner's company was established as a “Joint stock company”. So, the shareholders will not be personally responsible for any obligations at all, But, if the ship-owner's company was established as a “corporate company”. So, the shareholders will be personally responsible for the obligations and then the piercing and lifting of the corporate veil will be applied.

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

When a vessel has been arrested, so that the ship-owners can't sale it at all without the court permission unless the arrest is removed, and if the ship-owners was sold the vessel while it arrested so this sale contract is considered null and void.

*\*Our legal services and consultancies are presented to Ship-Owners, Charters, P & I Clubs, Marine Insurance & Reinsurance Companies, Ship Agents, Repairs, Suppliers, Building, Oil & Gas Companies....etc, Our legal services are included, Marine insurance and reinsurance claims, Charter parties liabilities, Bills of lading, Ship sale/Purchase contracts, Collision/Salvage and General damage liabilities, Oil pollution/ Casualties, Stowaways and Refugees, Cargo liabilities (Shortage/Loose/ Damage and Delay of cargo, Ship's arrest/ Release, in all Egyptian ports, Crew detention, Costs and Fines, Disputes settlements, Legal defense, disputes before the all Egyptian courts, Disputes under voyage/ time charters, Financial collapse, Bankruptcy, Collisions of ships, Salvage claims and marine casualties, Marine mortgages, Crew wages claims, Personal injury and death claims, Ship registration, Ship deletion, Ship delays, Custom's fines and demurrages, Customs clearance facilities, Assisting in import & export procedures, All aspects of shipping, marine and trade disputes, International Arbitration, Execution of international judicial and arbitration awards in Egypt.*

# SHIP ARREST IN ENGLAND & WALES (Questions 1 to 9)



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

An application on paper is made to the Admiralty Marshal. Evidence must be filed showing that the claim comes within the Court's Admiralty Jurisdiction. There is a sliding scale of fees; the maximum fee is £1,920 for claims exceeding £300,000 plus a further £220 for issuing the arrest warrant. In addition the applicant must give an undertaking to pay the Admiralty Marshal's costs which should be recovered as they are a first charge on the proceeds of the vessel ranking before maritime liens.

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

The UK is a party to the Brussels Convention Relating to the Arrest of Seagoing Ships, 1952. The relevant provisions are contained in the Senior Courts Act 1981. Section 20 sets out the types of claims for which the ship may be arrested.

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

No.

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

It might be possible to obtain an injunction but this is more difficult and more expensive than an arrest.

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

Section 20(2) of the Senior Courts Act 1981 lists 19 types of maritime claim within the admiralty jurisdiction of the High court in respect of which a vessel may be arrested.

These include claims relating to the possession or ownership of, or mortgage on, a ship, claims for damage done by or to a ship, claims for loss of life or personal injury due to a defect in a ship, claims for loss of or damage to goods carried on a ship, other claims relating to the carriage of goods on a ship, claims relating to the use or hire of a ship, claims for salvage, towage and pilotage, claims for goods and materials supplied to a ship, claims in respect of the construction or repair of a ship, claims by the master or crew for wages, claims arising out of a general average act, and claim arising out of bottomry and collisions. Notable exceptions to this list, i.e. where arrest is not possible include claims for insurance premiums and claims for legal costs.

English law treats both English and foreign flag vessels equally and it does not distinguish between "Convention" and "non-convention" vessels either.

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

Yes.

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

Yes.

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

It is possible to arrest sister ships but not ships in associated ownership. Sister ships are vessels that are owned at the time when action is brought by the person who was the owner of the ship in connection with which the claim arose.



## 9. What is the position as regards bareboat and time-chartered vessels?

A bareboat chartered ship may be arrested for a claim for which the bareboat charterer is contractually liable. Time chartered vessels cannot be arrested for claims of this nature, but where a time charterer owns a vessel, any vessel owned by the time charterer may be arrested for a claim under the charterparty.

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*Lewis Moore acts for clients in relation to contentious and non-contentious work, joint venture disputes, commodity sale and purchase, ship sale and purchase and charterparties and is a CEDR Accredited Mediator.*

*He acted for the successful charterers in *The Achilles* [2007] 1 Lloyd's Rep 19 a House of Lords decision regarding damages for late redelivery and for the successful appellants in *Star Reefers Pool Inc. v. JFC Group* [2011] EWCA, a Court of Appeal decision on anti-suit injunctions.*

## SHIP ARREST IN ENGLAND & WALES (Questions 10 to 26)



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### 10. Is counter-security required in order to arrest a ship?

No. All that is required is an undertaking by the solicitor instructed to make the arrest to pay the Admiralty Marshal's reasonable costs in serving the arrest warrant. However, it may be necessary to pay expenses incurred as result of the ship being detained, including for example berthing charges throughout the period of arrest. These can be added to the claim and be recovered out of the proceeds of sale if the matter proceeds to that stage.

### 11. Is there any difference between an arrest for a maritime claim and an arrest for a maritime lien?

Maritime claims are dependant upon the ownership of the ship. The ship can only be arrested provided that the party who was the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to issue a claim and to arrest the ship despite a change of ownership. The procedure for arrest is the same however.

### 12. Does your county recognise maritime liens?

Yes, but only in respect of claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia - which are claims in which the ship is pledged as security in return for monetary advances and usually during times of distress and are uncommon today as a result of modern mortgage agreements.

### 13. What period of time is required in order to arrest a ship following receipt of instructions by your law firm?

Subject to the receipt of all documentation relevant to the claim, the application to the court can take place within a matter of hours. The actual arrest will be dependent on the availability of local court marshals and bailiffs in the area that the ship is located but should be effected within 24 hours of the warrant being issued.

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

A Power of Attorney is not required in order to arrest a ship. Documents in support of the claim should be filed with the claim form, together with details of the ship's location and port of registration. Prior to the arrest, the arrestor should determine whether there is a caution against arrest in force against the ship in question.

### 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 original court documents (the warrant of arrest and a claim form) must be filed with the court before the arrest. The warrant of arrest must be accompanied by an admiralty claim form detailing the particulars of the claim, together with a signed declaration to confirm the ownership of the ship, the level of security sought and confirmation that the claim has not been satisfied. A signed undertaking from the solicitor must also be submitted to cover the Admiralty Marshal's expenses in serving the arrest and claim form. At present, no documents can be filed electronically. Certification or apostille by a Notary is not required although if supporting documents need translating then the translations should be certified by a Notary.

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

This will depend on the circumstances. If the claim arises out of a contract which contains an exclusive

foreign jurisdiction clause it may be the case that the proceedings are stayed in favour of the relevant foreign court. However, for most other claims the Court will usually accept jurisdiction.

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

Once security has been agreed all that is required in order to release a ship from arrest is the filing of a request for release with the Admiralty Marshal together with a further undertaking to be responsible for any costs he may incur in effecting the release. The Admiralty Marshal will then arrange for one of his officers to remove the arrest papers from the ship.

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

It is up to the parties to agree appropriate security.

#### 19. Does security need to cover interest and costs?

No but it would be wise to ensure that it does.

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

Usually but it may depend upon the circumstances.

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

Once security has been provided the request for release can be lodged with the Admiralty Marshal immediately but it will depend upon the availability of local officers of the court where the ship is located. Outside of normal office hours it may therefore take a little longer.

#### 22. Is there a procedure to contest the arrest?

Not as such. A ship owner could include a counterclaim for damages in respect of losses suffered as a result of the arrest being brought on an improper basis as part of the defence to the substantive action but provided security is given in timely fashion such losses should be minimal and be limited to the costs, if any, of providing the security. If adequate security is offered but an arresting party refuses to accept that security, thereby extending the period of arrest, a claim for damages for detaining the vessel without just cause may have more chance of success.

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

The claim form must be issued at the same time as the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced. The defendant has 14 days to acknowledge service and a further 14 days to file a defence if settlement is not concluded immediately.

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

Yes, but damages will only be recoverable if the defendant can show that the arrest was made in bad faith or with gross negligence.

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

The courts will be prepared to accept the piercing and lifting of the corporate veil in very limited circumstances. Usually there must be an element of improper conduct with intent to defraud. The use of the corporate structure must have been established to evade liabilities imposed by the law.

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

Yes, but the court will only make an order for sale if there is good reason to do so. The fact that the costs of maintaining the arrest may exceed the value of the claim and therefore diminish or extinguish the value of the claimant's security may be deemed to be sufficient grounds for a sale *pendente lite*.

*\*Russell Kelly qualified as a solicitor in 1986 and worked for 12 years with a well known shipping law firm in London before moving to Southampton and establishing LA Marine, the shipping and marine law team at Lester Aldridge. Russell's practice encompasses both the commercial shipping and the leisure marine and yachting markets, advising in particular on vessel sale, purchase and finance and on new building and repair disputes as well as dealing with crew and passenger personal injury claims, vessel arrests and criminal prosecutions. He also conducts on board investigations following incidents on vessels, collecting evidence and advising owners and crew members in relation to investigations by the MAIB and MCA. Russell is a supporting member of the London Maritime Arbitrators Association (LMAA) and a regular speaker at various industry conferences and seminars.*

# SHIP ARREST IN ESTONIA (Questions 1 to 9)



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

Ship arrest in Estonia is normally handled speedily and by a judge who specializes in maritime matters. Normally a ship will be arrested in Estonia within 1-2 working days as of submitting an application to arrest the ship, provided that the application is well grounded and the necessary fees have been paid.

In case of urgency, it may be possible to arrest the ship even on the same day when the application was submitted. Pohla & Hallmägi has successfully arrested a ship in the morning and managed to release the ship from the arrest in the evening after the outstanding payment has been made.

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

Estonia is a party to the following conventions, which regulate the arrest of ships and their possible sale:

- International Convention on the Arrest of Ships (1999) which specifies maritime claims;
- International Convention on Maritime Liens and Mortgages (1993) which specifies maritime liens;
- International Convention on Civil Liability for Oil Pollution Damage (1969) and amendments;
- Convention on Limitation of Liability for Maritime Claims (1976).

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

If the ship owner is an Estonian company, the court may arrest the ship under Estonian Code of Civil Procedure.

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

No

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

Maritime claims in Estonia can arise from the following:

- 1) loss of or damage to property caused by the operation of the ship;
- 2) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- 3) salvage operations or any salvage agreement, including, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- 4) damage or threat of damage caused by the ship to the environment, coastline or related interests, also:
  - costs of measures taken to prevent, minimise, or remove such damage;
  - compensation for such damage;
  - costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken;
  - loss incurred or likely to be incurred by third parties in connection with such damage;
  - and other damage, costs, or loss of a similar nature to those identified in this clause;
- 5) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
- 6) any agreement relating to the use or hire of the ship, whether contained in the correspon

ding agreement or otherwise;

7) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

8) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

9) general average;

10) towage, pilotage;

11) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

12) construction, reconstruction, repair, converting or equipping of the ship;

13) port, canal, dock and other waterway dues and charges;

14) 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;

15) disbursements incurred on behalf of the ship or its owners;

16) insurance premiums (including mutual insurance claims) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

17) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

18) any dispute as to ownership or possession of the ship;

19) any dispute between co-owners of the ship as to the use of the ship;

20) restricted real rights established on the ship;

21) any dispute arising out of a contract for the sale of the ship.

The following claims in Estonia are secured by a maritime lien:

1) claims for wages and other sums due to the master, officers and other members of the crew in respect of their employment on the ship, including costs of repatriation and social security contributions payable on their behalf;

2) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

3) claims for reward for the salvage of the ship;

4) claims for port, canal, and other waterway dues and pilotage dues;

5) claims which arise out of direct damage caused by the operation of the ship other than damage to cargo, containers and passengers' effects carried on the ship.

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

Yes.

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

Yes.

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

Arrest is also permissible of any other ship or ships which is or are owned by the person who is owner of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

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

Arrest is also permissible of bareboat charterer, time charterer or voyage charterer of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

*\*Martin Männik a Partner of Law Firm Pohla & Hallmägi. He has graduated the Faculty of Law of Tartu University in 2003 and Lund University (LL.M) in 2006.*

*Law Firm Pohla & Hallmägi has a long history of ship arrests, being one of the first law firms engaged in ship arrests in Estonia. Martin Männik is responsible for all questions relating to maritime matters. He consults Estonian credit institutions on a daily basis involving arrest and enforcement proceedings of mortgaged vessels in Estonia and elsewhere in the world.*

*He represents clients in litigations concerning ship arrest in Estonia and has represented both creditors, owners of arrested vessels, mortgagees and ports as interested parties in the ship arrest procedure and in civil cases concerning collision of vessels and maritime insurance. He also assists various shipbuilders on a daily basis and is responsible for vessel transactions.*



# SHIP ARREST IN ESTONIA (Questions 10 to 26)



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

Yes. According to the law 5% of the claim is minimum counter-security. Usually Estonian Court appoints counter-security in the amount of 15% of the claim. In case of small claims higher counter-security may be appointed at the discretion of the judge. Estonian law provides currently 32 000 EUR as maximum amount of counter-security. By recent decision of the Supreme Court, lower courts may appoint higher counter security than 32 000 EUR if this amount is clearly not sufficient to protect owners against consequences of illegal arrest. Consequently the arresting party may after some time face a demand for higher security than originally paid to keep the arrest in force. Depending on the circumstances it is possible to apply that court will not appoint counter-security – claims of crew wages are the most common in this category.

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

Yes. In order to arrest a ship for maritime claim owner of the vessel or bareboat-charterer needs to be liable for the claim and should remain to be the owner or bareboat-charterer at the time of the arrest. In order to arrest a vessel for maritime lien you may also proceed, if the claim is against manager/operator of the vessel.

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

Estonia is party to 1993 Geneva Convention on Maritime Liens and Mortgages and recognises list of maritime liens set forth therein.

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

Provided we receive the file in early morning hours, arrest is possible by afternoon or evening of the next working day. In case we receive a file in the afternoon, arrest may not be possible during the next working day, but only on the day after.

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

It is necessary to provide to the Court documents, which convince the Court that there is a valid maritime claim. POA is required, but this does not need to be notarised and apostilled.

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

Upon applying for arrest all documents may be submitted electronically and no originals are required. Originals as well as notarisations and apostilles may be required in later stages of proceedings.

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

In case of clear agreement between the parties on jurisdiction of foreign court or arbitration, Estonian Court will not accept jurisdiction. In case of absence of agreement on foreign court jurisdiction or when parties demonstrate that they do not object to the jurisdiction of Estonian Court, it will accept jurisdiction over the substantive claim.

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

Court has to order a release, after which bailiff will take vessel documents back onboard, or captain or lawyer can collect them from bailiff's office. Bailiff's fees need to be paid before do

cuments are released from bailiff's office. After this there are no restrictions for a vessel to sail. Should any problems with different authorities occur, court order of release can be used.

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

Quickest way to lift an arrest is to provide monetary deposit or first class bank guarantee in the amount the court has appointed. This amount will be appointed in the court arrest order.

#### 19. Does security need to cover interest and costs?

In arresting order court will appoint the exact amount against which vessel will be released, so court order needs to be followed in this matter.

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

LOU is accepted only in case opponents agree this to be sufficient guarantee, legislation does not support acceptance of LOU.

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

From the moment court receives monetary deposit order of release is issued immediately, however not after office hours. In case of bank guarantee court may ask claimants opinion, which delays the arrest for 1-2 working days. However dispute over acceptability of a bank guarantee may stop release. Rough optimistic estimation for release, provided monetary deposit or acceptable guarantee is given, shall be 24-48 hours from the moment court receives deposit or original guarantee letter.

#### 22. Is there a procedure to contest the arrest?

Yes, it is possible to contest an arrest, but this does not affect procedure of arrest or release against guarantee. Contesting an arrest may take considerable time.

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

One month will be granted for claimants to take legal action on the merits.

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

There are no clear cases where arrest has been acknowledged wrongful, and currently it seems that courts are unwilling to recognise wrongful arrest, but no provision of law prevents Estonian Court to declare arrest wrongful in cases of misrepresentation or abuse of arrest mechanism by the claimant.

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

Lifting of the corporate veil in the context of ship arrest is not possible.

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

It is possible to apply for a court to allow sale of a ship pendente lite starting from the moment when her keeping costs under arrest (port dues, crew wages, bunkers, provision, port electricity etc.) in substantial amount remain unpaid. Being priority claims these will later be taken firstly from the proceeds of the sale and thus affect negatively all creditors. Any other circumstance having similar negative effect to condition and value of the ship and thus also to interests of the creditors will also serve as a ground for sale pendente lite. Obtaining a court decree allowing sale may take few days, but bailiff's procedure of sale on public auction, depending on circumstances, may take several months or even more. Quick sale on the initiative of the debtor against private offer, which is expected to be higher than estimated proceeds of public auction, is permitted by law, but such practice has not been introduced yet.

# SHIP ARREST IN FAROES



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

Arresting a ship can be done fast and very effectively under the law of the Faroe Islands. Often the arrest can be done within few hours from launching the application to the Court. The rules are quite flexible and the Court does not demand notarized and authenticated documents. The most time-consuming element is the obtaining of the acquired counter-guarantee through the banks.

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

The Faroe Islands, as a part of the Kingdom of Denmark, is a party to the 1952 Arrest Convention and also the 1967 Brussels Lien Convention, and the provisions of these Conventions have been implemented in the Faroese Merchants Shipping Act. However, there are no specific provisions for arrest of ships, and arrest follows the ordinary provisions for arrest of properties, covered by the Law of Court Procedure.

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

A vessel can be arrested without being detained in a port, where the arrest instead will be registered as an encumbrance in the Ship Registry. This is a normal procedure against vessels under the Faroese flag and prevents a sale of the vessel.

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

No.

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

A ship may be arrested for any claim against the registered owner of the vessel and claims, which are secured by maritime liens.

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

Yes.

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

No. The debtor has to be the owner of the vessel that is being arrested, unless the claim is secured by a maritime lien.

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

It is possible to arrest sister ships if the vessels are owned by the same legal entity.

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

It is not possible, except for maritime lien, to arrest a vessel under Bareboat or Time-chartered party, if the registered owner is not the debtor of the claim. However, there can be made an arrest in assets owned by the charterer e.g. the bunkers onboard the vessel.

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

Yes. Counter-security by way of a bank guarantee issued by a bank in the Kingdom of Denmark will be needed.

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

No, except as mentioned above, that an arrest for a maritime lien can be made irrespective of the owner of the vessel.

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

Yes. The 1967 International Convention of Maritime Liens and Ship Mortgages.

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

An arrest can typically be obtained within a day. However, sometimes the Court will not be available for an arrest during the weekends or nights.

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

No POA is required - only copy of relevant documentation for the claim.

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

Only the application itself should be in original. Documents can be faxed or e-mailed to the Court.

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

Yes. However, if the underlying agreement supporting the claim is subjected to arbitration or litigation in a foreign forum, the Court will not assume jurisdiction.

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

In order to release the vessel, there must be placed a security at the court.

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

The security must be placed in the form of a bank guarantee.

19. Does security need to cover interest and costs?

The size of the security must be exactly the same as the amount set up in the arrest. Usually, the amount set up in the arrest covers costs and interests as well.

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

No.

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

Usually the same day as the court receives the security.

22. Is there a procedure to contest the arrest?

Yes. The party, which demands the arrest must issue a summons regarding the legitimacy of the arrest, and in this connection it is possible to contest the arrest.

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

Legal action on the merits must be commenced within one week of the arrest date.

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

Yes. The arrestor is liable for wrongful arrest and is liable for any loss caused by the arrest. The counter-guarantee provided by the applicant claimants is supposed to cover such damages.

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

No.

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

If the ship-owner does not pay or put up a counter-guarantee for the claim in order to release the ship, the claimants will have to pursue the case in the merits in order to obtain a judgement. Based on this judgement the vessel can be sold on a forced auction. The forced auction procedure normally takes between 3 or 6 months.

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# SHIP ARREST IN FIJI



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

The High Court of Fiji has the Jurisdiction to grant a warrant to arrest Ships within Fiji waters. The arrest procedure primarily used to obtain security for a maritime claim or a lien. The Law relating to ship arrest is complex and a failure to observe the law and procedure can be critical to establish jurisdiction. The applicable law and the procedure have been primarily adopted from England. It is a very powerful tool and so not surprisingly it has some very stringent rules surrounding the process of obtaining a warrant for arrest.

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

Currently Fiji does not apply any international convention in respect of ship arrests. It simply relies on domestic laws and laws adopted from England (including Common Laws).

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

No. The procedure to arrest a ship is through a Court order. This is obtained by filing an ex-parte application. The rationale is not to risk alerting ships of her impending arrest.

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

Yes. The Fiji courts do have jurisdiction to grant freezing orders.

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

The Admiralty Jurisdiction of the High Court of Fiji is as follows:

- (a) Any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) Any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) Any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) Any claim for damage done by a ship;
- (e) Any claim for damage received by a ship;
- (f) Any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

- (g) Any claim for loss of or damage to goods carried in a ship;
- (h) Any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) Any claim in the nature of towage in respect of a ship or an aircraft;
- (j) Any claim in the nature of pilotage in respect of a ship or an aircraft;
- (k) Any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (l) Any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (m) Any claim by a master or member of the crew of a ship for wages, and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts, 1894 to 1954, is recoverable as wages or in the court and in the manner in which wages may be recovered;
- (n) Any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (o) Any claim arising out of an act which is or is claimed to be a general average act;
- (p) Any claim arising out of bottomry;
- (q) Any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

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

The High Court of Fiji has jurisdiction within Fiji waters irrespective of the ships flag. This provides comfort to local businesses intending to do business with ship calling into a Fiji Port for repair or supply of goods and materials.

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

For a ship to be arrested the debtor must have some interest in the ship, that can include the owner, charterer or person in possession and may in certain circumstances include a beneficial owner. This is a requirement that is envisaged in the Administration of Justice Act 1956 and Supreme Court Act 1981. Both of these English Acts are applied and relied upon in Fiji.

The effect of an arrest was expressed in the case of *Hai Soon International Trading PTE Ltd v Owners of the Motor Vessel Yin Chen No. 1* [2010] FJHC 474 where Justice Wati referred to the case of the case of *The "Cella"* (1888) 13 P.D. 82 (C.A.) which discussed the effect of a ship arrest Lord Esher M.R said at page 87:

"the moment that the arrest takes place, the ship is held by the Court as a security for whatever may be adjudged by it to be due to the claimant"; and Lord Justice Fry said at page 88: "The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment"; and Lord Justice Lopes said at page 88 as well: "From the moment of the arrest the ship is held by the court to abide the result in the action, and the rights of the parties must be determined by the state of things at the time of the institution of the action, and cannot be altered by anything which takes place subsequently."

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

The case of *Hai Soon International Trading PTE Ltd v Owners of the Motor Vessel Yin Chen No. 1* referred to Section 1(1) of the Administration of Justice Act, 1956 which provides;

For the purposes of enforcing either a maritime claim or a maritime lien a sister ship can also be named as a party in rem. The case of *The Preverse* [1973] 1 Lloyd's Rep. 202 states that where proceedings are taken out against a sister ship, the rule is the same as that applying to the actual offending ship. However, the claim or lien can only be realised against one. If the ship that is directly subject to the cause of the action cannot be arrested, a sister ship may be arrested provided

- (a) it is named within the proceedings and
- (b) beneficially owned by the same debtor.

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

The Supreme Court Act 1981 does not limit the word charterer to demise charterers. It includes time charterers. This means that the same procedure is applied.

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

There is no requirement to offer any form of counter security in any form. However the court must be satisfied that a right to arrest exists either through a maritime claim or a maritime lien.

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

No. The process to arrest a ship is the same whether the ship is arrested pursuant to a lien or a claim.

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

A maritime lien is recognised by the Fiji Court through Common law. Justice Scott in *Jeyang International Company Limited v the Owners of the Motor Vessels Kao Ya No. 1 and Kao Ya No. 137* Admiralty Action No. 9 of 2001 accepted the priority classification by Lord Diplock in *The Halcyon Isle* (1980) 3 ALL ER 197. These cases establish 6 classes of maritime liens in an order of priority. These are as follows:

1. Salvage;
2. Collision damage;
3. Seamen's Wages;
4. Bottomry (now obsolete);
5. Master's wages;
6. Master's disbursements

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

An application to arrest ships can be completed within 24 hours - 48 hours depending upon complexity. The Application is then allocated by the registry to a judge for determination of the arrest.

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

All evidence is required to be provided to court (including documentary evidence) in print. These are always annexed to an affidavit. The registry will not accept the filing of documents electronically unless the Court directs.

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 Court is moved through a motion together with an accompanying Affidavit. This is accompanied by other documents. No documents are filed electronically unless ordered by the Court.

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

Yes it will unless the jurisdiction of the court is challenged.

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

The Limitation Act provides 3 years for actions in tort (personal injury) otherwise it is 6 years.

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

Yes they do. Damages usually follow.

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

Not to date but as a common law jurisdiction – incremental changes can occur.

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

If the ship's value deteriorates the court can direct the admiralty marshal to sell the ship *pendente lite* and pay the gross proceeds into court. There are no time frames for the court to order this. However if either of the party contests the application to sell it may take 2 – 3 months for the court to resolve.

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

A motion and affidavit is filed to either offer bail or challenge the jurisdiction of the Court.

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

A cash bond or an undertaking by the vessel owners to satisfy any judgment given against the vessel.

23. Does security need to cover interest and costs?

Yes

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

If it is accepted by the Plaintiff, the Court may accept it as well.

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

Usually parties negotiate before applying to Court for release. However if a motion is filed and contested, it can take between 7-21 days.

26. Is there a procedure to contest the arrest?

As arrest is usually done ex-parte, the ship owners are able to contest the orders at once

a. as soon as it is served upon the return date.

b. upon the return date given by the Court in the arresting order.

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# SHIP ARREST IN FINLAND



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

The arrest of foreign vessels is possible in Finland if the underlying claim is a maritime claim as defined in the Arrest Convention of 1952, incorporated in the Finnish Maritime Code of 1994 (Chapter 4). However, Chapter 4 of the Maritime Code is not applicable if the applicant is domiciled in Finland and the vessel in question is registered in the Finnish Register of Ships or if the claim is of a public nature.

The existence of a maritime claim in itself is not a sufficient ground for an arrest. It is only possible to arrest a vessel in Finland if the material claim as such can be enforced against the vessel in Finland. Therefore, the vessel must be owned by the defendant or the claim should be secured by a maritime lien on the vessel. When arresting a vessel in Finland the applicant must provide security to cover the costs of an unjustified arrest.

An arrest is constituted in two independent and separate phases. Firstly, the applicant must obtain a court order for the arrest and thereafter apply for the actual enforcement of the order from the executive authorities. To maintain an enforced arrest in force, the applicant must commence legal proceedings against the defendant to obtain an enforceable judgment within 1 month from the date when the arrest was granted.

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

Finland has on 21 December 1995 ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships of 1952 ("the Arrest Convention"). Finland has also on 31 August 2000 signed the International Convention on the Arrest of Ships of 1999 but the Convention has not yet been ratified.

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

If the provisions of the Maritime Code concerning arrest do not apply for reasons explained in question 1, the general rules on precautionary measures incorporated in the Finnish Judicial Procedural Code, Chapter 7 apply.

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

When enforcing an arrest order the vessel is in principle taken in to the custody of a Bailiff but due to the nature of the arrested property, this is not possible in practice. Instead, the Bailiff takes possession of all the vessel's necessary documents e.g. nationality certificate in order to prevent the vessel from leaving port. The vessel can also be chained to the pier or prevented from refuelling. The Bailiff can also give notice of arrest and request executive assistance from e.g. the Coast Guard, the pilots, the Customs or the port authority to ensure the vessel remains under arrest.

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

Generally, it is possible to arrest seagoing ships only to secure the enforcement of maritime claims as defined in the Arrest Convention. However, in certain cases the provisions set forth in the Convention do not apply. See question 1.

Under Chapter 7 of the Judicial Procedural Code, the granting of an arrest order is subject to:

- (i) prima facie evidence of the applicant's claim which the defendant can be ordered to pay by a judgement or an arbitral award enforceable in Finland; and
- (ii) the existence of a threat that the defendant will hide, destroy or dispose of his property or otherwise endanger the applicant's claim.



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

Finland has extended the scope of the application of the Arrest Convention to all vessels registered in the Finnish Register of Ships or in corresponding foreign ship register, regardless of the nationality or the trading areas of the vessel.

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

When ratifying the Arrest Convention Finland limited the possibility to arrest vessels owned by someone who is not liable for the claim of the applicant. Only when a claim is secured by a maritime lien on a vessel such vessel can be arrested irrespective of who the debtor is.

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

A fundamental principle under Finnish law is that in order to secure a claim it is only possible to arrest property owned by the defendant. Therefore a sister ship can be arrested if both vessels were owned by the same defendant at the time when the maritime claim arose. The same does not apply to ships in associated ownership.

However, arrest of a sister ship is not possible if the underlying maritime claim is based on a dispute of ownership of a vessel or a dispute of ownership, possession or operation of or earnings from the vessels between co-owners of a vessel.

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

It will not be possible to arrest bare-boat or time-chartered vessels if the charterer is solely liable for the claim.

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

Yes, the applicant must provide security for any damage or loss which may be caused to the defendant if the arrest of the vessel proves to be unjustified.

The law contains no guidelines for how to determine the amount of security. The Bailiff enforcing the arrest order will at his own discretion decide what security will be considered sufficient to cover the liability of the applicant and in practice both limited and unlimited securities have been required. Generally only security given by a Finnish bank is accepted.

The Maritime Court may release the applicant from the obligation to provide security if the applicant cannot provide security and the applicant's claim is considered justified and well-founded. However, it is highly unusual that such release is granted.

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

There are some differences in this respect. The main principle is that a ship can only be arrested if the claim is a maritime claim and the vessel owned by the debtor. If a claim is secured by a maritime lien on a vessel such vessel can be arrested regardless of the debtor and it is not necessary to show any threat that the defendant will hide, destroy or dispose of his property.

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

Finland recognises maritime liens. The claims secured by a maritime lien are listed in the Maritime Code, Chapter 3 which corresponds to the list in the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967. However, Finland has signed the Convention but it has not been ratified.

A maritime lien is valid even if the debtor is a non-operating vessel owner, a charterer or other person who takes use of the vessel.

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

Generally, the application for an arrest must be served on the defendant and the defendant is given an opportunity to file a defence before the arrest order is finally given. As this procedure often endangers the purpose of the arrest it is possible to obtain an interlocutory order which is immediately enforceable without any service of documents on the defendant. In cases of extreme urgency an arrest order may even be obtained on the same day it is filed and enforced provided that the required security is available.

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

If the court so orders, a lawyer shall produce a POA personally signed by his/her client unless orally retained by the party in court.

There are no specific requirements regarding the particulars of the arrest application but it should at least contain details of the applicant and the defendant, particulars of the vessel to be arrested, particulars of the amount of the claim with supporting documentation, a brief account of the grounds of the claim and an explanation why the arrest is considered to be necessary by the applicant.

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

A written application with supporting documents must be filed with the Maritime Court in order to obtain an arrest. If the applicant wants to invoke the benefit of a maritime lien, he must produce evidence of the existence of such lien.

Normally an extract from the ship's register or a corresponding document as evidence of the ownership of the vessel is required. Also particulars of the parties and the vessel to be arrested as well as particulars of the amount of the claim can be attached. The attached documents are not required to be original. Neither notarization nor apostille of a document are normally required. Parties are in principle allowed to deliver documents electronically to the authorities. If the document is required to be signed, the requirements of an electronic signature as stated in the relevant act must be met. However, if the document includes information about the sender and there is no uncertainty about the originality or integrity of the document, the electronic document can be delivered unsigned to the authorities.

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

A court competent to try an action in civil litigation is the Maritime Court within whose jurisdiction the defendant is domiciled, has his principle place of business or where the vessel to be arrested is present.

If security has been lodged with an authority for release from arrest, an action can be brought before the Maritime Court where the security was lodged. The same applies even if the security has lapsed.

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

In order to release a ship from arrest the defendant can provide the Bailiff with a security for the applicant's claim. In some cases the arrest can only be lifted if the defendant provides a security that is approved by the applicant or in the Bailiff's view corresponds to the applicant's need for legal protection in an appropriate and sufficient manner.

An arrest can also be lifted at the request of the defendant unless the applicant demonstrates that legal proceedings against the defendant were commenced on time. The applicant must commence legal proceedings against the defendant within one month from the day when the final arrest order was granted. An arrest shall also be lifted if the principal claim has been rejected or dismissed by a court or if the claim has been paid.

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

The security may take the form of a monetary security or a guarantee. The Bailiff may require a bank guarantee from a Finnish bank.

19. Does security need to cover interest and costs?

The security shall cover the amount that the court has ordered the ship to be arrested for. The security shall generally also cover interest and legal costs.

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

Yes, LOUs of P&I clubs are usually accepted as sufficient to lift the arrest.

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

If the grounds for the arrest have lapsed, the Bailiff shall carry out the reversal measures. The law does not specify the duration of this procedure.

22. Is there a procedure to contest the arrest?

When the arrest is granted and enforced by a separate arrest order or during the proceedings of the principal claim, the defendant can appeal such an order in the court of higher instance. However, in cases of an interlocutory order, the order cannot be appealed but the applicant must commence legal proceedings against the defendant within one month from the final arrest order.

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

The applicant must commence legal proceedings against the defendant within one month from the day when the final arrest order is granted.

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

The applicant's liability for an unjustified arrest is strict. Therefore, the applicant is liable for any loss the defendant may suffer as a result of an unjustified arrest even if the applicant has not been negligent or acted in bad faith when enforcing the arrest.

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

Piercing the corporate veil is not common. Therefore it is not normally possible to arrest the property of owners associated with the debtor. The only exceptions are partnerships, since the general partners are personally liable for the debts of the company.

However, property formally owned by a third party can be attached to secure a claim on condition that the ownership is based on formal arrangements which do not correspond to the actual nature of the transaction and aim at avoiding enforcement. A further condition is that the applicant's claim cannot be otherwise recovered from the debtor within a reasonable time.

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

The main principle under Finnish law is that it is not possible to sell the ship *pendente lite*. According to the Finnish Judicial Enforcement Act, if property which is subject to rapid deterioration or which is expensive to retain in custody has been arrested but the court has not yet given a judgment, the Bailiff is entitled to sell such property at the request of the claimant. In theory these principles may apply also to vessels under arrest.

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# SHIP ARREST IN FRANCE



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

During the years following the adoption of the 1952 Brussels Convention, France was held to be a ship arrest haven. Indeed, as a response to the abusive expansion of single ship companies, French judges resorted to an extensive interpretation of article 3.2 of the Brussels Convention, granting orders of arrest against any ship apparently owned by “the same beneficial or associated owner”, such concept including a company which shares are owned by an entity holding also shares in the capital of the debtor. This movement, which led to various conflicting judgments, subsided in the mid nineties. The French courts back-pedaled to a more conservative view, whereby the piercing of the corporate veil must reveal the fictitious character of the company owning the ship (see parag. 25 below)? France remains however an interesting forum for arrest insofar as the domestic legislation allows, under certain conditions, the arrest of a ship for any claim against the owner, were it not maritime, and as the procedure is relatively not costly and can be implemented rapidly.

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

France ratified the Brussels Convention on the Arrest of Sea-Going Ships of 10 May 1952 and incorporated it through the Decree no.58-14 of 4 January 1958.

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

Yes. Under the domestic regime framed by the Code of Transports (art. L.5114-20 to L.5114-29), the Decree no.67-967 of 27 October 1967 concerning the status of vessels, as amended (art. 30 to 58) and the Code of Civil Procedures of Execution (art. L.111-1 et seq. and art. R.112-1 et seq.).

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

As a matter of principle, a freezing injunction may be issued under the provisions of the Code of Civil Procedure, in case of urgency whenever the claim is not seriously disputable, otherwise when it aims at preventing an imminent damage or at stopping a disturbance obviously unlawful. In practice, it is rarely ordered against a ship.

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

Under the Brussels Convention, ships may be arrested for any of the “maritime claims” identified in article 1 of the Convention. Under the domestic legislation, ships can be arrested for any *prima facie* claim that the petitioner may have against the owner of the ship.

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

Yes. All ships calling at a French port may be arrested – save warships and state-owned ships employed in a public non-commercial service or ships proven to be necessary for the personal exercise of a professional activity (eg. fishing boats).

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

Subject to the maritime claims identified in the Brussels Convention, in the event secured by a maritime lien, and to the circumstances described below, French judges have regularly dismissed any petition for the arrest of a ship not owned by the debtor.

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

Under French law, any ship belonging to the debtor may be arrested even where the claim is

not related directly to the ship. The Brussels Convention permits such arrest provided the claim is not in connection with the title to or ownership of a particular ship or with disputes between co-owners or the mortgage or hypothecation of this ship.  
A ship owned by an associated company of the debtor may be arrested only if the company is proven to be fictitious (see parag. 25 below), otherwise whenever the associated company is deemed to be jointly responsible for the claim.

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

Under the Brussels Convention, the holder of a maritime claim against the bareboat or time charterer of a ship is entitled to arrest the said ship or any other ship in the ownership of the charterer. The French domestic regime allows such arrest only if the claimant has a maritime lien on the ship or has reasonable grounds to believe that the underlying obligation was concluded on behalf of the actual owner of the ship.

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

It is not common practice that French courts require counter-security as a prerequisite for the arrest of a ship. However, judges have the free discretion to decide otherwise.

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

There is no difference in the procedure of arrest. However, a maritime lien would allow the arrest of the ship irrespective of the identity of its owner ("into whatever hands it may pass" - art 8 of the Brussels Convention; art. L.5114-18 of the Code of Transports).

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

Yes. France ratified the Brussels Convention on Maritime Liens and Mortgages dated 10 April 1926, incorporated into French domestic law (art. L.5114-7 et seq. of the Code of Transports), it being highlighted that an additional maritime lien is provided under article L.5114-8 of the Code of Transports ("the shipping agent's claim for disbursements paid outside the port registry of the vessel").

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

If all the necessary documents are provided in due time, the arrest can be made within the same day in case of urgency.

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

There is no need to provide a POA. Obviously, the petition must be substantiated with any document evidencing the existence and the cogency of the claim. When the petition is grounded on the Brussels Convention, the documents must also show the maritime nature of the claim.

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

In practice, no original or notarized documents are required. The documents supporting the petition must be handed to the ruling judge.

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

Save when the Brussels Convention applies (art.7), French judges may not rule on the merits of the claim, on the sole ground that the ship was arrested within their area of jurisdiction (Forum Arresti). The criteria and conditions set under the international rules of conflict, as per the applicable International Conventions and EC Regulations, must be met.

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

A ship may be released from arrest either by providing the appropriate guarantee or deposit as per the order of arrest or by serving upon the arrestor a writ of summons with a view to challenging the arrest (see parag. 22 below).

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

As a matter of principle, any security that would be equivalent to the guarantee offered by the arrest of the ship for the recovery of the claim is acceptable. In practice, French judges accept bank guarantees, cash deposits and P&I letters of undertaking.



### 19. Does security need to cover interest and costs?

Security would need to cover the exact sum for which the arrest of the ship has been ordered. This sum often includes a provision for interests and costs.

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

P&I letters of undertaking are usually deemed sufficient when provided by P&I Clubs members of the International Group. For other P&I Clubs, it would depend of the identity, reputation and creditworthiness of the Club, as freely appreciated by the ruling judge.

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

In usual cases of urgency, the ruling judge would issue an order to lift or confirm the arrest of the ship the same day of the hearing at which the arrestor would have been summoned to appear. Once obtained, the order to lift the arrest can be notified forthwith, through bailiff, to the harbour master for an immediate release.

### 22. Is there a procedure to contest the arrest?

The arrest of a ship is challenged by writ of summons served upon the arrestor, which is deemed to have elected domicile at the offices of its lawyers and/or bailiffs. The writ, which does not need to be translated, summons the arrestor to appear before the judge who ordered the arrest at a hearing that could be scheduled at the first convenience of the judge or his/her substitute, including the same day of the arrest.

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

The claimant must institute legal proceedings on the merits within one (1) month after the arrest is performed, otherwise the arrest will automatically be held cancelled.

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

French judges are reluctant to accept a claim for compensatory damages for wrongful arrest, unless the bad faith or malice of the arrestor is clearly established.

### 25. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes. In this respect, French judges have been relying on the concept of "Fiction" instead of the theory of "Appearance", i.e. one must establish that the company owning the ship is fictitious. To this end, various elements must be gathered: eg. same beneficial or associated owner, want of employees, concurrency of assets and/or debts, unity of management, lack of participation to the profits and/or debts of the company, unequal distribution of the dividends, existence of a subordination bond between the existing entities, etc.

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

Yes. The judicial sale of the arrested ship is possible when the petitioner holds an enforceable deed or judgement. In practice, the procedure of judicial sale lasts around three to six months.

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# SHIP ARREST IN GEORGIA



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

Georgia is not a signatory part of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships (Brussels 1952) and UN International Convention on Arrest of Ships (1999), but has implemented provisions of the Conventions into maritime legislation.

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

The source of law during a ships arrest procedure implementation is the following:

1. International legal instruments the 1982 UN Convention on Law of the Sea.

2. Domestic legal instruments:

Maritime Code of Georgia (15.05.1997r. N 715 - IIC).

The Law of Georgia «On maritime areas» (N°1756 of 24.12.1998).

The Law of Georgia «On international private law» (29.04.1998r. 1362- IIC)

The Law of Georgia «On State Boundary» 17.07.1998 N°1536-PC

Georgia Code of Civil Procedure (14.11.1997r. N°1106- 1C)

## 3. Judicial practice of Georgian courts

State arbitration has been abolished from the justice system of Georgia, and the system was generated in the form of general courts of three instances, administering justice through civil, administrative and criminal jurisprudence. As a result, a specific judicial form of ships arrest has been gradually formed.

In accordance with Article 831 of Maritime Code of Georgia ship's arrest is implemented only for maritime claim security. Maritime claim comes from the ship's ownership and from other property relations that arise in the construction, management, maintenance, commercial use, and mortgage or as a result of activities related to the salvage of the ship.

In accordance with the general provision of Article 831 of Maritime Code of Georgia and Civil Procedure Code (CPC) the only competent authority, which is authorized to consider the issue of arrest and release of a vessel in Georgia is general court. And the procedure of arrest and release of a vessel is carried out in accordance with the CPC of Georgia. Taking into consideration the structure and provisions of the CPC we can clearly conclude that the arrest of the ship can be realized only as a form of security for the claim, which logically should be a maritime claim.

In Georgia, as well as in Romano-Germanic legal systems, there is a standard regulation when a court considers a case involving a foreign element. In particular the court shall:

- Determine a jurisdiction of the court to the claim (suit, petition) being considered
- Determine the qualification and the nature of the claim being considered.

In such cases, as a rule, general competence is substantiated by the main legal instrument of the international maritime law - the UN Convention on Law of the Sea.

Domestic regulations of competence of the courts in this part are stipulated for by the Law of Georgia «On maritime areas». In particular: in accordance with Art. 26 legal enforcement measures with the purpose of civil claim security can be applied to a foreign vessel which left internal sea waters of Georgia and crossing its territorial sea, or is in the territorial sea of Georgia.

The important regulations substantiating the competency are provided by the Law of Georgia «On international private law», which is - unlike Maritime Code or the Law on Maritime Areas –

one of the most common and used laws by the courts.

According to the generalized provisions of this law in relation to the Georgian courts competence, the following can be concluded:

-General courts of Georgia have special international competency in the applications regarding legal enforcement if their implementation or claim for implementation or realization is carried out in Georgia.

-For claim security Georgian court is competent if interim and conservatory measures of relief are enforceable in the courts of Georgia or courts of Georgia have international jurisdiction. Use of CPC of Georgia as procedural and legal substantiation of consideration and implementation of ship's arrest, is imperatively provided by Article 831 of Maritime Code of Georgia. Carrying out the arrest of vessel as an interim and conservatory measure of relief Georgian law provides protection of the shipowner's interests. In accordance with the Law of Georgia «On international private law» foreign citizens and legal entities, participating in the civil process under Georgia jurisdiction, enjoy the same legal safeguard as legal entities and physical persons – residents of Georgia.

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

In accordance with the laws as listed above three types of detention and arrest are applicable:

- a) detention by Harbour Master for 72 hrs.
- b) ship's arrest via the competent court decision.
- c) ship's arrest against legal decision of a foreign arbitrage or a court.

Each type has its own character and procedure

- detention by Harbour Master – the limit of such detention is 72 hrs, days off and public holidays are not included in this period. It is implemented on the base of an application of any physical person or legal entity, which has got grounds for claim for commercial damage compensation or claim regarding the cargo etc. In order to implement this, a physical person or legal entity should apply to the Harbour Master providing the copies of all the documents proving the fact of damage or claim. The application should be in the Georgian language. Such detention is applied for a short period in order the Parties could solve the issue peacefully or a competent court could make a decision regarding detention of the vessel for a certain period of time. In order to make such detention the preliminary 2 days notice is required.

- ship's arrest via the competent court decision – as a rule, preliminary court arrest is carried out for the period of 10 days for claiming on the merits to the appropriate authority (arbitrage or court), which has competency for consideration of the claim on the merits.

- ship's arrest against legal decision of a foreign arbitrage or a court – Georgia is a part of New York Convention on Enforcement of Arbitral Awards and therefore foreign arbitrage decision after the procedure of recognition and implementation by the Supreme Court of Georgia, is implemented as domestic judicial act. Recognition and implementation procedure takes 10 days from the date of acceptance the appropriate petition into processing.

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

Such alternatives are possible. Saisie conservatoire can be applied to any movable and immovable property, providing the court is given documents proving the defendant's ownership of the subject regarded as a matter of security.

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

Base for detention and the appropriate legal actions are the main three reasons: First reason is connected with Georgian law and regulations infringement. The second reason is connected with providing of safety of navigation. The third reason – application of any physical person or legal entity having base for claiming for commercial damage compensation, claim for cargo etc.

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

There are not any privileges, rather than it is a governmental vessel, whose immunity is provided by international law.

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

Detention can be carried out only in relation to the shipowner and in rare cases - in relation to the bareboat charter owner.

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

Maritime claim can be applied to any vessel, if its ownership is documentarily proved.

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

Detention can be carried out only in relation to the shipowner and in rare cases - in relation to the bareboat charter owner providing Bareboat ownership documentary proof.

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

In the case of ships arrest the adequate form of security in order to release the vessel - can be depositing the amount of claim to the court's account by the defendant. Or some other forms of coercive measures can be applied, such as a bank security, P&I security or some other, including those not provided by the legislation of Georgia. In any case the court's decision completely depends on the Party demanded the vessel's arrest.

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

No difference if the third reason occurs – application of any physical person or legal entity having base for claiming for commercial damage compensation, claim for cargo etc.

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

Georgia law and courts recognize maritime liens for the debtor's property irrespective of damage claim base – breach of obligations (law or contract) or delict. The provisions of the International Convention on Maritime Liens and Mortgages Geneva, 6 May 1993 are incorporated into Art. 350 – 355 of Maritime Code of Georgia.

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

In order to make such detention the preliminary 3 days notice is required.

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

The following documents are necessary: original Power of Attorney to the lawyer (in Georgian and English, as a rule) Statement of claim, copies of all documents regarding this case.

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

Georgian courts require originals or notarized copies of all important documents (contracts, bills of lading, charter-parties, correspondence between the parties) of the plaintiff as stated in the application.

Translation of all the documents into Georgian is carried out by a certified translator. Documents translation takes time and the client should bear this time factor in mind.

Other documents can be presented as copies, certified by a seal and signature of the plaintiff. The documents (apart from the LOA) can be presented in electronic copies.

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

Georgian court can accept a claim on the merit for consideration if its competency is in accordance with the Law of Georgia "On international private law", irrespective where the vessel is, or of the Parties have agreed in written form for proceeding the case in Georgia, are presented by lawyers and have been familiarized with their right of objection in regards of the court's competency.

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

A vessel can be released by the order of the Court, which took a decision to arrest her, or by the order of the Court of Appeal, if any appeal had been submitted.

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

Civil Code of Georgia provides that instead of arrest of the vessel – as claim security – financial security can be applied as a local bank guarantee or a deposit submitted to a deposit account of the Court. However, in practice this provision is applied quite rarely.

#### 19. Does security need to cover interest and costs?

No interest is imposed on the penalty amount. When applying to the court the court fee is fixed: about USD 90. Court of Appeal fee is approximately the same.

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

Maritime Code of Georgia provides that P&I Club or first-rate bank guarantee can be submitted. In practice, this provision shall not apply in cases of administrative delinquencies. In the private law disputes the application of this provision of in the private law disputes the application of this provision depends on the goodwill of the Party who seeks arrest of a ship on property requirements.

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

A vessel's release depends on the grounds of the arrest. If the arrest was implied as a security for a property claim, the time of release can be until the conclusion of the dispute on the merits. In the cases of administrative delinquencies, the vessel is released from the arrest in 1-2 days upon payment of the penalty.

#### 22. Is there a procedure to contest the arrest?

Procedure of appeal exists and is widely applied.

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

In the case the court has made a decision to implement interim and conservatory measures of relief before the claim on the merits has been arisen, the court grants 10 days period for declaring to the competent court, and this period is not subject to extension in accordance with CPC. On expiration of this period interim and conservatory measures of relief are withdrawn by the court and the Party concerned cannot appeal to the court with the same claim on the same base. In the case the claim on the merits has been declared security measures remain in force until the final decision of the claim on the merits.

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

In the case of wrongful arrest a court can take a decision on release of the vessel providing:

(a) The interim and conservatory measures of relief appeared to be unjustified as the plaintiff's (concerned party's) claim was dismissed and the decision has entered into force.

(b) The plaintiff has not applied to the competent court for considering the claim on the merits, that's why the court withdraws the interim and conservatory measures of relief. If the arrest has been recognized as unjustified, the defendant can declare a claim against the arrest initiator in order to compensate the sustained loss.

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

Georgian corporate law recognizes property accountability of a subject only based on organizational structure of the defendant if this company is registered in Georgia. As for a company not registered in Georgia this issue is decided by the court on the basis of the common provision as provided by the Law of Georgia "On international private law"

#### 26. Is it possible to have a ship sold pendent elite; if so how long does it take?

With the purpose of court and arbitration decisions enforcement on the basis of a writ of execution issued by the competent court of Georgia, enforcement is carried out by the Executive Bureau of the Ministry of Justice of Georgia. The procedure is as follows: the debtor is given a written notice of the voluntary implementation of the court decision, after that the vessel is auctioned by posting statements on the appropriate websites. After two failed auctions the property is transferred to the creditor and the appropriate act of the Executive Bureau is issued.

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# SHIP ARREST IN GERMANY



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

Germany has not only well-known international sea-ports at the North- and the Baltic-Sea but also a long history in maritime law. Although it is said that German law is generally rather restrictive in allowing conservatory and provisional measures, no doubt an arrest can be achieved within a day and with reasonable costs involved; in particular after the revision of the German Maritime Trade Law ("Das deutsche Seehandelsrecht"), which entered into force on April 25th, 2013. The much disputed requirement of "the good reason" for an arrest ("Arrestgrund") has been deleted. Therefore the merits of an arrest now depend on a thoroughly prepared application by the arresting party only.

The competent court is the local court ("Amtsgericht") for the port in which the ship is berthing or any inland court having jurisdiction to hear the case on the merits.

Mostly the courts decide the application without a hearing. If the presiding judge believes the application may be without merits, he usually will inform the creditor's lawyer before dismissing it and allow him to complete his arguments or to withdraw the application.

Counter-Security may be ordered, but there are arguments to oppose to such a request.

As to the service of an arrest order it has been clarified that such order may be served on the master onboard the vessel.

In order to have an arrest lifted the ship-owners may put up security in an amount ordered by the court ("Lösungssumme"); such security may given by a bank-guarantee, however, as practice shows, P+I-Club letters of first-class P+I-Clubs ("International Group") are widely accepted. Simultaneously the ship-owners will file an appeal ("Widerspruch") against the arrest-order and an immediate hearing on the merits of the arrest-order will follow.

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

Germany is since April 1973 member of the Brussels Arrest-Convention of 1952.

## 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?

No.

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

Generally speaking an arrest may be applied for if the creditor's claim is for payment or may become a claim for payment, which is generally broader than the claims admitted under the Brussels Arrest Convention 1952, however, that does not lead to major differences because – as practice shows – those claims cover the vast majority of claims against ship-owners.

However, it should be noted that although the requirement of the "Good reason" for an Arrest ("Arrestgrund") has been deleted this deletion is limited to an arrest of the seagoing and inland-waterway vessel only, and not for the arrest of the debtor's other assets (i.e. for an arrest into bunkers): Therefore an arrest-application for "other" assets of the debtor should clearly be separated from an arrest of a vessel, as for such application the creditor still has to demonstrate that without such an arrest the enforcement of a (later) judgement would be rendered impossible or substantially more difficult.

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

An arrest may be applied for irrespective of the flag.

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

As already said an arrest will only be granted if the shipowner is the debtor of the claim.

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

An arrest into a sister-ship is possible, provided that sister-ship is owned by the person/company against the claim is made.

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

A vessel may be arrested if the claim against the bareboat or demise charterer is covered by a maritime lien. It is also well arguable that for any other claim against the bareboat and demise charterer the vessel can be arrested. This, by contrast, does not apply to time charterers. If other property of charterers is concerned – i.e. bunkers – that property may of course also be arrested.

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

Although it was the clear intention of the government when reforming the German Maritime Trade Code to make arrests into ships easier and less risky it is still uncertain whether the court may ask for counter-security. Some commentators, pointing to the government's intention, favour such an abolishment, however, the law of civil procedure ("Zivilprozessordnung") remains unchanged and due to § 921 it is still in the discretion of the judge to order counter-security. It is therefore wise to argue within the application that such discretion no longer exists and that no counter-security may be requested any longer, but of course, as time is of the essence, the applicant should be ready to present security, if so ordered.

The reason that an order for counter-security may still be made is that German law is rather strict on compensation for wrongful arrests. The counter-security should safeguard the ship-owners' claim for compensation and therefore the amount of such guarantee is not related to the creditor's claim but to the damage the ship-owners may suffer due to his ship being arrested for a while. The actual amount is in the discretion of the judge, but as a general rule the ship's charter-rate for the off-hire period may be a reasonable guideline. A counter-security of the creditor will be ordered in cash or – if so requested in the application – may be given by a bank guarantee of a 1st class European bank. Therefore the creditors' bankers should be involved in due course before the application.

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

No, there are no differences.

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

The applicant may have to consider maritime liens and mortgages. Germany is neither a member to the International Convention on Maritime Liens and Mortgages 1967 nor 1993, but has transformed the 1967 Convention into the Commercial Code (Handelsgesetzbuch); however, cargo claims arising out of charter-parties or other contracts have been deleted. Liens are accepted for crew wages, port- and pilots-charges, claims for personal injury and death or damage to property, GA-contributions and salvage-remuneration and claims of the social-security-authorities. Maritime liens prevail over all other liens on the ship, also over the ships' mortgages but they all can destroy the value of the ship for any creditor not being so secured.

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

That very much depends on how fast the creditor may arrange for a possible counter-security. When all documents are at hand in the morning an arrest may be done in a day. The time limits are then as follows: The arrest order may only be executed within one month from its delivery to the applicant. The execution will be done by the court's bailiff ("Gerichtsvollzieher") on a special order of the applicant, not by the court. The applicant also has to make sure that service of the arrest-order to the ship's owners is effected or at least applied for within one week after the ship has been arrested and within the one-month-timelimit mentioned before. If one of these time-limits has not been observed the arrest will be lifted if the ship-owners so applies to the court. The execution may only be done as long as the ship has not started her voyage and is still within a German port.

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

The arrest procedure is simple and starts with an application filed by a lawyer, although this is not compulsory. No POA is required but advisable to avoid delay if so requested. The application must be in the German language and supported by prima facie evidence ("Glaubhaftmachung") as to the claim. This is usually been done by a sworn affidavit of a competent manager of the creditor confirming that the facts stated in the application are true. However, no legalisation is required. As said it is also wise to argue that no counter-security may be requested any longer, but if so ordered by the court, the creditor may be apply to provide for security by a 1st class European bank. Very rarely the attached documents have to be translated into German; in the main seaports of Germany such as Hamburg and Bremen the courts are well familiar with the English language.

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

No special documents are required and thus no originals are needed. In Germany very few courts accept an electronically filed motion, but only by fax. No notarisation, no Apostille.

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

As German Courts generally accept jurisdiction clauses, only for claims under the 1952 Arrest-Convention the arrest may lead to jurisdiction.

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

There are in general two possibilities: The shipowners may either file a motion/appeal against the arrest order (§ 924 German Procedural Code) or – as every arrest order has to include the amount of security against the arrest may be lifted – pay such amount into the court's cashier.

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

In general security has to be provided in cash or by providing an unconditional bank guarantee issued by a first class bank located in the EU. Of course, if the parties to an arrest so agree, a vessel may be released against a P+I-Club-Letter, preferably from a P+I-Club of the International Group. However, a German court will not accept a P+I-Club-Letter, if the arresting party does not agree.

#### 19. Does security need to cover interest and costs?

The court may consider interest and costs, but in the end the shipowners have to provide such amount as determined by the court in the arrest order. If the parties agree on a P+I-Club-Letter interest and cost will of course be an issue.

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

As stated, that depends on an agreement of the parties; a court will not accept a P+I-Club-Letter as sufficient security.

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

As stated in No.17 there are two possibilities: Contest the arrest by an appeal (i) or pay what is ordered as security (ii). It is obvious that (ii) is fast and efficient as a prompt release only depends on providing security and therefore it is advisable to have your preparations ready to pay cash or provide for a guarantee and then appeal. If cash or security may not be provided for whatever reason and the appeal is the only option it depends on the counter-arguments the shipowners may present. The court will in any case set a date for a hearing immediately after the counter-arguments have been lodged. German Courts will in general decide at the end of that hearing. So generally speaking – depending on the merits of the counter-arguments – the arrest order may be lifted within a couple of days.

#### 22. Is there a procedure to contest the arrest?

Look at No.17!

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

As to the legal action there is no automatism, however, on an application of shipowners the

court will file an order giving the applicants reasonably time, which is in the discretion of the court, mostly about a month. If the applicants fail to comply with this order the arrest will be lifted.

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

German law is rather strict on compensation for wrongful arrests. § 945 ZPO stipulates a strict liability which arises irrespective of illegality or fault on the part of the applicant for arrest but is only due to the decision of the judge that the arrest was unjustified from the very beginning. However, as all parties under German law also the shipowner has an obligation to mitigate damage and should provide for a guarantee i.e. a P+I-Club without delay.

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

Under German law it is rather rare that the corporate veil may be lifted; only in cases of clear misconduct of the managers or the shareholders there might be a direct claim against them.

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

During pending arrest proceedings the owners are not entitled to sell their vessel.

#### Note as to the revised German Maritime Trade Code ("Deutsches Seehandelsrecht")

On April 25th 2013 the revision of the German Maritime Trade Code entered into force; the main changes are:

1. The excuses for error in navigation and fire are deleted; the carrier may (re-)include this excuse by implementing a specific Standard Business (bill of lading) term, however, he is not entitled to rely on such term if he acted with intent or recklessly with the knowledge that damage would probably occur.
2. Arrest proceedings are much easier as a special requirement of the German Civil Code, the good reason for an arrest ("Arrestgrund") has been deleted.
3. The liability of and direct claims against the "actual carrier" have been established; cargo interests may therefore sue the actual carrier and the contracting carrier.
4. The new maritime code is mandatory and the parties may not deviate from it by standard business (bill of lading) terms but only by individual agreement, except for the limits of the liability and the excuses for error in navigation and fire.
5. The liability of the carrier for death or injuries to passengers has been formed in line with The Athens Convention of 2002.
6. Germany remains a Hague-State having the Hague-Visby-Rules implemented into the national Commercial, therefore the limits of liability for cargo claims (2 SDR/kg or 666,67 SDR/unit).

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# SHIP ARREST IN GHANA



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

Jurisdiction in respect of admiralty matters is vested in the High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court.

Order 2 of the High Court (Civil Procedure) Rules 2004 (C.I. 47) provides that all civil proceedings must be commenced by Writ of Summons and must be filed along with a Statement of Claim. Every Writ of Summons must contain concise statement of the nature of the claim or relief, remedy sought in the action.

Order 62 of C.I. 47 generally makes provision for maritime actions. At the time of issuing a Writ of Summons, the Plaintiff files an Ex parte application for an order for a warrant of the arrest of the ship. No warrant of arrest shall be issued until an affidavit by the party or his agent has been filed and the following provisions complied with:

(a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim and the name and nature of the property to be arrested;

(b) In an action for wages or possession, the affidavit shall state the national character of the ship proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in Ghana, and a copy of the notice shall be annexed to the affidavit;

(c) In an action for bottomry, the bottomry bond, and if in a foreign language also a certified translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the transaction thereof, certified to be correct, shall be annexed to the affidavit;

(d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same;

(e) The lodging of an undertaking in writing by the solicitor who applies for the issuance of the warrant to pay the fees and expenses of the Marshal.

The application for an order for warrant of arrest not being on notice can be filed, heard and granted within 24 hours. After the grant of the order a bailiff of the High Court is assigned to serve the Order on the Captain of the vessel. A copy of the Order is also served on the Harbour Master, the Port Authorities and Customs Excise and Prevention Service at the port where the vessel is berthed.

A defendant who is served with an Order of arrest may apply to the High Court of Justice which granted the Order to have the order set aside or provide adequate security for the satisfaction of the Plaintiff's claim. If the defendant is able to provide adequate security to the satisfaction of the Court, the Court may vacate the order on terms and conditions as in the opinion of the Court is just and appropriate. Upon service of the order vacating the warrant of arrest, the Harbour Master and the Port Authorities will grant the Captain of the vessel unconditional leave to sail from the port of call.

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

Ghana has not acceded to the Arrest Conventions.

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

There is no other way to arrest a ship, other than as stated in (1) above.



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

No. Arrests can only be effected pursuant to an action in rem brought against a ship or a sister ship.

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

There is no law or rule of procedure that specifically defines what maritime claims are. The position is that where the C.I. 47 does not make specific provision for the rule of procedure in a matter, resort can be had to the practice and procedure applicable in any common law jurisdiction. Without prejudice to the above, Section 446 of the Ghana Shipping Act, 2003 (Act 645) provides a definition of maritime actions in rem. It states that in any case in which an action may be brought against a ship other than actions arising from claims to the possession or ownership of a share in it, or a claim in respect of a mortgage or charge on a ship or a share, where the person who would be liable on the claim in an action in personam, when the cause of action arose, was the owner or charterer of, or in possession or in control of the ship, the admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against:

(a) that ship, if at the time when the action is brought, the ship is beneficially owned in respect of the shares by that person; or  
(b) any other ship which, at the time when the action is brought, is beneficially owned as under paragraph (a); but in determining whether a person would be liable on a claim in an action in personam, it shall be assumed that the habitual residence or a place of business of that person is within Ghana.

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

Yes, a vessel can be arrested within Ghana irrespective of the flag she is sailing under.

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

No. The claim must be enforceable in personam against the owner of the ship or the demise charterer.

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

It is possible to arrest sister ships, but not associated ships.

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

An action in rem can be brought against a bareboat vessel, but not against a time-chartered vessel.

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

Counter-security is not required for an arrest. All that is required is an undertaking by the applicant or its Solicitor to pay the Admiralty Marshal's costs in serving the arrest warrant. However, if the applicant is a foreign entity without assets in the jurisdiction, security for costs of the litigation is often ordered, upon the application of the Defendant.

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

No, the procedure is the same.

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

Ghana recognises maritime liens under Section 66 of Act 645, but she is not a party to any Convention with respect to them.

According to Section 66 of Act 645, any of the following claims against an owner, demise charterer, manager or operator of a vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and any other sums due to the master, officers and the other members of the vessel's complement in respect of their employment on the vessel including costs of repatriation and social insurance contributions payable on their behalf;  
(b) claims in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the vessel;  
(c) claims for reward for salvage of the vessel;  
(d) claims for ports, canal and other waterway dues and pilotage dues;  
(e) claims based on tort arising out of physical loss or damage caused by the operations of the vessels other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

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

An arrest order can be obtained within 24 hours of filing the requisite processes.

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

There is no requirement of a POA, however copies of all relevant documents supporting the claim will have to be provided to the Court.

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

Original and hard copies of all the documents are required, but they do not have to be notarized. Documents cannot be filed electronically.

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

Yes. Ghanaian courts will accept jurisdiction over the substantive claim once a ship has been arrested within Ghanaian territorial waters.

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

Where owners have placed acceptable security for the release of a ship, the court may order release of the ship upon request made by the owners for release of the ship.

In some cases, the arrestor could request for release of the ship, where owners have placed acceptable security for the release.

In some cases, the court may order release of a ship under arrest, if owners successfully challenge an order of arrest.

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

Security such as bank guarantees, P and I Club LOUs and insurance bonds are acceptable to be placed for the release of ships.

19. Does security need to cover interest and costs?

Yes, security must cover the claim, interest and costs.

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

Yes, P and I LOUs are accepted as sufficient to lift the arrest.

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

A ship can be released within 24 hours of filing an acceptable security.

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest.

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

The Plaintiff (arresting party) must file a statement of claim at the time of filing the ex parte motion for a warrant of arrest. As a result, the claim documents are usually served along with the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced.

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

Yes. Costs, damages, demurrage and expenses will be recoverable if the defendant can show that the arrest was made unreasonably and in bad faith.

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

Ghanaian courts may be prepared to pierce and lift the corporate veil under certain limited circumstances, for example in the instances of fraud.

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

Order 62 rule 16 of C.I. 47 makes it possible for a ship to be sold pendent lite. The process of sale can take about two months, after the applicant has obtained the sale order and the appraisalment of the ship by the Admiralty Marshal.

*\*ÁELEX is the leading Nigerian firm with expertise and institutional depth in Transportation. Our Maritime practice has evolved with developments in the sector, gaining us invaluable experience and capabilities. We offer various shipping services from ship finance to corporate, regulatory compliance and litigation.*

*Members of our Maritime team are located in Lagos and Port Harcourt in Nigeria and Accra, Ghana with an aggregate of over 30 years experience in maritime law. We act as counsel to ship-owners, P&I clubs, charterers, operators of ships and other offshore assets, insurance companies, financial institutions, oil and gas companies, port owners and operators.*

*ÁELEX advises on ship and mortgage registration, asset financing for off shore oil and gas operations, ship registration, ship finance and lease transactions. Our expertise also extends to claims arising from charter parties, collision, cargo and demurrage, both at arbitration and in the courts of law in Nigeria and Ghana. We are regularly instructed to undertake subrogated claims on behalf of insurers, arrest and release of vessels as well as negotiating the settlement of claims.*

# SHIP ARREST IN GIBRALTAR



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

Arresting a ship in Gibraltar is a relatively simple and straight forward process. In the first instance a Claim Form should be prepared with either brief particulars (which is just a brief summary) or Particulars of Claim together with a request for service of the Claim Form in rem, a declaration in support of the claim and a solicitor's undertaking to pay the Admiralty Marshal's costs and expenses.

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

The Supreme Court of Gibraltar has jurisdiction to try admiralty matters by virtue of the Colonial Courts of Admiralty Act 1890 and the Admiralty Jurisdiction (Gibraltar) Order 1997. The same provide the Supreme Court of Gibraltar which is a Colonial Court of Admiralty, shall have the like admiralty jurisdiction as that of the high court of England as defined by section 20 of the Supreme Court Act 1981. Give effect to the convention relating to the arrest of sea going ships, Brussels 1952.

## 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?

It is possible to obtain a Freezing order over a defendant's assets where the Gibraltar Court has in personam jurisdiction. In such cases if the Defendant has a vessel within Gibraltar territorial waters, the freezing Order can be enforced against the vessel thus preventing her departure from the jurisdiction.

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

In Gibraltar ships can only be arrested pursuant to a claim which gives rise to a right of action in rem. These are:

- (a) any claim to the possession or ownership of a ship or the ownership of any share therein.
- (b) any question arising between the co-owners of a ship as to the possession, employment or earning of that ship.
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein.
- (e) any claim for damage done by a ship. (maritime lien)
- (f) any claim for loss of life or personal injury in respect of a defect in a ship, neglect or default in navigation, management of the ship, loading, carriage or discharge of goods, embarkation, carriage or disembarkation of passengers,
- (g) any claim for loss or for damage to goods carried in a ship.
- (h) any claim arising out of an agreement relating to the carriage of goods in a ship or the use or hire of a ship.
- (i) any claim in the nature of salvage (including aircraft). (maritime lien)
- (j) any claim in the nature of towage in respect of a ship or an aircraft.
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft.
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance.
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues.
- (n) any claim by the master or a member of the crew of a ship for wages. (maritime lien)
- (o) any claim by a master, shipper, or charterer or agent in respect of disbursements made on account of a ship.
- (p) any claim arising out of an act which is or is claimed to be a general average act.
- (q) any claim arising out of bottomry. (maritime lien)

(r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure or for droits of admiralty.”

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

Yes.

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

Save for claims which give rise to a maritime lien where the ship can be arrested irrespective of the debtor all other actions that give rise to an in rem a ship can only be arrested if when the cause of action arose the person who would be liable on a claim in an action in personam was other the owner or the Charterer or in possession or in control of the ship.

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

True sister ships can be arrested in Gibraltar. For vessels to be deemed to be sister ships they must be owned by the same entity be it a company or a physical person. With the increasing use of one ship owning companies it is increasingly rare to encounter sister ships. It is not possible to arrest associated ships in Gibraltar.

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

Bareboat chartered vessels can be arrested. Time-chartered vessels cannot be arrested.

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

No counter-security is needed in order to arrest a vessel in Gibraltar. However a deposit of between £10,000 and £20,000 must be placed with the Admiralty Marshal at the time of the arrest in order to cover the expenses of the arrest together with a solicitor's undertaking in respect of the cost of the arrest. If the arrest is successful all costs are normally recovered from the owners of the vessel or in default from the process of sale of the vessel.

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

An arrest for a maritime lien can be effected irrespective of who the owner of the vessel is and in circumstances whether the vessel may have been sold after the claim arose. An arrest for a maritime claim not being in the nature of a lien can only be carried out in the circumstances set out at 7 above.

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

Gibraltar recognises maritime liens in respect of claim for crew wages, salvage, masters wages and disbursements, damage done by a vessel and 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?

Provided full instructions with the supporting documents are received enabling us to prepare a general endorsement of the claim form together with the declaration in support, an arrest may be carried within hours of receiving instructions. The Admiralty marshal is on call 24 hours a day 365 days a year and therefore in urgent cases a ship may be arrested at almost any time.

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

No Powers of Attorney are needed in Gibraltar in order to arrest a vessel. As regards documentation in support of the claim, in order to enable the solicitor to prepare the claim form and declaration in support of the arrest, documentation should be provided setting out the nature of the claim, the name of the ship to be arrested and its port of registry.

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

For the purposes of the arrest no original documents need be sent. Provided we receive pdf copies of all documents we can prepare the original claim form and original declaration to be filed in Court. However original documents or certified copies of the same should follow as soon as reasonably practical.

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

Once the vessel has been arrested pursuant to an in rem claim, the courts will accept jurisdiction to



hear the merits of that in rem claim. However it might be possible for a party to seek to stay the proceedings in Gibraltar and the hearing of the merits of the case if there is a foreign jurisdiction clause that the parties have previously agreed.

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

In order to have ship released from an arrest one must either put up security or satisfy the claim in respect of which the arrest has been made.

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

The type of security which needs to be put in place for the release is either, a cash deposit, a letter from a P & I Club or a guarantee from a first class bank.

19. Does security need to cover interest and costs?

Yes .

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

Typically they are.

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

Once security is put up or the owner of the ship as satisfied the claim, a ship can be released almost immediately.

22. Is there a procedure to contest the arrest?

If a ship owner would like to contest an arrest, then he must file an acknowledgement of service of the claim within 14 days of the claim form being served on them and file a defence to the claim within 28 days of the date of service of the particulars of claim.

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

As discussed previously a claim form setting out the details of the claim has to be filed at the time the arrest documentation is lodged. Once the claim form is lodged the Defendant will have 14 days in which to acknowledge service and a maximum of 28 days in which to file the defence.

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

Although it is possible to claim wrongful arrest in Gibraltar it is extremely rare for this to happen given that the parties would have to prove that the arrested party has acted in bad faith or has been grossly negligent in carrying out the arrest.

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

Gibraltar law as English law recognises the principal of separate legal entities. As such, instances of piercing the corporate veil are extremely rare and, in practice, will only happen in cases where there are allegations of fraud.

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

In Gibraltar ships may be sold and then pendente lite. Although in theory this can be done at any point after the arrest, given the fact that the Court will only grant such an application for very good reason and in instances where there is a real risk that the vessel will seriously diminish in value during the arrest, such applications will only be made in instances where it is clear that the Defendant does not intend to post security and the cost of arrest are significant.

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*What they say about Christian: "He is noted for expertise in non-contentious and disputes work in the admiralty area." CHAMBERS & PARTNERS 2007 "Hernandez is well known for his expertise in ship arrest and has a strong track record for his handling of shipping cases." THE LEGAL 500, 2007 "Isolas remains a leading player in the shipping sector under the leadership of Christian Hernandez." THE LEGAL 500, 2008 "Christian Hernandez, head of the firm's admiralty and shipping team, is 'undoubtedly one of the heavyweights in the sector' THE LEGAL 500, 2009.*

# SHIP ARREST IN GREECE



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

The Greek legal system provides basically for two types of seizure of the assets of a debtor, serving two different purposes, i.e. the provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire) and the executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

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

As regards vessels, Greece has ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships (10.05.1952) which was implemented in Greece by Legislative Decree 4570/1966(the "Convention").

One-member district courts enjoy general subject matter competence for provisional remedies. An arrest may be ordered by Court judgment only, issued following summary proceedings initiated by the filing of the Claimants' Petition. In circumstances of urgency, ex parte proceedings may be conducted should the requested measures seek to secure a substantive right and the indebtedness of the debtor is ostensible.

The sole oral hearing is based on a flexible procedural framework. This refers to both the authority of the judge for relying on facts not submitted by the parties and the free admissibility of any available means of proof. Evidence must be brought during this hearing. The decision to issue a provisional remedy, or to reject an application, is a judicial decision and may not be attacked by any methods of review.

According to Article 692/4 of the Code of Civil Procedure, provisional remedies must not lead to the full satisfaction of the substantive right which they seek to secure or preserve. An arrest judgment may be given provided that Petitioners would be able to show to the satisfaction of the Court, a prima facie founded and valid claim against the vessels' owners and the occurrence of a situation of urgency or of imminent danger justifying the necessity for granting the requested arrest.

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

A. Under the Private Maritime Law Code

I. The transfer of ownership in lieu of security (fiduciary transfer of ownership).

II. Hypothecation of the ship.

B. The Ship Mortgage (preferred Mortgage under Legal Decree 3899/1958

C. The Preferred Mortgage under the Legal Decree 2687/1953.

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

a. Provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire), by any party alleging to have a claim against the owners of a specific vessel may apply for her arrest as Petitioner. Interim Restraining Order: It is a standard practice that the Petition also contains a request for an Interim Order for the temporary prohibition of the vessel's sailing. If the ship under arrest is flying the Greek flag the Interim Order not only prohibits the vessel's sailing but also prohibits any change to her legal status. The Interim Restraining Order is valid until the hearing date and subject to extension, on Petitioner's request, until the issuance of the judgment on the arrest Petition. An Interim Order or an arrest Judgment become effective as from their notification, by way of service of an official copy thereof upon Respondents as well as upon the competent Port Authorities for entry into the appropriate Books kept by them. The main effect of the enforcement is the prevention of the vessel's sailing. Furthermore and to the extent Greek law

would apply, any disposal of the arrested vessel is forbidden and if effected in breach of such prohibition, will be nul and void towards the arrestor and for the amount for which the arrest was ordered; disposal is likewise nul and void towards third parties as well, if effected after the entry of the arrest Order or Judgment into the Arrest Book of the Port of the ship's Registry. An arrest effected as aforestated is provisionally valid i.e. until a final judgment on the merits is issued against the arrestor or a like judgment, issued in the arrestor's favor, has been enforced. b. Executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

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

Arrest can be sought for claims of any type and nature, be it conditional or subject to time terms, but where the Convention applies, an arrest cannot be ordered for claims other than maritime as defined in Art. 1.1 of the Convention.

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

Arrest of ships is subject to the regime of the Convention where the latter is applicable i.e. to vessels flying the flag of another contracting State calling at a Greek port and for maritime claims only as the latter are defined by the Convention, otherwise, the general provisions of domestic law shall apply.- In both cases the procedure to follow is identical.

As regards Greek flag vessels their arrest can be sought and ordered even if they are not physically present within the jurisdiction of the Court with which the Petition is filed. The respective arrest judgment, being served as aforementioned, will cause the legal prohibition of any disposal of the vessel; the vessel's physical arrest may be then effected at any time within the jurisdiction of any Greek Court by virtue of the same judgment. Furthermore and insofar as Greek law is applicable, in case the ownership of the vessel has been transferred by the original debtor, arrest of the same vessel may be sought and possibly ordered against her new owner.

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

Actions in rem against the vessel only are not provided for by Greek law. Therefore, the Petition should be filed anyway against her registered owners, even in case the main liability for the claim lies on third parties such as the vessel's operators and possibly other parties having control over the vessel.

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

Under Greek law two ships are regarded as sister-ships if owned by the same person (or body corporate) and sister-ship arrests may be effected in Greece in limited circumstances.

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

The Court has the power to order Petitioners to provide counter security by way of Bank guarantee; however in practice such counter security is rarely ordered, although frequently demanded by Respondents.

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

Greece did not ratify the 1926 Convention. The Greek Code of Private Maritime Law however (Arts.205-209) has been influenced up to a point by that convention. Further, the administrative acts by which ships are capitals as foreign registered (those ships form the bulk of the Greek merchant fleet) stated that the maritime liens, included in Art.205 para. 1 of the Code of Private Maritime Law take priority over a preferred maritime mortgage.

The Supreme Court of Greece (Areios Pagos) in its decisions (913/1975,229/1983 (plenary) and 1055/1983) held that Art.2 of the 1926 Convention cited by the acts above was to be dealt with as a fact. Thus, the party € to the proceedings asserting such a maritime lien had also to prove the existence and the content of the maritime liens which took priority over a preferred mortgage.

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

Upon receipt of instructions we may act all over Greece (through our network of associated offices) within the same day. Court and related costs are in the region of Euro 250-300 including Bailiff's charges for the required notifications. The respective lawyer's charges depend much on the urgency factor, the complexity of the issues involved, the work done and the time spent in initiating and conducting the arrest proceedings.

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

Attorneys are presumed to have the authority to act therefore the presentation of a Power of Attorney is not needed, unless this authority is challenged by the adverse party.

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

Submissions along with supporting documents, translated into Greek and comments on the witnesses' depositions are filed within 3 working days from the hearing. Supporting documentation needs to be notarized and apostilled, although simple copies may be used during the interim restraining order.

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

Jurisdiction of a Greek Court to decide on the subject merits is not created by the arrest itself. However and unless otherwise provided for by international conventions ratified by Greece, the presence of a vessel within the jurisdiction of a Greek Court, not competent in principle to decide on the merits, would create jurisdiction of this Court to so decide (*forum rei sitae*), for as long as the vessel is still within its jurisdiction. The jurisdiction so founded may, however, be affected by certain jurisdiction clauses or arbitration agreements. Article 905 of the Code of Civil Procedure provides for the enforcement of foreign judgments in Greece. Under Article 905, a civil judgment issued by a foreign court may be enforced in Greece if it has previously been declared executable by a decision of a proper Greek court. Article 906 of the Code of Civil Procedure provides that foreign arbitration awards may be enforced in Greece if provisions of Article 903 of the Code are met.

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

Counter arrest or filing of a separate new petition.

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

The court orders the placement of security in the form of a bank guarantee issued by an approved financial institution in Greece. P&I Letters are accepted on the premises that the other party accepts them.

19. Does security need to cover interest and costs?

In general, the petition to arrest a vessel is made for an amount covering the costs and the interests. Therefore the security necessarily covers them also.

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

P&I Letters are accepted on the premises that the other party accepts them.

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

The procedure is rather quick from the moment the bank guarantee is filed with Court that ordered the arrest.

22. Is there a procedure to contest the arrest?

The arrest can be contested with the filing of a counter petition based on various grounds (such as unlawful act, misrepresentation etc).

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

Unless an action on the merits of the claim has been already brought, the arresting party should bring such action in the competent Court within such time as ordered by the Court, otherwise within 30 days from the service of the arrest judgment on Respondents, failing which the arrest is lifted *ipso jure*.

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

Following substantive proceedings against an arresting party, the latter may be held liable for damages resulting from an arrest or a guarantee lodged, only if Claimants would be able to prove to the satisfaction of the Court that the arresting party knew, or by gross negligence ignored, that its claim secured as above, did not exist. Furthermore such liability is conditional to a final and irrevocable judgment whereby the action of the arresting party on the merits of its

claim is dismissed for it being unfounded.- In view of such requirements it is not an easy task for Claimants to succeed in his action for damages caused by a wrongful arrest.

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

It has been held by the Greek courts that the corporate veil may be pierced to reveal the beneficial ownership only where there exists an *in concreto* reason for doing so. In lifting the corporate veil, the Greek courts have traditionally considered two criteria.

A. The criterion of “the effective control” (of the company)

B. The criterion of the “use of intermediary persons” in respect of shareholding or management.

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

Under Greek law, the vessel remains in the custody of the ship-owner or the person who, at the time of the arrest, may be in possession of the ship. It is possible however, upon application to the Court for the arrestor to become the custodian of the ship in which case this party would have to bear the respective costs which are quite substantial.

The disposal of the arrested ship may only be effected after an irrevocable judgment has been issued in the main action (which may run in parallel with or follow the arrest proceedings) on the merits of the case. Such disposal may only take place in a public auction conducted by a Notary.

The “Forced Auction Procedure”. This procedure is governed by specific provisions contained in the Civil Procedure Code. A Notary who is specifically appointed by virtue of a Court order executes the forced sale. The sale has the form of an open public auction whereby the interested parties may submit their bids on the basis of a schedule prepared by a Court bailiff. No judicial sale can take place within the context of a ship arrest procedure, as the latter may only serve as a means of preservation, not a means of satisfaction, of a claim.

There are cases however when, in the context of arrest proceedings, the property arrested may be subject to deterioration and at the same time the cost for preserving it, is disproportionately high having regard to the level of claim. In such instances the Court, may, after a summary hearing, order its disposal. The auction proceeds shall consequently substitute the arrested property and shall be deposited with the Loans & Deposits Fund, pending the issue of an irrevocable judgment on the merits of the claim. In shipping disputes, such a procedure may be encountered in cases where perishable cargoes have been arrested and the cost of preserving same until the issue of an irrevocable judgment is excessive. However it should be noted that such sale orders are granted in these very limited circumstances.

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# SHIP ARREST IN HONG KONG



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

Hong Kong is a Special Administration Region (SAR) of the People's Republic of China (PRC). As such it has a separate and distinct legal system from that of the PRC. Hong Kong has a common law system of justice which developed during the years when it was a British colony.

A ship - or one of its sister ships - may be arrested where:

- a claimant's cause of action carries with it a right of arrest;
- an in rem writ has been issued;
- the ship is available in Hong Kong; and
- no caveat against arrest has been entered.

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

The Brussels Convention 1952, as enacted in Hong Kong legislation.

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

No

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

It is possible to get an injunction. This is more difficult and expensive than arresting the ship. Civil Justice Reforms were implemented in April 2009. Innovations in the regime have put interim relief, similar to *saisie*, into effect. The new reforms have opened up Hong Kong to claims where injunctions are available to provide support and security for foreign proceedings.

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

The High Court Ordinance lists types of maritime claim for which a vessel may be arrested. They include:

- possession or ownership of, or mortgage on, a ship;
- loss of life or personal injury because of a defect in a ship;
- damage done by or to a ship;
- loss or damage to goods carried by ship and other claims relating to carriage of goods by ship;
- use or hire of a ship;
- salvage, towage and pilotage;
- goods and materials supplied to a ship;
- construction or repair of a ship;
- wages owed to a ship's master or crew;
- acts of general average;
- bottomry; or
- collisions.

Arrest is impossible in some cases (e.g. in relation to claims for insurance premiums). The purpose of an arrest is to obtain security in respect of a court judgment in that action. The court should not allow the arrest of ships for other purposes. In the 2014 case the "KOMBO" [2014] HKCU 1698, the court upheld the arrest of a vessel even though the Plaintiff had already obtained an arbitration award. The effect of this judgment is significant as it means that vessels can still be arrested under the in rem jurisdiction of the court so long as the judgment or arbitration award in personam remains outstanding. The court's jurisdiction can be invoked to secure claims in arbitration where the law of the place governing the arbitration permits this.

An arrest intended to force the party affected to agree to a foreign jurisdiction is outside the purpose of an action in rem. Where a plaintiff has already commenced an action in a foreign jurisdiction, a duplicate action in rem commenced in Hong Kong will be considered vexatious and is liable to be set aside.

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

Usually, vessels under any flag may be arrested. However, if the vessel belongs to a port of a state having a consulate in Hong Kong and the arrest is for possession of the ship or in respect of outstanding crew wages, a notice of action must be sent to the consul and a copy of the notice annexed to the affidavit to lead warrant.

Hong Kong is a Special Administrative Region of the PRC and this status has given rise to questions of whether legal claims can be brought in the Hong Kong courts against entities which form a part of the PRC Government and whether foreign states are entitled to claim immunity from legal claims brought in Hong Kong courts.

In *Intraline Resources Snd Bhd v The Owners of the Ship or Vessel "Hua Tian Long"*, it was held that the Guangdong Salvage Bureau (GSB), which is an entity of the PRC, could rely on "Crown immunity" after their derrick barge, "Hua Tian Long", was arrested for an alleged failure to perform a charterparty. The doctrine of Crown Immunity developed whilst Hong Kong was a British colony and meant that the Crown was immune from the processes of its courts. In 1997, the PRC became the sovereign so organs of the PRC can claim immunity in response to claims against them.

In *FG Hemisphere v Democratic Republic of Congo* two arbitral awards were obtained against the Democratic Republic of Congo ("the DRC") because it defaulted on its obligations in relation to a contract to build a hydroelectric facility.

The DRC claimed state immunity and the Hong Kong Court of Final Appeal sought a ruling by the National People's Congress (NPC) of the PRC under provisions of the Basic Law. The NPC Standing Committee unanimously confirmed that the doctrine of absolute state immunity applies in Hong Kong, as it does in Mainland China. The principle of restrictive immunity no longer applies.

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

Yes, subject to Sovereign and Crown immunity.

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

A plaintiff may proceed in rem against any ships under the same beneficial ownership. The writ should be issued against all of the ships. It must subsequently be amended by striking out all names except that of the ship on which the writ has been served or against which a warrant of arrest has been issued.

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

Bareboat-chartered vessels can be arrested, but not time-chartered vessels.

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

No. In limited circumstances including where the plaintiff is foreign, the defendant can apply to the court for an order to compel the plaintiff to give security for the defendant's litigation costs, subject to the court's discretion.

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

Maritime claims depend on the ownership of the ship. A ship can only be arrested if the owner at the time of the cause of action is still the owner at the time of arrest. Maritime liens can be enforced regardless of ownership. An identical arrest procedure applies in both cases.

#### 12. Does the Hong Kong SAR recognise maritime liens? Under which International Convention, if any?

Hong Kong recognizes maritime liens arising in connection with a number of specified claims such as claims for:

- damage done by a ship;
- salvage rendered to a ship;
- wages owed to a master or seaman;
- masters' disbursements; and
- bottomry.

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

Arrest documents can be issued within hours receiving the file. Subject to certain difficulties, documents can be issued and executed on emergency application to a duty judge out of normal hours. This can be achieved by solicitors undertaking to issue a writ and swear an affidavit in support of the warrant at the first available opportunity when the court re-opens.

14. Do you need to provide a Power of Attorney, or any other documents in respect of the claim to the Court?

No but solicitor's firms in Hong Kong require a formal written retainer before advising or acting on instructions on behalf of a client.

There are no specific requirements in the form of claim documents, apart from minimum copy documents to be exhibited to the affidavit as are required to establish a prima facie right to arrest.

According to Order 75/5/14 of the Rules of the High Court, there is no prescribed or practice form when it comes to the affidavit. The affidavit must state certain specified details, such as the nature of the claim, the parties' details and the name of the ship. An outline of the form is provided.

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 claimant's solicitor will apply to issue a warrant of arrest, supported by an affidavit to lead warrant.

The caveat book must be searched for caveats against arrest. A written application must be made to the registrar for leave to search; this can be done by letter. The warrant, once issued, is filed with the bailiff, together with a request to execute the warrant and an undertaking to pay the costs of arrest. The affidavit consists of a written statement of facts and belief, with the sources and grounds thereof, and is made under oath. It constitutes the only evidential requirement for arrest. An undertaking to pay the Bailiff's expenses must also be submitted.

Documents cannot be filed electronically. Notarisation and / or apostille certification is not required but if any documents need to be translated then these must be certified by a notary.

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

The court will usually accept jurisdiction. If grounds exist for a forum non conveniens application, concluding in particular where the claim arises out of a contract that has an exclusive foreign jurisdiction clause, the proceedings may be stayed in favour of the relevant foreign jurisdiction.

The court will not insist on hearing an entire action commenced by the issuance of a writ followed by an arrest. The parties can agree an alternative jurisdiction. For example, this frequently happens in cases involving collisions in international waters.

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

This is done by filing a Praecipe demanding the court to issue a Warrant of Release. An Undertaking issued by a solicitors firm undertaking to pay all charges and expenses incurred by the Chief Bailiff is required to be filed at the same time. The agreement of the arresting party and all caveators must be obtained. This is normally done by the parties signing their names on the Warrant of Release expressing their consent to release the ship from arrest.

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

The party seeking release of the ship should obtain the consent of the arresting party (and the caveators, if any) to the issue of a release by giving bail to his/their satisfaction.

The arresting party may agree to accept a P&I Club LOU or a guarantee issued by a bank or insurance company on wording acceptable to him. The court does not have power to intervene in negotiations over private security arrangements but it is always open to the party seeking release of the ship to provide bail or make payment into court to security the release of the ship under arrest.

19. Does security need to cover interest and costs?

The arresting party is entitled to sufficient security to cover the amount of his claim with interest and costs.

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

No, not without the consent of the arresting party.

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

Within a few hours.

22. Is there a procedure to contest the arrest?

The party seeking release of the vessel may make an application to court on the basis that the court does not have jurisdiction to issue the Warrant of Arrest. Such application is usually made on grounds that the party seeking arrest has acted in bad faith or in a grossly negligent manner and that he had failed to disclose material facts known to him at the time the affidavit leading to the issue of a warranty of arrest was sworn.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Although a writ may be issued earlier than an application for a warrant of arrest, service of the writ will take place when the vessel is in Hong Kong jurisdiction. The vessel is then arrested. The defendant has 14 days to acknowledge service and another 14 days to file a defence.

24. Do the Courts of your country acknowledge wrongful arrest?

Whether or not a caveat has been entered, the court's test for ordering an inquiry into damages for wrongful arrest is whether the action was so unwarrantedly brought as to imply malice or gross negligence on the part of the plaintiff. The defendant must establish malice or gross negligence before the plaintiff can be held liable for damages. Damages can also be recovered where an arrest has been unduly continued.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The principle of separate corporate personality is a cornerstone of Hong Kong company law. The court will lift the corporate veil where the protection given by incorporation under the law is being abused. The grounds for lifting the corporate veil are where separate corporate personality is used to evade an existing legal obligation or practice fraud or deception.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

The court will not order the appraisal and sale of a ship while the litigation is pending except for good reason, regardless of whether the action is defended. Where the action is defended and the defendants oppose the making of such an order, the court examines more critically the question of whether there is good reason to make the order.

The question of whether an order for the appraisal and sale of a ship under arrest in an action in rem should be made while litigation is pending normally arises only where there is a default of acknowledgment of service or defence, in which case such an order is commonly made on the plaintiff's application on the grounds that the security for the plaintiff's claim would otherwise be diminished by the continuing costs of maintaining the arrest, to the disadvantage of all interested parties (including the defendant, if it has a residual interest).

Where the defendant to an action in rem against a ship appears with the intention of defending the action, it almost invariably obtains the ship's release by providing bail or other security for the claim that is satisfactory to the plaintiffs.

The Hong Kong Court will readily order sales of vessels *Pendente Lite*, especially in Crew and / or Mortgagee actions for which Hong Kong is a recognized centre in Asia.

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*Chris has been devising strategies to resolve complex, often high profile cases on behalf of clients and has special interests in hands-on involvement in case handling and practice management.*

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# SHIP ARREST IN ICELAND



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## 1. Please give an overview of ship arrest practice in your country.

An arrest may generally be instituted in Iceland if the ship is situated in Iceland at the time of the arrest. The request for arrest must be submitted in writing to the relevant District Magistrate's office. It must contain the information of the facts necessary to enable the District Magistrate to consider the matter and must be supported by copies of the documents on which the claimant relies on to prove the existence of the claim.

In practice, the District Magistrate performing the arrest will usually go on board the ship and grant the order for the arrest by obtaining the certificate of the registry, certificate of seaworthiness and other ship's certificates from the master, which the magistrate will keep in his possession during the arrest procedure.

The shipowner will usually keep the possession of the ship and bear the responsibility and costs of maintenance of the vessel during the arrest procedure.

## 2. Which International Convention applies to arrest of ships in your country?

Iceland is not party to the International Convention on the Arrest of Ship (Geneva, 1999).

The International Conventions which are in some part applicable in Iceland when ship arrest is at issue are:

- i. The Lugano Convention on jurisdiction and the enforcement of judgments. in civil and commercial matters (1988), as Article 54A provides jurisdiction for selected countries, inter alia Iceland, in maritime matters, including claims in respect of a mortgage or hypothecation of an arrested ship.
- ii. The Convention on future multilateral cooperation in North-East Atlantic fisheries (NEAFC) (1980). The convention provides that ships committing illegal fisheries shall be arrested.
- iii. Convention on future multilateral cooperation in the Northwest Atlantic Fisheries. The convention provides that ships committing illegal fisheries shall be arrested.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Icelandic law does not contain specific rules on arrest of ships. The arrest of ships is thus regulated by Act No. 31/1990 on Seizure, Injunctions etc.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No, in practice the arrest of a ship is the way to guarantee payment of claim against the shipowner under Icelandic law.

## 5. For which types of claims can you arrest a ship?

Generally only property belonging to the defendant (with the exception of claims secured by



maritime lien) can be arrested in order to secure a payment of claim if the claim cannot immediately be enforced by an attachment and it is probable that without the arrest, the likelihood of securing the claim will decrease or become more difficult. Therefore, a ship can be arrested in respect of a monetary claim against the owner of the ship. It is not a condition for the arrest that the claimant proves his claim. However, the request for the arrest will be dismissed by the District Magistrate (Icelandic: *sýslumaður*) if the evidence provided on the claim shows that the claimant is not the lawful owner of the rights he seeks to secure by the arrest.

#### 6. Can you arrest a ship irrespective of her flag?

Icelandic rules on arrest of ships described herein apply irrespective of the ship's flag. It is permitted to request arrest from the District Magistrate of the district where the defendant's ship will be at the time of the arrest, irrespective of her flag.

#### 7. Can you arrest a ship irrespective of the debtor?

Arrest can generally only be performed in respect of ships owned by the debtor of the claim which the arrest is to guarantee the payment of. However, in case of claims secured by maritime lien, arrest can be performed irrespective of the debtor.

#### 8. What is the position as regards sister ships and ships in associated ownership?

Arrest in respect of maritime lien can only be made in the ship which the lien is made. However, arrest for other claims than those under maritime lien may be performed in respect of other assets of the defendant which fall under the jurisdiction of the respective District Magistrate.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

A ship can under Icelandic law only be arrested in respect of a claim against the party leasing the ship (under a Bareboat or Time-Chartered arrangement) if the claim is made under a maritime lien. For other claims arrest can only be made in order to guarantee payment against the shipowner.

#### 10. Do your Courts require counter-security in order to arrest a ship?

A claimant will generally need to provide guarantee in order to have the arrest performed. It is up to the District Magistrate handling the arrest application' discretion whether a security is needed or not and the form and amount of such security.

In determining the guarantee's amount the District Magistrate shall mainly take into account to what extent the arrest affects the functions of the defendant in terms of doing him harm, whether it is likely that the arrest or request for the arrest will harm his credit status or his business interests and whether he has a chance to make remarks about the validity of the claimant's claim and the arrest. The cost that the defendant might later have to endure through court procedure due to the arrest should also be taken into account.

If security is required it should be in the form of money or in a comparable form. A bank guarantee is usually required.

The District Magistrate can, by demand of the claimant, arrest a ship without any security being submitted if one of the following conditions is fulfilled:

- The arrest is demanded pursuant to a debenture, a draft or a cheque and the defendant does not protest the claim;
- the defendant waives his right for a security in front of the District Magistrate;
- the defendant acknowledges the claim as being valid in front of the District Magistrate or court and that conditions for an arrest are prevailing;
- a judgment has been rendered regarding the claimant's claim, but the enforcement period has not yet come to an end; or
- the claimant's claim is in other terms so that the magistrate considers both it and the arrest undoubtedly valid given the conditions prevailing.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

A claim secured by a maritime lien may be enforced by means of arrest irrespective of the shipowner's identity while maritime claims can only be enforced by means of arrest if the debtor is the shipowner. The following claims enjoy a maritime lien in the ship under Icelandic law:

- Wages or other payments due to the Master, Crew and other persons employed on board;
- claims for damages due to loss of life or personal injury in so far as such claims have arisen in direct connection with the use of the ship;

- claims for damages due to damage properties in so far as the claim has arisen in a direct connection with the use of the vessel and provided that such claim is not based on contract;
- salvage, compensation for removal of wrecks and general average contributions; and
- ship charges. This refers mainly to claims for port, canal and waterway dues and pilotage.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Icelandic courts recognise maritime liens under the Icelandic Maritime Act No. 34/1985. In case of a claim secured by a maritime lien over a ship, she may be arrested despite being owned by a third party. Claims that are secured by a maritime lien under Article 197 of the Icelandic Maritime Act No. 34/1985 are an exception as the only types of claims that may be pursued “in rem” by way of arrest irrespective of the ship’s owner’s identity.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

In theory the arrest procedure is supposed to be only a matter of hours or days. However, in practice the arrest procedure can unfortunately stretch up to few days and even as long as 1-2 weeks.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

Icelandic attorneys can generally submit claims on behalf of their clients on grounds of lawyer’s power of attorney. There is thus no need to issue a special POA in respect of individual claims. The request for arrest procedure shall be made in writing and shall state the identity of the claimant and the defendant, the amount which the arrest is to secure payment of and the grounds which the claimant bases its claim on. As regards supporting documents for the claim the Act on Seizure, Injunctions etc. provides that the request for arrest shall be accompanied by the documents on which the claimant supports his claims. It therefore varies which documentation is necessary, e.g. in case of claim based on debenture a copy of the respective debenture would generally suffice.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

There are no rules on when the original documents are required and it is up to the District Magistrate’s discretion whether to request originals or have copies suffice. Notarisation and/or apostille is generally not necessary for arrest procedure under Icelandic law.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No, the courts will not accept jurisdiction on the substantive claim. In case the substantial claim falls under the jurisdiction of a foreign court the claimant shall have the claim confirmed by the respective foreign court.

#### 17. What is the procedure to release a ship from arrest?

A ship is released from arrest when the claimant receives payment of claim, if a confirmation of an arrest is not submitted to Icelandic courts in time, or if a confirmation of an arrest is not granted by the courts and the arrest set aside.

However, if confirmation of an arrest is declined by the District Courts and it set aside, the arrest remains in effect for three weeks, until a time limit for appeal passes.

If the claimant neglects to submit a request for confirmation to Icelandic courts within the applicable limitation period, the arrest is set aside when the limitation period has passed, after either one or three weeks from the arrest, see question 23.

A shipowner may additionally prevent an arrest by providing an immediate guarantee.

#### 18. What type of security needs to be placed for the release?

No security is necessary for the release when an arrest ceases due to the general reasons above. A shipowner’s guarantee to prevent an arrest is subject to similar rules as the claimant’s counter-security, see question 10, and must be in cash or a similar form, e.g. a bank guarantee.

#### 19. Does security need to cover interest and costs?

Yes, to prevent an arrest the shipowner’s guarantee must cover the full claim amount, including interests and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No.

21. How long does it take to release the ship?

The shipowner will usually keep the possession of the ship under arrest, see question 1. After the arrest ceases, legal restraints due to the arrest will usually be lifted by the District Magistrate within a few days, although it might vary in relation to the reasons for the arrest ending or being set aside.

22. Is there a procedure to contest the arrest?

Shipowner's protest during arrest procedure do generally not stop the arrest. If the arrest has not yet taken place and is being processed by the District Magistrate the Magistrate must upon shipowner's protest make an immediate decision on whether to proceed. Protests are usually unsuccessful unless the shipowner proves that the request for arrest should have been dismissed ex officio or that the claimant's claim is unfounded. The shipowner may only appeal a Magistrate's decision to proceed with the arrest to the District Courts if the claimant approves. After ship arrest completion however, the shipowner may contest the arrest before Icelandic courts in proceedings for confirmation of an arrest pursued by the claimant.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

A confirmation of an arrest must be submitted to the Icelandic courts within one week from the arrest together with the claim itself as it is subject to Icelandic law. If the claim is subject to a foreign jurisdiction the claimant must within three weeks from the arrest pursue proceedings on the merits in that jurisdiction and within the same three weeks pursue proceedings in Icelandic courts for the confirmation for the arrest. Otherwise, the defendant can request that the arrest be set aside.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, if the claim for which the arrest was granted is found to be non-existent or unjustified in other ways, the claimant must compensate the shipowner for all his loss suffered, including damages for loss of amenities, and for the injury done to the shipowner's professional reputation. The basis of liability in such cases is strict and not dependent upon proof of negligence or other omission on his part. It is possible for the court to decide compensation based on the facts of the case if the shipowner has suffered loss but cannot prove the quantum of his claim.

If an arrest turns out to be wrongful for reasons that occurred after the completion of the arrest, the claimant has to compensate the shipowner only if it is presumed that he did not own the claim for which the arrest was granted.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Icelandic Courts do generally not acknowledge the piercing and lifting of the corporate veil.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

No, parties would generally have to await the outcome of a court case prior to selling a ship. However, court ordered sale can be performed on grounds of lien in the ship, without prior Court proceedings.

*\*LOGOS legal services has been providing legal services to the shipping and transport sector in Iceland and advising foreign clients on Icelandic maritime law since the foundation of LOGOS in 1907. There has always been at least one partner at LOGOS who specialises in shipping and transport law. As a result LOGOS has considerable experience in this field.*

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*LOGOS's work in the shipping and transport sector includes all maritime and transport related matters, such as arrest, contract of carriage, storage contracts, cargo claims, personal injury, salvage, general average, sale and purchase of new and second hand vessels, shipbuilding contracts and charter party contracts.*

# 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:

- Loss or damage caused by the operation of the ship.
- Loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship.
- Any claim towards salvage.
- 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.
- Costs or expenses relating to the raising, removal, recovery, destruction of a ship which is sunk, wrecked, stranded or abandoned.
- Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise.
- 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, Complaint, 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 needs 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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# SHIP ARREST IN IRAQ

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## 1. Please give an overview of ship arrest practice in your country.

Iraqi Transportation Law does not regulate the arrest of ships in specific. Therefore, the general legal principles of precautionary attachment stipulated for in the Iraqi Law of Civil Procedures will apply to the arrest of ships in Iraq. According to this Law, a creditor will have the right to attach the assets of his debtor if he succeeds in proving that he has a credible claim against the defendant and has a legitimate fear that the defendant might dissipate his assets. The arrest application is normally submitted to the Court of First Instance. The court will consider the application on a prima facie basis and the arrest order will be issued in chambers on an ex-parte basis.

## 2. Which International Convention applies to arrest of ships in your country?

Iraq is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Ships may be arrested in Iraq in reliance to the Civil Procedures Law (Article 231) which regulates conservatory attachment of assets in general (please see above question no. 1).

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No. The saisie conservatoire procedure will apply to the arrest of ships in Iraq.

## 5. For which types of claims can you arrest a ship?

In general, a ship can be arrested for any claim which the claimant has against the owner of the ship or the ship, provided the claim is proven, on the face of things, to be serious and grounded.

## 6. Can you arrest a ship irrespectively of her flag?

Yes. A ship anchored within the Iraqi territorial waters can be arrested irrespective of the flag she is flying.

## 7. Can you arrest a ship irrespectively of the debtor?

In general, a ship can be arrested for any claim which the claimant has against her current owner provided that the claim is proven, on the face of things, to be serious and grounded. However, in certain circumstances especially where the claim is secured by a maritime lien, it could be argued in court that the creditor has recourse against the ship regardless of the owner's identity.

## 8. What is the position as regards sister ships and ships in associated ownership?

According to the Iraqi Laws, the application of arrest should be directed against the party responsible for the debt. There is no legal provision which gives the creditor the right to arrest a ship unless its owner is responsible for the debt. The arrest of a sister ship might be possible providing that both ships are owned by the same party who is a debtor of the arresting party. The arrest of associated ships is not possible in Iraq.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

The arrest of a ship for a debt created by the charterer of the ship is impossible.

10. Do your Courts require counter-security in order to arrest a ship?

Yes counter-security is required by the court prior to the issue of the arrest order.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice there is no difference between the arrest of a vessel for a maritime claim and the arrest of vessel for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

The Iraqi Maritime Code does not recognize maritime liens in specific. In addition, Iraq did not accede to any of the International Conventions relating to Maritime Liens. Therefore, and pursuant to the general legal principles applicable in Iraq, the following debts shall give the creditor a maritime lien over the ship:

- a) The costs of a court action and other costs involved in the sale of the ship and the distribution of the sale proceeds.
- b) The taxes and fees due to the treasury.
- c) The maintenance costs of the ship and its machinery and other equipment.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Iraq, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Iraqi Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Iraq is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Iraq prior to submission.

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 arrest application must be submitted manually to the competent Court of First Instance as electronic filing is not available. The documentation supporting the claim must be attached to the application and if this documentation is in foreign language it must be translated into Arabic language. Only official documents must be legalised up to the Iraqi Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Iraq.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

In principle, they will not.

17. What is the procedure to release the ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The only type of security acceptable by the court is bank guarantee issued by a bank.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are unacceptable by Iraqi Courts.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file a grievance to the judge that issued the arrest order. Upon hearing the grievance, the Court may order the lifting of the arrest order and such judgment shall be enforceable. This judgment may be appeal through the normal channels of appeal.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must, within eight days starting from the issue of the arrest order, file substantive proceedings before the competent court to sustain the arrest order, failing which the arrest order will be void *ab initio*.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This concept is not recognised in Iraq.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

In principle, it is not possible unless we succeed in proving to the Court that the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

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# SHIP ARREST IN IRELAND



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## 1. Please give an overview of ship arrest practice in your country.

Arrest procedure in Ireland is straightforward, quick and requires no security from the arresting party. Similar to most maritime jurisdictions, there are only certain types of claims where a Claimant can bring an action in rem, giving a right to arrest a vessel. However, the lack of any consolidating legislation has resulted in Admiralty jurisdiction which is rather disjointed. Therefore, it is important in Ireland to consider the jurisdictional basis of each claim to ensure there is a right of arrest and to avoid any potential liability for wrongful arrest.

## 2. Which International Convention applies to arrest of ships in your country?

The 1952 Convention applies in Ireland.

## 3. Is there any other way to arrest a ship in your jurisdiction?

A ship can only be arrested by an application to Court. The two principal jurisdictional sources which provide a right to arrest a vessel in Ireland are:

- (a) The Court of Admiralty (Ireland) Act 1867; and
- (b) The Jurisdiction of the Courts (Maritime Convention) Act 1989

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No.

## 5. For which types of claims can you arrest a ship?

- (a) Damage caused by any ship either in collision or otherwise;
- (b) Loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- (c) Salvage;
- (d) Agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) Agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) Loss of or damage to goods including baggage carried in any ship;
- (g) General average;
- (h) Bottomry;
- (i) Towage;
- (j) Pilotage;
- (k) Goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) Construction, repair or equipment or any ship or dock charges and dues;
- (m) Wages of masters, officers or crew;
- (n) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- (o) Disputes as to the title to or ownership of any ship; This shall be construed as including disputes as to possession of a ship;
- (p) Disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
- (q) The mortgage or hypothecation of any ship. This shall be construed as including the mortgage or hypothecation of any share in the ship.

## 6. Can you arrest a ship irrespective of her flag?

Yes.

### 7. Can you arrest a ship irrespective of the debtor?

Providing the claim is a “maritime claim” there is a right to arrest the vessel. A ship can be arrested irrespective as to the debtor, for example, bunkers supplied to the vessel on the orders of the time charter, even if that time charter has come to an end. Importantly, the in rem proceedings must be issued before there is a change of ownership or, if the vessel has been demised chartered, before that demise charter has terminated.

### 8. What is the position as regards sister ships and ships in associated ownership?

Perhaps the most significant effect of the Arrest Convention is the possibility to arrest a sister ship. Article 3(1) of the Arrest Convention expressly permits the arrest of sister ships. It is possible to arrest a sister ship providing that:

- (a) The claim is a “maritime claim”.
- (b) The ship flies the flag of a contracting country to the arrest convention.
- (c) That the claim arose in respect of another ship which, at the time that when the maritime claim arose, was also owned by the same person.

### 9. What is the position as regards Bareboat and Time-Chartered vessels?

A vessel can be arrested for maritime claims arising during the demise charter and a time charter. Issuing in rem proceedings creates the right to arrest the “res” being the ship. If prior to the proceedings being issued, ownership of the vessel has changed (or a demise charter has been terminated) then the new owner of the vessel is not liable and there is no right to arrest the vessel. Time charterers are distinct from Demise Charterers who are regarded as the temporary owners of the ship.

### 10. Do your Courts require counter-security in order to arrest a ship?

No, counter-security is not required in Ireland.

### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. Issuing in rem proceedings creates the right to arrest. Certain maritime claims do not survive a change of ownership and, if proceedings are not issued before the change of ownership, the right to arrest the vessel terminates upon that change of ownership. Certain claims, however, for example unpaid crew wages, establish maritime liens which are not dependent on proceedings having been issued. However, for all other claims, the arresting party’s right to arrest vessel only arises upon the proceedings being instituted.

### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. Ireland recognises maritime liens. Ireland has not enacted any International Convention on maritime liens.

### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Arrest procedure in Ireland is straight forward and quick. We can normally arrest within a few hours of being instructed.

### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

No Power of Attorney is required, however, copies of supporting documentation will need to be provided at the arrest application in Court, for example, Bills of Lading, Charterparties, commercial Invoices etc. Copies by fax or email are sufficient for the initial arrest application.

### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Original documentation is not required for the initial arrest application but originals may need to be filed with the Court if the arrest is contested by the ship owners. Documentation does not need to be notarised or apostilled.

### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes arresting the vessel establishes jurisdiction for the substantive claim but Irish Jurisdiction could be contested if the substantive claim is subject to a valid jurisdiction clause in favour of another country.

17. What is the procedure to release a ship from arrest?

An application is made before the Admiralty Judge. The application is normally made on consent, immediately following the provision of security. The Admiralty Marshal immediately releases the vessel.

18. What type of security needs to be placed for the release?

The type of security is normally agreed between the parties. If there is no agreement as to the type of security proffered, then the ship-owners must pay money into court and apply for a release.

19. Does security need to cover interest and costs?

Yes, security should cover interest and costs. The arresting party is entitled to an amount of security to cover their "best arguable case".

20. Are P&I LOUs accepted as sufficient to lift the arrest?

In practice a P&I LOU is often acceptable, subject to the arresting party being satisfied as to the particular entity proffering the undertaking.

However, there is no decided case in Ireland compelling an arresting party to accept a P&I LOU as security.

21. How long does it take to release the ship?

A ship is released very swiftly on receipt of security, normally within 2 hours.

22. Is there a procedure to contest the arrest?

Yes. An application is brought by the ship interests to contest the arrest.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no specified time but the Courts will require the Claimant to progress the proceedings on the merits within a reasonable period.

24. Do the Courts of your country acknowledge wrongful arrest?

The arresting party can be liable for all costs and expenses and damages for the detention of the vessel unless the arresting party can show that: -

(a) He could not, without such arrest have obtained bail or other security.

(b) That he had otherwise good and sufficient reason for having issued the proceedings and arresting the vessel.

There is very little law in Ireland demonstrating an arresting party's liability for a wrongful arrest. The Court is required only to decide whether the arresting party has established "fair stateable case and that there are sufficient grounds for the arrest of the vessel".

Each case will be determined on the particular facts and an arresting party should act reasonably and in good faith. Providing the arresting party can establish both a "fair and stateable case" and that there was "good and sufficient reason" for arresting the vessel there would be no liability for a wrongful arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

It is considered difficult to pierce and lift the corporate veil in Ireland.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

It is possible to have the vessel sold *pendente lite*. Given the draconian nature of a judicial sale, which would deprive the ship owner of his vessel, the Court would need to be satisfied that the sale should be ordered. Each matter would be taken on its particular circumstances and in certain situations a sale could be ordered quite swiftly.

*"Hugh Kennedy is a shipping lawyer who specialises in ship arrest in Ireland. Hugh is instructed by ship owners, prominent insurance companies, P&I Clubs, cargo and hull underwriters, and by leading International law firms who specialise in shipping, transport and insurance law. Hugh regularly advises and lectures on all aspects of Admiralty law, including ship arrest, collisions, salvage, and casualty investigations. Hugh's clients include ship-owners, P&I Clubs, charterers, cargo underwriters, shippers and receivers for all types of cargo."*

# SHIP ARREST IN ISRAEL



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## 1. Please give an overview of ship arrest practice in your country.

### 1.1 Sources of the Admiralty Court's Jurisdiction

The jurisdiction of the Israel Admiralty Court (which sits in Haifa) is established by the 1840 and 1861 English Admiralty Acts. These acts were extended to the Dominions and Possessions of the United Kingdom by the Colonial Courts of the Admiralty Act 1890. Under the Palestine Admiralty Jurisdiction Order of 1937 these acts were extended to Palestine, then a British mandated Territory.

When the State of Israel was established in 1948, under the Law and Administration Ordinance, the Admiralty Court Acts of 1840 and 1861 became part of the domestic legislation of the newly established State.

In the year 1960 the Israel Shipping Law (Vessels) was enacted. Section 41 of this law determines the Maritime Liens and their priorities, as follows:

- (1) The official expenses of selling a vessel pursuant to a judicial sale,
- (2) Port and port related charges and expenses,
- (3) The costs of preserving a vessel pending Judicial sale,
- (4) Payments due to the master and crew including damages for personal injury,
- (5) Salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers.
- (6) Damages for personal injuries to passengers
- (7) Damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects,
- (8) Mortgages - no distinction is drawn between a local or foreign registered Mortgage,
- (9) Necessaries.

The question of the existence of a Maritime Lien or a Statutory Claim in Rem is determined by the "Lex Causa" and the priorities, being procedural by the the "Lex Fori". If a party wants to prove the Lex Causa this is done by providing the Court with an expert opinion. If no such opinion is provided in accordance with the identity of a laws principle, Israel law will be applicable.

Two significant Judgements have been handed down by the Admiralty Court over the past year.

In the first, the Court held that a bunker carrier who supplied bunkers to a vessel ordered through an intermediary trader did not have a maritime lien for necessities as the vessel had effected full payment to the intermediary supplier. This Judgement is under Appeal to the Supreme Court.

In the second, the Court held, following the applicability of the jurisdiction of the English Admiralty Courts under the Colonial Courts Act 1890 and the extension of this jurisdiction to Palestine, under the Admiralty Jurisdiction Order of 1937 and the adoption thereof as Israeli law under the Israel law and Administration Act of 1948 (all as mentioned in the above preamble to this clause) – the Israel Admiralty Court had jurisdiction to act as a "Prize Court" and to order that a vessel which had been

detained whilst attempting to breach the Israel naval blockade over Gaza (which blockade has been deemed to be lawful under international law – the “San Remo” Protocol) was subject to confiscation. However under the circumstances of the particular matter, the Court did not order confiscation and ordered that the vessel be returned to its owner.

### 1.2 The Application for Arrest

The Application for Arrest must be filed with the Claim in Rem.

The Application must be supported by an Affidavit. In practice a scanned Affidavit confirmed in front of the foreign lawyer or by an Israeli lawyer (by fax or e-mail) will be sufficient. Additionally the Affidavit can be given by the arresting attorney. Copies of all the relevant documents in support of the arrest are attached to the Affidavit.

A Power of Attorney is not required.

The Court has a discretion to order that the arresting party furnish security. The Court will order so on rare occasions such as when there is a serious doubt as to the validity of the documents constituting the application for arrest.

Special mention should be made of the Haifa Admiralty Court’s rather liberal attitude when ordering an arrest for necessities. The Court will order an arrest even if the necessities were not supplied directly by the Claimant (for example when they were supplied by a subcontractor or a local agent) and even if the Master did not sign the agreement for the supply of the necessities.

The arrest procedure is relatively swift and the arrest can be effected within 24 hours of receiving instructions.

If the application is made on a Saturday or Public holiday, this period may be extended as a result of the necessity to appear before the roster Judge and obtaining the formal Order of Arrest which is issued by the Marshal of the Admiralty Court.

The Order of Arrest will be normally discharged by the provision of a P&I Club or other acceptable guarantee. In the latter case this would be normally a local bank guarantee.

The Vessel can apply to set aside the Arrest by contesting the merits of the claim or, on the grounds that the claim does not constitute a maritime lien or a statutory right in Rem under the Lex Causa or that the Admiralty Court does not have jurisdiction.

In order to avoid delay to the vessel, security can be furnished without prejudice and subject to the vessel’s rights to contest the Arrest and to have the security provided cancelled.

Upon serving the Order of Arrest on the vessel’s Command, the Port Authority and Border Police, the Arrest becomes effective.

### 1.3 Court Fees and Legal Costs

The Court fees payable are 2.5% of the amount claimed in the Claim in Rem of which half is payable at the time of filing the claim. No additional Court fee is payable for the Application for Arrest.

The legal fees for attending to the Arrest excluding VAT (at present 18%) and disbursements, are between US\$3,000.- and US\$6,500.-, depending on the complexity and urgency of the matter.

## 2. Which International Convention applies to arrest of ships in your country?

There are no International Conventions which apply to the arrest of ships in Israel.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Ships or any other property of the debtor can be provisionally attached in a normal civil claim. This requires that the cause of action is within the Court’s normal civil jurisdiction and the provision of a guarantee.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

Apart from arrest or attachment no other alternatives for detaining the debtors property are available.

## 5. For which types of claims can you arrest a ship?

Those claims in respect of which the Admiralty Court has jurisdiction in terms of the enactments stated in Clause 1 above.

## 6. Can you arrest a ship irrespective of her flag?

A ship can be arrested irrespective of its flag except an Israel registered vessel cannot be arrested for



necessaries supplied in Israel.

#### 7. Can you arrest a ship irrespective of the debtor?

Israel law follows the Procedural Theory of Arrest where “personal” liability is required and also the “Personification” Theory where personal liability is not required. Which of the two is applicable would depend on the nature of the maritime lien or statutory right in rem alleged.

#### 8. What is the position as regards sister ships and ships in associated ownership?

It is not possible to arrest sister ships and ships in associated ownership. It is possible to attach same. See Clause 3 above. In the case of ships in associated ownership, attachment would be subject to “lifting the corporate veil”.

Notwithstanding the foregoing, recently arrest of sister ships or ships in associated ownership have been ordered by the Admiralty Court, subject to the provision of security. These have been in “Interlocutory” Decisions. As yet there have not been any definitive Judgements in this regard.

#### 9. What is the position as regards Bareboat and Time-Chartered Vessels?

A ship can be arrested for an obligation incurred by a Bareboat or Time Charterer.

It should be noted that the Israel Courts recognise choice of law clauses or would apply the principles of international private law, as the case may be, to determine the “applicable” law governing the foreign lien or statutory right in rem and would determine whether or not an arrest can be made say for a Time Charterer’s obligation in accordance with the principles of such “applicable” law.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Not normally, only in exceptional cases where the Court has material doubts as to the cause of action as same appears from the documentation filed in support of the Arrest.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

For Arrest purposes the Courts make no distinction between the historical maritime liens which are embodied in the 1840 and 1861 Admiralty Acts and the additional maritime liens (which are in effect statutory claims *in rem*) constituted by the Section 40 of the Shipping Law 1960. See Clause 1 above.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, as in Clause 1.1 above. None of the International Arrest Conventions apply in Israel as a matter of ratification or accession.

However as the Israeli Shipping Law mentioned in clause 1 above follows, in clause 41, part of the International Convention for the Unification of Certain Rules of Law Relating to Maritimes Liens and Mortgages 1926 and as the Court itself was established by and according to English Law and the Admiralty Court in fact follows both, it may well be arguable to ask the Court to follow a relevant Convention on a specific matter, as a matter of customary law.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Normally one day.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA is not obligatory. The Claimant must furnish an Affidavit which should clearly set out the cause of action and the documents in support thereof should be attached to the Affidavit.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

For the Arrest Application and Order no original documents are required, but the originals would have to be produced if the claim proceeds to trial.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Court will only accept jurisdiction if the Claim in Rem is recognised under the laws mentioned in Clause 1 above. The Application for Arrest is ancillary to the Claim in Rem which means that if there is no jurisdiction over the Claim in Rem – an arrest cannot be affected.

17. What is the procedure to release a ship from arrest?

The ship can be released from arrest by successfully contesting the alleged grounds of arrest or the Courts jurisdiction or by providing an acceptable guarantee.

18. What type of security needs to be placed for the release?

The usual securities acceptable to the Court are a P+I LOU issued by one of the International Group of P&I Clubs or a bank guarantee issued by an Israeli bank.

19. Does security need to cover interest and costs?

Yes. The amounts are a question for the Courts discretion.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

See 18 above.

21. How long does it take to release the ship?

If security is provided as above, a matter of day or so. If the arrest is contested for substantive or procedural reasons, the Court will attempt to resolve the matter as soon as possible but if the issues are complex this may take up to a week to ten working days.

22. Is there a procedure to contest the arrest?

Yes, as described in clause 17 above.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After preliminary hearings the matter is normally concluded within one year as from the date of filing the Claim in Rem. As a matter of practice the Arrest in itself normally determines the matter.

24. Do the Courts of your country acknowledge wrongful arrest?

The Court can award damages for wrongful arrest if the arrest or attempted arrest is malicious or grossly negligent.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Corporate veil can be lifted in circumstances of fraud, deceit or maliciousness.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

A ship can be sold *pendente lite* if it can be shown that the continuation of the arrest will substantially affect the value of the ship. In this case the net sale proceeds are regarded as having substituted the ship for all purposes, including the eventual determination of the validity of the claims *in rem* and the priorities.

*\*John Harris established the legal firm of J. Harris & Co in 1977. The firm is dedicated exclusively to the practice of Maritime and Admiralty law. The firm regularly receives a "top tier" ratings from independent legal rating entities including Legal 500, Dun & Bradstreet and BdiCoface.*

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*According to Legal500 'the response time is excellent as is the quality of the advice', the 'best shipping lawyer in Israel', John Harris is a 'seasoned professional who can handle the biggest cases, both wet and dry' and Yoav Harris is described as "outstanding".*

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# SHIP ARREST IN ITALY (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

Italy is a party to the 1952 Arrest Convention, ratified in 1979. Moreover the Italian Code of Navigation provides a set of domestic rules applicable when the Convention does not apply in whole or in part. Arrest is possible in Italian Ports also where there is no jurisdiction on the merits. The procedure is fairly quick and informal. No counter security is required. Appeal is possible and usually heard and decided in few weeks. P&I Clubs Letters of Guarantee are widely accepted if issued by one of the IG Pool. Alternatively bank guarantees or cash deposit are available to release the vessel.

## 2. Which International Convention applies to arrest of ships in your country?

The 1952 Brussels Convention on Arrest of Sea Going Ships has been ratified on 9.11.1979 in Italy and applies to all vessels flying the flag of one Contracting State. It will also apply, pursuant to article 8, to those vessels flying the flag of a non-Contracting State in respect of any claim for which the law of the Contracting State seized with the case permits arrest. In addition our Code of Navigation provides subsidiary rules applicable when the Convention cannot be applied in whole or in part or to arrest issues not ruled by the Convention (articles 643-686).

## 3. Is there any other way to arrest a ship in your jurisdiction?

A Vessel may be detained pursuant to an arrest order issued within a criminal proceeding by a Prosecuting Judge (i.e. when the Vessel can be considered as *corpus delicti*) or pursuant to an administrative detention order of a Public Authority (i.e. the Harbour master Office in case of damage to public properties like a berth, a quay, a light buoyancy).

## 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

In respect of the same claim usually arrest orders are alternatives and not cumulative. It is anyway possible that under special circumstances, where different interests are involved, a single event generates more detention orders (i.e. in a pollution case arising out of collision the interest of the State and those of cargo owners, the colliding vessel, the salvors, the victims). From a strict procedural profile an arrest order under the 1952 Arrest Convention for a particular maritime claim is always alternative to any likewise detention order to secure the same claim.

## 5. For which types of claims can you arrest a ship?

A Vessel can be arrested in Italy for any maritime claim among those listed under art. 1(1) of the 1952 Arrest Convention. For Vessels flying the flag of a non-Contracting State an arrest is possible also in respect of any other claim for which the law of the court seized with case permits arrest. This in Italy includes any debt of a contractual or non contractual nature but in this case the arrest can only be obtained if the Vessel is owned by the debtor.

## 6. Can you arrest a ship irrespectively of her flag?

A ship can be arrested irrespectively of her flag.

## 7. Can you arrest a ship irrespectively of the debtor?

A ship can be arrest irrespectively of the debtor but, if the debtor is a State or other Public body, then the ship might be regarded as immune from arrest. Whether and to what extent immunity may be invoked is left to the law of the forum arresti. Immunity is related to the ownership or operation of the ship, not to the nature of employment. For example the fact that a privately

owned ship is employed on a liner service which is of public interest should not justify immunity from arrest.

#### 8. What is the position as regards sister ships and ships in associated ownership?

Sister-ships, meaning ships owned by the same Company owning the particular ship in respect of which the maritime claim arose, can be arrested under art. 3 (1) of the Arrest Convention. A similar principle is provided at Italian domestic law (art. 2740 Italian Civil Code). Ships in associated ownership (or management) cannot be arrested unless the Claimant can pierce the corporate veil. This is not impossible in Italy but is certainly a difficult exercise, which implies a rigorous burden of proof on identity of shareholders and management of the two companies.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

In cases where the bareboat charterer is liable in respect of a maritime claim and not the registered owner, the situation is different if the Arrest Convention applies or not. If the Convention applies, art. 3 (4) enable arrest of such ship or any other ship in the ownership of the bareboat charterer, but no other ship in the ownership of the registered owner. The last sentence of Article 3, para. 4 seems to extend the rule to any case in which a person other than the registered owner of the ship is liable (i.e the time charterer, the ship manager, etc.). This is anyway in conflict both with the literal meaning of the provision and with the travaux préparatoires of the Convention. When Italian domestic law applies arrest of a ship under bareboat charter to secure a claim against the bareboat charterer, the time charterer or the ship manager is not possible unless the Claimant has a maritime lien assisting his claim. The main reason for this is that a creditor cannot arrest a ship to secure a claim if he can never be authorised to enforce the final judgment on the merit against the registered owner and auction the vessel. This is the worldwide unsolved problem of the Arrest Convention and Italy is no exception. Only maritime liens give right to enforce a claim against the vessel, even if she is property of someone different than the liable party. Not all maritime claims under the Arrest Convention are maritime liens under the different national domestic law systems. Not the 1926 Liens and Mortgages Convention enjoyed a wide acceptance around the world. The Lisbon Draft attempted to clear things as well as the 1999 Arrest Convention, not yet in force.

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# SHIP ARREST IN ITALY (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

No security is required as a preliminary condition to seek an arrest of ship. The Judge may order the applicant to tender a countersecurity, although this is rather uncommon at the time of the filing of the application, and a security is normally requested only where the Court considers that the arrest is controversial, or the merits of the claim have not been assessed with sufficient depth.

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

If the claim is secured by a maritime lien, this may operate to allow the arrest of a vessel even if it has changed ownership, the doctrine being that the lien attaches to the property at the time the cause of action arises and remains so attached until satisfied or time barred. Maritime liens take priority over registered mortgages, yet need not be registered themselves.

## 12. Does your country recognise maritime liens? Under which International Convention, if any?

Italy is a signatory to the 1926 Liens and Mortgages Convention, and recognizes a list of maritime liens under article 552 of the Italian code of navigation, which largely coincide with the list contained under article 1 of the 1926 Convention. The existence of a lien over the ship is determined by the law of the flag of the ship at the time the claim or credit arose, pursuant to art. 6 of Italian Navigation Code.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Instructions should be received possibly 48 or 24 hours before the moment of the presentation of the application. It should be considered in this respect that it is crucial to file the application early in the morning in order to try to have the case heard the same day, and in many Courts it is impossible to file the arrest application after noon.

## 14. Do you need to provide a POA, or any other documents of the claim to the Court?

The presentation of an application as well as any legal activity before major Italian Courts are made by a solicitor by virtue of a power of attorney. Powers of attorney issued outside Italy must be legalized and apostilled pursuant to Hague Convention 5 October 1961, or alternatively legalized by the Italian Embassy or Consulate in the country of issuance. The apostille is unnecessary, though, for powers of attorney released in countries party to the Brussels Convention 1987 which abolished the need of the apostille for deeds issued inside the EU; the apostille may be furthermore excluded by virtue of bilateral agreements. Italian solicitors have the authority to legalize powers of attorney, provided that they have had the opportunity to identify the party signing the deed. (1) In arrest or urgent proceedings an option is furthermore provided by article 77 c.p.c. which permits the possibility of an agency appointment, generally made in practice by appointing (by fax or e-mail) as agent for urgent matters (including the one for which the measure is sought) a lawyer who in turns appoints (usually) another lawyer of the firm as attorney in law. A formal duly legalized power of attorney is often disclosed at a later stage in order to prevent exceptions and technicalities.

(1) Cassazione n. 5840/2007, Alpina Versicherung A G c. Royal & Sun Alliance.



15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Original documents are not required, and could be disclosed in case the defendant contests the truthfulness of the copy disclosed. The notarization and/or apostille are required only for the POA.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Arrest is admitted regardless of the fact that Italian Courts have jurisdiction for the merits of the case: the Italian Court competent for the arrest is the Court of the port of call, and the application is subject to the condition that the vessel is within Italian territorial waters.

(2) Italian Courts however do not acknowledge jurisdiction on the substantive claim unless they have jurisdiction by virtue of the application EU Regulation on jurisdiction, or jurisdiction exists pursuant to article 7 of the 1952 Arrest Convention.

17. What is the procedure to release a ship from arrest?

An application should be filed before the court seeking an order releasing the ship. It is common practice however to ask the court, along with the arrest order, for authorization to inform the harbor master that the ship is free to leave (upon receipt of proper security or following a settlement agreement) with no need for a formal release order.

Such authorization is generally granted by the courts more familiar with ship arrest procedures, and this considerably simplifies the release.

18. What type of security needs to be placed for the release?

Either under Italian law or pursuant to the provisions of the Brussels Convention 1952 owners may obtain the release of the ship arranging the issuance of a suitable guarantee.

The options available are two: escrow or bank guarantee (or Club's LOU).

The first solution implies that the sums are deposited into a special bank account and authorization from the Court is sought to shift the arrest from the ship to the sums.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are generally accepted and considered suitable to lift the arrest.

21. How long does it take to release the ship?

A few hours if an application is required, otherwise just a very short time if the authorization as per question 17 above is given.

22. Is there a procedure to contest the arrest?

Yes, the party intending to challenge the arrest has 15 days to file an appeal, before the same court (a board of 3 judges decides on the application)

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Where the arrest is confirmed, the applicant is compelled to commence the proceeding for the merits (unless one is already pending) before the Court having jurisdiction within a deadline which is set by the Court up to a maximum of 60 days.

24. Do the Courts of your country acknowledge wrongful arrest?

Damages for wrongful arrest are uncommon and awarded only when it is clear that the applicant sought the arrest acting in bad faith or with gross negligence, disregarding the evidence available, or intentionally providing the Court with partial or misleading background information.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Italian Courts have started in the last few years (and in very few cases) to recognize the possibility of lifting the corporate veil, but this is quite exceptional, and the burden of proof resting on the applicant is severe. Italian law is indeed very strict in the definition of ownership in the context of companies and in applying the principle of autonomy of companies which are distinct

(2) Court of Venice, 25 August 2001, *El Sayed Aly Alla c. Sayed Nasr Navigation Lines*

and separate entities. As a result Italian Courts are reluctant to pierce the corporate veil, and the applicant intending to do so must be able to prove that the company structure has been actually created or employed with the purpose to frustrate creditors' actions.

**26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?**

The sale of the ship *pendente lite* has been authorized in few instances where the applicants successfully proved that the value of the ship under arrest was dramatically deteriorating and the costs (custody, berth and port dues, maintenance of the ship and so forth) were being disproportionate compared to the likely sale value. The proceeds of the sale are of course in this case frozen until the applicant obtains a judgment.

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# SHIP ARREST IN IVORY COAST



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## 1. Please give an overview of ship arrest practice in your country.

Jurisdiction in respect of admiralty matters is vested in the High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court.

Order 2 of the High Court (Civil Procedure) Rules 2004 (C.I. 47) provides that all civil proceedings must be commenced by Writ of Summons and must be filed along with a Statement of Claim. Every Writ of Summons must contain concise statement of the nature of the claim or relief, remedy sought in the action.

Order 62 of C.I. 47 generally makes provision for maritime actions. At the time of issuing a Writ of Summons, the Plaintiff files an Ex parte application for an order for a warrant of the arrest of the ship. No warrant of arrest shall be issued until an affidavit by the party or his agent has been filed and the following provisions complied with:

(a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim and the name and nature of the property to be arrested;

(b) In an action for wages or possession, the affidavit shall state the national character of the ship proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in Ghana, and a copy of the notice shall be annexed to the affidavit;

(c) In an action for bottomry, the bottomry bond, and if in a foreign language also a certified translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the transaction thereof, certified to be correct, shall be annexed to the affidavit;

(d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same;

The port of Abidjan is the main focus of maritime transportation. The port of San Pedro is mainly specialized in the export of wood even if it tends to diversify its activities (especially by the establishment of a container terminal assigned to MSC).

Therefore, 99% of the arrests of ships' procedures are initiated at Abidjan so that the orders of arrests are delivered by the President of the Court of First Instance of this city.

Usually, it is quite easy to arrest a vessel at Abidjan; however, the President of the Court requires that all documents submitted to him must be translated into French, which is the official language in Ivory Coast. The translation requirement could sometimes be a disadvantage because it takes time and has to be realised by a listed translator of the Court of Appeal.

Moreover, the Courts being closed on Saturdays and Sundays, the authorizations to arrest a ship must be obtained no later than on Fridays. However, the arrest order is implemented via the services of the port Harbour Master who needs the arrest orders to be formally approved by the Legal Department of the port Harbour which closes at 18:00 LT on Fridays.

Furthermore, the local regulation requires that the arrest order states several detailed information (regarding for instance the domiciliation of the creditor, the legal form of both the debtor and creditor); without those detailed information, an arrest order could easily be cancelled upon request. The said requirement has two (2) important consequences: 1- the creditor must provide complete information on himself, on the vessel and on the debtor;

2-99% of the releases of ships are the result from the cancellation of arrest orders. In this case

however, the Court's decision to issue the arrest order is not cancelled and the claimants can still ask the Court to issue a new arrest order and therefore oblige the Shipowners to negotiate. To conclude, detaining a vessel is quite easy when the creditors' claim file is complete and transmitted rapidly to the Court.

## 2. Which International Convention applies to arrest of ships in your country?

Ivory Coast did not ratify the Brussels International Convention dated 10th May 1952 but accepted to apply it after having accessed independence.

## 3. Is there any other way to arrest a ship in your jurisdiction?

The answer is yes, but depends on the purpose of the procedure of arrest:

### 3.1 The provisional arrest of a ship

The article 8 §2 of The Brussels Convention concerns the arrests of ships flying a State flag which is not a contracting party of the International Convention. The creditor has therefore the choice to base his demand either on one of the maritime debts of the convention or on one of the debt foreseen by the local Laws.

The article 8 §4 of The Brussels Convention provides that local Laws applies when the arrested ship flies Ivory Coast Flag and when the creditor's usual residence or principal place of business is in Ivory Coast.

3.2 The arrest of a ship with the view to sale it In such procedure the creditor bases on Ivory Coast Laws. The creditor would be able to arrest the vessel after the notification of a commandment of an enforceable title noticing a liquid and due debt.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

These alternatives are "saisie conservatoire" which means "arrest" and not freezing orders. However, the Government and/or the Port Authority are able to retain a vessel basing on the Ivory Coast Public Law.

## 5. For which types of claims can you arrest a ship?

5.1 The provisional arrest of a ship In such procedure, when the Brussels Convention applies, the arrest must be justified by a maritime claim as defined by the article 1 § 1 of the said Convention. Usually, the Courts issue easily an arrest order when the claim appears justified.

When the Ivory Coast Law applies, especially the Uniform Act of Ohada, the claim is not necessarily a maritime claim and the claim must only appear justified in its principle.

5.2 The arrest of a ship with the view to sale it In such a procedure, the claim must be based on a liquid and due debt.

## 6. Can you arrest a ship irrespectively of her flag?

The answer is yes because, as per the Article 8 § 2 of the Brussels Convention "A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest".

## 7. Can you arrest a ship irrespectively of the debtor?

- In principle, a vessel owned by a State cannot be arrested. However, this principle is limited to the vessels which have a governmental activity at the time of the birth of the debt. Consequently, the vessels owned by a State can be arrested when such vessels have a commercial activity at the time of the birth of the debt.

However, Ivory Coast vessels can in no case be arrested in Ivory Coast.

Under Ivory Coast Law, the seizure of property is limited to the property owned by the debtor. Consequently, when Ivory Coast Law applies for the arrest of ships, the ship must be the property of the debtor except when the creditor has a maritime lien.

## 8. What is the position as regards sister ships and ships in associated ownership?

There are only a few decisions with regards to this question in Ivory Coast.

The article 3 §2 of the Brussels Convention provides that "Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons". So

metimes, the Judges had accepted to ignore the autonomy of each property and the legal personality of societies when evidence showed that there were a link between societies and therefore an organised fraud in order to be insolvent.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The article 3 §4 of the Brussels Convention provides that “When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship”.

The international Convention points out the cause of the debt, i.e. a maritime claim relating to the ship.

When the Ivory Coast Laws apply, a creditor may arrest a ship which is not the property of the debtor when the creditor has a maritime lien and/or a mortgage.

#### 10. Do your Courts require counter-security in order to arrest a ship?

As per the article 4 of the Code of Civil Procedure, the defendant (or the debtor) may ask to obtain a guarantee to cover the payment of the costs, interests and damages for which may be condemned the plaintiff (or the creditor). The demand for guarantee is conditioned to the existence of an adversarial debate. The procedure of arrest is not subject to any adversarial debate. Consequently, the defendant (or the debtor) cannot ask for a counter guarantee.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

A maritime Lien exists only because a maritime claim exists. It is therefore impossible to arrest a ship basing only on the existence of a maritime Lien. A maritime Lien gives a right of mortgage on a property even if property changes hands and a priority right to be paid before other creditors.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Ivory Coast recognizes Maritime Liens and applies the International Convention on Maritime mortgages and liens dated 10th April 1926.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

If the file is complete and the documents translated in French by a listed translator of a Court of Appeal, the arrest could be obtained within the same day.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A special power of attorney would be required to recover the amount of money from the debtor who has been condemned by the Court.

#### 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 Court does not require originals except when a defendant alleges that a document is a forgery. Consequently, all documents can be filled electronically; there is not any requirement of notarisation or apostille of the documents although it is better to legalise a special power of attorney.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

In principle, once the vessel is arrested in Ivory Coast, the Courts accept jurisdiction.

#### 17. What is the procedure to release a ship from arrest?

- Negotiations for amicable settlement
- Proceedings before the Court for lifting the arrest

#### 18. What type of security needs to be placed for the release?

- P&I LOU
- Local bank guarantee



- Deposit escrowed before the CARPA (Local bank of lawyers)

#### 19. Does security need to cover interest and costs?

According to article 5 of the Brussels Convention "The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished [...]". The security must cover only the amount of claim which is mentioned in the order of arrest.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

If there is no real dispute on the debt, a P&I LOU can be provided and an amicable release is made without going before the Court. But the claimant is not obliged to accept a P&I LOU. He may prefer a bank guarantee. Furthermore, there are many chances for the Court to require a bank guarantee. The debtor can also make a deposit corresponding to the whole amount of claim before the CARPA (Local bank of lawyers) until the case is definitely resolved.

#### 21. How long does it take to release the ship?

The time necessary to lift the arrest depends on several factors including :

- The time elapsed between the arrest of the ship and the appointment of the counsel ;
- The duration of the proceedings before the court: the proceedings can take three days or more ;
- The time necessary to place security;

So it is not possible to determine exactly the time expected to release a ship.

But once the judicial decision or amicable agreement done, the vessel can be released in a few hours.

#### 22. Is there a procedure to contest the arrest?

Yes. An urgent writ of summons for release of the ship will be filed before the Court which delivered the order of arrest. It can be made within two (02) days (procedure of refere).

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The local Regulation, and not the Courts, imposes to the claimants to take legal action on the merits within one (1) month after the issuance of an arrest order. If the claimant does not respect this regulation the arrest becomes null and void. Actually, the Port Harbour Master would refuse to enable a vessel to sail without having received a withdrawal (or release order) by the Court.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Ivory Coast recognizes wrongful arrest if evidence show that an arrest is abusive, especially when the debtor provides proofs showing that the debt has been paid.

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

As explained at point 8, it is possible to obtain such condemnation when the plaintiff (or creditor) shows strong evidence. Courts' decisions are rare, but existent.

#### 26. Is it possible to have a ship sold pendente lite; if so how long does it take?

A ship can be sold at the end of the procedure of arrest with the view to sell it; the creditor is supposed to have obtained an enforcement title from the Court. The procedure for sailing the vessel takes approximately two (2) months after the notification of a commandment to pay before execution.

# SHIP ARREST IN JAPAN



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## 1. Please give an overview of ship arrest practice in your country.

In Japan there are mainly two types of ship arrest. One is an arrest by lien or Mortgage. The other is a provisional arrest.

Arrest by Lien or Mortgage – A ship can be arrested to execute a maritime lien on the arrested ship or enforce a mortgage on the arrested ship. The arrestor can arrest the ship without putting up any counter-security. To release the arrested ship the shipowners are usually requested to put up security (although we have recently experience to release the arrested ship without security ~ “Fairwind 308”). Provisional Arrest – A creditor of shipowners can arrest the ship owned by the shipowners to obtain the security of their claim (regardless of such claim is maritime or not). In order to arrest by this provisional arrest the arrestor shall put up counter security. To release the arrested ship the shipowners are usually requested to put up security which is usually the same amount of the arrestor’s claim amount.

## 2. Which International Convention applies to arrest of ships in your country?

No International Convention applies to arrest of ships in Japan. Japan has not ratified the arrest conventions of 1952 and 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

A claimant can arrest a ship by (i) an arrest by lien or mortgage or (ii) provisional arrest.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No.

## 5. For which types of claims can you arrest a ship?

By the provisional arrest the claimant can arrest a ship under any monetary claim of whatsoever nature against the shipowner. In order to arrest by lien or mortgage the arrestor shall have a maritime lien or a mortgage on the arrested ship.

## 6. Can you arrest a ship irrespectively of her flag?

Yes.

## 7. Can you arrest a ship irrespectively of the debtor?

In case of the provisional arrest the debtor shall be the shipowners. In case of the arrest by lien or mortgage, the holder of the maritime lien or mortgage can arrest the ship irrespectively of the debtor.

## 8. What is the position as regards sister ships and ships in associated ownership?

Not impossible but not easy.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

In case where a bareboat charterer is the debtor the creditor may arrest the ship based on our special provision. In case of time charter there is some argument.

## 10. Do your Courts require counter-security in order to arrest a ship?

In case of an arrest by a lien or mortgage, a claimant does not need to put up counter-secu-

ity. In case of the provisional arrest a claimant must deposit counter-security.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?  
Yes. If a claim gives rise to a maritime lien, the claimant can arrest the ship by lien. If not the claimant shall arrest the ship by provisional arrest only.

12. Does your country recognise maritime liens? Under which International Convention, if any?  
Yes. Japan is not member of any International Conventions. But a Japanese court can recognize the maritime liens.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

It depends on how complicate your claim is. We have several experience to arrest ships within 48 hours from the instruction.

In the arrest of Three Tulip to enforce the mortgage, we got the instruction on the Thursday and arrested her next day. In the provisional arrest of Aventicum we got the instruction on the Thursday mid-night and arrested her next Tuesday morning. In the arrest of the Pegasus Prime by maritime lien we got the instruction on Friday morning and arrested her next Monday. It all depends on case.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes we need a POA. Several documents are required as the Japanese courts like paper.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Originals of POA and corporate certificates are required. But some courts accept a copy. It depends on the discretion of the judges.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

It depends upon a case.

17. What is the procedure to release a ship from arrest?

To file a motion to release the arrested ship in the court.

18. What type of security needs to be placed for the release?

Cash, Bank guarantee and insurance bond can be accepted as security. But in case of arrest by lien or mortgage, LOU of PI club can be accepted as security. But sometimes security is not required to release the ship. We had success to release the Fairwind 308 without any security (Yokohama District Court 4 June 2007).

19. Does security need to cover interest and costs?

Usually the claim amount secured by the arrest already includes interests and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

In case of arrest by lien or mortgage, PI LOU is sufficient (although such PI shall have license in Japan).

21. How long does it take to release the ship?

Once we file sufficient documents we can usually release the ship within one day.

22. Is there a procedure to contest the arrest?

Yes we have procedures.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

In case of the provisional arrest it is minimum two weeks. With respect to an arrest by lien or mortgage there is no need to take legal action on the merit.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes but not easy.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No. During proceedings, the ship can only be sold by a public auction at the Court.

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# SHIP ARREST IN JORDAN

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## 1. Please give an overview of ship arrest practice in your country.

The Jordanian Maritime Code does not regulate the conservatory arrest of ships. Therefore, the arrest of ships in Jordan will be subject to the Civil Procedures Law which gives which gives any creditor the right to apply to the Court of First Instance (Summary Judge dealing with urgent matters) for a conservatory attachment of his debtor's assets to obtain security for his claim. The Court normally considers the arrest application of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter).

## 2. Which International Convention applies to arrest of ships in your country?

Jordan is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Yes. Ships may be arrested in Jordan in the context of either a precautionary seizure procedure or an enforcement procedure commenced against her. The main difference between both procedures is that the applicant is not required to have an execution deed against the ship in order to commence precautionary arrest proceedings.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

The precautionary seizure procedure above-mentioned (question No. 3) is an alternative to the saisie conservatoire procedure.

## 5. For which types of claims can you arrest a ship?

A ship may be arrested in the Jordanian territorial waters for any debt against the owner of the ship or the ship, provided that the debt is proved, on the face of things, to be serious and grounded.

## 6. Can you arrest a ship irrespectively of her flag?

Yes. A ship anchored within the Jordanian territorial waters can be arrested irrespectively of the flag she is flying.

## 7. Can you arrest a ship irrespectively of the debtor?

The ship can be arrested in the Jordanian territorial waters for any claim which the claimant has against the owner of the ship or the ship if he proves, on the face of things, that his claim is serious and grounded.

## 8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Jordan is possible since the creditor is given the right to arrest any of the assets of his debtor to secure the claim provided that he proves, on the face of things, that his claim is serious and grounded.

As for the arrest of associated ships, this recourse is not available to creditors in Jordan.



#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The Jordanian Maritime Code does not give expressly the creditor of the charterer the right to arrest the ship for a debt resulting from the charterer's actions. Therefore, the position of the time charterer and bareboat charterer needs to be examined on a case by case basis while taking into consideration whether the charterer has a lien on the ship.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Yes a counter-security is required in Jordan.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a ship for any maritime claim and the arrest of ship for a maritime lien.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Jordan did not accede to any of the International Conventions relating to Maritime Liens.

The Jordanian Maritime Code recognizes maritime liens and article 50 of the said code has listed them as follows:

a) Judicial costs and expenses incurred in order to preserve the value for the benefit of the creditors generally (tonnage dues and lighthouse and port fees and other dues or fees of a similar nature) pilotage fees and guarding and maintenance costs from the time of the ship's entry to the port.

b) Debts arising from the contract of employment of the master, crew members and other employees of the vessel.

c) Charges due for assistance and salvage operations and for the contribution of the ship to general average losses.

d) Indemnity for collision or arising from other perils of the sea and from damages caused to ports, docks and navigational routes, and compensation for injuries to passengers and crew and for loss or damage to cargo and baggage.

e) Debts arising from contracts concluded, or operations carried out carried out by the master outside the ship's port of registration with his legal powers, and which are actually required for the preservation of the ship or for completing the voyage, whether or not the master is the owner of the ship, and whether or not the debt is owed to him, or the ship chandlers, repairmen, creditors or other contracting parties.

f) Damages due to the charterers of the ship.

g) The total of premiums due on insurance taken on the ship's hull, tackle and equipment for the last voyage insured, or for the last period of insurance on a term policy, provided that in both cases this total does not exceed one year's premiums.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Jordan, the ship can be arrested within 48 to 72 hours.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Jordanian Embassy must be submitted to the President of the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Jordan is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Jordan prior to submission.

#### 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 original documentation supporting the claim must be attached to the application and electronic filing is not available. As mentioned under question 14 above, if these documents are in foreign language they must be translated into the Arabic language. Only official documents must be legalised up to the Jordanian Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Jordan.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?  
If foreign courts are given jurisdiction over the conflict, Jordanian courts will not accept jurisdiction over the substantive claim.

17. What is the procedure to release the ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship must take the form of either a bank guarantee issued by a local bank or cash deposited in the Court.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No they are not.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file an appeal against the arrest order before the Court of Appeal. Upon hearing the appeal, the Court may issue an order lifting the arrest order and such judgment shall be enforceable through the normal channels. The appeal shall be submitted within 10 days from the date of issue of the arrest order. The judgment issued by the Court of Appeal may be appealed through normal channels.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must commence substantive proceedings within eight days starting from the date of issue of the arrest order.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

In principle, the concept of piercing and lifting the corporate veil is not recognised in Jordan.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Such sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

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# SHIP ARREST IN KOREA



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## 1. Please give an overview of ship arrest practice in your country.

There are two principal methods of arresting a ship under a Korean law—an arrest can either be made (1) on the basis of a maritime lien against the ship that is recognized by the law of the ship's flag or (2) as a preliminary attachment if a creditor can show the existence of a claim against the registered shipowner.

Chapter 5 of the Korean Commercial Code sets forth the rules for arrest of ships by way of a maritime lien, which arise out of the use and operation of a particular vessel. For foreign-flagged ships, however, the courts in Korea will ascertain the law of the flag state's jurisdiction to determine whether a particular claim gives rise to a maritime lien, but will apply Korean law (including time bar) to the arrest proceeding. Arresting a ship by way of a maritime lien automatically commences auction sale proceedings.

In contrast, the Civil Execution Act sets forth the rules for arrest of ships by way of a preliminary attachment or preliminary disposition proceeding. An arrest by way of preliminary attachment is available whenever a creditor can show that it has a claim against the registered owner of a ship, irrespective of whether it is a "maritime claim" or whether the claim arose with respect to the concerned ship. It is also possible to attach other assets under the same law. The right to arrest a ship by way of a preliminary attachment is based on the principle that a creditor should take interim measures to preserve its rights against the debtor. The procedure is ancillary to a proceeding on the merits and does not give the Korean court jurisdiction over the merits of the underlying claim. Furthermore, while arresting a ship by way of a preliminary attachment does detain the vessel (except in the case of vessels flagged in Korea), it is not possible for the creditor to commence auction sale proceedings unless and until a final judgment or award is obtained from a court or arbitral tribunal having jurisdiction over the merits.

A ship may only be arrested by way of a preliminary attachment if arrest by way of a maritime lien is not available.

## 2. Which International Convention applies to arrest of ships in your country?

Korea is not a party to any of the international conventions relating to the arrest of ships. In particular, for an arrest by way of preliminary attachment, there is no requirement of a "maritime claim" or requirement that the claim arose with respect to a particular ship. It is only necessary to show that the debtor on the underlying claim and the registered owner of the ship are the same person.

## 3. Is there any other way to arrest a ship in your jurisdiction?

In addition to the two methods for arrest of ships detailed herein, it is also possible for a creditor to arrest a ship in reliance on a mortgage or a possessory lien.

## 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

An arrest by way of preliminary attachment, which is detailed herein, is effectually a *saisie conservatoire*.

## 5. For which types of claims can you arrest a ship?

As stated above, whether a particular claim gives rise to a maritime lien in Korea depends on whether a maritime lien is recognized under the law of the ship's flag. For ships that are flagged in Korea, Article 777 of the Commercial Code sets forth the following claims that give rise to a maritime lien:

(1) Claims for the cost of litigation for common interests of the creditors, public taxes imposed on the vessel concerning a voyage, piloting fees, towing fees, maintenance and inspection charges on the ship and her equipment after her last entry into port;

(2) Claims under employment contracts with crew and other persons hired onboard;

(3) Claims for salvage remuneration and contributions in general average; and

(4) Claims for loss or damage arising due to a collision or other navigation accident, loss or damage to navigation facilities, port facilities and waterways, personal injury and loss of life of crew and passengers.

In addition, any type of claim may be used to arrest a ship by way of preliminary attachment, provided that the debtor is the registered owner of the ship.

#### 6. Can you arrest a ship irrespective of her flag?

A ship may be arrested by way of a preliminary attachment irrespective of her flag. However, the availability of a maritime lien is determined by reference to the laws applicable in the jurisdiction of the ship's flag.

#### 7. Can you arrest a ship irrespective of the debtor?

A claim against a ship that gives rise to a maritime lien may be used to arrest the ship irrespective of the debtor. For arrest of a ship by way of preliminary attachment, the debtor must be the registered owner of the vessel.

#### 8. What is the position as regards sister ships and ships in associated ownership?

It is not possible to arrest a sister ship or associated ship in Korea on the basis of a maritime lien. The arrest of a sister ship is possible in a preliminary attachment proceeding, so long as the registered owner of both ships is the same. The arrest of a ship under associated ownership is theoretically possible where the circumstances warrant piercing the corporate veil; however, as courts in Korea generally do not permit piercing the corporate veil, this is very difficult in practice.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

Arrest of a ship under Chapter 5 of the Commercial Code requires the existence of a claim against the ship, as opposed to a bareboat or time charterer.

In contrast, to arrest a ship in a preliminary attachment proceeding, the arresting party must have a claim against the registered owner of the ship. A claim against a mere charterer, even a bareboat charter, will not give rise to a right to arrest a ship by way of preliminary attachment.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Counter-security is required to arrest a ship on the basis of a preliminary attachment. The amount of counter-security which to be provided by the arresting party in each case is up to the discretion of the individual judge overseeing the matter. In Busan, where many applications for arrest are filed, judges typically require 20 percent of the claim amount as counter-security, although this can vary depending on the particular case and judge. The type of counter-security may also vary. While judges will typically accept a surety bond, they have discretion to require some or all of the counter-security in cash.

No counter-security needs to be posted for arresting a ship by way of a maritime lien; however, the payment of maintenance charges and the costs necessary for auction sales proceedings is required.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Korean law does not recognize the concept of a "maritime claim" as such, but where a claim that is maritime in nature gives rise to a maritime lien under the law of the ship's flag jurisdiction, then the lien holder may arrest the ship. Alternatively, the party seeking to arrest a ship for a maritime claim or any other type of claim may do so by way of a preliminary attachment provided that it has a claim against the ship's registered owner.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, but Korea is not a party to any of the international conventions dealing with maritime liens and mortgages.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Upon receiving all of the documents necessary to file an application for arrest or preliminary attachment of a ship, a minimum of 72 hours is generally required, although it may be possible to arrest a ship within 48 hours in extreme situations. In Korea, it is not possible for a judge to consider the application during a weekend or holiday or outside normal business hours.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes. An original notarized POA is required to file any application for arrest and, if the POA is notarized outside of Korea, it needs legalization or an apostille. In addition, the party applying for arrest should provide documents evidencing its claim against the debtor. In the case of arrest by way of preliminary attachment, the party applying for arrest should, technically, also show that the arrest is necessary to protect its interest in enforcing a subsequent judgment or arbitration award, but in practice this is not a burdensome evidentiary requirement.

For arrest by way of a maritime lien, the applicant does not need to show that the arrest is necessary to protect its interest in enforcing a subsequent judgment since the application for arrest itself is the first step toward commencing auction sale proceedings in Korea. Nevertheless, it is necessary for the party applying for arrest to produce evidence showing that it has a maritime lien under the law of the vessel's flag jurisdiction.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

In principle, original documents are required to evidence the claim against the debtor and show the existence of a maritime lien. The latter is usually shown by provision of a legal opinion, together with copies of relevant rules, in the ship's flag jurisdiction. All documents originating outside of Korea require notarization and legalization or apostille, as appropriate, and are needed at the time the arrest application is filed.

For arrest by way of preliminary attachment, the evidentiary burden on the party applying for arrest is substantially less than in the case of an arrest by way of a maritime lien, even more so where counter-security is being provided by the arresting party. A statement by the arresting party, or the arresting party's lawyer, together with copies of the basic documents showing the existence of a claim against the debtor will typically suffice.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No. Korean law makes no provision for in rem or quasi in rem jurisdiction.

17. What is the procedure to release a ship from arrest?

Release of the vessel is also dependent on whether the vessel was arrested by way of pre-judgment attachment or under a maritime lien.

Pre-Judgment Attachment

To release a vessel arrested by way of pre-judgment attachment, the vessel owner must deposit cash security equal to the full claim amount, without exception. A Letter of Undertaking may be deposited in lieu of cash security only if the arresting party consents, otherwise only cash is acceptable. After the security is deposited to the Court, the arrest is automatically cancelled. The cash deposit or LOU serves as a substitute for the vessel. Unless settlement is reached soon, litigation on the merits would soon follow.

The above is simplest way to release a vessel arrested by way of pre-judgment attachment. On the other hand, the owner or third party owner of the vessel can file objection to the arrest with the Court, which is similar to main litigation on the merit. Thus, the latter remedy takes much more time, which is recommendable only where the owner is not capable of providing cash deposit.

Maritime Lien

Once his vessel has been arrested under a maritime lien, the vessel owner may take one of two steps to release his vessel. Firstly, the vessel owner may file an objection to the commencement of auction sale proceedings and apply for an Order to suspend the auction sale. This is an expedient remedy. The Court will review the objection without delay and, assuming the Court accepts the objection, will order the auction sale to be suspended with deposit or without deposit in the Court's discretion. Once the vessel owner has obtained the Suspension Order, he must submit the Order along with a cash deposit to the Court, which will then cancel the auction sale



proceedings. The cash deposit is equal to the aggregate amount of all claims against the vessel, plus the estimated costs of conducting the auction sale. After the auction sale is cancelled, the vessel is released and the cash deposit stands as a substitute. The cash deposit will be distributed to the vessel's creditors only after judgment on the merits.

A second option open to the owner of a vessel arrested under a maritime lien is to seek a declaratory order from the Court that the obligation right claimed by the arrest applicant does not exist, or that the obligation right does not give rise to a maritime lien. If the Court accepts the vessel owner's arguments, the Court will issue a Suspension Order. As described before, the vessel owner would then submit both the Suspension Order and a cash deposit to the Court, and the Court would then cancel the auction sale proceedings.

#### 18. What type of security needs to be placed for the release?

Regardless of whether the vessel was arrested by way of pre-judgment attachment or under a maritime lien, it is cash.

#### 19. Does security need to cover interest and costs?

In case of arrest based on pre-judgment attachment, security does not need cover interest or costs. In contrast, in case of arrest based on a maritime lien, the security need to cover the costs, but not interest.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

It is not accepted.

#### 21. How long does it take to release the ship?

In case of arrest based on pre-judgment attachment, if cash deposit is posted for cancellation of arrest, the arrest will be cancelled automatically. Thus, we may say that it takes 1 day or at most 2 days.

In contrast, in case of arrest based on a maritime lien, several procedural steps should be taken. The time necessary depends on several factors including the Court's then work load situation and the availability of judge. We can say that it takes 3 days to 1 week.

#### 22. Is there a procedure to contest the arrest?

The owner of the vessel can file lodge objection with the court, and then the court will review the merit.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

As arresting a ship on the basis of a maritime lien automatically commences auction sale proceedings, the claimants are not required to take legal actions on the merits within any specific period of time. In practice, however, the shipowners will usually challenge the existence of the obligation giving rise to the maritime lien, the claimant's right to exercise the maritime lien, or both, and apply for the suspension of the execution of auction sale proceedings while the challenges are considered by the court. In order to suspend the execution of auction sale proceedings, the shipowners are required to deposit a cash sum equivalent to the aggregate amount of all claims against the ship plus estimated auction sale costs or, alternatively, to reach an agreement with the arresting party about the type and amount of security to be provided. If suitable security is provided, the ship will be allowed to sail while the court considers the merits of the shipowners' arguments.

For arresting a ship on the basis of a preliminary attachment, there is no stipulated period for brining a claim on the merits. Rather, the shipowners must apply to the court for an order directing the arresting party to proceed on the merits of its claim. The court will then consider the circumstances of the case and stipulate a time period of more than two weeks, generally closer to one month.

Meanwhile, the ship will be detained (if it is not registered in Korea) unless and until the shipowners have provided suitable security to the arresting party, typically a cash amount equal to the amount claimed against the debtor.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Yes. A wrongful arrest claim in Korea will be assessed using ordinary tort principles. If the arresting party does not succeed on the merits of the underlying claim, the court will presume that

the arrest was effected negligently. The arrest may also be wrongful, even if the arresting party eventually succeeds in recovering some amount, if the amount recovered is significantly less than the amount initially claimed when arrest the ship.

**25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?**

Korean law permits piercing the corporate veil. However, in practice, the courts have permitted piercing the corporate veil only in rare circumstances.

**26. Is it possible to have a ship sold pendente lite; if so how long does it take?**

For arrest on the basis of a maritime lien, a ship can be sold pendente lite and, in fact, will usually be sold pendente lite unless cash security is provided by the shipowners.

In the case of arrest by way of preliminary attachment, it is not possible for the ship to be sold pendente lite as this is only a provisional remedy to secure a claim pending final resolution of the merits of the dispute by a court or arbitral tribunal properly seized of jurisdiction.

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# SHIP ARREST IN KUWAIT

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## 1. Please give an overview of ship arrest practice in your country.

The Kuwaiti Maritime Code regulates the conservatory arrest of ships. The arrest application is submitted to the Court of First Instance (Summary Judge dealing with urgent matters). The Court normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is proven based on the face of things. The arrest order may be challenged but this procedure is usually complex and lengthy.

## 2. Which International Convention applies to arrest of ships in your country?

Kuwait is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Ships could be arrested in Kuwait in the context of either a precautionary seizure procedure or an enforcement procedure commenced against her. The main difference between both procedures is that the applicant is not required to have an execution deed against the ship in order to commence precautionary arrest proceedings against the ship.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

There are not alternatives for the arrest of ships in Kuwait as the Maritime Code regulated the arrest of ships in specific which prevents the applicant from relying on other laws in Kuwait.

## 5. For which types of claims can you arrest a ship?

In order to arrest a vessel in the Kuwaiti territorial waters the creditor must have a maritime debt against the ship. Article 73 of the Kuwaiti Maritime Code defines "maritime debts" as a debt arising from the following:

- a. Damage caused by the vessel by reason of a collision or otherwise.
- b. Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.
- c. Assistance and salvage.
- d. Contracts relating to the use or exploitation of the vessel under a charterparty or otherwise.
- e. Contracts relating to the carriage of goods under a charterparty, bill of lading, or other documents.
- f. Loss of or damage to goods or chattels being carried on board the vessel.
- g. General average.
- h. Towage or pilotage of the vessel.
- i. Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.
- j. Construction, repair or fitting out of the vessel, and costs of it being in dock.
- k. Wages of the master, officers and crew.
- l. Sums spent by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.
- m. A dispute as to the ownership of the vessel.
- n. A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.

o. Maritime mortgages.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Kuwaiti territorial waters can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

The ship can be arrested in the Kuwaiti territorial waters if the claimant successfully proves that he has a maritime debt against the vessel.

8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Kuwait is possible for any of the maritime debts listed under question 5 above with the exception of debts arising out of a dispute as to the ownership or co-ownership or possession of the vessel or mortgage on the vessel (Question 5(m), (n) and (o) above). Arresting ships in associated ownership is also possible if the debt is related to the ship. Regarding the arrest of associated ships, there is a great degree of uncertainty as, for the arrest to be successful, we need to prove to the judge the close link between the entity owning the ship that incurred the debt and the entity owning the associated ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Kuwait Maritime Code gives the creditor of the charterer who has control over the nautical navigation of the ship the right to arrest the ship for a debt resulting from the charterer's actions. In addition, the creditor has the right to arrest any other ship owned by the charterer.

10. Do your Courts require counter-security in order to arrest a ship?

No counter-security is needed to arrest a ship in Kuwait.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a vessel for a maritime claim and the arrest of vessel for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Kuwait did not ratify any of the international conventions related to maritime liens. The Kuwaiti Maritime Code recognizes maritime liens. In fact, the Kuwaiti Maritime Trade law has listed the maritime liens in Article 47 as follows:

a. Judicial expenses that were spent to maintain the Vessel, sell it, distribute its price, cargo and port charges as well as other charges, public taxes of the same kind, and charges of pilotage and compensations for the damage that caused to the installations of the ports, docks and navigation routes, and expenses for removing navigation obstacles caused by the Vessel as well as expenses of sentry duty and maintenance since the entry of the Vessel to the last port.

b. Debts resulting from the employment contract of the captain, sailors and others relating to the Vessel with an employment contract.

c. Monies due for assistance and salvage, and the share of the Vessel in general marine average.

d. Compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions.

e. Debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the Vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the Vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Kuwait, the ship can be arrested within 48 to 72 hours.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Kuwaiti Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Kuwait is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Kuwait prior to submission.

#### 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 documentation supporting the claim must be attached to the application and electronic filing is not available. As mentioned under question 14 above, if these documents are in foreign language they must be translated into Arabic language. Only official documents must be legalised up to the Kuwaiti Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Kuwait.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

There is uncertainty in this area of law especially where the jurisdiction is given to a foreign court and not arbitral tribunal. Therefore, and if jurisdiction is given to an arbitral tribunal, we recommend our clients to commence arbitration within the two weeks period (as highlighted under question 23 below) and request from the court the stay of the proceedings until an arbitral award is issued. However, if jurisdiction is given to a foreign court, we may argue in court that Kuwaiti courts have jurisdiction over the substantive claim.

#### 17. What is the procedure to release the ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

#### 18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship must take the form of a bank guarantee issued by a local first class bank covering the value against which the vessel is arrested.

#### 19. Does security need to cover interest and costs?

The security should cover the claimed amount in the arrest application.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

No they are not.

#### 21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

#### 22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file a grievance before the Court of First Instance who issued the arrest order. Upon hearing the grievance, the Court may make an order revoking, confirming or modifying the arrest order and such judgment shall be enforceable through the normal channels. The judgment issued shall be appealable through normal channels.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

According to the Kuwaiti Procedures law the applicant must, within eight day at the most from the date of the service of the arrest order, bring a claim before the court for the confirmation of his right and validity of the arrest, failing which the arrest shall be declared null and void.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Yes. The claim of wrongful arrest will succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.



25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?  
Potentially yes depending on the type of company.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?  
Such sale could be authorized.

*\*Zeina has graduated from the University of Southampton in 2007 and has practised maritime and transportation law for more than 7 years. She acts for clients in a wide range of contentious and non contentious matters in her field of expertise including ship arrest, maritime claims, charterparty disputes and ship finance. She is member of the Women's international Shipping and Trading Association in Lebanon and a member of the International Bar Association.*

*\*Ahmed is an experienced bi-lingual litigator. He is able to handle all legal procedures including preparing and reviewing commercial documents and written pleadings, as well as drafting and reviewing claim writs and memorandums. In his work, he has acted as a representative of several Protection and Indemnity Clubs (P&I CLUB), involved in a wide range of P&I related work along with all related services such as, cargo claims handling and settlements, personal injury claims, fixed objects damage claims, collision liability claims, assisting marine agent enquires in all legal obstacles occurring at the ports, advising on charter party issues such as drafting, interpretation, disputes and resolutions and general legal assistance.*

# SHIP ARREST IN LATVIA



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## 1. Please give an overview of ship arrest practice in your country.

In Latvia claimant is entitled to arrest the vessel to secure his claim before claim on merits is brought.

Latvian Maritime Code (hereinafter – LMC) gives definition of arrest as “any detention of a ship or prohibition of its relocation in accordance with a court adjudication in order to secure maritime claim. Arrest does not mean attachment of a ship in order to implement a court judgment or use of other compulsory means, including the detention of a ship in accordance with administrative procedures, upon implementation of state control of ports and supervision of the navigation regime of Latvian waters”.

Petitions to arrest the vessel are heard by the regional courts of common jurisdiction. Law does not determine minimum amount of claim enabling ship arrest.

Court tax for debtor's asset arrest before bringing claim on merits is 0.5% from the claimed amount. Language of hearing is Latvian and all documentation must be presented to the court in Latvian.

Ruling to arrest the vessel is issued by a sole judge on ex parte basis. If the claim is secured by arrest of the vessel, the court gives out a copy of corresponding decision to the claimant with an inscription that the copy is given out for detention of the vessel in the port. Appeal to the ruling cannot suspend the enforcement of the ruling.

When making the decision on the question of arrest of the vessel the court takes into account *prima facie* formal legal basis.

## 2. Which international Convention applies to arrest of ships in your country?

Latvia is a party of the Ship Arrest Convention 1999. Definitions of maritime claims are listed in the LMC in conformity with Article 1 of the Ship Arrest Convention 1999.

But the Ship Arrest Convention 1952 is also in force. These days in Latvia it is possible to apply to provisions of both Ship Arrest Conventions depending on the circumstances.

## 3. Is there any other way to arrest a ship in your jurisdiction?

As per LMC and local Civil Process Code provisions arrest of any ship is allowed if a maritime claim exists in relation to this ship.

## 4. Are there alternatives e.g. Saisie conservatoire or freezing order?

No, Latvian legal system does not recognize Saisie conservatoire or freezing order.

## 5. For which types of claims can you arrest a ship?

A ship can be arrested to secure a maritime claim. Types of maritime claims are listed in the LMC in conformity with Article 1 of the Ship Arrest Convention 1999.

## 6. Can you arrest a ship irrespectively of her flag?

Provisions of the LMC apply to all ships located in waters under Latvian jurisdiction with no irrespectively to the flag the vessel is flying. Thus, a ship flying any flag can be arrested in Latvia.

## 7. Can you arrest a ship irrespectively of the debtor?

The arrest of any ship is allowed if in relation to the ship one of the following conditions is in effect:

- the person who owned the ship at the time when the maritime claim arose is liable for the claim and is the ship owner at the time of arrest of the ship;
- the person who was the bareboat charterer of the ship at the time when the maritime claim arose

is liable for the claim and is the bareboat charterer or ship owner at the time of arrest of the ship;

- the claim arises from a mortgage or other similar type of encumbrance on a ship;
- the claim relates to the ownership or possession rights of the ship; or
- the claim is directed against the ship owner, bareboat charterer or ship's operator and this claim is secured by maritime lien.

Any other ship or ships that at the time of arrest are owned by such persons may also be arrested as are liable regarding a maritime claim and who at the time the claim arose were:

- The owner of the ship in relation to which the maritime claim arose; or
- The bareboat, time or voyage charterer of such ship.

#### 8. What is the position as regards sister ships and ships in associate ownership?

LMC states that any other ship or ships can also be arrested if at the time of arrest they are owned by such persons who were liable for a maritime claim and at the time the claim arose were: 1) the owner of the ship in relation to which the maritime claim arose; or 2) the bare boat, time or voyage charterer of such ship.

This provision of LMC does not relate to claims arising from ownership or possession rights of the ship.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

A ship can be arrested if the person who was the bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or ship owner at the time of arrest of the ship.

#### 10. Do your Courts require counter – security in order to arrest a ship?

As per Latvian law the court could require the arresting party to put up security for a wrongful arrest, but in practice it is required very rarely.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is a difference - if there is a maritime lien, a court action may be taken directly against the vessel.

#### 12. Does your country recognize maritime liens? Under which international Convention, if any?

Latvia recognizes maritime liens although is not a member of any appropriate Conventions. Claims secured by maritime liens are listed in the LMC in full accordance with Article 4 of the Geneva Convention 1993.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to you law firm?

As it was mentioned above the language of the court hearings in Latvia is Latvian. Thus, translation of supporting documents is required. To save time on initial stage we usually ask our principals to provide us with all appropriate documents as soon as possible to start translation by sworn translators. It usually takes 2-3 days to translate depending on the quantity of documents.

The court's resolution may be issued maximum within seven days after petition of the plaintiff and all supporting documents are delivered to the court.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

Besides the petition and supporting documents, a relevant original Power of Attorney (POA) (notarized and legalized) to local lawyers is required.

Copies of attached documents are sufficient at stage of arrest.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or Apostile, and when are they needed?

At the stage of arrest in order to secure a possible claim on merits court may accept copies of documents. Translation of the documents must be prepared. Latvian courts accept electronically filed documents if opposite party does not object against them.

POA should be certified by a public notary and covered by Apostile in accordance with terms of the Hague Convention of 5th November 1961.

#### 16. Will your Court accept jurisdiction over the substantive claim once a vessel has been arrested?

LMC states that if a vessel is arrested in Latvia in order to secure a possible claim on merits, Latvian courts hear the case if only the parties have not agreed about another country court's jurisdiction or

arbitration court.

#### 17. What is the procedure to release a ship from arrest?

Lifting arrest is a long procedure taking into account that the order to release the vessel must be issued by the judge in the court trial, with participation of both plaintiff and defendant. In accordance with the law, trial to lift arrest must be held within 30 days after claimant delivers petition that he is satisfied with the defendant and asks to lift arrest. Practically such trial can be held during 3-5 days after petition to release the vessel is delivered to the court.

#### 18. What type of security needs to be placed for the release?

Security to release the vessel from arrest is known to Latvian legislation and is accepted by judges. Different types of security can be accepted: P&I Club's letter of undertaking, deposit to the court bailiff's account, bank guarantee etc.

#### 19. Does security need to cover interest and costs?

In general yes, security needs to cover interest and costs if they are reasonable.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

It is to the discretion of the court, but in principle LOUs are accepted.

#### 21. How long does it take to release the ship?

See answer to question 17 above.

#### 22. Is there a procedure to contest the arrest?

Legality and validity of arrest may be contested by a participant in the matter.

On the basis of an application court may replace arrest with other means of security or revoke it.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

If arrest ruling is obtained the court obliges the claimant to bring suit on merits during certain period of time, usually – one month. But claimant may ask the court about other time to bring suit on merits (two or three months). The court can accept such request taking into account concrete circumstances of the case.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Defendant has a right to claim the plaintiff for damages having arisen in connection with the claim security if the claim, which has been sued against him, was rejected by court. Claim for a wrongful arrest must be brought in the court in a common way.

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The piercing and lifting of the corporate veil is not acknowledged in Latvian legal system.

#### 26. Is it possible to have a ship sold pendent lite; if so how long does it take?

There is no practice in Latvia regarding use of pendent lite. But in theory it is possible.

*\*Edward is CEO of law firm Maritime Legal Bureau (MLB).*

*Before MLB he spent several years as managing partner of another law firm in Riga, manager of private Russian ship owning company, as manager of Legal Dept. of Lloyd's agency in Latvia and of local correspondent for P&I Clubs.*

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*In 2010 Edward has been selected as being among the world's pre-eminent shipping and maritime lawyers (Who'sWhoLegal).*

*In May 2013 during 10th Shiparrested.com Conference in Marrakech (Morocco) Edward was called as the Best Member of Shiparrested.com of the decade 2003-2013.*

# SHIP ARREST IN LEBANON



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## 1. Please give an overview of ship arrest practice in your country.

Domestic legislation does not regulate the conservatory arrest of ships in specific. Ship arrest in Lebanese waters is regulated by the Code of Civil Procedure which grants any creditor the right to apply to the Judge of Execution Bureau for a conservatory seizure of his debtor's assets to obtain security for his claim (Article 866 of the Code of Civil Procedure). The Judge normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is proven based on the face of things. The arrest order may be challenged within no later than five days from date of its service. The procedure of challenging the arrest order is usually complex and lengthy. Therefore, the quickest way to arrange for the lifting of a ship arrest is to put up a bank guarantee for the value of the arrest. The guarantee should be issued by a local bank. A Club Letter of Undertaking is not considered satisfactory security for the Judge to lift a vessel's arrest.

## 2. Which International Convention applies to arrest of ships in your country?

Lebanon is not a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the Arrest of Ships of 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

The ship could be arrested in the context of a procedure for enforcement commenced against her owner in accordance with the provisions of articles 73 and what follows of the Lebanese Merchant Shipping Law. The party applying for enforcement against the ship should hold a deed ascertaining his claim against the ship.

## 4. Are there alternatives e.g. saisie conservatoire or freezing order?

The saisie-conservatoire is the procedure described under question 1 above while the procedure of enforcement against a ship is described under 3 above. In certain matters of urgent character, the Judge of Urgent Matters may order the seizure of the vessel but usually for a specific period of time.

## 5. For which types of claims can you arrest a ship?

The law stipulates that, in general, a ship can be arrested for any claim which the claimant has against the owner of the ship or the ship, provided the claim is proven, on the face of things, to be serious and grounded. The Judge dealing with conservative attachments normally considers the application for arrest of a vessel on a prima facie basis only and the arrest order will be rendered ex-parte.

## 6. Can you arrest a ship irrespectively of her flag?

Lebanese Law does not differentiate between vessels flying Lebanese and foreign flags. Therefore, a ship may be arrested by an unpaid creditor irrespective of the ship's flag.

## 7. Can you arrest a ship irrespectively of the debtor?

In general, a ship can be arrested for any claim which the claimant has against her current owner provided the claim is proven, on the face of things, to be serious and grounded. However, where the claim is secured by a maritime lien (See question no. 12) a recourse against the ship is accepted regardless of her owner's identity.



#### 8. What is the position as regards sister ships and ships in associated ownership?

Under Lebanese Law, the application of arrest should be directed against the person or party responsible for the debt. Save in the case where the claimant has a maritime lien over the ship, it is not possible to apply for the arrest of the ship unless her owner is responsible for the claimed debt. The arrest of a sister ship is generally possible providing that they are both owned by the same party who is a debtor of the arresting party. The arrest of associated ships may succeed (although chances of success are generally minimal) only if it is possible to prove the close links between the two entities while noting that (if the arrest succeeds) it is not certain that the Judge will maintain it in case of a challenge by the actual registered owner of the arrested vessel. Hence, there is a great degree of uncertainty when applying for the arrest of an associated vessel.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant the creditor a maritime lien as described in the Merchant Shipping Law (see response to question no. 12).

#### 10. Do your Courts require counter-security in order to arrest a ship?

The Judge has by law discretion in making the issuance of the arrest order conditional upon the provision of a counter-security by the claimant. However, this discretion is rarely put in effect.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No. The arrest procedure is the same.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. The Merchant Shipping Act defines and regulates maritime liens (Articles 48-61). Article 48 of the above-mentioned Act defines maritime liens as being a claim for:

- a. Legal costs and expenses incurred in the common interest of the creditors; port duties and taxes due on the ship;
- b. Claims arising out of the contract of engagement of the master, crew and other persons hired on board;
- c. Remuneration for assistance and salvage and the vessel's contribution to general average;
- d. Indemnities for collision or other accident of navigation; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;
- e. Claims resulting from contracts entered into or acts done by the master outside the port of registry by virtue of his legal powers for the actual maintenance of the vessel or the continuance of the voyage;
- f. Damages due to charterers; and
- g. Insurance premiums for policies covering the hull, fittings and gear of a vessel due for the last voyage or the last insured period and up to a maximum period of one year.

Lebanon is party to the International Convention For the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages of 1926 and claims a, b, c, d and e are identical to those listed in Article 2 of the Convention.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

2 days if all documentation is in order and documents issued in foreign language are translated.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA must be provided on submission of the application. The POA must be notarized and legalized by the Lebanese consulate at the place of issuance. The judge may in his discretion accept a POA that does not meet these requirements. The documents supporting the claim must be filed with the arrest application. If the documentation is in a foreign language, it is advisable to submit an Arabic translation thereof.

#### 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 law requires submission of the supporting documents in original copies. The judge however has discretion in waiving this requirement. The documents need not be notarized or apostilled (save the POA as highlighted above).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No. The substantive action should be brought before a Court/Arbitration Panel that is competent to deal with the merits of the claim. Such action must be commenced within no later than five days from the date of the arrest order.

17. What is the procedure to release a ship from arrest?

The procedure entails submission of an application for the lifting of the arrest along with suitable security. The security is deposited with the judge who issued the arrest order (and not with the claimant).

18. What type of security needs to be placed for the release?

A bank guarantee issued by a local bank or cash deposit.

19. Does security need to cover interest and costs?

Security should be for an amount equal to the arrest amount. This amount usually covers the principal amount of the claim plus 10% for costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are not regarded sufficient by the judge dealing with the arrest.

21. How long does it take to release the ship?

Depending on the time it gets to arrange issuance of the security (normally, local banks need 2-3 days from the date of receipt of the instructions to issue the bank guarantee). The judge would usually issue the order lifting the arrest on the day of submission of the security or the next day.

22. Is there a procedure to contest the arrest?

Yes, the arrest may be contested within no later than 5 days from date of service of the arrest order. The success of the challenge is conditional upon a number of legal requirements.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claimants must, within no later than five days from the date of the arrest order, take legal action on the merits. Failure to file such action will result in the cancellation of the arrest order.

24. Do the Courts of your country acknowledge wrongful arrest?

There are no legal precedents on the liability for the wrongful arrest of a ship. However, under the general principles of civil law, a claim for wrongful arrest would succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest. The damages that could be awarded for a wrongful arrest would cover all direct losses sustained by the shipowner as a result of the arrest (e.g. port dues and associated costs, crew wages, etc...) and possible indirect losses (including loss of profit).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Lebanese Judges tend not to allow the piercing of the corporate veil. Lebanese Courts have allowed this only in very rare instances where proof of the fictitious character of the company is provided by the arresting party.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Such a sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

*\*Jean Baroudi graduated from St-Joseph University Faculty of Law in 1992 and obtained a Master's Degree from Southampton University in 1994. He is currently the Managing Partner of Baroudi & Associates, one of the oldest and largest law practices in Lebanon founded in 1912. The firm is constantly recommended by international legal directories such as Chambers, Legal500 and IFLR1000 and specializes in various areas of law. The firm acts as Lebanon correspondent for most P&I Clubs. Jean Baroudi is a former adviser to the Lebanese Minister of Transport and is currently member of the Legislative Committee of the Lebanese Ministry of Transport and member of various committees of the Beirut Bar Association. He acts as adviser to the Syndicate of Lebanese Ship Agents and is an arbitrator at the Arbitration Chamber of Monaco.*

# SHIP ARREST IN LITHUANIA



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## 1. Please give an overview of ship arrest practice in your country.

The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, Brussels, 1952 (1952 Arrest Convention) was ratified by the Seimas of Lithuania on 26 March 2002 and since then it has been successfully applied by the Lithuanian Courts.

The Courts in Klaipėda have jurisdiction to decide on ship arrest applications only in cases when the main proceedings, in respect of which security is required, have been instituted or will be instituted in the same courts. If ship arrest is required for obtaining of a security in respect of a claim that is to be decided on the merits in a court of arbitration or in a foreign State Court, the District Court of Vilnius will have jurisdiction to decide on such ship arrest application.

There are no specialized maritime courts or judges in Lithuania, but all judges have some experience in applying provisions of 1952 Ship arrest Convention and no major difficulties should be expected when a ship arrest application is made.

## 2. Which International Convention applies to arrest of ships in your country?

The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, Brussels, 1952 (1952 Arrest Convention) and the International Convention on Maritime Liens and Mortgages (Geneva 1993) are ratified by Lithuanian Seimas and they are applicable.

## 3. Is there any other way to arrest a ship in your jurisdiction?

A Ship that is registered and flying the State flags of the State that is a Member to the 1952 Arrest Convention can be arrested only in respect of the claims enumerated in the Article 1 of the Convention. Other ships can be arrested in respect of maritime and non-maritime claims. In accordance with the Article 12(1) on the Law of Klaipėda State Sea Port the Harbour Master may refuse clearance of the vessel in case that there are unpaid port charges or fines in respect of the vessel or the vessel has damaged port's infrastructure, until such charges, fines and/or claims for damage to or infrastructure have been paid or secured.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No.

## 5. For which types of claims can you arrest a ship?

The types of claims for which a ship can be arrested are enumerated in the Arrest Convention Paragraph a) to q) of Article 1(1).

## 6. Can you arrest a ship irrespectively of the flag?

In accordance with the Article 8(1) of the 1952 Arrest Convention a ship flying the State flag of the Member State of the Convention can be arrested only for the claims enumerated in the Article 1 of the Convention. A Ship that does not fly the State flag of the State that is Member to the 1952 Arrest Convention can be arrested for any claims under provisions of Code of Civil Proceedings.

## 7. Can you arrest a ship irrespectively of the debtor?

Yes, in some cases. Several appeals filed on behalf of the arrested ship owners trying to challenge such arrest have been unsuccessful so far.

## 8. What is the position as regards sister ships and ships in associated ownership?

Under provision of the Arrest Convention a claimant may arrest the particular ship in respect of

which the debt arose or any other ship owned by the debtor. Therefore arrest of a sister ship is permitted, except in respect of the claims mentioned in the Article 1(1), o-q. Ships in the associated ownership can be arrested if it can be proved that the same persons beneficially own them. Demonstration on the company's website showing fleet of the company's vessels might be sufficient to prove that.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

Part 4 of the Article 3 of the 1952 Ship Arrest Convention shall apply in respect of arrest of a Bareboat chartered vessels. Such vessel can be arrested in respect of maritime claims created by the Bareboat Charterer, or any other vessel that is owned by the Bareboat Charterer can be arrested. Generally, a vessel cannot be arrested in respect of claims created by her Time-Charterer.

#### 10. Do your Courts require counter-security in order to arrest a ship?

No counter security is required before arresting the ship. The court on request of the ship's interest may order the arrestor to provide counter-security within certain period of time. If this is not complied with, the arrest will be lifted.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In case of maritime claim it is allowed to arrest either the ship in respect of which the maritime claim arose or any sister ship. The subject of the maritime lien is the offending ship only. It can be enforced against the ship regardless of who was in control or possession of the ship when the events which gave rise to maritime lien occurred. Maritime lien is not enforceable against a sister ship. Otherwise, there is no difference.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Lithuania does recognise maritime liens as per the International Convention on Maritime Liens and Mortgages, 1993.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Normally it takes 2-3 working days. In very urgent cases it might be possible to arrest within the same day on which we receive the instruction. The Courts are closed on Saturdays, Sundays and National Holidays. No ship arrest is possible then.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

We require a written legal service agreement that needs to be signed by the Client. Faxed or emailed copy of the legal service agreement is sufficient to make a ship arrest application on behalf of the Client. The original copy of the legal representation agreement must be presented if requested by the Court later. No notarization or legalization of the legal representation agreement is required. Basic claim documentation evidencing existence of a maritime claim in favour of the arrestor is sufficient.

#### 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 documents can be filed electronically for the purpose of ship arrest. Only original legal service agreement should be available if so requested by the Court. A ship arrest application normally should be supported by:

- a copy of legal service agreement between the lawyer and the Client;
- a copy of an extract from the Companies' Register of the Client's State, confirming that the Client exists as a legal entity;
- a basic Claim documents that will depend on the type of claim;
- Copy of an agreement containing the arbitration clause in case that the arrest is for obtaining security in respect of maritime claim that is to be pursued in an Arbitration or an agreement to litigate in a foreign State Court, or an evidence that such proceedings have been commenced.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, the Lithuanian courts accept jurisdiction over the substantive claim once the vessel has been arrested, subject that there is no agreement between the relevant parties to litigate in another jurisdiction or to submit dispute to arbitration.

17. What is the procedure to release a ship from arrest?

The Parties should make a written request to the Court to release the ship, in case they reach an agreement. Otherwise an adequate security needs to be deposited to the Court together with request to release the ship from arrest.

18. What type of security needs to be placed for the release?

Any type of security if the Arrestor agrees. Cash payment to the court's account or Lithuanian Bank's guarantee if there is no agreement as to type of guarantee.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Not, if the arrestor does not agree with it.

21. How long does it take to release the ship?

One day if there is no dispute regarding type or amount of security.

22. Is there a procedure to contest the arrest?

Yes, but it can take few months.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

14 days in the National Courts and 30 days in arbitration or in a foreign State Court.

24. Do the Courts of your country acknowledge wrongful arrest?

The court may order the Plaintiff to pay damage for wrongful ship's arrest in case if:

-the claim in respect of which the vessel was arrested was rejected;

-In case of misuse of the procedural rights to seek the ship arrest, for example arresting the vessel despite the fact that an adequate security has been provided, submitting to the court knowingly wrong information when seeking a ship arrest etc. The ship's interest must prove what loss has been suffered due to ship's arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

There have not been relevant cases heard yet.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No.

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# SHIP ARREST IN MALAYSIA



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## 1. Please give an overview of ship arrest practice in your country.

A ship may be arrested in Malaysia as long as the arresting party's claim falls under any of the provisions of Section 20(2) and Section 21 of the Supreme Court Act 1981 of England and Wales. A party who wants to arrest a ship in Malaysia must strictly comply with the Rules of Order 70 of the Rules of Court 2012 which govern admiralty proceedings in the Malaysian High Court. Malaysia now has a dedicated Admiralty Court situated in the High Court of Malaya at Kuala Lumpur to hear applications for arrest relating to Vessels calling the West Malaysian ports. For Vessels calling the East Malaysian ports, the application will have to be heard by any of the High Courts situated in the High Court of Sabah and Sarawak.

## 2. Which International Convention applies to arrest of ships in your country?

Malaysia is neither a party to the International Convention relating to the Arrest of Seagoing Ships of 1952 nor the International Convention on arrest of Ships 1999.

## 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?

No.

## 5. For which types of claims can you arrest a ship?

- a. any claim to the possession or ownership of a ship or to the ownership of any share therein;
- b. any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- c. any claim in respect of a mortgage of or charge on a ship or any share therein;
- d. any claim for damage done by a ship;
- e. any claim for damage received by a ship;
- f. any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship.
- g. any claim for loss of or damage to goods carried in a ship;
- h. any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- i. any claim in the nature of salvage;
- j. any claim in the nature of towage in respect of a ship or an aircraft;
- k. any claim in the nature of pilotage in respect of a ship or an aircraft;
- l. any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- m. any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- n. any claim by a master or member of the crew of a ship for wages;
- o. any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- p. any claim arising out of an act which is or is claimed to be a general average act;
- q. any claim arising out of bottomry;

r. any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty.

#### 6. Can you arrest a ship irrespective of her flag?

Yes

#### 7. Can you arrest a ship irrespective of the debtor?

No. we can only arrest a ship if the person who would be liable on the claim in an action in personam is, when the cause of action arose, the owner or demise/bareboat charterer of, or in possession or in control of, the ship

#### 8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships but not associated ships. Sister ships are ships that when the action is brought is owned by the same person who was the owner of the ship in connection with which the claim arises at the time when the cause of action arose.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

It is possible to arrest Bareboat vessels but not Time-Chartered vessels.

#### 10. Do your Courts require counter-security in order to arrest a ship?

No. However, a written undertaking by the arresting party to the Sheriff to pay the fees and expenses of the Sheriff while the arrested ship is under his custody and custody, must be furnished as a pre-condition to execution of the Warrant of Arrest. In addition, a Court deposit of RM15,000 must be made prior to issuance of the warrant of arrest.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime claims are dependant upon the ownership of the ship. The ship can only be arrested provided that the party who was the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to issue a claim and to arrest the ship despite a change of ownership. The procedure for arrest is the same however.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. In the *Dong Nai* [1996] 4 MLJ 454, 463, the court cited a passage from Mallal's Supreme Court Practice which observes that, just like Singapore law, Malaysian law on the area of maritime liens is no different from English law. Under English law, and hence the laws of Malaysia, claims which are recognised to give rise to a maritime liens consists of salvage, damage done by a ship, seaman's and master's wages, bottomry and master's disbursements.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Usually, a Warrant of Arrest can be obtained within a reasonably short period of time, so long as all the claim documents are in our possession, and the supporting affidavit leading to the arrest has been affirmed/sworn. Subject to the receipt of all documentation relevant to the claim, the application to the court can take place within a matter of hours. The actual arrest will be dependent on the availability of the bailiffs in the area that the ship is located but should be effected within 24 hours of the warrant being issued.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

There is no requirement for a POA to be furnished. However, the claim documents must be furnished. Prior to the arrest, the arrestor should determine whether there is a caveat against arrest in force against the ship in question.

#### 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 court documents including the affidavit leading to the arrest can be filed electronically. All relevant documents must be filed with the court before the warrant of arrest can be issued.

Certification or apostille by a Notary is not required although if supporting documents need translating then the translations should be certified by a Notary. The affidavit leading to the arrest, if filed a deponent residing outside Malaysia must be affirmed before a Notary Public (for Commonwealth countries) or a Consular Officer of the Malaysian Consulate Office situated in that country (for non-Commonwealth countries).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

This will depend on the circumstances. If the claim arises out of a contract which contains an exclusive foreign jurisdiction clause it may be the case that the proceedings are stayed in favour of the relevant foreign court. However, for most other claims the Court will usually accept jurisdiction.

17. What is the procedure to release a ship from arrest?

File into Court the release papers i.e. Praecipe for Release and Release Order and once issued serve same on the Vessel, Marine Department and Immigration.

18. What type of security needs to be placed for the release?

None.

19. Does security need to cover interest and costs?

Not applicable.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes.

21. How long does it take to release the ship?

Within the day, depending on what time the Release Order is obtained.

22. Is there a procedure to contest the arrest?

Yes.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Upon arresting the ship and serving the Writ of Summons on the ship, time starts running under the time table/procedure set down by the Rules of Court 2012 and the claimants can follow the timelines set out in the Rules of Court 2012 to move the claim on its merits along the prescribed timelines.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes but only where the arrest of ship is carried out in circumstances where there is mala fides or gross negligence (i.e. crassa negligentia) as to imply malice on the part of the arresting party which results in damage to the owner of the arrested property.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. A corporate veil may be lifted if there are special circumstances which indicate the presence of a facade or sham set up with the object of perpetrating fraud or deception.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes but only where there is a good reason for it. One important factor the court takes into account is whether, if the ship remains under arrest while the action is pending, the value of the security represented by the ship would be progressively reduced by the continuing costs of maintaining her under arrest. Other relevant factors include the market value of the arrested ship, the rate of depreciation in the value of the ship, any deterioration in the condition of the ship if she remains under arrest, the time lapse before the action comes on for trial and the quantum of the claims faced by the ship as compared with the value of the ship and the timing of the sale. The sale procedure will take several months considering the need to obtain the Judge's order, the service on the owner of the ship and the sale procedure that will follow thereafter.

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# SHIP ARREST IN MALTA



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## 1. Please give an overview of ship arrest practice in your country.

The law on ship arrest in Malta was, until recently, governed by very archaic rules. Suffice it to say that our admiralty jurisdiction was still regulated by British statutes which had long become defunct in their own country of origin, namely the Vice-Admiralty Court Act 1840 and the Admiralty Court Act 1861. These provided very limited heads of jurisdiction 'in rem' on the basis of which a ship could be arrested, and in particular did not regulate the substance of the action in rem. Problems arose in more recent cases connected with bareboat charterers, for which no provision was made.

Furthermore, there was no right of sister ship or of associated ship arrest.

All this changed with statutory amendments introduced in 2006, as further fine tuned in 2008. Although not strictly part of this Questionnaire, it ought also to be mentioned that these amendments also radically reformed the system regulating Judicial Sale by Auction of ships, as well as introduced the concept of Court Approved Sales for Ships.

## 2. Which International Convention applies to arrest of ships in your country?

Malta is not a signatory to the Arrest Convention 1952. Ships are arrested in Malta by Warrant of Arrest issued on any one of the grounds listed in Article 742B of the Code of Organisation and Civil Procedure giving rise to the in rem jurisdiction of the Maltese Courts. These include all maritime claims recognised under the Convention. The law provides for a precautionary as well as for an executive warrant of arrest. Creditors seeking to arrest a ship in security of a claim which is not yet judicially acknowledged must have recourse to the precautionary warrant. Judgment creditors and other creditors being in possession of an enforceable executive title or of an Authentic Instrument pursuant to the provisions of Regulation (EC) No. 805/2004 (such as a Mortgagee) may immediately proceed to issue an executive warrant.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Ships may be arrested in Malta both in security of maritime 'in rem' claims as mentioned above, whenever the ship concerned is physically present within the territorial jurisdiction of the Maltese Courts, as well as in security of 'in personam' claims in those instances where the shipowner may be personally subject to the ordinary jurisdiction of the Maltese Courts. Ships may also be arrested in Malta in security of arbitration proceedings commenced against the shipowner. Finally, ships may also be arrested in Malta pursuant to the provisions of Article 31 of Council Regulation (EC) No. 44/2001, dealing with provisional including protective measures, in cases where the Courts of another Member State have jurisdiction as to the substance of the matter. However, in all these cases, the ship must always be arrested in virtue of the warrant of arrest, which remains the only way in which a ship may be arrested in Malta.

#### 4. Are there alternatives e.g. saisie conservatoire or freezing order?

The law is very clear on this point. A ship can only be arrested in Malta in virtue of a Warrant of Arrest, and no other warrant may be issued out against a ship. In this context it is also to be borne in mind that in virtue of Article 37A of the Merchant Shipping Act, dealing with detention of ships as security for debts, ships constitute a particular class of movables whereby they form separate and distinct assets within the estate of their owners for the security of actions and claims to which they are subject.

#### 5. For which types of claims can you arrest a ship?

A total number of 25 Maritime Claims giving rise to in rem jurisdiction are provided for under paragraphs (a) – (y) of Article 742B of the Code of Organisation and Civil Procedure. These follow closely the British Supreme Court Act 1981 but also incorporate both Arrest Conventions of 1952 and 1999 even though Malta is not yet signatory to either. The basic heads of claim may be summarised as follows :

a) Claims to possession / ownership / title to ship; b) Questions arising between co-owners; c) Claims in respect of mortgage / hypothec / charge on a ship; d) Claims arising out of a contract of sale; e) Claims for damages received by ship; f) Claims for damage caused by ship; g) Claims for loss of life / personal injury caused by ship; h) Claims for loss of life / personal injury caused by ship ; i) Claims arising out of agreement for carriage of goods / use or hire of ship; j) Claims for salvage; k) Claims for damage to environment by ship; l) Claims relating to wrecks; m) Claims for towage; n) Claims for pilotage; o) Claims for supplies / services rendered to ship; p) Claims for construction / repair / conversion / equipping ship; q) Claims for port / dock / harbour dues; r) Claims by crew for wages / repatriation; s) Claims for disbursements made; t) Claims for commissions / brokerage / agency fees; u) Claims arising out of general average act; v) Claims arising out of bottomry; w) Claims for forfeiture of ship; x) Claims for insurance premia and y) Claims for fees due to Registrar / tonnage dues.

#### 6. Can you arrest a ship irrespective of her flag?

Yes. The only requirement is that the ship has a length exceeding 10 metres, and that the claim in respect of which the ship is arrested be no less than €7,000. All matters relating to jurisdiction and ranking of creditors are subject to Maltese law as the *lex fori*.

#### 7. Can you arrest a ship irrespective of the debtor?

With very few exceptions, there are no privileged debtors, so that a ship may be arrested irrespective of who the debtor might be. The exceptions relate to ships of war, and ships wholly chartered in the service of the Government of Malta or employed in any postal service either by the Government of Malta or by any other Government.

Of course as shall be seen later, the underlying personal liability of the debtor for the maritime claim concerned is an essential requisite for an action in rem following an arrest to succeed.

#### 8. What is the position as regards sister ships and ships in associated ownership?

In cases concerning any one of the maritime claims listed in (a), (b) and (c) under question 5 above, an action in rem and may only be brought against that ship in connection with which the claim arose.

In all other cases concerning the remaining maritime claims listed in (d) – (y), an action in rem may be brought against (i) that ship, where the person who would be liable on the claim for an action in personam (the “Relevant Person”) was, when the cause of action arose, an owner or charterer of or in possession or in control of, the ship if at the time when the action is brought the Relevant Person is either an owner or beneficial owner of that ship or the bareboat charterer of it, and/or

(ii) any other ship of which, at the time when the action is brought, the Relevant Person is the owner or beneficial owner as respects all shares in it. In these cases, therefore, sister ship and associated ship arrest is possible.

The requirement of the Relevant Person being the owner or beneficial owner of the ship or the bareboat charterer of it at the time when the action is brought does not apply in regard to those maritime claims secured by a special privilege in accordance with Article 50 of the Merchant Shipping Act, which survive the voluntary sale of the vessel by up to one year from when such sale is recorded in the ship’s register.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The answer to this question is already to be found in the response given to Question 8 above. If at the time the cause of action arose the person who would be liable for the claim in personam (the



“Relevant Person”) was the charterer (which therefore includes both bareboat charterers as well as time and voyage charterers) of the vessel concerned, then if at the time the action is brought that same person is either an owner or beneficial owner of that ship or the bareboat charterer of it, that particular ship may be arrested in security of that maritime claim.

Furthermore, if at the time the action is brought the same charterer liable for the claim in personam happened to be the owner or beneficial owner of any other vessel, then that other vessel could also be arrested in security of the maritime claim concerned.

#### 10. Do your Courts require counter-security in order to arrest a ship?

An Owner whose ship has been arrested may request that counter-security be put up by the claimant; and the Court, upon good cause being shown, will uphold such request and determine the quantum of such counter-security in an amount of not less than €11,600 for the payment of the penalty for wrongful arrest, damages and interest; and in default the Court will rescind the warrant of arrest.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maltese law does not recognise the concept of a ‘maritime lien’ as such. However, a number of ‘special privileges on ships’ are recognised under Article 50 of the Merchant Shipping Act. The difference between an ordinary maritime claim (as recognised under Article 742B of the Code of Organisation and Civil Procedure) and a special privilege is essentially twofold. Firstly, special privileges survive the voluntary sale of a ship for a period of one year from when such sale is recorded in the ship’s register. Secondly, special privileges would rank in priority to ordinary maritime claims.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

As mentioned above, Malta does not recognise the concept of a ‘maritime lien’ as such; and Malta is not a signatory to any International Convention pertinent to maritime liens.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Provided of course that the ship to be arrested is physically in a Maltese port, or at an anchorage within the territorial jurisdiction of the Maltese Courts, and we have received (i) a sufficient background of facts in relation to the claim; (ii) documentation substantiating the claim, (iii) a power of attorney – all of which may initially be forwarded to us by fax or e-mail – as well as (iv) funds covering fees and costs, then we could proceed to arrest the ship well within 24 hours.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

We always require these documents as we need to substantiate both our authority to act as special mandatories of the claimant, as well as the claim itself in order to avoid any possible claim for wrongful arrest.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

We should perhaps differentiate between two separate and distinct stages, being the stage at which the precautionary Warrant of Arrest itself is issued in security of a maritime claim; and the action on the merits which must follow the precautionary warrant of arrest in order to maintain in vigore the effects of the warrant of arrest.

The Warrant of Arrest itself does not require to be substantiated by any documents according to law, which only requires the completion and filing of the official form of warrant. However, in the subsequent action on the merits, documents should be submitted to the Courts in original format, or at least as certified true copies in the manner required by the law of procedure. In the event that only copies of documents are available, these would need to be substantiated by evidence given either viva voce before the Court, or by means of a sworn Affidavit.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Provided the claim falls within the ambit of Article 742B of the Code of Organisation and Civil Procedure, then the Maltese Courts would be vested with jurisdiction to entertain the substantive claim on the merits.

#### 17. What is the procedure to release a ship from arrest?

The procedure entails an application requesting the Court to release the ship from arrest. This may

be done by the person arresting the vessel or by the shipowner. A reason has to be given for liberating the vessel from arrest, such as payment of the claim, the deposit of the claim amount at the Court registry or the setting up of adequate security.

**18. What type of security needs to be placed for the release?**

The security involves either the deposit of the claim amount at the Court registry or the putting up of a Maltese bank guarantee. By agreement between the parties also a P&I Letter of Undertaking can be placed for the release.

**19. Does security need to cover interest and costs?**

Yes, the security needs to cover interest and costs.

**20. Are P&I LOUs accepted as sufficient to lift the arrest?**

The great majority of maritime lawyers acting on behalf of claimants advise clients to accept P & I Letters of Undertaking.

**21. How long does it take to release the ship?**

Under normal circumstances the release can be achieved within the course of the day.

**22. Is there a procedure to contest the arrest?**

Yes, there is. The shipowner can file an application requesting the Court to revoke the arrest if the arrest is wrongful and illegal.

**23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?**

Action on the merits is to be brought, or arbitration commenced, in respect of the Claim stated in the Warrant of Arrest not yet being judicially acknowledged in virtue of a final and unappealable judgment or arbitration award or not otherwise constituting an executive title (such as would a Ship Mortgage), within 20 days from the date of issue of the Warrant.

**24. Do the Courts of your country acknowledge wrongful arrest?**

Yes. Maltese Courts would recognise, and penalise, wrongful arrest. In case the Court were to find that a Warrant of Arrest was issued on a demand maliciously made or unjustly obtained, it may impose a penalty upon the arresting party in an amount of not less than €11,600.

**25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?**

Our Courts would likely follow English principles of company law in this regard, and would therefore allow the piercing and lifting of the corporate veil in appropriate circumstances.

**26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?**

The Court may order the sale of an arrested ship *pendente lite* if, on application of a Creditor, it appears that the debtor is insolvent or unlikely to continue trading and maintaining the asset. In reaching its conclusion, the Court will have regard to all the circumstances, including the nature of the claim, as well as of the defence; as well as to such steps as the defendant may have taken to secure the claim or otherwise to preserve the ship.

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# SHIP ARREST IN MEXICO

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## 1. Please give an overview of ship arrest practice in your country.

Mexico has no special procedural legislation on this matter neither in their old Codes of Commerce, nor in the Navigation and Maritime Commerce Act 1963 and was until 1994, when there was a draft chapter for procedural rules on this matter, but was not adopted because it was not considered appropriate to include adjective law in this Act. This project basically followed the concepts of the 1952 Convention on the ground that at the time it was far from the concepts of the Convention that was signed later in 1999.

On the Navigation and Commerce Act 2006, currently in force, it included adjective law provisions within that Act related to the arrest of ships.

## 2. Which International Convention applies to arrest of ships in your country?

In Mexico there is no International Convention in force but our internal legislation basically followed the concepts of the 1952 Convention.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Executive seizure.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

There are not within the Mexican Legal system.

## 5. For which types of claims can you arrest a ship?

I. Loss or damage by the use of the ship;

II. Death or injury occurring, whether on land or on water, in direct relation to the use of the ship;

III. Assistance or salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations or assistance to a ship that by itself or its cargo threatened to damage the environment;

Damage or threat of damage from the ship to the environment, coastline or related interests, measures taken to prevent, reduce or eliminate such damage; compensation for the damage, the costs of reasonable measures for restoration of the environment actually undertaken or to be taken, actual losses or losses that may occur in connection with such damage;

Costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a sunken, wrecked, stranded or abandoned ship, including anything that is or has been on board, and costs and expenses relating to the conservation of a vessel and its crew maintenance;

VI. Any contract related to the use or hire of a whether vessel formalised in a charter party or otherwise;

VII. Any contract related to the carriage of goods or passengers on the ship whether formalised in a bill of lading, passenger ticket or otherwise;

VIII. The loss or damage to the goods, including luggage, carried on board the vessel; General Average;

Tugging services,

XI. Pilotage;

XII. Goods, materials, supplies, fuel, equipment, including containers supplied or services ren

- dered to the ship for her use, management, conservation or maintenance;
- XIII. The construction, reconstruction, repair, alteration or fitting of the vessel;
- XIV. The rights and duties of ports, canals, docks, harbours and other waterways;
- XV. Salaries and benefits due to the master, officers and other crew members under their employment on the vessel including costs of repatriation and social security contributions payable on their behalf;
- XVI. Disbursements incurred on account of the vessel or its owners;
- XVII. Insurance premiums, including P&I, payable by the owner of the vessel, or the bareboat charterer, or on their own in relation to the boat;
- XVIII. The commissions, brokerages or agency fees payable by the owner of the vessel, or the bareboat charterer, or on their own, in relation to the boat;
- XIX. Any dispute concerning the ownership or possession of the vessel;
- XX. Any dispute between co-owners of the vessel related to its use or exploitation of the vessel;
- XXI. Claims secured by mortgage or pledge, and
- XXII. Any dispute arising from a contract of sale of vessels.

#### 6. Can you arrest a ship irrespective of her flag?

Yes, the vessel can be arrested irrespective of her flag.

#### 7. Can you arrest a ship irrespective of the debtor?

Yes, a ship can be arrested irrespective of the debtor, but only if this debtor is the owner or the Bareboat or Time Charterer.

#### 8. What is the position as regards sister ships and ships in associated ownership?

Yes, sister ships and ships in associated ownership can be arrested.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

Under Mexican Legislation any owner, disponent owner, bareboat charterer, operator and/or time charterer can be subject to the arrest of their vessel.

#### 10. Do your Courts require counter-security in order to arrest a ship?

The Court, when granting an arrest order, sets the amount of the counter-security to be posted by the claimant to respond for the damages resulting of a wrongful arrest. The Court arrest order shall have no effect until the counter-security is filed at the Court. The counter-security can be posted either in a cash or by a bond issued by a Mexican bonding company.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The Mexican Law states the cases in which a ship can be arrested and its a close list mentioned in point number 5 of this document.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

In Mexico, the Navigation and Commerce Act provisions state the liens, in the following order:

- I. Salaries and other amounts owed to the crew of the ship,, including costs of repatriation and social security contributions payable on their behalf;
  - II. Claims arising from death or personal injury occurring on land or water, in direct relation to the operation of the vessel;
  - III. Claims for the salvage of the vessel;
- Vessels credits, arising from the use of port infrastructure, maritime signalling, waterways and pilot.
- Claims arising from tort, by reason of loss or damage caused by the use of the vessel, other than loss, or damage caused to cargo, containers and personal belongings of passengers carried on board. Maritime liens from the last trip will be preferred to those from previous trips.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

There is no mandatory period, but based on our experience, it would take approximately between one or two weeks.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes, we require a POA duly apostilled in order to act on behalf any Legal Entity or Person.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Maritime legislation in Mexico, requires the submission of original documents evidencing the credits and unfortunately we have to mention that this is a serious setback of the legislation, as in practice it is extremely difficult to file a claim in different jurisdictions either domestic or foreign, yet use original documents in more than one court.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, once the vessel is arrested, the claimant has five working days to file the substantive claim or to produce evidence that has being filed on another jurisdiction. If not, the Judge will lift the arrest order and will declare a wrongful arrest on the claimant.

We most point that the arrest shall be ordered without previous hearing to the other party and run without prior notice, meaning that rulings will be made secret. This is to avoid previous knowledge of the procedure by the debtor could hasten the departure of the vessel and thus evade justice.

17. What is the procedure to release a ship from arrest?

Once the Court issues the arrest order and the vessel is arrested, Owners must appear before the Court and request the Court to set the amount of the guarantee that must be posted in order to release vessel. The guarantee can be presented either in a deposit bill (cash needs to be deposited to the bank in order for the bank to issue the deposit bill) or by a bond issued by a duly authorized Mexican bonding company.

18. What type of security needs to be placed for the release?

A bond issued by a Mexican Bonding Company, duly authorized by the Treasury Ministry or a cash deposit through a deposit bill issued by a Government Bank or real assets or a P&I LOU provided that the P&I is part of the IG Group and that the party presenting the LOU is the Owner or disponent owner of the vessel or a related entity to them.

19. Does security need to cover interest and costs?

The Judge will set the amount by his own criteria, but always to an figure enough to cover the claimed amount, plus accessories.

20. Are P&I LOU accepted as sufficient to lift the arrest?

P&I LOU are accepted by Mexican Judicial system to lift arrests provided that the P&I is part of the IG Group and that the party presenting the LOU is the Owner or disponent owner of the vessel or a related entity to them.

21. How long does it take to release the ship?

Once the guarantee is posted, it will take approximately 24 working hours for the Court to accept the guarantee and order the release of the vessel.

22. Is there a procedure to contest arrest?

The arrest can be contested in the same arrest proceedings. If there are Constitutional Rights violated, an Amparo remedy can be filed.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Once the vessel is arrested, the claimant have five business days to file the substantive claim or to produce evidence that has being filed on another jurisdiction.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, if the claimant fails to file the lawsuit or the final ruling is adverse, then the counter party have legal action against the claimant of the wrongful arrest.



25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil? Yes, but the burden of proof is very high in order to lift the corporate veil.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes, it can be sold pendant the proceedings but its not likely to have a buyer that its willing to take the risk be affected by the procedures.

*\*Melo & Melo Lawyers, leading law firm in Mexico was established in 1881 by Macario Melo y Tellez. Since then, and for over a hundred years, the firm has gained national and international reputation in every area of its legal practice. Senior Partner of the firm, Dr. Ignacio L. Melo has been active litigating for over 50 years, specializing in Maritime matters. The firm joins its experience in corporate consulting and litigation, with the advice to various governmental and non-governmental organizations both, in Mexico and abroad.*

*Furthermore, the firm is involved in legal lecturing, researching and publishing in subjects in which we are specialized. From its establishment to the present, the firm has had the practice of Maritime Law as keystone, as our firm has been a pioneer in this area for over a century. In addition the firm also offers its services in other key disciplines such as Civil, Administrative, Tax, Commercial, Environmental, Corporate, Bankruptcy and Labor Law.*

# SHIP ARREST IN MONTENEGRO



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## 1. Please give an overview of ship arrest practice in your country.

Overview is contained in answers given hereinbelow.

## 2. Which International Convention applies to arrest of ships in your country?

International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships 1952 (Brussels Convention) is applicable in Montenegro and consequently the Marine and Inland Navigation Act (MINA, 1998) is mostly set out in line with the said Convention. Montenegro has made reservation to apply domestic rules for disputes as to the title to or ownership of any ship (Article I, paragraph (1)(o)).

## 3. Is there any other way to arrest a ship in your jurisdiction?

The ship may be arrested only under the authority of the court for maritime claim with the purpose of security of the claim but other Authority can order detention of the ship such as Harbor Master Office exercising Port State Control. It is worth noting that in 2011 the Maritime Authority of Montenegro joined the Paris MoU as a cooperating member with the prospect of becoming a full member in the future. The Customs Office authorities and the Criminal Court may order temporary detention of a ship for the purpose of their proceedings and under restricted terms provided in other laws or other international conventions applicable. It is not the arrest in the sense of the Brussels Convention and MINA.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

The prohibition of alienation and disposal as a specific measure or alternative to ship's arrest exists in Montenegrin law as a security measure related to maritime claim with the court order to make such entry in the Ship Register in Montenegro. Hence, possible alienation of the ship by the Defendant against such prohibition has no legal effect whatsoever.

## 5. For which types of claims can you arrest a ship?

A ship can be arrested for:

Maritime claims as provided by Article 1 of the Brussels Convention 1952 but when Convention is not applicable for all other claims notwithstanding to the nature if there is no reciprocity between Montenegro and the state of the flag. Because of the urgent nature of the ship arrest procedure, examination of the existence of reciprocity by Montenegrin Court is rarely done, and as a consequence thereof the court usually allows arrest for such ship practically for any type of claim.

## 6. Can you arrest a ship irrespectively of her flag?

Yes.

## 7. Can you arrest a ship irrespectively of the debtor?

Yes.

## 8. What is the position as regards sister ships and ships in associated ownership?

The concept of sister-ship arrest applies in Montenegro in the spirit of the Brussels Convention and the same is provided for in MINA, 1998 that the applicant may arrest any ship owned by the person against whom the claim is directed but no other ship than the particular ship in

respect of which the claim arose may be arrested in relation to the claim regarding the ownership, mortgage, hypothecs or other like charges attached to a ship.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

There is no restriction to arrest the vessel as regards Bareboat and Time-Chartered vessel. In this regard MINA, 1998 does not depart from the Convention.

There is a certain ambiguity in regard to Time-Chartered vessel for the bunker supplied to the chartered vessel not paid by the charterer to the supplier. There is no sufficient case law established so far in Montenegro to give judge guidelines and the court could be strayed and led to the conclusion that such claim is against the owner of the vessel.

#### 10. Do your Courts require counter-security in order to arrest a ship?

This matter is not regulated by MINA, 1998 but such possibility does exist in other laws and in our experience the Court has never required a counter-security as a precondition for ship's interest in order to arrest a ship or for maintenance of already ordered arrest. Further, the claimant would have to prove in any case the existence of the claim.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No, there is no difference from the procedural point of view.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Montenegro has not ratified any convention relating to maritime liens but the 1926 Brussels Convention on Maritime Liens and Mortgages is fully incorporated in the MINA, 1998 with all its consequences.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

That depends on the contents of the file and supporting documents all of which must be officially translated.

If the claimants have traced the vessel movement and prepared the documents as instructed before vessel's arrival in Montenegrin waters, no more than one day is required to sort documentation and prepare the application, but the official translation of the relevant documents may turn to be time consuming. However, the applicant must put forward a claim meeting the standard of lower level of proof of its existence and be well-grounded (*fumus boni juris*) and that should be observed as the best guidelines in preparing supporting documentation.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes. No special form is required to grant a POA to our law firm which authorizes our Law Office to handle the case. The POA is required to be signed by a duly authorized company officer.

Apart from POA all documents and evidence supporting the claim against the debtor are also required by the Court including agreements, vouchers, invoices and survey or inspection report by a surveyor or inspector in relation to the damage, and nature of the claim, etc.

If the arrest is based on a mortgage, the mortgage document and the appropriate petition for foreclosure, it is prudent to provide the latest excerpt from the Ship's Register.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Application for arrest must be in original/hard copy because electronic filings with the Court are not possible for the time being. It is recommended that the original of POA be submitted with affixed Apostille stamp that will follow within reasonable time and while pending receipt of the original the POA transmitted by facsimile will suffice to lodge application for arrest.

No other documents are required in original but the court may order presentation of original if in doubt or on explicit demand of the debtor.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

That is subject to the nature of the claim and some other factors, but the court shall have jurisdiction to determine the case upon its merits in any of the cases specified in detail in the Brussels Convention, 1952, under Article 7, paragraph (1).

### 17. What is the procedure to release a ship from arrest?

It is very simple and expeditious procedure. The shipowner may deposit the amount of money or other valuables with the court as ordered by the court in which case the vessel will be set free by the judge without application of the parties in dispute by issuing release order for the ship. The release order can be served to the master through Harbor Master Office to whom the power is presented to act for and on behalf of the court and the release order may be sent by facsimile transmission in order to speed up the release of the vessel.

### 18. What type of security needs to be placed for the release?

There is a peculiarity in Montenegrin law in regard of security needed for the release. The court may order the deposit only in the amount for which the applicant had made probable the main claim and according to the standard of lower level of proof of claim but without costs and interest thereon, which is very difficult to assess in the early stage of proceedings. That means the court shall not determine the nature and amount of other security met in practice in other jurisdictions but this peculiarity can be easily overcome in practice with one advantage that the claimant cannot be exposed to the risk to be sued for excessive security sought and its consequences.

It is worthwhile to note that deposit with the court as ordered by the court pursuant to provision provided in MINA, 1998 is without doubt a top quality security, but may turn out to be a heavy burden for the owner and is rarely done in practice which is reflected in the practice of Montenegrin Courts.

The court shall play an active role and determine the nature and amount of the claim only in case regarding the default in discharging the agreement between the Parties when the ship has been arrested in respect of any maritime claim enumerated in Article 1(1)(o) and (p) allowing vessel to continue trading.

### 19. Does security need to cover interest and costs?

Restriction imposed on the court as described under point 18. above cannot prevent the applicant and shipowner to negotiate the acceptability or otherwise of any form of guarantee less burdensome for the debtor and if they reach an agreement the applicant must notify the judge in writing and request the judge to release the ship from arrest and that shall be accepted by the judge and considered as good security. Naturally, such security if offered and accepted shall cover the amount of claim plus interest and costs.

When the interest of Montenegrin persons is involved they will usually accept foreign bank guarantees for the amount of claim plus cost and interest as agreed between the Parties if confirmed by Montenegrin bank because if not confirmed by the Montenegrin bank, may cause difficulties in enforcement as the Montenegrin court has no jurisdiction over the foreign bank, and recognition of a Montenegrin judgment may have to be obtained.

### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

The court cannot force the applicant to accept P&I Letter of undertaking or Letter of guarantee or in combination with P&I Club's bank but irrespective of that we have always instructed our clients without exerting pressure to consider acceptability of first class P&I Clubs of the Group who have always honored their obligation and their Letter of undertaking, which is the advantage in most circumstances to release the vessel or preventing arrest and in its wording total liability is composed of such sum or sums as may be adjudged, inclusive of interest and costs.

Local insurance companies are not prone to issue back to back guarantee when a P&I guarantee had been issued by foreign P&I Club and another disadvantage is that P&I Club cannot post security for an un-insured claim. However, in some cases we have attempted to convince the P&I Club to post guarantee to the satisfaction of our clients exploiting the possibility that each Club may define circumstances when it can issue letter of undertaking for liabilities outside the scope of P&I insurance cover against counter-security from its Members.

### 21. How long does it take to release the ship?

The ship can be released from the arrest by order of the same judge that granted the arrest upon the occurrence of one of the causes that permit an discharge of an arrest order under Montenegrin law described hereinabove, and the release time usually takes no more than few hours on the same date of application for release subject to official hours of the Court.

## 22. Is there a procedure to contest the arrest?

Yes. The time for appealing an order for arrest to the Court of Appeal is 8 days from its notification to her master, who is considered to be the legal representative of the shipowner.

## 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After the arrest the claimant must start proceeding on the merits within 15 days if the Montenegrin Court has jurisdiction for hearing the entire action on the merits, but if the parties have agreed to submit the dispute to the jurisdiction of particular Court or Arbitration tribunal other than that within whose jurisdiction the arrest was made the single judge in his discretion may grant a period of 30 up to 60 days to the claimant to start proceeding thereafter and if the action or proceedings are not brought within the time so fixed the defendant may apply for the release of the ship or of the bail or other security provided.

## 24. Do the Courts of your country acknowledge wrongful arrest?

Yes, although that matter is not regulated with MINA, 1998. The claim for indemnity can be instituted pursuant to The Law on Obligations and Torts against the applicant inflicting loss who wrongfully arrested the ship. The claim for indemnity should be placed in the separate proceeding. There is not sufficient case law so far whether the complaint for damages for wrongful arrest can be placed in the same arrest proceeding as known in other jurisdictions.

## 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Court will not acknowledge the piercing and lifting of the corporate veil. Such institute does exist in corporate law but is not applicable for maritime claims because pursuant to the provision of MINA, 1998 the court will acknowledge the Owner/Operator as the key person who is liable for obligation arising from navigation and use of the vessel for intended purpose.

## 26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

This matter is not regulated by MINA, 1998 pursuant to which the compulsory sale of the vessel must be performed at public auction in rather lengthy court proceeding which must be properly advertised inviting all known creditors. Therefore the Security and Forced Execution Act being a subsidiary source of law which provides *pendente lite* sale of other assets in certain circumstances is not applicable in the case of arrested ship or seized in execution or satisfaction of the judgment.

Due to the above said limitation a way was found by instituting the sale of the vessel, somewhat similar to the institute of “*pendente lite*” but not on the application of parties in dispute or involved neither in the sole discretion of the court. For that purpose recently promulgated Law on Safety of Navigation provides that Harbor Master may apply with the court for sale of the vessel “*pendente lite*” in the court proceeding if her master and the crew abandoned the vessel without being replaced by the Owner or Operator within time left to hire additional crew as per Certificate of Minimum Safe Manning, and as such presenting actual or potential danger for safety of navigation, port facilities or environmental risk as the case may be.

As regards the question how long does it take to sell the vessel “*pendente lite*” there is not sufficient case law so far but we may say for certain that will be the shortest and most simplified and expeditious way of proceeding for enforced sale of the vessel experienced in Montenegro.

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# SHIP ARREST IN MOROCCO



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## 1. Please give an overview of ship arrest practice in your country.

Legally speaking, Morocco is certainly one of the most attractive forums for vessel arrests:

- No P.O.A required,
- No original documents required
- Arrest order is granted on the sole basis of an ex-parte application
- No counter security is required
- Arrest order is most of time delivered within same day or the day after the application is filed
- An alleged maritime claim is sufficient; besides, the notion of maritime claim is interpreted widely,
- When the claim is related to a vessel, she can be arrested whoever is the debtor (even it is the time charterer)
- Sistership arrests are admitted
- Associated ship arrest are also admitted on the sole basis of some relevant clues establishing a community of interests
- It is rather difficult to challenge an arrest order because Owners should go through an adversary procedure
- Bank guarantee or cash deposit is required to get the arrest lifted
- Arrest has no impact on jurisdiction (except for the exceptions provided in Brussels convention)
- There is almost no possibility to get remedies for wrongful arrest

## 2. Which International Convention applies to arrest of ships in your country?

1952 Brussels convention (for the unification of certain rules relating to the arrest of sea going ships) is applicable in Morocco. It was ratified on 11.07.1990.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Moroccan vessels and notably fishing boats, can be arrested by Moroccan creditors in application of the national law instead of Brussels Convention.

In the meantime, vessel detention can be carried out by port state control authorities or by Royal Navy in case of violation of administrative or criminal law; however this has nothing to do with an arrest under Brussels convention.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

Under Moroccan law, arrest is a conservatory seizure aiming to secure a claim. It is called "saisie conservatoire". "Saisie execution" requires an enforceable title and can lead to the judicial sale of the arrested vessel.

## 5. For which types of claims can you arrest a ship?

Vessels can be arrested as security for any maritime claim among those listed under article 1.1 of Brussels Convention.

On top of this, Moroccan courts accept, through an extensive interpretation of article 1.1, to grant arrest even in relation with claims arising out of provision of services (such as claims of ship classification companies ...).

In any case, it is sufficient to prove an alleged maritime claim; it is not necessary to prove at the arrest stage that the arrestor has a valid claim which is bound to succeed on the substantives merits. It is sufficient to provide evidence of an alleged maritime claim. So a prima facie evidence

of a claim is enough.

In the meantime, if both parties (applicant and owner of the vessel) are Moroccans, Moroccan law would be applicable. In that case that there is no restriction as per the nature of claims in relation of which arrest can be granted.

#### 6. Can you arrest a ship irrespectively of her flag?

Yes. Ship can be arrested whatever the flag she is flying.

#### 7. Can you arrest a ship irrespectively of the debtor?

Yes. The ship in relation of which the maritime claim arose can be arrested whoever is the debtor and even if the claim is related to voyage or time charterers, bareboat charterers...

Thus, vessel can be arrested even if :

- she is under charterparty whilst the debt is related to Owners or previous charterers
- she is operated by Owners whilst the debt is related to previous charterers

In any case, security has to be put up on behalf of Master of the vessel as representative of Owners and/or Charterers.

#### 8. What is the position as regards sister ships and ships in associated ownership?

Claimants are entitled to arrest either the vessel in relation of which the maritime claim arose (who ever is the debtor) or any other vessel in the same ownership that the said vessel.

Thus, it is possible to arrest sister ship vessels (i.e owned by the same person who was the owner of the ship in connection with which the claim arises at the time the claim arose).

In the meantime, we should underline that in application of article 3.4 of Brussels convention, in case the claim arose whilst the ship was under charter by demise, claimant may arrest on top of the vessel in question, any other ship in the same ownership of the charterer by demise but no other ship in the same ownership of the registered owner.

As per associated vessels, please see Q. 19 "lift of the corporate veil".

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The vessel in respect of which the maritime claim arose can be arrested even though she was under bareboat charterparty or time-chartered.

In the meantime, as per article 3.4 of Brussels convention, in case the debtor is the charterer, claimant can arrest either the vessel in respect of which the maritime claim arose or any other vessel owned by charterer but not other vessels owned by registered owners.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Even though Moroccan law provides such a possibility, practically speaking, counter security is never required.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No. From a procedural point of view, there is no difference.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Maritime liens are recognized by Moroccan law that provides a list of the privileged debt. Morocco has not ratified any international convention on maritime liens.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Upon receipt of instructions and relevant documents, arrest order can be carried out within the same day (during week days and court opening time).

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

No power of attorney is required under Moroccan procedure law.

Arrest application should just be supported by relevant documents proving the alleged maritime claim and the relation with the vessel the arrest of which is sought.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

At this arrest stage, no original documents are required.

As a general rule, Casablanca court accept to consider documents even if they are drafted in english. In the meantime, it is remains preferable to provide at least a free translation of the most relevant part of same.

However, other courts, such as Agadir and Tangiers, uses to demand a sworn translation of all documents drafted in a foreing language.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested? Moroccan court would accept jurisdiction only in the cases listed in article 7 of Brussels convention or if parties agree to provide competence to Moroccan court.

17. What is the procedure to release a ship from arrest?

A vessel under arrest can be released in three different situations:

- If the claim in respect of which the vessel was arrested is settled :

If so, it is up to arrestors to grant a "mainlevée" on the basis of which owners have to seek before the court a release order which has to be served on port authorities

- If security is posted:

If a bank guarantee is issued, arrestors have to grant in consideration of same a "mainlevée " which enable arrestors to get a release order as described above.

If a cash deposit is put at the court, owners seek a release order under the procedure as described in question 18.

- If the arrest is challenged before the court:

In order to be in position to get a release order on the grounds that the arrest order was not founded, owners should establish that the conditions of the arrest as set out above are not met (if for instance there is no maritime claim or that the vessel is not concerned by the claim)

18. What type of security needs to be placed for the release?

Security can be put up in two different ways:

o Bank Guarantee :

In some cases, Arrestors accept P&I club LOU to be replaced by a bank guarantee within 8 days, However, as a general rule, they are reluctant to accept so.

o Cash deposit :

The procedure is as follows:

- File an application seeking authorization to put the amount of the security at the court,
- Get the order giving such authorization
- Put the money at the court (either certified check or lawyer check)
- file proceedings seeking judicial release
- get a hearing set by the court
- notify to Opponents lawyer the convocation to the hearing
- after the hearing court issue a release order
- same has then to be served on port authorities by a bailiff

19. Does security need to cover interest and costs?

Security should cover the amount granted under the arrest order, which - in principle- does not cover interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Only, if accepted by arrestors which is almost never the case in Morocco.

21. How long does it take to release the ship?

If payment is carried out or security posted, the vessel can be released within one or two days.

If the arrest is challenged, it would take 3 to 4 days.

However, this is mainly for Casablanca. Before other jurisdictions such as Agadir and Tangiers, it takes much more time.

22. Is there a procedure to contest the arrest?

Yes, as indicated in question 17.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no legal obligation for arrestor to start legal action on the merits within a specific time (in so far as time bar limits are respected).

For the sake of completeness, it should be specified that a couple of years ago Casablanca court was used to impose to arrestors the obligation to start legal action on the merits within 30 days from the date of the arrest order. However, court stooped to do so on the grounds that as per article 7.4 of Brussels Convention such an obligation can be imposed only in case the court in which the arrest was made has jurisdiction to decide the case on the merits.

24. Do the Courts of your country acknowledge wrongful arrest?

A claim seeking remedies for wrongful arrest supposes that the arrest was made knowingly that it was unlawful.

Thus, Moroccan courts are very reluctant to accept to grant remedies for wrongful arrest unless malice of arrestor is evidenced.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

As principle, sole the vessel in relation of which maritime claim arose or any other vessel in the same ownership can be arrested.

However, given single ship company practice, Moroccan courts accept to pierce corporate veil considering vessels owned by distinctive company as being under the same ownership if applicant can prove that both vessels pertains in fact to the same economical entity (same addresses, same management, same shareholders ...).

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Conservatory arrest can be converted into an executory arrest in so far as arrestor gets an enforceable title (e.g a definitive court condemnation on the merits).

This procedure including judicial sale is rather long and complicated. It would take not less than a couple of months.

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# SHIP ARREST IN NETHERLANDS



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## 1. Please give an overview of ship arrest practice in your country.

The Netherlands remain a convenient jurisdiction for ship arrests. The procedure for obtaining leave for arrest starts with submitting an arrest petition to the court in whose jurisdiction the ship is located or is expected to arrive shortly. These proceedings are ex parte. The petition can be filed after office hours or on weekends.

The arrest petition should contain inter alia the full style of the claimant and debtor, the grounds for the arrest, the nature and amount of claim, details of the ship, but also whether the claim is contested by the (alleged) debtor and if so, on what grounds. To be attached are supporting documentation (underlying contract, an overview of outstanding invoices, summoning letters).

The bailiff enforces the arrest by serving the court order to the master. The port authorities will not allow the ship to order for a pilot without which the ship can/may not leave the port. The claim amount for which the arrest is permitted is raised with a certain percentage along a gliding scale between 10 and 30% over the capital claim amount to cover future interest and costs while proceedings are pending.

A time limit is set within which the claim must be filed in main proceedings before the proper court or arbitrators, failing which the arrest expires.

The arrest must be lifted immediately once the claim is settled or in case sufficient alternative security is offered. This is usually done in the form of a first class Dutch bank guarantee or letter of undertaking by P&I Clubs of good standing. An arrest can be lifted without the intervention of the court by a simple telephone call to the bailiff.

The ship owner may apply for an injunction ordering release. Such proceedings can take place on very short notice. A decision will follow shortly. The court decides whether the claim has sufficient merit to justify maintaining the arrest. In practice, it is an uphill battle to convince the court the claim is clearly without merit.

## 2. Which International Convention applies to arrest of ships in your country?

The Netherlands is a party to the 1952 Brussels Arrest Convention since 1983. The provisions of this Treaty are not incorporated into the Dutch Civil Code (like in some other countries), with the effect that the 1952 Brussels Arrest Convention only applies when the arrest is sought of a ship flying the flag of a country being a party to this convention.

Therefore, in cases where the 1952 Brussels Arrest Convention is not applicable, an arrest on a ship is allowed for any, i.e. also non-maritime, claims against the debtor on any vessel (or other asset for that matter) owned by him. In such case the vessel can be arrested more than once for the same claim (which is not allowed under the 1952 Brussels Arrest Convention).

## 3. Is there any other way to arrest a ship in your jurisdiction?

A distinction must be made between conservatory and executory arrests on a ship. Executory arrests are a means of enforcing a judgment (or arbitral award). For such enforceable/executory arrest, the arrest is allowed based on a judgment rendered by a Dutch court. Express permission for such arrest is then not needed.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

An executory arrest can be followed by public sale if the debtor is, despite the arrest, not willing or able to comply with the judgment or award. (see further in answer to question 26).



#### 5. For which types of claims can you arrest a ship?

In case the Brussels Arrest Convention 1952 applies, the ship can only be arrested for maritime claims as defined in article 1 of the convention.

If Dutch law applies, the ship can be arrested for any type of claim.

#### 6. Can you arrest a ship irrespectively of her flag?

Yes, however if the ship is flying a flag of a Contracting State to the Brussels Arrest Convention of 1952, the ship can only be arrested for a maritime claim as defined in that treaty.

#### 7. Can you arrest a ship irrespectively of the debtor?

A ship may in principle be arrested only for a claim against the (legal) owner of the ship and not for claims against any other party involved in the operation of the ship.

However, there are various exceptions to this rule. Subject to certain requirements, such as claims against the bareboat charterer of the subject ship, cargo claims and also claims against the time-charterer for services rendered to the ship in order to keep into operation (such claims for unpaid bunkers, supplies).

Certain claims can attach to the ship for crew wages, salvage, general average, mortgage and the like. For these claims, the ship may be arrested, even if it was sold to another after the claim arose.

State-owned ships may enjoy immunity, provided such ships are not commercially used.

Where the claim is against debtors which cannot be considered as 'owners', like a time-charterer, an option could be an attachment on the ship's bunkers/fuel reserve (rather than a ship's arrest). This so-called 'bunker-attachment' can be a useful tool to enforce payment for delivered bunkers ordered, for example, by the time charterer of the ship. Under Dutch law, it is presumed bunkers are owned by the time-charterer.

#### 8. What is the position as regards sister ships and ships in associated ownership?

As said, as any asset of a debtor may be arrested in order to obtain security (or for that matter in enforcement of a judgment or award), a sister ship may be arrested. Ships not owned by the debtor cannot be arrested, i.e. only under extra-ordinary circumstances whereby the court "pierces the corporate veil". If a ship is owned by more than one owner, the ship can still be arrested for a claim against one of these "associated" owners.

In an important decision the Supreme Court recently widely interpreted the sister ship / bare boat charterer - clause of Article 3(4) last paragraph Brussels Arrest Convention 1952 ("a person other than the registered owner") in favour of the claimant seeking security. An arrest on a sister ship based on Article 3(4) need not necessarily be on a bare boat charter.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

See the answer under question 7.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Dutch courts have discretionary power to demand counter security but in practice this rarely happens but courts nowadays tend to be more receptive for such requests.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The common law concept of "maritime lien" is unknown in Dutch law. However, if a maritime lien means that a certain claim is attached to the ship, i.e. even if the debtor is not the legal owner of the ship, a ship may be arrested for such claim/lien.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

The Netherlands is not a party to any conventions on maritime liens. However, claims based on a maritime lien, having the legal status of being attached to the ship, may qualify for an arrest.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Generally between 3 and 8 hours. The petition will be dealt with by the court immediately. Once the arrest is permitted the bailiff, if put on stand-by beforehand, can then execute the arrest forthwith.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A Power of Attorney is not required when filing the arrest petition. An attorney-at-law is assumed by law to duly represent his client.

#### 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 requirement of submitting original documents is under Dutch law very rare, i.e. only when the opposing party contests the authenticity of the document. As original documents are not required when applying for arrest permission, nor are notarisation and/or apostille.

In case of utmost dispatch, an arrest petition can even be filed electronically.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The arrest creates jurisdiction unless international conventions to which the Netherlands is affiliated provide otherwise. If the parties had agreed on another jurisdiction or arbitration, Dutch courts must step aside.

#### 17. What is the procedure to release a ship from arrest?

By serving a writ of summons in summary proceedings on the arresting party, the ship owner can demand immediate release of the ship from arrest. The court (where the ship is located) will set a date for a hearing on very short notice. The more urgent the quicker the hearing. At the hearing both parties' lawyers will plead the case orally. A decision will be issued within a few days, if not already immediately after the hearing (although that is rare). The court will lift or maintain the arrest by court order. The ship is then virtually released. To effectuate the court order, the arrestor's lawyer is supposed to instruct the bailiff to call the harbour authorities that the ship is free to go.

#### 18. What type of security needs to be placed for the release?

The type of security to be provided by the ship owner to the arresting party in release from arrest is up to the discretionary powers of the court. But in practice this varies from a (first class Dutch) bank guarantee, a deposit on an escrow account or a letter of undertaking given by a reputable and financially strong P&I Club ("Club letter"). Standard forms are in use on the basis of which a bank guarantee or Club letter is given.

#### 19. Does security need to cover interest and costs?

Yes, the arresting party may add 30% (the "raise") over the capital claim (which claim is not exceeding an amount of €300,000) for covering (future) interest and (procedural) costs. To claims exceeding €300,000 applies a gliding scale, i.e. the higher the amount the more limited the raise for covering interest and costs (still 20% for claims up to €1 mio).

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

Although case law is divided, technically, a court may reject a request for lifting an arrest despite of a P&I LOU put on the table by the ship owner if the arresting party refuses to accept the P&I LOU and demands a bank guarantee instead.

However, in practice P&I LOUs are very often accepted by the arresting party in release from arrest, which means the court usually need not to decide whether P&I LOUs are considered sufficient alternative security.

P&I LOUs are only acceptable when provided by a reputable and financially strong P&I Club.

#### 21. How long does it take to release the ship?

If the court order lifting the arrest is in place or the parties have made an agreement (settlement or alternative security), the arrest can be lifted within 5 minutes. There is no need for the court's intervention, the lawyer acting for the arresting party simply calls the bailiff who enforced the arrest. The bailiff subsequently calls the harbour authorities that the ship is free to leave again.

#### 22. Is there a procedure to contest the arrest?

The arrest can be contested/challenged in summary proceedings as described in question 17. Usually, the ship owner's lawyer holds the arresting party liable for wrongful arrest and demands immediate release and if refused the ship owner can turn to the court with the request to issue a court order to lift the arrest.

**23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?**

The time limit for filing suit after the arrest has been enforced must be at least eight (8) days after the arrest was enforced. Usually a time limit for filing suit of one to two months is granted when it concerns a foreign ship. Courts are free to determine this time frame.

In case the creditor needs more time for filing suit, or in case the parties are still negotiating a settlement, the creditor can submit a request for an extension of the initial time limit to the Court. The grounds for the extension of the time limit need to be mentioned in the request otherwise it will be rejected by the Court.

**24. Do the Courts of your country acknowledge wrongful arrest?**

Yes. If the claim on which the arrest is based appears not to exist or appears to be unfounded (because it has been rejected later on in proceedings on the merits), the arrest is deemed to be wrongful. The arresting party will be strictly liable for all damages suffered by the ship owner due to the wrongful arrest.

This means the (wrongful) arrestor is by definition obliged to reimburse the ship owner for all his damages and losses, like port dues, but even consequential damages, such as loss of hire (all amounts to be increased with statutory interest). This is premised on the condition that the ship owner renders sufficient evidence of the damages and losses incurred. Furthermore, the ship owner has a duty to mitigate its damages.

**25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?**

Dutch law is very strict in the definition of "ownership" and in acknowledging company structures. As a result, Dutch courts are hardly inclined to "pierce the corporate veil" and in principle do not allow a ship arrest for a claim against a third party which has close links to the ship owner.

**26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?**

If a ship has been arrested and the arrest is not lifted in injunction proceedings or by way of alternative security, the arrest will be maintained until the creditor has obtained a title (judgment or arbitration award). Once such title is obtained, the conservatory arrest will automatically be transformed into an executory arrest. This may be followed by a judicial/public sale of the vessel before the court, if so requested, in which case the court will determine the pre-conditions for such auction.

Auctioning of a foreign seagoing vessel is subject to a detailed time frame and scheme of requirements to be fulfilled prior to the day on which the ship is actually auctioned. These procedural requirements and the bidding system aim at securing proper and fair auction proceedings with the purpose to obtain the highest price for the vessel to be auctioned.

The auction notice must be published in the newspapers as designated by the court at least thirty (30) days prior to the day of the auction. An auction can be organized between 30 and 40 days after the title is obtained in which the creditor's claim was adjudicated.

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# SHIP ARREST IN NEW ZEALAND



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## 1. Please give an overview of ship arrest practice in your country.

Initial ship arrest in New Zealand can be fast and relatively inexpensive. It requires a notice and application to be filed and does not require a hearing. An undertaking to meet the costs of the Registrar is also required. The time and cost involved in continuing a claim against the ship, and possibly obtaining judicial sale, will depend upon a range of factors.

## 2. Which International Convention applies to arrest of ships in your country?

New Zealand is not a signatory to any International Conventions dealing specifically with arrests. Ship arrests in New Zealand are governed by the Admiralty Act 1973 and the High Court Rules.

## 3. Is there any other way to arrest a ship in your jurisdiction?

No (although note the comments on freezing orders in response to question four, below). Arrests in New Zealand are obtained by filing in the High Court, a Notice of Proceeding relating to an *in rem* claim against the vessel and an application for arrest, supported by an affidavit. The proceeding must relate to a claim falling within the heads of jurisdiction set out in the Admiralty Act 1973.

## 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

The New Zealand High Court also has jurisdiction to grant freezing orders over any type of asset and, while such orders could extend to ships, the powers do not relate specifically to vessels. It is harder to obtain a freezing order than it is to arrest a vessel: an application is usually made without notice and the applicant must, usually by way of a contested hearing, demonstrate a good arguable case, show that there is a risk of dissipation of the relevant asset and give an undertaking as to compensate the respondent for any damages caused by the order, before a freezing order is made. In contrast, for an arrest, the applicant will need file an *in rem* notice of proceeding, with a concise statement of the nature of the claim and of the relief or remedy sought, an application for a warrant of arrest and an affidavit in support setting out the details of the parties, the ship and the claim. No real interrogation of the matters set out in the notice and affidavit is carried out and the warrant for arrest is issued without a hearing. The applicant is required to provide an indemnity to the Registrar but this is limited to the costs of arrest are does not cover any damages suffered as a result of the arrest.

## 5. For which types of claims can you arrest a ship?

Arrest is available for claims coming under s 4(1) of the Admiralty Act 1973, which lists:

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein:

- (b) any question arising between the co-owners of a ship as to possession, employment, or earnings of that ship:
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein:
- (d) any claim for damage done by a ship:
- (e) any claim for damage received by a ship:
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the owners, charterers, or persons in possession or control of a ship are responsible, being an act, neglect, or default in the navigation or management of the ship, in the loading, carriage, or discharge of goods on, in, or from the ship or in the embarkation, carriage, or disembarkation of persons on, in, or from the ship:
- (g) any claim for loss of or damage to goods carried in a ship:
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship:
- (i) any claim in the nature of salvage:
- (j) any claim in the nature of towage in respect of a ship or an aircraft:
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft:
- (l) any claim in respect of goods, materials, or services (including stevedoring and lighterage services) supplied or to be supplied to a ship in its operation or maintenance:
- (m) any claim in respect of the construction, repair, or equipment of a ship or for dock or port or harbour charges or dues:
- (n) any claim by a master or member of the crew of a ship for wages:
- (o) any claim by a master, shipper, charterer, or agent in respect of disbursements made on account of a ship:
- (p) any claim arising out of an act which is or is claimed to be a general average act:
- (q) any claim arising out of bottomry:
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty.

#### 6. Can you arrest a ship irrespective of her flag?

Yes.

#### 7. Can you arrest a ship irrespective of the debtor?

For some claims, yes, except for foreign state immunity. For certain claims, however, the debtor against whom the *in personam* claim arises must also be the owner or charterer of the vessel at the time that the action is brought.

#### 8. What is the position as regards sister ships and ships in associated ownership?

For some claims a sister ship may be proceeded against. Claims which cannot be transferred to a sister ship are claims for:

- (a) possession or ownership;
- (b) claims between co-owners;
- (c) claims in respect of a mortgage; and
- (d) claims for forfeiture, restoration or droits of admiralty.

For other claims falling within s 4(1) of the Admiralty Act, a sister ship may be proceeded against if the person liable on the claim was owner or charterer of the ship when the cause of action arose and was the beneficial owner or demise charter of the other ship when the action was brought.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

A ship can be arrested if the relevant person was the owner or charterer, or in possession or control of the ship, when the cause of action arose and, when the action was brought, was beneficial owner or demise charterer of the ship. Arrest of a ship that is under time charter is not available in relation to claims against the time charterer.

#### 10. Do your Courts require counter-security in order to arrest a ship?

No. However, a party seeking the arrest of a ship is required to provide an indemnity to the Registrar for the costs likely to be incurred by the vessel to be arrested, such as harbour dues and crew expenses. The Registrar requires some payment upfront to cover initial arrest costs



and then to be kept in funds in anticipation of subsequent costs.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. A maritime lien entitles the claimant to arrest the relevant vessel regardless of beneficial ownership. For other claims, the person against whom the claim arises must also be owner or demise charter at the time the action is brought.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, for certain types of claims, but they are defined and recognised under the Admiralty Act, not an international convention.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Provided that all of the necessary information (including translations if required) is available, the proceeding can be prepared and the application for arrest made on the same day. It is then in the hands of the Court to arrest the vessel, although this is usually done within a few days.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

No. See 15 below.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

In order to obtain the arrest of a vessel, a notice of proceeding, application for arrest, supported by affidavit, and filing fee must be filed in the High Court Registry. The required documents are standard form documents and, while originals of these documents need to be filed, they can be prepared by the New Zealand law firm instructed. Usually, the documents would need to be physically filed with the Court but in cases where there is extreme time pressure, the documents may be accepted electronically in the first instance. No other original documents are required nor do any documents need to be notarised. A statement of claim which sets out the nature of the claim must also be filed, but can be done after the vessel has been arrested.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. There may, however, be issues of jurisdiction if the claim is contract based or if a cross-border insolvency is involved.

17. What is the procedure to release a ship from arrest?

A party interested in a vessel under arrest can request the release of the vessel by filing in the court a standard form setting out the grounds on which the release is sought. The registrar must ascertain whether there is a caveat against release in force before releasing the vessel and, if there is, the party seeking release must give notice to caveator requiring that the caveat be withdrawn. The vessel will not be released until the caveat has been removed. The registrar may issue a release either upon an order of the court or with the consent of all the other parties to the action. The registrar must issue a release if the party who sought the arrest files a notice withdrawing the warrant of arrest before an appearance is entered in the action concerned. Before the vessel is released, the party who sought the arrest must either pay the costs due in connection with the custody of the vessel while under arrest or undertake to pay those costs.

18. What type of security needs to be placed for the release?

A vessel may be released from arrest if the amount claimed in the relevant notice of proceeding together with costs of issue and execution of the warrant of arrest is paid into court or if security for those amounts is given to the satisfaction of the registrar. On the application of any party, the court can determine the amount and form of the security required.

19. Does security need to cover interest and costs?

A plaintiff is normally entitled to security on the basis of its reasonably best arguable case, together with interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

International Group P & I Club letters of undertaking have been established as an acceptable form of security in New Zealand. Other forms of security may also be accepted on proof of sufficient means.

## 21. How long does it take to release the ship?

Once the request for release has been filed and security to the satisfaction of the registrar, or as determined by the court, has been paid, the vessel will normally be released immediately. If the parties are unable to agree on the amount of security, there may be some delay for an application to determine the amount and form of security to be heard.

## 22. Is there a procedure to contest the release?

There is no specific procedure set out in the Admiralty Act or the High Court Rules to contest a release. Any party may make an application to the court to determine the amount and form of security if they are not satisfied with the amount agreed or set by the registrar but the application will need to be made before the registrar has issued the release. Accordingly, a party that is interested in a vessel under arrest is likely to want to file a caveat against release, intervene in the proceeding and file their own *in rem* claim against the vessel to ensure that notice is given when a request for release is made and that they are able to seek to be heard in relation to that request.

## 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

If the defendant enters an appearance following the arrest, then a claim must be filed within 10 working days. The Courts will apply relevant limitation provisions to any claims.

## 24. Do the Courts of your country acknowledge wrongful arrest?

Yes, where the party arresting has acted in bad faith or with gross negligence. It is not enough that the claim is made on a mistaken basis.

## 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Only in special circumstances where a failure to do so would cause substantial injustice.

## 26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Yes. The time will depend on the urgency of the claimant's application, whether the application is opposed, whether there is a ready market for the vessel and whether the ongoing costs of arrest are likely to exhaust the security in the ship.

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# SHIP ARREST IN NIGERIA



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## 1. Please give an overview of ship arrest practice in your country.

Nigerian law provides a simple uncomplicated procedure for the arrest of ships thereby making the country a suitable and favourable jurisdiction for such proceedings.

Jurisdiction in respect of admiralty matters is vested exclusively in the Federal High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court. The court can order the arrest of a vessel in order to confer jurisdiction upon itself or to provide pre-judgment security for the applicant. The jurisdiction of the court applies to all maritime claims however arising and to all ships irrespective of their places of residence or domicile of their owners.

## 2. Which International Convention applies to arrest of ships in your country?

Nigeria has acceded to the International Convention for the Unification of Certain Rules Relating to the Arrest of Ocean Going Vessels, 1952 simply referred to as "The Arrest Convention" but has not promulgated it as municipal law so arrest is under extant municipal law.

## 3. Is there any other way to arrest a ship in your jurisdiction?

The Admiralty Jurisdiction Act, 1991 and the Admiralty Jurisdiction Procedure Rules, 2011, govern admiralty matters. The Act provides for two general classes of maritime claims namely: proprietary maritime claims and general maritime claims. A ship may be arrested pursuant to an action in rem brought against such ship in respect of a proprietary or general maritime claim.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No. Arrests can only be effected pursuant to an action in rem brought against the ship or a sister ship.

## 5. For which types of claims can you arrest a ship?

A person seeking to arrest a ship in Nigeria's territorial waters must satisfy the court that his claim qualifies as a 'Maritime Claim' as defined in §2 of the Admiralty Jurisdiction Act, 1991. This generally means that it must be a proprietary maritime claim or a general maritime claim.

1. Proprietary maritime claims relating to the possession of a ship, title to or ownership of a ship or a share in a ship, mortgage of a ship or of a share in a ship, mortgage of a ship's freight or claims between co-owners of a ship relating to the possession, ownership, operation or earning of a ship. Also claims for the satisfaction or enforcement of a judgment given by the Court or a court (including a court of a foreign country) against a ship or other property in an admiralty proceeding in rem are maritime claims.

2. General maritime claims includes claims for damage done or received by a ship (whether by collision or otherwise), claims for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship as well as arising out of an act or omission of the owners or characters of a ship.

Prior to applying to the court for an order to arrest a ship, the applicant must conduct a search of the caveat book to ascertain whether there is a caveat against arrest in force with respect to that ship. Where such a caveat exists, the applicant must inform the court of same.

Once an applicant has ascertained that his claim falls within the meaning of a maritime claim as defined by the Act and that there are no caveats registered against the ship, he may commence proceedings by filing an action in rem at the Federal High Court in the judicial division covering the port or area where the ship is located. He may at the same time file an ex-parte application

disclosing a strong prima facie case for the arrest of the ship. This application must be supported by an affidavit deposed to by the applicant, his counsel, or his agent stating the following:

- i. The nature of the claim.
- ii. That the ship is within the jurisdiction of the court or is expected to arrive within the jurisdiction within three days.
- iii. That the ship may leave the jurisdiction of the court at anytime thereby depriving the applicant of his pre-judgment security.

The applicant is also required to provide with the application the following:

- i. A statement of claim
- ii. Exhibits supporting the claim
- iii. An undertaking to indemnify the ship against wrongful arrest.
- iv. An undertaking to indemnify the Admiralty Marshal in respect of any expenses incurred in affecting the arrest.
- v. An affidavit of urgency stating facts why the application must be heard expeditiously.

Although, at this stage of the proceedings, the court may admit photocopies of exhibits and undertakings, the applicant would subsequently be required to provide the originals or certified true copies. It is important to note that Nigerian courts will entertain an application for an arrest only when the ship has entered its jurisdiction. So where a prospective applicant is aware that a ship sought to be arrested is bound for a Nigerian port, it is advisable for him to instruct his counsel in Nigeria as soon as possible so that the requisite processes can be prepared and filed immediately the ship is within three days of entering Nigerian territorial water.

An arrest order is usually served along side an arrest warrant and the writ of summons and statement of claim by affixing sealed copies of the processes to a mast or some other conspicuous part of the ship. Copies of the said processes must also be delivered to the appropriate officers of the Nigerian Port Plc, for example the Chief Harbour Master, Traffic Manager and Port Manager.

#### 6. Can you arrest a ship irrespective of her flag?

Yes. A ship can be arrested irrespective of its flag, as long as it is within Nigerian territorial waters.

#### 7. Can you arrest a ship irrespective of the debtor?

No. In order to sustain an arrest, the claimant has to show that at the time his application is brought before the court the person liable to him otherwise known as the 'relevant person' is the beneficial owner or the demise charterer of the ship.

#### 8. What is the position as regards sister ships and ships in associated ownership?

A sister ship may be arrested in place of the offending ship if it is found within Nigerian territorial waters and if the 'relevant person' is also the beneficial owner in respect of all the shares in the sister ship.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The Admiralty Jurisdiction Act is silent on Time-Charters. However under §4(a) of the Act an action in rem may be brought against a ship where the 'relevant person' is the demise (bareboat) charterer of the vessel.

#### 10. Do your Courts require counter-security in order to arrest a ship?

An applicant for an arrest order may be required to give security for costs. The court will order security for costs where the claim is in excess of Five Million Naira or its foreign currency equivalent or where the plaintiff has no assets in Nigeria.

The form of security required is usually a deposit of the sum specified by the court; or a guarantee supplied by a Protection and Indemnity Club (P & I Club), an insurance company or a bank. In determining the quantum or nature of security to be provided, the court shall have regard to all the circumstances of the case and shall not restrict itself to the costs of the legal proceedings.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Where the claim is one in respect of a maritime lien (a lien for salvage, damage done by a ship, wages of the master of a ship or other crew member and master's disbursements), or a claim in respect of a proprietary maritime claim (relating to the possession of a ship, title to or ownership of the ship or a share in the ship, a mortgage of a ship or a share in a ship, or a mortgage of a ship's freight), or a claim as between the co-owners of a ship as regards the possession, ownership, operation or earning of the ship, an admiralty action in rem may be brought against the ship or

property in connection with which the claim arises. In this instance, the ownership of the vessel is not material.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. Nigeria recognises maritime liens by virtue of §5(3) of the Admiralty Jurisdiction Act which provides for a closed list of maritime liens such as liens for salvage; or damage done by a ship; or wages of the master or of a member of the crew of a ship; or master's disbursements. Furthermore, Nigeria is a signatory to the International Convention on Maritime Liens and Mortgages 1993 but has not promulgated the Convention as municipal law.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

An arrest order can be obtained within 24 hours of filing the requisite processes.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

There is no need to provide a POA, however copies of the documents listed in answer 5 above have to be presented to the court in support of the claim.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Original, hard copies of all the documents are required, but do not have to be notarised. Documents cannot be filed electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Nigerian courts will accept jurisdiction over the substantive claim once a vessel has been arrested within Nigerian territorial waters.

17. What is the procedure to release a ship from arrest?

Where owners have placed acceptable security for the release of a ship, the court may order release of the ship upon request made by the owners for release of the ship.

In some cases, the arrestor could request for release of the ship, where owners have placed acceptable security for the release.

In some cases, the court may order release of a ship under arrest, if owners successfully challenge an order of arrest.

18. What type of security needs to be placed for the release?

Security such as bank guarantees, P and I Club LOUs and insurance bonds are acceptable to be placed for the release of ships.

19. Does security need to cover interest and costs?

Yes, security must cover the claim, interest and costs.

20. Are P and I LOUs accepted as sufficient to lift the arrest?

Yes, P and I LOUs are accepted as sufficient to lift the arrest.

21. How long does it take to release the ship?

A ship can be released within 24 hours of filing an acceptable security.

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

An order for an arrest will not be granted unless the ex parte motion for a warrant of arrest is accompanied by the statement of claim and supporting documents. There is accordingly no waiting period between the arrest taking place and the commencement of the substantive action.

24. Do the Courts of your country acknowledge wrongful arrest?

An applicant for an arrest order is liable to the ship owner for damages arising from a wrongful



arrest. A ship owner has three options to with:

- i. He may apply to court within three months from the termination of the suit for general damage of such amount as the courts may deem a reasonable compensation; or
- ii. He may make an oral application for damages immediately after judgment. The court in this instance is entitled to summarily assess the damages due to the ship owner; or
- iii. He may also bring an action for wrongful arrest claiming all the damages arising from the arrest, which he can establish.

## 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Nigerian courts recognize and exercise the powers to pierce or lift the corporate veil, in this regard an action may be commenced against a sister ship in respect of general maritime claims. However, the ship in relation to which it is a sister ship must be identified in the writ of summons. The writ of summons may identify more than one ship as a sister ship.

## 26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

The court may, on application by a party before final judgement in a proceeding, order that a ship that is under arrest in the proceeding be sold. Where the ship is deteriorating in value, the court may at any stage of the proceeding, either with or without application, order it to be sold (order 16 rules 1 & 3 Admiralty Jurisdiction Procedure Rules).

The sale of a ship ordered to be sold shall be by auction 21 days after the advertisement shall have been placed in two national daily papers by the Admiralty Marshal.

*\*ÁELEX is the leading Nigerian firm with expertise and institutional depth in Transportation. Our Maritime practice has evolved with developments in the sector, gaining us invaluable experience and capabilities. We offer various shipping services from ship finance to corporate, regulatory compliance and litigation.*

*Members of our Maritime team are located in Lagos and Port Harcourt in Nigeria and Accra, Ghana with an aggregate of over 30 years experience in maritime law. We act as counsel to ship-owners, P&I clubs, charterers, operators of ships and other offshore assets, insurance companies, financial institutions, oil and gas companies, port owners and operators.*

*ÁELEX advises on ship and mortgage registration, asset financing for off shore oil and gas operations, ship registration, ship finance and lease transactions. Our expertise also extends to claims arising from charter parties, collision, cargo and demurrage, both at arbitration and in the courts of law in Nigeria and Ghana. We are regularly instructed to undertake subrogated claims on behalf of insurers, arrest and release of vessels as well as negotiating the settlement of claims.*

# SHIP ARREST IN NORWAY (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

Arresting a ship is relatively straight forward matter under Norwegian law, and can be arranged quickly at a reasonable cost. Advokatfirmaet Simonsen Vogt Wiig AS law firm can act in arrest cases in all Norwegian Courts/ports. The claimant must submit an application for arrest to the District Court where the ship is located or is expected to arrive, alternatively to the District Court in the judicial district where the debtor (the owner of the vessel) resides, if the ship owner is Norwegian. The application has to specify the claim, the size of the claim, the arrest ground and provide an outline of the allegations of the applicant. Documentation supporting the allegations is not mandatory, but should be provided. A well presented case with supporting evidence increases the probability of obtaining an arrest award ex parte. The Courts will however normally accept documentation in English.

The applicant must further prove upon a balance of probability that he has a maritime claim, that an "arrest ground" is present and that the averments for arrest are fulfilled. This is a requirement that is not found in the Arrest Convention and it is imposed in addition to the rules of the Arrest Convention.

What constitutes an arrest ground is set out in the Norwegian Dispute Act section 33-2(1) which reads: "*Arrest of assets of economic value can be decreed when the behavior of the debtor gives reason to fear that the enforcement of the claim otherwise will either be made impossible or made substantially more difficult, or has to take place outside the Kingdom*". In short this means that the Norwegian Courts is provided with the discretion as regards whether or not an arrest shall be granted.

If arrest is granted, the Courts issue an arrest decree which states the name of the parties, the claim, the maximum amount the claim shall be secured for and the arrest ground. The Courts notifies the enforcement authorities, which ensure that the ship does not leave the harbor and reports the arrest to the ship register.

## 2. Which International Convention applies to arrest of ships on your country?

The 1952 Arrest Convention applies. The convention is incorporated in the Norwegian Maritime Code, the Enforcement of Claims Act and the Dispute Act. Norway has also signed the 1999 Arrest Convention, which came into force 14 September 2011 when finally ratified by the requisite ten countries. Norway has so far not taken any steps towards ratification of the 1999 Arrest Convention, leaving the 1952 Arrest Convention as the foundation for Norwegian law with respect to ship arrests.

## 3. Is there any other way to arrest a ship in your jurisdiction?

If a vessel is flying Norwegian flag, it may be arrested by way of so called "register arrest". This is practical if the claim is not a maritime claim, as this is not an arrest of the vessel as such, and section 92 of the Maritime Code is not applicable. A register arrest means that instead of physically seizing the vessel, the arrest is registered as an encumbrance in the ship register. If a creditor fears that the vessel may be sold, and thereby he loses the only object that may provide security for the claim, this can be an effective alternative to arresting the vessel. A register arrest prevents a sale of the Wessel but may not provide an offer of immediate security.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

In addition to the rules of arrest, there are two other important sets of rules under which a vessel may become legal security for a claim. Firstly, there are the ordinary rules on liens and mortga

ges. Under these rules a claim is secured by a right in the ship. Such security can have its legal basis in contract, a decision by the enforcement authorities or statute. Secondly, there are rules that may give a creditor a right of retention, e.g. a yard retain a vessel until the bill is paid. The right of retention may be based in contract or law.

#### 5. For which types of claims can you arrest a ship?

All maritime claims as listed in article 1(1) of the Arrest Convention, with the addition of compensation for wreck removal, may be the basis for an arrest of the ship. These different maritime claims are listed in section 92 of the Norwegian Maritime Code.

However, a register arrest (see section 3 above) and arrest of other assets than the vessel, e.g. bunkers and insurance proceeds, may be granted for any type of monetary claims.

#### 6. Can you arrest a ship irrespectively of her flag?

Yes.

#### 7. Can you arrest a ship irrespectively of the debtor?

No, the debtor has to be the owner of the vessel that is being arrested, cf. the Maritime Code section 93(4). Norwegian legislators have deviated from the Arrest Convention on this point, as claims against bareboat charterers may not give raise to arrest of the vessel itself as per article 3(4) of the Arrest Convention. However, as mentioned in section 9 below, claims against the bareboat charterer and the time charterer may give raise to arrest of other assets, e.g. the bunkers onboard the vessel.

#### 8. What is the position as regards sister ships and ships in associated ownership?

In principle, the only ship that may be arrested is the one out of which the claim arises. However, in accordance with the Arrest Convention, Norwegian law recognizes the right of sister ship arrest. If vessel A and B are owned by the same legal entity, and this legal entity is the debtor for the claim, either of the vessels may be arrested, even if the claim only arises out of vessel A. It should be noted that both the vessels in principle must be owned by the same legal entity in order to enable an arrest of the sister ship. If the ownership of vessels is organized with a holding company and single purpose companies as the registered owner of each vessel, arrest of a sister ship will in principle not be possible under Norwegian law.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

As mentioned above, claims against time- or bareboat charterers do not give the right of arresting the vessel, as the vessel is not owned by the charterers. The legal principle that the debtor has to be the owner of the ship is set out in section 93 (4) of the Maritime Code: *"Arrest can only be effected if the ship can serve as an object for the enforcement of a claim according to the general provisions of the Enforcement of Claims Act."* Turning to the Enforcement of Claims Act, section 11-4 and 7-1, it is clearly said that the debtor must be the legal owner of the asset that is being arrested. This means that an arrest of the vessel is not a remedy at hand where the Claimant has a Claim against the bareboat charterer or the time charterer of the vessel. However, on bareboat chartered vessels, the bunkers onboard are normally owned by the charterer. This is often also the case under a time charter, and arresting the bunkers onboard may be an effective remedy where the claim is not against the owner of the Wessel.

*\*Ingar Fuglevåg was born in 1970, and has been with Advokatfirmaet Simonsen Vogt Wiig AS since 1999, a firm which is constantly ranked in the 1st category of shipping lawyers in Norway in the Legal 500. He became a partner of the firm in 2005. Ingar is one of the partners of the shipping department of Advokatfirmaet Simonsen Vogt Wiig, and specialises in shipping/admiralty law and insurance law. Ingar litigates insurance disputes, casualty disputes, including P&I and cargo disputes both in arbitration proceedings and before the Courts in Norway.*

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# SHIP ARREST IN NORWAY (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

The court can require the claimant to deposit security as a condition for the arrest. The security is fixed at the court's discretion based on the potential liability of the claimant in case of wrongful arrest.

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Arrest in ships can only secure maritime claims and the Maritime Code exempts maritime liens from the definition of a maritime claim. The claims giving ground for a maritime lien will however normally fall within the other categories of the definition of a maritime claim.

## 12. Does your country recognise maritime liens? Under which International Convention, if any?

Norwegian law recognizes maritime liens. The Norwegian regulations are based on the 1967 Convention and include a relatively small group of claims.

Norwegian courts will also recognize maritime liens legally established under the laws of the country of registration, however so that maritime liens pursuant to the national statute, registered mortgages and execution liens shall rank higher than such foreign maritime liens.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Kluge's lawyers will normally be able to arrange for arrest of a vessel in any Norwegian port within 24 hours after receiving necessary documentation.

## 14. Do you need to provide a POA, or any other documents of the claim to the Court?

No POA is required. A statement from the legal counsel that he/she has been duly appointed by the claimant will suffice.

Although there are no formal requirements as to what documents should accompany the arrest petition, it is advisable to submit copies of any documentation relevant to the substantive claim.

## 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Except for the arrest petition which has to be in original and signed by the claimant or its legal counsel, all documents relevant to the substantive claim may be submitted as copies. Notarisation and/or apostille are not required. In some cases documents may be filed electronically by legal counsel. In any circumstance Kluge's lawyers can print and attach hard copies to the arrest petition upon receipt of documents by e-mail.

## 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Subject to any possible valid agreement between the parties with respect to legal venue or arbitration, the Norwegian arrest court may take jurisdiction over the substantive claim.

## 17. What is the procedure to release a ship from arrest?

The defendant may have the arrest discharged and the ship released by submitting a petition with evidence proving that the substantive claim does not exist or the ground for securing the claim does not exist. The defendant may also have the ship released by providing security for the claimants claim.

Furthermore, the arrest may lapse and this will cause the release of the vessel. Lapse of the arrest will happen without further procedure, *inter alia*, when the claim is secured by a lien over the arrested vessel and when the claimant has obtained a judgement for payment of its claim and has not secured this claim by a lien within 1 month after the date of the relevant judgment.

#### 18. What type of security need to be placed for the release?

Cash deposit in a Norwegian bank and/or an unconditional guarantee from a Norwegian bank issued to the competent authority will be sufficient to have the vessel released. In case of cash deposit the relevant bank must issue a declaration that the debtor can not dispose over the cash deposit without the bailiff's consent. The declaration must set out the size of the cash deposit.

#### 19. Does security need to cover interests and cost?

If the claimant has claimed interests and costs covered by the defendant, the security will also have to cover interests and costs in addition to the claim.

#### 20. Are P&I LOUs accepted as sufficient security to lift the arrest?

No, in Norway only cash deposit in a Norwegian bank and an unconditional guarantee from a Norwegian bank will suffice as security in order to lift the arrest. The claimant may however accept a LOU from a reputable P&I Club as part of a commercial agreement, and on that basis abandon his right in the arrest.

#### 21. How long does it take to release the ship?

The ship is released within 24 hours from the time any of the options in question 17 materialize. The fastest way to have a ship released is by providing security. If the defendant does not provide security and the claimant files a lawsuit regarding the substantive claim, the ship will at the earliest be released after 7 months from its arrest. If the district court's ruling is appealed, it may take years before the ship is released.

#### 22. Is there a procedure to contest the arrest?

Yes, the defendant may demand a hearing in which he may contest the claimant's grounds for arrest. The hearing will be held shortly after the arrest. The hearing is conducted in accordance with the ordinary procedural rules for a civil court hearing.

#### 23. Which period of time will be granted by the courts in order for the claimants to take legal action on the merits?

The defendant can request the courts to fix a time-limit by which the claimant must institute legal proceedings to avoid the arrest order being quashed. If no such time limit has been fixed, the period will be one year from the issue of the arrest order, cf the Dispute Act Section 33-10.

The claimant may also take legal action of the merits after the arrest order has been quashed pursuant to the said rules. In such case the writ of claims must be filed to prevent the statute of limitations from running. The general limitation on claims under Norwegian law is three years.

#### 24. Do the courts of your country acknowledge wrongful arrest?

Yes. If the claim did not exist at the time of the arrest or if the claimant by negligence or intent has given wrongful or misleading information regarding the ground for arrest, the claimant can be held liable for any economic loss the defendant has suffered as a consequence of the wrongful arrest and non-economic loss.

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

As a general rule, the shareholders of a limited liability company will not be personally responsible for the obligations of the company. The courts will however make an overall assessment and, in exceptional circumstances, the possibility of piercing the corporate veil cannot be ruled out.

#### 26. Is it possible to have a ship sold pendent lite; if so how long does it take?

When a ship has been arrested, the owner has lost his control over the ship, including the possibility to sell the ship.

On the claimant's side, the arrest does not give him/her/it any right to compulsory fulfilment. The courts can, however, permit a pendent lite sale if the claimant requests it and it is necessary to avoid substantial decrease in the ship's value.

*\*Linn Hoel Ringvoll works within Kluge's shipping and financing group. She is specialized in choice of law, jurisdiction and international arbitration, and assists Norwegian and international finance institutions with i.a. securing claims. She has her background from and is still connected to the Scandinavian Institute of Maritime Law.*

*Through its offices in Stavanger, Oslo and Bergen, Kluge's lawyers provide a wide range of national and international clients with first class advice and assistance with ship registrations, ship financing and securing claims including ship arrest.*



# SHIP ARREST IN OMAN

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## 1. Please give an overview of ship arrest practice in your country.

The Omani Maritime Code regulates the conservatory arrest of ships. The arrest application must be submitted to the Court of First Instance. The Court normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is one of the maritime debts listed in the Omani Maritime Code (please see below question No. 5). The arrest order may be challenged but this procedure is usually complex and lengthy and the quickest way to lift the arrest is to put-up a security (please see below question No. 18).

## 2. Which International Convention applies to arrest of ships in your country?

Oman is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

The ship could be arrested in Oman in the context of either a precautionary seizure procedure or an enforcement procedure commenced against her. The main difference between both procedures is that the applicant is not required to have an execution deed against the ship in order to commence precautionary arrest proceedings against the ship.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

There are no alternatives for the arrest of ships in Oman as the Maritime Code regulates the arrest of ships in specific which prevents the applicant from relying on other laws in Oman.

## 5. For which types of claims can you arrest a ship?

In order to arrest a vessel in the Omani territorial waters, the creditor must have a "maritime debt" against the ship. Article 188 of the Omani Maritime Code defines maritime debts as follows:

1. Damages caused by the vessel due to collision or other reason.
2. Losses of lives or physical injuries caused by the vessel or which has originated from utilization.
3. Aid and rescue.
4. Contracts for utilizing or chartering the vessel under a charter party or other contract.
5. Contracts for the carriage of goods under a charterparty, bill of lading or other.
6. Complete loss of or damage of goods and luggage carried by the ship.
7. General average.
8. Towage of ship.
9. Pilotage of ships.
10. Supply of equipment and tools which are necessary for the ship's utilization or maintenance.
11. Building, repairing and equipping of the vessel as well as the ship as well as the expenses incurred thereon while in docks.
12. Wages of masters, officers and sea men and others who work on the ship under articles of agreement.
13. Sums spent by the master, shippers, charterer or agents for the ship's account.
14. Dispute over the ownership of a vessel or dispute over single ownership.
15. The rights in the profits resulting from her utilization.
16. Marine mortgage, especially every mortgage the origin of which enables the application of limitation of liability of the owner or her manager.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Omani territorial waters can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

Pursuant to Article 189 of the Omani Maritime Code, any debtor whose debt is qualified as a maritime debt may arrest the ship anchored in Omani territorial waters.

8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Oman is possible as long as the sister ship was owned by the debtor at the time the debt was incurred. However, if the debt resulted from a dispute over the ownership of the ship, the rights in the profits resulting from her utilisation and maritime mortgage (see above bullets No. 14, 15 and 16 listed under question No. 5).

Regarding the arrest of associated ships, there is a great degree of uncertainty as, for the arrest to be successful, we need to prove to the judge the close link between the entity owning the ship that incurred the debt and the entity owning the associated ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Omani Maritime Code gives the creditor of the charterer who was given control over the nautical navigation of the ship the right to arrest the ship for a debt resulting from the charterer's actions. In addition, the creditor has the right to arrest any other ship owned by the charterer.

10. Do your Courts require counter-security in order to arrest a ship?

No counter-security is required in Oman.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a ship for a maritime claim and the arrest of ship for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Maritime liens are enumerated in Article 156 of the Omani Maritime Code. This Article reads:

"Lien right shall be considered so if it includes the vessel, the freight of a voyage during which the lien has originated, the accessories and the freight due on the day of the commencement of the voyage according to the following:

1. The legal expenses which were spent for keeping, sale and distribution of the price of the vessel, loading, lighthouses port and other fees as well as taxes of the same type, pilotage fees, indemnities for the damages sustained by port installations, decks and guarding and maintenance charges from the time of the vessel's entry into the last port.
2. The debts arising out of the terms of agreement of the master, seamen and others who work on the vessel under a contract.
3. The salvage monies payable for the aid and rescue as well as the vessel's share in the general average.
4. The indemnities payable for collisions, other navigational accidents, physical injuries to passengers, seamen and others who work on the vessel under a contract and complete loss or damage of goods and luggage.
5. The debts arising out of the contracts concluded by the master and the operations he carries out, within the scope of his legal powers, outside the vessel's port of registration for an actual need which is required for the vessel's maintenance or continuing with the voyage, whether the master is the owner of the vessel or otherwise and whether the debt is payable to him, suppliers, lenders, persons who repaired the vessel or other contracted parties."

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Oman, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Omani Embassy must be submitted to the competent Court with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Oman is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Oman prior to submission.

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 documentation supporting the claim must be attached to the application and electronic filing is not available. As mentioned under question 14 above, if these documents are in foreign language they must be translated into Arabic language. Only official documents must be legalised up to the Omani Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Oman.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Omani courts will not accept jurisdiction over the substantive claim once the vessel has been arrested if the parties have agreed to give jurisdiction to a foreign court.

17. What is the procedure to release the ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. The decision issued must be served upon the ship and the harbour master or the coast guard. If the defendant to the application wants to release the ship then he must deposit the security requested by the judge and request from the judge the release of the vessel.

18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship is either a bank guarantee issued by a local bank or cash deposited in the court.

19. Does security need to cover interest and costs?

The security needs to be equal to the amount included in the arrest order which will be assessed by the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are unacceptable by Omani Courts.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file a grievance before the Court who issued the arrest order. Upon hearing the grievance, the Court may make an order lifting the arrest order and such judgment shall be enforceable through the normal channels. The grievance shall be submitted within seven days from the date of issue of the arrest order.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After the execution of the arrest, a period of 10 days is granted in order for the claimant to take legal action on the merits.

24. Do the Courts of your country acknowledge wrongful arrest?

There are no legal precedents on the liability for the wrongful arrest of a ship. However, under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This concept is not recognised in Oman.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Such a sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

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# SHIP ARREST IN PANAMA (Questions 1 to 9)



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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 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.

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# SHIP ARREST IN PANAMA (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

Yes. It depends on the purpose of the arrest: a) prevent disposition (20 to 30% of the amount of the complaint); b) to give jurisdiction to the court over the owner (US\$ 1,000.00); or c) for enforcement of maritime liens (US\$ 1,000.00).

An up-front amount of US\$2,500.00 would be required upon submitting the arrest petition for maintenance and the Marshall would thereupon be entitled to require additional amounts. Failure to do so would result in the release of the asset.

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Not in terms of the procedure for the arrest itself. The Law also provides for mix proceedings (in rem and in-personam). Foreign law could apply to determine the right to arrest.

## 12. Does your country recognise maritime liens? Under which International Convention, if any?

The concept of maritime lien against the vessel, freight and cargo is expressly contemplated in the law of Maritime Commerce.

Liens may be recognised under foreign law, by application of conflict of law rules and there are also special provisions for enforcement of naval mortgages, which applies to national and foreign vessels which are arrested in Panama.

Panama has not ratified international conventions on maritime liens.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

The arrest of a vessel could be arranged on a same day basis, considering that the Court and the Marshall would be available (as provided in the law) 24 hours.

## 14. Do you need to provide a POA, or any other documents of the claim to the Court?

The POA, in principle, and prima facie evidence of the right to claim would be needed when submitting the application for arrest (and the corresponding complaint).

By suppletory application of the Code of Civil Procedure, it is possible for a lawyer to act in lieu of POA (i.e. negotiorum gestor). The POA would have to be submitted within 60 days. In case of foreign entities, proof of existence of the same (i.e. certificate of existence or good-standing) would also be necessary.

## 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 general rule is that documents must be filed in original form; in particular, documents deemed of a "public" source (coming from an official or Governmental entity).

The law expressly provides that public documents issued outside of Panama would have to be legalised to be admissible in Court, either by Panamanian Consul or, where the 1961 Hage Convention applies, Apostilled, or in lieu thereof by the Consul of a country deem amicable to Panama.

The law provides for the possibility of admission of copies, including discovery motions to seek agreement of the parties in this connection, which is commonly accepted. The Judge should assess overall under rules of logic and experience (ie "sana critica").

Documents deem essential for the representation of the parties, such as power of attorney are to be produced in original and duly noticed and legalised (see 14 above). Currently, documents are

to be filed with the Court as opposed to allowing electronic filings.

**16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?**  
Generally, the arrest in the events mentioned in item 10 above are meant to support proceedings which, in turn, implies the review of a matter on the merits by the Court.

**17. What is the procedure to release a ship from arrest?**

Response. The law provides that the plaintiff may unilaterally do so. Also by posting of security and filing a request. This could be made unilateral by the defendant/owner of the asset or a third party, or jointly by plaintiff and defendant/owner of the asset.

Failure of the plaintiff to consign relevant maintenance amounts, after five days from a request, also allows the Marshall to proceed with the release.

**18. What type of security needs to be placed for the release?**

Response. The law provides the following alternatives:

1. Cash or Certificate of Judicial Deposit at the National Bank of Panama
2. Letter of Guarantee, Certified or Cashier's Cheque from a local bank holding a general license.
3. Surety from an insurance company licensed in Panama.
4. Other which the parties may agree.

**19. Does security need to cover interest and costs?**

Response. Yes, these would be assessed by the Judge upon fixing the amount of release bond. However the parties may agree in terms of amount, thus also excluding interest or costs.

**20. Are P&I LOUs accepted as sufficient to lift the arrest?**

Response. These are, but would need the acquiescence of the plaintiff.

**21. How long does it take to release the ship?**

Response. Usually within the day of filing of the request (including if the necessary release bond is duly consigned with the Court)

**22. Is there a procedure to contest the arrest?**

Response. Yes, this involves a motion duly supported for wrongful arrest, when there is a mistake in the asset to be attached or ownership thereof, the absence or inexistence of an alleged maritime lien causing the arrest or against an agreement not to arrest.

**23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?**

As per 16, above, the complaint would have to be filed at the time of the request of the arrest. The Court would review if the underlying claim stands (prima facie) to initiate the proceedings with the admission of the complaint.

The order for the arrest of a vessel would be served together with the complaint, and would trigger the term to answer the complaint, to start the proceedings.

**24. Do the Courts of your country acknowledge wrongful arrest?**

The law contemplates the following specific proof for wrongful arrest when: a) the arrest has been performed over property which is different from the one against which the suit was brought; or b) which does not belong to the defendant; or c) on which the maritime lien or in rem right for whose execution the arrest was requested is extinguished or inexistent; or d) if the arrest was requested in contravention of a prior agreement between the parties, as the case may be; as overall.

**25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?**

This would be in exceptional situations involving fraud or criminal actions, before competent courts in that respect. Therefore, it should be noted that Maritime Courts may be reluctant to do so, on strictly maritime causes of action, without an order or further support from a Penal Court.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Yes, in the following situations:

a) If the arrest may result in a deterioration of the vessel (depending on its type); b) After 30 days from date of the arrest; c) If the costs for custody and maintenance become excessive in respect to the sale value; d) If the complaint is not timely answered;

The first three scenarios would require the intervention of both parties, whilst the fourth, would proceed at the request of the claimant and in case of enforcement of naval mortgages, *ipso jure*.

The proceeds would then be deposited at the National Bank of Panama, in an interest bearing account.

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# SHIP ARREST IN PERU



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## 1. Please give an overview of ship arrest practice in your country.

Peru is a country that has no specific maritime law. Henceforth, when it comes to trying cases of this nature, one must rely on international treatise, doctrine and current applicable local laws in order to arrest a ship even though the term itself is inapplicable in this country but the outcome is the same. Peru has a mere handful of maritime attorneys who can be referred to as such but only by profession and not by dedication. Given the intricacies of practicing law in an area that does not have a law of its own is a monumental task as there is only experience on which to base your legal actions for filing claims and following them through to the end. The concept of *arresting* a ship in Peru is non-existent per se, it must be done through a preliminary injunction that if requested "out of process" it can be obtained in up to 72 hours, but this on its own is a costly, tedious and complex task. The other option to requesting an injunction is to do it "within the judiciary proceeding", but in Peru, this may easily take up to four months provided no strike, holidays or vacations come up for the courts. In Summary, placing a do not move order on a ship is a viable option, but documents need to be in place that can readily be legalized at the Peruvian Consulate or by apostille and FedExed immediately for official translation whilst the claim is being drawn up and all this can be done in as little as 48 hours, how long will the court take is a completely different question.

## 2. Which International Convention applies to arrest of ships in your country?

- a. International Convention on the Arrest of Ships, Geneva 1999
- b. Santiago Declaration
- c. The Hague Rules
- d. Convemar
- e. Cartagena Agreement
- f. Decision 487
- g. Decision 532

## 3. Is there any other way to arrest a ship in your jurisdiction?

The precautionary measure of placing a lien on the ship is a solid option that goes hand in hand with filing a formal claim before the pertinent authorities. This however leaves a great deal up for interpretation, as it requires counsel to approach the court presiding over the case for an *ex parte* meeting with the judge to explain the case. However, this is an option that is widely used and mostly accepted in the event the defendant has incurred debts with companies or government agencies located within the Peruvian territory. I would add that limiting this task to debts incurred in Peru only would be erroneous as we have been able to detain and hold vessels for debts with foreign entities in Peruvian waters just as well.

## 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

Only precautionary measure

## 5. For which types of claims can you arrest a ship?

- a. Debts,
- b. Criminal activities,
- c. International arrest warrants,
- d. Suspicion of illegal trafficking or
- e. Human trade, etc.

6. Can you arrest a ship irrespective of her flag?

Yes, in accordance with the Convention of 1999.

7. Can you arrest a ship irrespective of the debtor?

Yes, if it can be demonstrated that there is just cause and a pre-existing debt that is going through a valid judicial proceeding in Peru then yes it can.

8. What is the position as regards sister ships and ships in associated ownership?

Although not customary, a sister ship or any other property for that matter can be arrested if the property can be demonstrated to be that of the debtor beyond shadow of a doubt.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The bareboat chartered is only for charter; its specific purpose is freight cargo. The Time-chartered is a charter party. Either ship can be detailed and held under a Do Not Sail order if a court order so mandates it.

10. Do your Courts require counter-security in order to arrest a ship?

Yes, counterclaims are mandatory and represent a percentage of the outstanding amount allegedly owed.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The judicial proceedings will be the same for both.

12. Does your country recognize maritime liens? Under which International Convention, if any?

Yes. International Convention on Maritime Liens and Mortgages.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Company documents that attest to the debt (invoices, Charterparty, amounts, wire transfers, etc) can be legalized at the Peruvian Consulate or they can be Apostilled, either way, they then need to be officially translated into Spanish in Peru. There must also be a Power of Attorney enacted in our favor, which can also be at the Consulate or, by Apostille. Please note that any documents procured at a Peruvian Consulate, upon arrival in Peru must be further legalized before the Peruvian Ministry of Foreign Affairs and then officially translated into Spanish. These must then be registered locally at the Lima Public Records. As a result of all these steps, clients must start this process as soon as possible in order to have them completed in time. Assuming all documents are in order then an detention with a Do Not Sail order can be obtained in 72 hours and even less depending on the circumstances and while pending a litigious process.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes, POA is necessary as well as all supporting documents that would lead to a ship detention. These documents are be BL, Invoices, Charter party, etc. POA will be provided to client on the day they contact and retain our services but they will process it internally.

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

No original documents are ever needed, that is why the court requests legalizations by way of Peruvian Consulate or Apostille services to ensure the copies adhere to the originals. These documents are needed in order for the court to issue a final ruling but given the time constraints, many times we file claims with simple copies while the client is processing the legalizations. The court will then indicate that legalized copies are needed but by then we will have gotten them via courier from the client.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, as long as all documentation support the claim then the court will issue a Do Not Sail order awaiting the start of the case or further indication from outside courts.

17. What is the procedure to release a ship from arrest?

In order for the Sail block to be lifted, the court that issued the block in the first place has to be the one that lifts it. This can only take place once the reason that initiated the block in the first place



has been satisfied, i.e. an outstanding debt has been paid, ship has been turned over to its rightful owners, etc.

#### 18. What type of security needs to be placed for the release?

That all debts and commitments between the defendant and the plaintiffs have been satisfied accordingly.

#### 19. Does security need to cover interest and costs?

If that makes up part of the agreement then yes. Other times the debtor agrees only to a written agreement but this is entirely between the parties, all the courts need to know is if the plaintiff is desisting in his endeavors at recovering a debt.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

No, since Peru has no specific maritime law it needs to only go by that which is stated in the Peruvian Civil Code and international treaties.

#### 21. How long does it take to release the ship?

The court order indicating the release of the vessel can be issued in 72 hours, however, this order needs to go through due process and that is what can take several weeks to complete its process.

#### 22. Is there a procedure to contest the arrest?

The defendant, in responding to the initial claim can assert a lack of validity to the invoices, the BL, and even question the Charterparty itself in order to cast a shadow of doubt to the claim. We have seen many courts prefer to discard an initial claim in fear of starting an international debate while others actually go through the due diligence process in order to determine who has a better right.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Legal action starts with the granting of the arrest of the ship, which can take place in two forms: *"out of process"* or *"within the process"*. In the foremost the claimant must initiate legal actions by filing the claim immediately after said arrest has been granted, while in the latter the lien is granted as a result of the legal proceedings initiated by the plaintiff.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

On a personal note, we do not engage in claims where we feel the plaintiff is filing a claim out of malice or without evidentiary support. The claimant I asked to deposit a counterclaim with the court. However, if the defendant can through the judicial proceedings demonstrate that it was in fact a wrongful claim then the affected party can file for damages against the claimant.

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Corporate veils can only be lifted through judicial orders, which must be ratified by a local judge in the event the order is foreign.

#### 26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Yes it is possible but under two conditions: only through a court order from a local judge and only if the buyer is fully aware that the ship being sold is currently undergoing a legal proceeding.

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*Mr. Monteblanco was raised in the United States and spent his formative years between Oregon and New York. Later in life he travelled to Europe where he lived, studied and graduated from Chelsea University with an advanced degree in International Business Administration.*

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# SHIP ARREST IN PHILIPPINES



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## 1. Please give an overview of ship arrest practice in your country.

Ship arrests in the Philippines are allowed pursuant to Sec. 10 of Presidential Decree (P.D.) No. 1521 otherwise known as the Ship Mortgage Decree of the Philippines with respect to ship mortgages which are duly recorded and registered. Moreover, P.D. 1521 allows the arrest of vessels to enforce maritime claims or necessities furnished to the vessel.

## 2. Which International Convention applies to arrest of ships in your country?

The Philippines has not adhered to any international convention on arrest of ships in the Philippines. In fact, none of the international conventions on maritime liens has been ratified by the Philippines.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Yes, the 1997 Philippine Rules of Civil Procedure allow the attachment of a vessel. This in effect is an arrest or detention of the vessel.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

Yes, attachment is a form of freezing order.

## 5. For which types of claims can you arrest a ship?

The various types of claims which will justify the arrest of a ship are, as follows:

a) Ship mortgage duly recorded or registered with the primary flag of registration; and b) Any person furnishing repairs, supplies, towages, use of dry dock or marine railway, or other necessities, to any vessel, foreign or domestic.

## 6. Can you arrest a ship irrespective of her flag?

Yes.

## 7. Can you arrest a ship irrespective of the debtor?

Yes.

## 8. What is the position as regards sister ships and ships in associated ownership?

The Philippines does not allow sister ship arrest or ships in associated ownership. However, if the ship will be detained pursuant to an attachment, the claimant needs to show that the ship to be arrested is owned by the defendant.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

Arrest is allowed on bareboat vessels provided that the person has the needed authority to get the necessities such as, repairs, supplies, towage, use of dry dock or marine railway given by the ship owner since the bareboat charterer is considered the owner pro hac vice (for this purpose). The same does not hold for time-chartered vessels.

## 10. Do your Court require counter-security in order to arrest a ship?

Yes, the counter-security will pay all costs and damages which may be adjudged to the adverse party if the Court shall finally adjudged that the applicant was not entitled to the Warrant of Arrest earlier issued.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?  
No.

12. Does your country recognize maritime liens? Under which International Convention, if any?  
Yes, the Philippines recognize maritime liens under Sec. 21 of P.D. No. 1521 but not under any international convention.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

It will take approximately five (5) working days to arrest a ship since a formal Complaint has to be drafted and the Certificate of Non-Forum Shopping has to be signed by the authorized representative of the claimant stating that no previous Complaint for arrest has been filed with any Court. Additionally, filing fees must be paid.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes, a copy of the basis for the claim must be attached to the Complaint which will be the “actionable document.”

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

The original basis of the claim has to be presented in Court during the presentation of evidence. If the original is not presented the opposing party may move to dismiss the Complaint.

16. Will your Court accept jurisdiction over the substantive claim once a vessel has been arrested?  
Yes.

17. What is the procedure to release a ship from arrest?

There are several procedures to secure the release of the vessel from arrest.

Firstly. The Defendant may post or give a counter bond which will answer for the claims of the Plaintiff. This counter bond is generally issued by a local Philippine bond or surety company where the amount of the counter bond is equal to the amount being claimed by the Plaintiff which would include legal interests, costs of suit and attorney's fees.

Secondly. The counter bond may also take the form of a cash bond which will be deposited in Court whereby the Court would deposit the said amount in a new bank account which will be opened for the purpose which will earn interest during the pendency of the suit to avail final judgment by the Court.

Thirdly. Another form of a counter bond would be the Letter of Guarantee or Undertaking issued by a P&I Club. I hasten to add that this form of bond must have the conformity and approval of the Plaintiff, otherwise, the same may not be accepted.

18. What type of security needs to be placed for the release?

The answer in paragraph 17 above.

19. Does security need to cover interest and costs?

Yes, the security would oftentimes cover legal interest, legal cost & attorney's fees. The reason for this is that once the counter bond is issued by the Defendant in favor of the Plaintiff, a considerable lapse of time may arise with reference to the termination of the case. If the counter bond would only secure the original claim of the Plaintiff, the reimbursement as to the cost of suit, attorney's fees and legal interest may not be covered. As such, the Court may make provision for these other extraneous costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

It would depend on the counsel for the Plaintiff if he will accept the Letter of Undertaking (LOU) issued by the P&I Club. If the counsel for the Plaintiff accepts the same then the Court would lift the arrest of the vessel and the LOU will be accepted.

21. How long does it take to release the ship?

It depends on whether the counsel for the Plaintiff's will accept the counter bond being proposed by the Defendant. If the counsel accepts the counter bond then the vessel will be released

in a short period of time no later than five (5) days. In contrast, If the Plaintiff's counsel objects to the counter bond, then there will be considerably delays in accepting a counter bond by lifting the arrest.

**22. Is there a procedure to contest the arrest?**

Yes, the Court will not unilaterally decide the acceptability of the counter bond but will give both sides an opportunity to examine and accept the counter bond. This is done where the Defendant files a Motion to lift the arrest and attaches a copy of the counter bond or a Letter of Undertakings issued by the P&I Club. The Plaintiff counsel is given an opportunity to either accept or reject the counter bond by filing a Comment to the Motion to lift the arrest. Once the Motion and the Comment are filed, the Court will rule based on the arguments presented by both parties.

**23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?**

The Claimants must pursue the legal action within a reasonable period of time; otherwise, the defendant may move to dismiss or suspend the case in the event that the plaintiff does not vigorously pursue its claim.

**24. Do the Court of your country acknowledge wrongful arrest?**

Yes.

**25. Do the Court of your Country acknowledge the piercing and lifting of the corporate veil?**

Yes.

**26. Is it possible to have a ship sold pendente lite; if so how long does it take?**

Yes, Philippine courts allow the sale of a vessel pendente lite provided that a motion is filed in Court alleging that there will be damage or loss to the vessel if the sale is not granted. The sale may take place after two (2) months from the filing of the motion.

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# SHIP ARREST IN POLAND



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## 1. Please give an overview of ship arrest practice in your country.

Under Polish law, to arrest a vessel you need a decision of the court (court order). Such order is given in accordance with provisions of the Polish Civil Procedure Code (PCPC) on securing claims (art. 730 - 757). These provisions do not apply only to vessels but also to any other types of claims - both pecuniary and non-pecuniary.

Under the art. 730 (1) of the PCPC the security order will be granted to a creditor:

- whose claim is probable (you do not have to prove your claim at this stage of proceedings),
- who has legal interest in the arrest.

Legal interest means the situation in which (1) lack of security makes it impossible to satisfy creditor's claim or (2) satisfaction of this claim is connected with serious difficulties. These circumstances should be probable but you do not have to prove them.

Arrest orders are enforced by bailiffs who prior to seizure of the vessel should inform maritime authorities and Border Guard about the arrest.

## 2. Which International Convention applies to arrest of ships in your country?

International Convention Relating to the Arrest of Sea-Going Ships of 10th May 1952 (Brussels Convention). The **Brussels Convention** is integral part of Polish law and is applied directly.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Maritime authorities may detain vessel for up to 72 hours (on Sundays and public holidays this time does not run) to secure claims for outstanding port fees, claims for damages in port facilities, docks or sailing routes and claims arising from environmental pollution.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

If a vessel is entered into the Polish register this is possible to encumber it with compulsory mortgage. In practice this is used mainly for securing creditors' claims on vessels under construction.

## 5. For which types of claims can you arrest a ship?

Vessels flying flag of member states of the Brussels Convention can be arrested only for maritime claims listed in art. 1.1 of this convention. Other vessels can be arrested also for other claims.

## 6. Can you arrest a ship irrespectively of her flag?

Yes, this is possible.

## 7. Can you arrest a ship irrespectively of the debtor?

Yes (excluding warships and other vessels in state service).

## 8. What is the position as regards sister ships and ships in associated ownership?

As under the article 3.1. of the Brussels Convention.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

As under the article 3.4 of the Brussels Convention.



#### 10. Do your Courts require counter-security in order to arrest a ship?

The court may require payment of deposit to satisfy potential claims of the debtor connected with wrongful arrest. This is, however, quite rare situation.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien? Procedure is the same.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any? Poland is a party to Brussels convention on maritime liens and mortgages of 1926. Polish Maritime Code also contains provisions concerning maritime liens.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

About 3-4 days (much depends on the judge).

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

We need POA and documents which prove that the person(s) who signed the POA is (are) duly authorised to represent the company (extract from commercial registers, etc.) We also need documents which show that claim is probable (we do not have to prove the claim in this stage of proceeding).

Certified translations to Polish are necessary in all cases.

#### 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 documents should be filed in the Court in paper version – scans and copies are acceptable provided they are certified as “true copy” by the attorney-at-law (legal adviser or advocate). Additional legalisation, notarisation or apostille may (but does not have to) be necessary for claims listed in art. 1 para 1 letters “o”, “p”, “q” and with respect to maritime liens (actions in rem).

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

As under the art. 7.1 of the Brussels Convention. Moreover, careful examination of other sources of law is recommended (the PCPC and Council Regulation 44/2001 in the first instance).

#### 17. What is the procedure to release a ship from arrest?

The ship may be released in following cases:

- when the arrest is successfully contested (see question 22).
- when the cash security is given by a debtor (see questions 18 & 22).
- when the arrest collapses (see question 23 & 24),
- when the creditor agrees for the release (see question 20).

#### 18. What type of security needs to be placed for the release?

The fastest way to release the vessel is to pay full amount determined in the arrest order into court deposit bank account. In such case, the arrest collapses automatically.

The main disadvantage of this procedure is that this money will have to stay in the deposit account until the proceedings as to the merits of the case are finished in final and legally binding way.

Other disadvantage is that the cash deposit must be paid in Polish zloties.

However, the debtor may at any time try to negotiate with the creditor in order to change the type of security (e.g. cash deposit for bank guarantee etc.). See also question 22 in fine.

#### 19. Does security need to cover interest and costs?

Under Polish law, it is possible to secure future costs of proceedings and interest but it is not obligatory - only creditor decides whether to do so or not. Anyway, security given by the debtor has to be in an amount corresponding with the amount determined in the arrest order issued by the court. So, if the arrest order includes costs of proceedings and interest, these costs will also have to be secured.

## 20. Are P&I LOUs accepted as sufficient to lift the arrest?

Under Polish law, the court will automatically release the vessel ONLY when the full amount determined in the arrest order is paid into the court deposit bank account. But still, maintaining or lifting the arrest is creditor's sole decision. So, if the creditor accepts the bank guarantee, insurance guarantee, P&I LOU etc. as the sufficient security of its claim instead of the cash deposit, there should be no problem with releasing the vessel on this basis.

## 21. How long does it take to release the ship?

Depends on the case - usually from two days to one week.

## 22. Is there a procedure to contest the arrest?

Under Polish law, it is possible to lodge a complaint against an unjust arrest. It should be done within 7 days as from the date of the arrest of the vessel. The main disadvantage of this procedure is that it is quite time - consuming - the case has to be re-examined by the court of the higher instance which may take about three months. However, if the debtor has time (for example if a vessel is arrested in a shipyard), lodging such complaint is recommended.

ATTENTION: If you pay full amount determined in the arrest order into the court deposit account, your complaint will be dismissed (where there is no arrest anymore, there are no grounds to lodge a complaint). However, if the debtor is trying to negotiate other type of security - i.e. bank guarantee, insurance guarantee or P&I LOU, it does not prevent the debtor from lodging such complaint and does not itself lead to dismissal of the complaint.

## 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Up to 14 days. Otherwise the arrest collapses (see also art. 3.3 of the Brussels Convention).

## 24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Debtor can lodge a complaint against the security order. If the court allows the complaint, the debtor may claim for compensation for its losses connected with the arrest. The same relates to situation when the arrest collapses – for example **(1)** if the action as to the merits is not commenced in prescribed time, **(2)** the writ of summons is returned or rejected for formal reasons or **(3)** the claim is dismissed.

## 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No.

## 26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No. Generally, no forced sale of the vessel in Poland is recommended. This is too complex and takes too much time.

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# SHIP ARREST IN PORTUGAL (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

Ship arrests are common in Portugal and such a fact is not surprising taking into account its extensive coast, strategic location and key importance of navigation throughout its history. Ship arrests are a provisional remedy envisaging a court decision pertaining to the collection of a debt though the seizure of assets. Indeed, according to Portuguese Law, the arrest petitioner must provide the court with the facts that show a serious probability that the claimed credit does exist and in addition demonstrate the risk of losing the guarantee (*"fumus boni iuris"* and *"periculum in mora"*).

Ship arrest under applicable international Law does not require evidence of *"periculum in mora"*, but the creditor must still evidence the apparent existence of the claimed credit. In the aforementioned cases it is not required evidence of the credit's existence, it is necessary to demonstrate that there is a serious probability that the credit indeed exists. Considering the provisional nature of this "legal instrument" it is also important to emphasise the relevance of its link to the declaratory procedure, since, it has to be filed by the petitioner within 30 days after the notification of the arrest decision or in another deadline if requested by the petitioner and ordered by the maritime court. If the petitioner does not act accordingly the arrest provisional remedy it is extinguished and the petitioner may be held liable for the unjustified arrest.

## 2. Which International Convention applies to arrest of ships in your country?

The International Convention for the Unification of Certain Rules relating to the Arrest of seagoing Ships of 1952 (below simply referred to as 1952 Convention) is applicable in Portugal to the arrest of foreign ships. An additional number of particularities arise from Portuguese law, namely from articles 391 and 394 of the Civil Procedure Code and article 619 of the Civil Code. It is in accordance with the aforementioned laws that the competent entity, i.e., the Maritime Court orders the arrest of ships.

## 3. Is there any other way to arrest a ship in your jurisdiction?

No. In Portuguese territory the only way to arrest a ship is through the aforementioned legal instrument. The entire legal basis mentioned is specifically referred to ship arrest and therefore these legal issues do not find solution in any other law. The arrest of ships in Portugal must be requested before the Maritime Court through the initial petition.

## 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

In Portugal the debtor can only stop a ship from leaving the country through a *saisie conservatoire* since the national legal system has specific laws for this kind of situations. This legal instrument will allow the creditor to secure his credit's payment keeping an asset (ship) well located.

## 5. For which types of claims can you arrest a ship?

In accordance with the 1952 Convention, namely article 2, ships can only be arrested in the jurisdiction of another State in respect of a maritime claim. However the Convention does not overlap or restrict internal laws and any national regulation of the State concerning ship's arrest.

Regarding the above mentioned we can conclude that the Maritime Court is competent to arrest ships, whether Portuguese or not, in accordance with both Portuguese and International Law, namely the aforementioned 1952 Convention.

It is important to emphasize that although in some cases Portuguese Courts may not have jurisdiction to decide on the merits of the claim, the arrest of ships in Portuguese waterways is possible, under the 1952 Convention. Should this be the case, the prerequisite of the maritime nature of

the underlying claim must be in place in order for the Convention to be applied, although it is not required demonstration of the “periculum in mora”, as it is presumed to exist.

#### 6. Can you arrest a ship irrespectively of her flag?

Yes. Since the Portuguese and International Law do not forbid the arrest of a vessel concerning its flag, through a reverse interpretation we can conclude that a ship can be arrested irrespectively of its flag.

#### 7. Can you arrest a ship irrespectively of the debtor?

Yes, it is possible in some situations to arrest a ship irrespectively of the debtor.

For example, paragraph 1 of the 3rd article of the 1952 Convention allows, a Claimant to request the arrest of either (i) the ship in respect of which the maritime claim arose, or (ii) any other ship owned by the person who was, at the time when the maritime claim arose, the owner of the ship (responsible for the maritime claim). This situation is possible even though the ship arrested is ready to sail. However no ship, other than the particular ship in respect of which the claim arose, can be arrested in respect of any of the maritime claims enumerated in Article 1 (1) (0), (p) or (q) of the 1952 Convention.

Another example, is stated in paragraph 4 of the 3rd article of the 1952 Convention, referred to situations of ship freight with nautical management transfer, which allows, (when the only responsible for the maritime claim against that vessel is the charterer), the arrest of that specific ship or any other owned by the charterer.

#### 8. What is the position as regards sisters ships and ships in associated ownership?

Regarding sister ships, paragraph 1 of the 3rd article of the 1952 Convention allows the arrest of ships in respect of which the maritime claim arose and also of any other vessel owned by the same person / company.

Regarding ships in associated ownership, the Portuguese legal system allows the arrest of ships in associated ownership, there is not a law forbidding it.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

There is a difference between these two types of charter contract. In a Time-chartered vessel the petitioner can request the arrest of the vessel from which the maritime claim arose or of any other vessel owned by the charterer. In a Bareboat Chartered vessels the only asset/ship that can be arrested is the vessel from which the maritime claim arose.

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# SHIP ARREST IN PORTUGAL (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

Although it is established on article 374 nr. 2 of the Portuguese Code of Civil Procedure that the judge may request the arrestor to put up an adequate security, considering the particular circumstances of the case, to our knowledge never did a Maritime Court Judge request for such counter-security to be given by the arrestor as a requisite for the arrest.

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference in respect of arresting a ship for a maritime credit or maritime lien; the same rules apply on both situations. However, when the arrest is requested on the basis of national law only, the arrestor will have to produce evidence on the probability of the existence of his credit, as well as on the financial situation of the arrestee, to justify that the arrest of the ship will be the only measure that will allow the arrestor to be able to receive payment considering the overall situation of the arrestee and his assets.

## 12. Does your country recognize maritime liens? Under which International Convention, if any?

Since 13th May 2012 Portugal is no longer be a party to the 1926 Brussels Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages. The issue of maritime liens is now ruled by the Commercial Code, namely article 578, listing as maritime liens the "hypothèque" in the third place, after court costs and expenses incurred in the common interest of the creditors and salvage, and before other liens such as pilotage and tug costs; light, harbour and port dues; crew wages; supplies and repairs to the vessel; insurance premiums; unpaid last sale price of the vessel; unpaid amounts arising from shipbuilding contracts and indemnities due to cargo owners.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Once the file is analysed by the Lawyers, it will be necessary to prepare and draft the arrest application stating clearly all the relevant facts of the case, the reasons for the arrest to be granted and the amount claimed, all duly supported by the relevant documentary evidence (contracts, invoices, exchange of correspondence, etc.), translated into Portuguese (at least the most relevant documents). A list of witnesses to be heard has also to be included. The judge will have a period of 24 hours to analyse the file and give the first detention order preventing the vessel from sailing. This order is immediately sent by fax by the Court to the Harbour Master office of the port where the vessel is staying. The hearing of the witnesses appointed, if necessary, will take place a few days later.

## 14. Do you need to provide a POA, or any other documents of the claim to the Court?

When submitting the arrest application it will be necessary to attach a power of attorney, as well as all the supporting documents evidencing the facts of the case and the amount of the claim, for the judge to be able to analyse the merits of the arrest application.

## 15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

All documents are filed electronically and the originals kept by the Lawyers. The original POA is kept by the Lawyers; the supporting documents may be kept only in copies. The POA has to be legalized with apostille or alternatively documents evidencing the identity and powers of the person signing the power of attorney should be presented to the Lawyer and considered as sufficient evidence.

## 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Portuguese Courts will accept jurisdiction over the substantive claim on the situations listed on article 7 nr 1 of the 1952 Brussels Arrest Convention.



#### 17. What is the procedure to release a ship from arrest?

The arrestee will have to discuss settlement with the arrestor or alternatively put up security, directly within the court or in the hands of the arrestor. The ship will be released as soon as requested by the arrestor or when the judge considers the security provided is adequate.

#### 18. What type of security needs to be placed for the release?

Any kind of security will be accepted provided it receives the agreement of the arrestor. If security is placed directly with the court only cash deposit or bank guarantee will be acceptable.

#### 19. Does security need to cover interest and costs?

Not necessarily, security will have to be sufficient to replace the amount of the claim guaranteed by the ship as established on the arrest decision.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are only accepted if they receive the agreement of the arrestor. The judge alone will not consider P&I LOU as adequate security.

#### 21. How long does it take to release the ship?

The time length to release the ship depends on the arrestee. As soon as payment is made or the security provided is considered adequate the ship will immediately be released. However, the release of the ship will have to be requested within the courts' working hours (week-ends and holidays are excluded)

#### 22. Is there a procedure to contest the arrest?

The arrestee may oppose to the arrest decision within 10 days from service of the arrest documents or alternatively appeal from the arrest decision. In case of opposition, the arrestee may submit documents and list witnesses to be heard by the court. A new arrest decision will be given after the judge has considered the arguments of the arrestee. The arrest may thereafter be lifted, maintained or the amount granted reduced.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The time limit for the claimant to take legal action on the merits is thirty days counting from the date the arrestor is notified by the Court that the arrest application has been served on the arrestee.

#### 24. Do the Courts in your Country acknowledge wrongful arrest?

Yes. Article 374 of the Code of Civil Procedure determines that if the arrest is considered unjustified or will become void because of the arrestor, the arrestor is responsible for the damages caused to the arrestee if the arrestor did not act as a normal and prudent man should have done. Civil liability rules will apply.

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No. In principle only the debtor / arrestee and his registered assets are liable for the payment of the debts claimed against such debtor, an individual or a company. The Court will not look into the links between different companies and their shareholders or allow the arrest of assets belonging to entities other than the debtor/arrestee.

#### 26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

It will be possible to request for the anticipated sale of the ship, providing one can justify the need for such measure because of, for instance, the depreciation of the value of the ship and the consequences thereof for the owner and claimants. The circumstances of each particular case are analysed by the Court and the sale is normally only allowed when the ship is abandoned by the owner/arrestee, remains arrested for a long period of time and her situation is uncertain. The sale procedure will take several months considering the need to obtain the judge's order, the service on the owner of the ship and the sale procedure that will follow thereafter.

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# SHIP ARREST IN PUERTO RICO



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## 1. Please give an overview of ship arrest practice in your country.

Puerto Rico is a territory of the United States of America subject to most federal laws enacted by the U.S. Congress. As in the United States, ship arrests must be commenced by filing a complaint *in rem* against the ship in the U.S. District Court. The Federal Rules of Civil Procedure's Supplemental Rules for Certain Admiralty and Maritime Claims ("the Supplemental Rules") govern the procedure for arresting or attaching a vessel or other maritime property in the Puerto Rico.

A warrant of arrest or writ of attachment is issued by the Court directing the U.S. Marshal to arrest the ship, maritime property (in *in rem* arrest cases for enforcement of liens), or to attach **any property** of the *in personam* defendant (in attachment/garnishment cases based on an *in personam* maritime claim).

## 2. Which International Convention applies to arrests of ships in Puerto Rico?

None

## 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?

Supplemental Admiralty Rule B provides a method to obtain *in personam* jurisdiction over the defendant vessel owner by attaching or garnishing his property (ships, goods, chattels, credits and effects) when the claimant asserts a maritime claim and the defendant cannot be found within the district.

## 5. For which types of claims can you arrest a ship?

As a general rule, the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico. An *in rem* action under Supplemental Admiralty Rule C to arrest a ship may be brought in Puerto Rico only to enforce maritime liens created under the Federal Maritime Lien Act, to enforce liens created under U.S. general maritime law, and as authorized by statutes such as the Ship Mortgage Act.

When foreign laws determine a claimant's rights, only a maritime lien created under the applicable foreign law will sustain an *in rem* arrest. A right of arrest under foreign law is not sufficient without a maritime lien. However, in an *in personam* action under Supplemental Rule B, there is no need for a lien on the vessel to be able to attach it as long as the claim is maritime in nature.

## 6. Can you arrest a ship irrespective of her flag?

Yes.

## 7. Can you arrest a ship irrespective of the debtor?

Yes. However, vessels owned by the U.S. government or other foreign nations may not be arrested as per the Foreign Sovereign Immunities Act.

## 8. What is the position as regards sister ships and ships in associated ownership?

Under U.S. law, arrest of a sister or associated ship is not allowed. Nevertheless, sister ships may be attached if the claimant asserts a maritime claim against the owner.

9. What is the position as regards bareboat and time-chartered vessels?

A maritime lien attaches at the beginning of the charter, yet only will be enforceable at the time of breach: the lien remains “inchoate” until “perfected.” The lien exists from the beginning of the charter to provide security for the parties. The obligations of shipowners, the shipper, consignee, or owner of the cargo are reciprocal, and the maritime law creates reciprocal liens for their enforcement. The vessel may be arrested only after the lien is “perfected” by a breach of the charter.

10. Do your Courts require counter-security in order to arrest a ship?

No. But, the court may at any time, require any party to give security or additional security, to pay all costs and expenses that may be awarded. Also, the execution of the arrest or attachment may be stayed, or the property released, on the giving of security, to be approved by the court or stipulated by the parties. See Supplemental Admiralty Rule E(5). In addition, when the person who has given security to stay execution of the arrest or to release the vessel asserts a counter claim that arises from the same transaction or occurrence subject to the original action, the arresting party must give security for the damages in the counterclaim unless the court directs otherwise. See Supplemental Admiralty Rule E(7).

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. A maritime arrest is allowed only when a maritime lien attaches the vessel. See Supplemental Admiralty Rule C. Not all maritime claims create a maritime lien. However, vessels may be attached under Supplemental Admiralty Rule B, which only requires a maritime claim against a defendant that cannot be found within the district but whose property is or will soon be within the district.

12. Does your country recognize maritime liens? Under which International Convention if any?

Yes. Maritime liens are recognized under U.S. general maritime law, U.S. maritime statutes and international conventions e.g. Federal Maritime Liens and Act, Ship Mortgage Act, and the 1910 Salvage Convention.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Vessels are commonly arrested on very short notice to law firms. Sometimes as little as 24 hours before the ship calls port. In such cases, the claimant must show the court that exigent circumstances exist that makes court review impracticable.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA is not necessary to arrest or attach a vessel. However, it is recommended that the complaint be accompanied by evidence that supports the existence of a maritime lien in *in rem* arrest cases, or the existence of a *prima facie* maritime claim in *in personam* attachment cases.

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostile, and when are they needed?

Original documents are not required as prerequisite. Any document may be filed electronically through the U.S. District Court’s CM/ECF online system. The complaint must be verified and this may be done by notarization or by making an unsworn declaration under penalty of perjury pursuant to 28 USC § 1746.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. After arresting or attaching the property, the Court will rule on the substantive claim by applying either U.S. law or any foreign law found to be applicable after making a “choice of law” test.

17. What is the procedure to release a ship from arrest?

The owner of the arrested ship must file security in the form of a bond, or letter of undertaking from its insurer or P&I club. The security may be approved by the court or stipulated by the parties.

18. What type of security needs to be placed for the release?

Supplemental Admiralty Rule E(5) does not specify the type of security necessary to secure release

se of the vessel. To the contrary, the Rule provides that “the parties may stipulate the amount and nature of such security”. Thus, the parties may be creative and agree to one or more of many possible types of security. However, if the parties do not stipulate the nature of the security, “the court shall fix the principal sum of the bond or stipulation”.

19. Does security need to cover interests and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes.

21. How long does it take to release the ship?

The party seeking release of a ship may file an emergency motion submitting the bond, LOU, or other security, and asking the court to immediately issue an order releasing the ship from the arrest. If the parties have stipulated the security, the ship will most likely be released expeditiously. If no stipulation is made, the security must be approved by the court prior to releasing the ship, which could take longer.

22. Is there a procedure to contest the arrest?

Yes. Whenever property is arrested or attached, any person claiming an interest in it is entitled to a prompt hearing at which the arresting/attaching party shall be required to show why the arrest or attachment should not be vacated or other relief granted. See Supplemental Admiralty Rule E(4)(f).

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The time to take judicial action will depend on the type of claim and the controlling law. For example, most claims arising under U.S. general maritime law must be filed within a time determined by the doctrine of laches, which provides flexible approach rather than an arbitrary/fixed period. On the other hand, for example, because the United States is a signatory of the Salvage Convention of 1910, salvage claims must be filed within two years.

24. Do Courts in your country acknowledge wrongful arrests?

Yes. Damages for wrongful arrest are recoverable when the arrest is made with bad faith, malice, or gross negligence.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Yes. Supplemental Admiralty Rule E(9)(a) allows interlocutory sale of the arrested ship when: (A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action; (B) the expense of keeping the property is excessive or disproportionate; or (C) there is an unreasonable delay in securing release of the property.

*\*Attorney Alberto Castañer has a broad wealth of knowledge concerning the area of Maritime and Admiralty Law, including advanced degree from one of the top maritime law school in the world.*

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*After obtaining his graduate degree in Maritime Law at New Orleans, Louisiana, Castañer formed his law firm to provide extensive commercial and corporate counseling and litigation representation to the transportation industry in matters such as cargo claims, international trade regulations, vessel arrests, ship mortgages, marine terminal operations, and others.*

# SHIP ARREST IN QATAR



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## 1. Please give an overview of ship arrest practice in your country.

The Qatar Maritime Code regulates the conservatory arrest of ships. The arrest application is submitted to the Court of First Instance (Summary Judge dealing with urgent matters). The Court normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is proven based on the face of things. The arrest order may be challenged but this procedure is usually complex and lengthy.

## 2. Which International Convention applies to arrest of ships in your country?

Qatar is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the Arrest of Ships of 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

The ship could be arrested in Qatar in the context of either a precautionary seizure procedure or an enforcement procedure commenced against her. The main difference between both procedures is that the applicant is not required to have an execution deed against the ship in order to commence precautionary arrest proceedings against the ship.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

There are no alternatives for the arrest of ships in Qatar as the Maritime Code regulates the arrest of ships in specific which prevents the applicant from relying on other laws in Qatar.

## 5. For which types of claims can you arrest a ship?

In order to arrest a vessel in the Qatari territorial waters the creditor must have a maritime debt against the ship. Article 42 of the Qatari Maritime Code defines "maritime debts" as follows:

- a. Damage caused by the vessel by reason of a collision or otherwise.
- b. Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.
- c. Assistance and salvage.
- d. Contracts relating to the use or exploitation of the vessel under a charterparty or otherwise.
- e. Contracts relating to the carriage of goods under a charterparty, bill of lading, or other documents.
- f. Loss of or damage to goods or chattels being carried on board the vessel.
- g. General average.
- h. Towage or pilotage of the vessel.
- i. Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.
- j. Construction, repair or fitting out of the vessel, and costs of it being in dock.
- k. Wages of the master, officers and crew.
- l. Sums spent by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.
- m. A dispute as to the ownership of the vessel.



n. A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Qatari territorial waters can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

The ship can be arrested in the Qatari territorial waters if the claimant successfully proves that he has a maritime debt against the vessel.

8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Qatar is possible for any of the maritime debts listed under question 5 above with the exception of debts arising out of a dispute as to the ownership or co-ownership or possession of the vessel (Question 5(m) and (n) above). Regarding the arrest of associated ships, there is a great degree of uncertainty as, for the arrest to be successful, we need to prove to the judge the close link between the entity owning the ship that incurred the debt and the entity owning the associated ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Qatar Maritime Code gives the creditor of the charterer who has control over the nautical navigation of the ship the right to arrest the ship for a debt resulting from the charterer's actions. In addition, the creditor has the right to arrest any other ship owned by the charterer.

10. Do your Courts require counter-security in order to arrest a ship?

No counter-security is required in Qatar.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a ship for a maritime claim and the arrest of ship for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

The Qatar Maritime Code recognizes maritime liens. In fact, the Qatar Maritime Code has listed the maritime liens in Article 33 as follows:

1. Judicial expenses that were spent to maintain the Vessel, sell it, distribute its price, cargo and port charges as well as other charges, public taxes of the same kind, and charges of pilotage and compensations for the damage that caused to the installations of the ports, docks and navigation routes, and expenses for removing navigation obstacles caused by the Vessel as well as expenses of sentry duty and maintenance since the entry of the Vessel to the last port.

2. Debts resulting from the employment contract of the captain, sailors and others relating to the Vessel with an employment contract.

3. Monies due for assistance and salvage, and the share of the Vessel in general marine average.

4. Compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions.

5. Debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the Vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the Vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors.

Qatar did not accede any of the International Conventions relating to Maritime Liens.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Qatar, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Qatari Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Qatar is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Qatar prior to submission.

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 documentation supporting the claim must be attached to the application and electronic filing is not available. As mentioned under question 14 above, if these documents are in foreign language they must be translated into Arabic language. Only official documents must be legalised up to the Qatar Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Qatar.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

There is uncertainty in this area of law especially where the jurisdiction is given to a foreign court and not arbitral tribunal. Therefore, and if jurisdiction is given to an arbitral tribunal, we recommend our clients to commence arbitration within the two weeks period (as highlighted under question 23 below) and request from the court the stay of the proceedings until an arbitral award is issued. However, if jurisdiction is given to a foreign court, we may argue in court that Qatari courts have jurisdiction over the substantive claim.

17. What is the procedure to release the ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. The decision issued must be served upon the ship and the harbour master or the coast guard. If the defendant to the application wants to release the ship then he must deposit the security requested by the judge and request from the judge the release of the vessel.

18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship must take the form either of a bank guarantee issued by a local bank or cash deposited in the court.

19. Does security need to cover interest and costs?

The judge will decide on the amount of the security that must be deposited by the defendant to the arrest application.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No P&I LOUs are unacceptable.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file a grievance before the Court of First Instance who issued the arrest order. Upon hearing the grievance, the Court may make an order lifting the arrest order and such judgment shall be enforceable through the normal channels. The grievance shall be submitted within seven days from the date of issue of the arrest order.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must commence substantive proceedings within two weeks starting from the service of the arrest order on the ship.

24. Do the Courts of your country acknowledge wrongful arrest?

There are no legal precedents on the liability for the wrongful arrest of a ship. However,

under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

**25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?**

In principle, the concept of piercing and lifting the corporate veil is not recognised in Qatar. The Qatari courts might consider piercing and lifting the corporate veil where conclusive proof is submitted to the court in relation to the fictitious character of the company owning the ship.

**26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?**

Such a sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

*\*Al Tamimi's Dispute Resolution team in Qatar is led by partner Hani Al Naddaf, a dual national of Syria and Canada, who is a senior litigation lawyer with 16 years experience in his field of expertise.*

*Hani has been closely involved in various high-profile litigation matters in relation to commercial agencies, trademarks, construction, debt recovery, employment and property. His exceptional understanding of the principles of the Civil Code, and of Qatari law more generally enables him to provide his clients with comprehensive legal opinions on the proper interpretation and application of relevant provisions of the laws.*

*Hani has been involved in many of the most high-profile projects in Qatar in recent years. He is regularly sought out by major international firms to act as local counsel in relation to large-scale international commercial and construction arbitrations of disputes governed by Qatari law, and he was recently appointed by a leading English law firm to act as Expert in relation to Qatari law issues in one such arbitration being conducted in London under LCIA rules.*

*\*Zeina has graduated from the University of Southampton in 2007 and has practised maritime and transportation law for more than 7 years. She acts for clients in a wide range of contentious and non contentious matters in her field of expertise including ship arrest, maritime claims, charterparty disputes and ship finance. She is member of the Women's international Shipping and Trading Association in Lebanon and a member of the International Bar Association.*

# SHIP ARREST IN ROMANIA



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## 1. Please give an overview of ship arrest practice in your country.

a) Indicate and provide evidences to the Court that plaintiffs have started the main legal action (Court action or arbitration proceedings according to the provisions of the C/P or B/L) against the defendant. The evidence should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started;

b) Indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel;

c) Provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10%). In accordance with the new Civil Procedural Code which entered into force on 15th of February 2013, the amount of the guarantee should be placed in cash and is limited at 20% of the claimed amount. In cases where no written evidences concerning the relations between the creditor and the debtor are presented to the judge, the amount of the guarantee will be fixed at 50% of the claimed amount. The main purpose of such bank letter of guarantee is to compensate the losses of the defendant owner if finally the claim of the plaintiff will be found ungrounded by the Court.

In case the matter is very urgent, vessels can be provisionally arrested through the Harbor Master, paying a tax of Euro 400 (Saturdays and Sundays Euro 800).

A notice of arrest will be notified to the Harbor Master.

Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will become effective when the vessel will finalize operations and vessel's agent will attend Harbor Master to receive vessel's permit to leave outside. Starting with the hour when vessel's agent will ask for the Permit to leave, Harbor Master will count 24 hours (Saturdays and Sundays are not included within this hours anyway) and the vessel will be arrested for 24 hours. During these 24 hours, plaintiff will need to apply to the Court asking for the arrest of the vessel. Courts are judging these cases on an urgent basis and normally are issuing the decision within 24 hrs. There is no need for the time being to place the counter-security which will be requested by the Court at a later stage.

Court costs are low. Lawyer fees normally calculated on hourly basis Costs are usually recoverable from defendant.

## 2. Which International Convention applies to arrest of ships in your country?

Romania has acceded to the International Convention for the unification of rules about the

arrest of vessels, signed in Brussels on May 10th 1952, on November 8th 1995. For the participant states of the 9th Diplomatic Convention of Maritime Law, it was enforced on February 24th 1956.

Article 8, paragraph 1 of the Convention provides that its provisions are applicable in any contracting state to any vessel that carries the flag of a contracting state. Paragraph 2 of the same article concedes the possibility that vessel that carries the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state. Romanian Courts are applying this principle when are taking into consideration the arrest of one vessel in Romanian jurisdiction.

### 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?

No.

### 5. For which types of claims can you arrest a ship?

A ship can be arrested in Romania for one or more of the claims listed in article 1.1 of the 1952 Arrest Convention. Ships may be arrested in Romania also for one or more of the claims listed by the 1926 maritime liens and mortgages Convention.

### 6. Can you arrest a ship irrespectively of her flag?

Paragraph 2 of the article 8 of 1952 Arrest Convention mentions the possibility that vessels that carries the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state.

### 7. Can you arrest a ship irrespectively of the debtor?

As already mentioned, it is compulsory to indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel.

### 8. What is the position as regards sister ships and ships in associated ownership?

Sister ships may be arrested in Romania, following the provisions of the articles 951-952, 959-968 of Romanian Civil Procedural Code and not the provisions of the 1952 Arrest Convention. Romanian Courts are reluctant to order the arrest of sister ships, although this is possible. Ships in associated ownership cannot be arrested in Romania.

### 9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat and Time-Chartered vessels cannot be arrested in Romania for the claims against the Bareboat and/or Time-Charterer.

### 10. Do your Courts require counter-security in order to arrest a ship?

Court will order to provide a bank letter of guarantee to the Court as a percentage of the claimed amount (the amount will be fixed by the Court but in most of the cases is 10 %). In accordance with the provisions of the new Civil Procedural Code the amount of the guarantee may be increased up to 20% of the claimed amount and needs to be placed in cash at the disposal of the Court. In cases where no written evidences concerning the relations between the creditor and the debtor are presented to the judge, the amount of the guarantee will be fixed at 50% of the claimed amount.

### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Arrest of a ship for a maritime claim will be done according to the procedure established by the 1952 Arrest Convention also in case of arrest of a ship for a maritime lien mentioned by the 1926 maritime liens and mortgages Convention.

### 12. Does you country recognise maritime liens? Under which International Convention, if any?

Romania recognizes maritime liens according to 1926 Maritime Liens and Mortgages Convention. Romania is not a party to the 1993 Maritime Liens and Mortgages Convention.



13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

A notice of arrest will be notified to the Harbor Master.

Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way vessel's operations. Notice of arrest will be placed immediately as the file arrives to our law firm and an Engagement Letter, even by e-mail and/or fax, will be signed with the client.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Based on the Engagement Letter signed by client, law firm will provide to the Court a power of attorney in the standard format prescribed by the Lawyers statute.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

There is no need to provide original documents to the Court, only copies mentioned to be true copies will be provided to the Court, on the understanding that originals will be kept by the law office. It is necessary to be provided with originals of the documents in order to translate them into Romanian and present legalised translations to the Court, taking into consideration that Public Notaries will not legalise translations without being provided with the originals of the documents. The evidence that main claim proceedings has been instituted should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No.

17. What is the procedure to release a ship from arrest?

As long as the debt have been paid or a Letter of Undertaking have been provided in order to release the ship, the debtor will request the Court to release the vessel from arrest. The Court will release the vessel from arrest on urgent basis.

18. What type of security needs to be placed for the release?

In accordance with Civil Procedural Code provisions, the security needs to be provided in cash at the disposal of the Court. Only in case the creditor agrees, the debtor may provide a bank Letter of undertaking or a P&I Letter of Undertaking at the disposal of the Court.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The P&I LOUs may be accepted by the Court for lifting the arrest only in case the creditor agrees to accept such undertakings.

21. How long does it take to release the ship?

1-2 days usually;

22. Is there a procedure to contest the arrest?

The arrest order issued by the Court may be appealed to the Court of Appeal.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Arrest cannot be requested if legal action on the merits has not yet started prior to the application to the Court. According to the new Civil Procedural Code, it is possible that, in urgent cases, arrest of the vessel to be permitted without the need to commence substantive claim proceedings in advance. In such a case, substantive claim proceedings has to be commenced in 20 days from the date the arrest application has been admitted by the Court.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. In practice, it is very difficult to prove such a claim.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?  
No.
26. Is it possible to have a ship sold pendente lite; if so how long does it take?  
No.

*\*Adrian has written several articles exclusively on maritime law published by well-known Romanian publications such as "Law" and "Commercial Law Journal" as well as by the English "International Journal of Shipping Law". In 2001, he published the "Maritime Law" Book. Adrian current practice focuses on commercial and maritime law, international trade law, private international law, insolvency & bankruptcy law, intellectual property law, real estate, administrative and tax law.*

*Lawyer within the Constanta Bar Association since 1996. He also regularly acts as an arbitrator within the Romanian International Commercial Arbitration Court. He is an authorised mediator and insolvency practitioner. He speaks English and Romanian.*

*\*Augustin Zabraitanu is a graduate of Bucharest University. He is a licensed attorney in Romania. His post graduate activity included Master in maritime law at Constantza Maritime University, private legal practice and criminology at Bucharest University School of Law. He is a member of the Bucharest Bar.*

*Although Augustin is a experienced and dedicated criminal law litigator, his current practice focuses on commercial and maritime law, international trade law, private international law, insolvency & bankruptcy law, intellectual property law, real estate, administrative and tax law.*

*Starting with 2005, Augustin Zabraitanu and his colleagues had successfully represented numerous and various clients (both of domestic and international companies), in a broad array of maritime issues, including arrest of ships. Augustin speaks English and Romanian.*

# SHIP ARREST IN RUSSIA (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

The ship arrest practice in Russia is wide and may be different due to the differences in court practice in regions – west, south, north, east. Basic ports where there is wide practice of ship arrest are: St. Petersburg, Novorossiysk, Vladivostok, Kaliningrad, Murmansk.

## 2. Which International Convention applies to arrest of ships in your country?

Russia ratified the International Convention on the Arrest of Sea-Going Ships (10 May 1952, Brussels). The provisions of this Convention are mandatory applicable to all ships flying the flag of another Contracting State and calling at Russian ports. Merchant Shipping Code of Russia (1999) is the domestic law which implemented basic principles of the 1952 Brussels Convention and even Merchant Shipping Code (1999) is an advance over the 1952 Brussels Convention as it is based on principles of International Convention on Arrest of Ships (Geneva, 1999) especially in regard to the wide list of claims subject to ship arrest. According to both above mentioned Conventions a ship may be arrested only under the authority of a Court. The regulations of procedure for the Court in Russia are defined in two Codes: the Civil Procedural Code of Russia and Arbitration Procedural Code of Russia. In general the Civil Procedural Code defines the procedure for the physical persons acting as claimants or applicants, and the Arbitration Procedural Code defines the procedural for the legal entities.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Due to absence in above mentioned procedural codes of special clauses devoted to the ship arrest there is a way to arrest the ship as property of the debtor (regardless of status of a ship as special kind of property) by means of filing to the Court the application for the arrest of property of the debtor. Such application is filed together with the statement of the claim. The ship may be arrested also under criminal or administrative procedure as exhibit of case or as subject of criminal or administrative offence.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

There is a way to arrest the ship as property of debtor in security of civil action as well as in the bankruptcy proceeding.

## 5. For which types of claims can you arrest a ship?

Under Domestic Law - In Merchant Shipping Code of Russia (1999) the whole list of maritime claims (a to v) from the 1999 Geneva Convention is included. The domestic law is applied by the Russian courts mostly in respect of the Russian flag seagoing vessels. Under the 1952 Brussels Convention – the Russian courts are more or less in line with the list of the maritime claims indicated in the 1952 Brussels Convention. But the courts apply this Convention mostly to the foreign flag vessels.

## 6. Can you arrest a ship irrespectively of her flag?

You can arrest a ship irrespectively of her flag.

## 7. Can you arrest a ship irrespectively of the debtor?

According to the 1952 Brussels Convention which was ratified by Russia a ship may only be arrested in respect of a maritime claim only. Therefore bearing in mind the regulations established in the Arbitration Procedural Code of Russia the claimant first of all should prove the existence of

the maritime claim in respect of the specific ship and same time the claimant should prove that the claim arose due to the actions of the specific debtor in respect of this specific ship when (as the claimant supposes) the debtor was the owner/ charterer of this ship. It may lead to that the real owner of the ship will try to object the arrest saying the ship never belongs to the debtor. The claims "in rem" can not be initiated in Russia. Certain claims may follow the ship regardless in whose hands it may be, e.g. claims for crew wages, salvage, port dues (maritime liens).

#### 8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ship as the property owned to same debtor.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

The provisions for the arrest of the vessels in accordance with the domestic law are the same as in the Convention, 1999 article 3 par.(1)-(2). If the Convention, 1952 is to be applied then the provisions for the arrest from Convention, 1952 will be applied.

*\*For more than 15 years Remedy Law firm helps in obtaining a highly professional and commercially oriented advice on issues relating to shipping and transportation in the widest range. Remedy Law Firm deals mainly with claims handling, represents cases of its clients in common law courts, arbitrations and appeals courts on all aspects of civil, maritime and administrative law, scrutinizes documentation and its enforceability under Russian and international laws and gives legal opinions on different issues.*

*We also offer advice on the interpretation of charter party clauses, bills of lading, insurance policies and other contracts.*

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# SHIP ARREST IN RUSSIA (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

In accordance with article 393 of the Code of Merchant Shipping, the court or arbitration which considers the application on arrest of a ship, may (but is not obliged to) order an applicant for arrest to provide security against any damages which may be caused by arrest and for which the applicant may be held liable. Amount and terms of such security shall be determined by the court. In practice, courts often require such counter-security as a condition for imposition or continuation of arrest of the ship. Therefore, the applicants should normally be prepared to provide counter-security in advance (together with application) in order to increase the chances of success of arrest application.

However, counter-security may not be required from the applicant which demands arrest of a ship on the basis of a claim for amounts due to the master or crew of the ship for their work on board.

## 11. Is there any difference in respect of arresting a ship for a maritime claim and a maritime lien?

In accordance with the Code of Merchant Shipping (article 388), a ship may only be arrested on the basis of a maritime claim. However, all types of claims which are, under the Russian law, secured by a maritime lien are, at the same time, included in the list of maritime claims provided by the CMS. Therefore, there is no practical difference in arrest procedures whether the maritime claim is secured by a lien or not.

## 12. Does your country recognize maritime liens? Under which international Convention, if any?

Yes it does - by the Federal law dated of 17/12/1998, Russia acceded to the International Convention on Maritime Liens and Mortgages of 1993.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

In practice, and in an optimistic scenario, it normally takes 4-5 days from the date of arrival of the full package of necessary documents is the shortest term to have the vessel arrested: (a) on day 1 the documents arrive and [if the documents come from abroad] - a certified translation of foreign documents is arranged; (b) on the evening of day 1 or the morning of day 2, the authorized lawyer leaves for the city where the territorially competent court is located (normally – the arbitration (commercial) court of the), (c) on day 2, the application for arrest with attachments is filed to the competent court; (d) on day 3, the court considers the application and grants the arrest, (e) on day 3 or 4, the court issues an executive order on the basis of its decision by which arrest is granted, (f) on day 4 or 5, executive order is submitted to the bailiffs service which commences executive procedure and filed the executive order to the harbor-master of the port where the vessel is located. In practice of some (but not all) courts and ports, procedure may be speeded-up by 2 days if the court is requested to include in the arrest ruling the order to the harbor-master not to grant to the vessel the permission to leave the port. If such order is included in the ruling, the vessel will be effectively immobilized before involvement of the bailiffs.

It must be noted, though, that in order for the above-mentioned time-frames to be observed and for the arrest to be successfully obtained, coherent work between the clients and the lawyers is required at the preparatory stage, so as to ensure that the correct information is provided for drafting of an application and the necessary support documents are also supplied.

## 14. Do you need to provide a POA, or any other documents of claim to the court?

Yes, the POA is necessary. Documents which confirm the existence of a maritime claim must also



be provided in order to confirm the existence of grounds provided in the law for imposing the arrest.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

Of the documents filed together with the application, only the POA needs to be in original (or a copy certified by the notary public). Other documents may be presented in copy certified by the applicant (an endorsement saying 'true copy of an original', a signature of a director and a company stamp). A general requirement of the law is that documents in the foreign language must be accompanied by a certified translation into Russian and that a document obtained abroad must be legalized, unless such requirement is abolished by an international treaty to which Russia is a party (for example, the Hague convention of 05/10/1961 and other multi-lateral or bilateral treaties, including the ones with CIS countries, Baltic countries, India, Argentina, Poland, Spain, etc.). In practice, commercial documents are not required to be apostilled but do require a certified translation.

Filing of documents in electronic form is also possible.

#### 16. Will the Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

When an arrest over the ship has been imposed in Russia, the Russian courts may accept jurisdiction over the substantive claim in cases provided for by the 1952 Convention:

- if a person which is a creditor under such claim has its main place of residence or business in Russia;
- if the substantial claim arose in Russia;
- if the claim relates to the voyage during which the arrest was imposed;
- if the claim arose from a collision or from other damages caused by one vessel to another vessel, or to people or goods on board of such a vessel;
- if the claim arose from salvage;
- if the claim is based on mortgage of the arrested vessel.

Alternatively, Russian courts may accept jurisdiction over the substantive claim on one of the general grounds which the procedural legislation provides for Russian courts to consider matters with foreign element. They include, i.a.:

- defendant having a place of residence, place of business or property located in Russia;
- the dispute arising from the contract which was intended to be fulfilled on the territory of Russia;
- the dispute arose out of damage to property, if such damage was caused or arose on the territory of Russia.

#### 17. What is the procedure to release a ship from arrest?

Release from arrest is allowed only in case if sufficient security is provided (or the maritime claim in question is satisfied for good) and is effected on the basis of a ruling of a tribunal which ordered the arrest. In case if the bailiffs have been involved in the arrest, they also need to be notified of the tribunal's ruling and must terminate their execution proceedings.

#### 18. What type of security needs to be placed for the release?

Type and value of security may be determined by the agreement of the parties concerned. In case if the parties fail to reach such agreement, these issues may be determined by the tribunal which handles arrest proceedings. In the latter case, value of security may not exceed the value of the ship arrested but if the value of a ship is higher than the extent of the underlying claim, security in amount of the claim (including also the reasonable costs and interest) will in most cases be sufficient. Acceptable form is either to be agreed on by the parties or by the competent tribunal and may be provided in the form of deposit on the account of the court, pledge of other property or guarantee/surety from the third party (banks, insurers including P&I clubs).

#### 19. Does security need to cover interest and costs?

Yes, security, unless it would exceed the value of the ship, would need to cover also interest and costs accrued by the respective time (i.e. date of application for release).

#### 20. Are P&I LOUs accepted as sufficient to lift arrest?

P&I LOUs are starting to be accepted as forms of security.

## 21. How long does it take to release the ship?

Release of a ship would, in practice, require at least two-three days: the courts are obliged to consider pleas for termination of security measures not later than the next day after filing of such pleas (provided that the defendant also submitted proof of providing the counter-security) and in case if arrest has been effected by the bailiffs, the latter would need to be notified and take respective action as well.

## 22. Is there a procedure to contest the arrest?

Arrest (as any other security measure imposed by the tribunal), in addition to being lifted in case of provision of security, may be contested by filing a respective plea to the tribunal in case if the arrest is unfounded (for example, when the vessel does not have the relation to the debtor which allows it to be arrested).

## 23. Which period of time will be granted by the Courts in order for the claimant to take legal action on the merits?

If arrest will be treated as a preliminary security measure for the purposes of commencing the main suit in the Russian court, than such period will be determined by the court in its ruling by which arrest will be granted. But in any event, it should not exceed 15 days.

## 24. Do the Courts of your country acknowledge wrongful arrest?

Russian courts have a right to refuse application of arrest. When the judge considers the application, he/she refuses or satisfies it on the basis of its internal conviction. Also, as mentioned above, it is possible for the court to order the applicant to provide counter-security against any damages which may be caused by the arrest, including wrongful arrest and to determine the extent of applicant's liability in such case.

## 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

It may be said that at present, Russian courts dealing with maritime claims will not be likely to pierce/lift the corporate veil, but at the same time, in one of the acts of the Supreme Arbitration [Commercial] Court (in a case completely unrelated to shipping), the doctrine of piercing the corporate veil was expressly acknowledged, so it is quite possible that this doctrine will gain wider application in Russia in the near future.

## 26. Is it possible to have a ship sold pendent lite; if so how long does it take?

No.

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# SHIP ARREST IN SAUDI ARABIA

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## 1. Please give an overview of ship arrest practice in your country.

KSA laws and regulations do not regulate ship arrest in specific. Therefore, the general legal principles of precautionary attachment procedure stipulated for in the KSA Enforcement Regulations will apply to the arrest of ships in KSA. According to these Regulations, a creditor will have the right to attach the assets of his debtor if he succeeds in proving that he has a credible claim against the defendant and has a legitimate fear that the defendant might dissipate his assets. The arrest application is normally submitted to the Court of First Instance. The court will consider the application on a prima facie basis and the arrest order will be issued in chambers on an ex-parte basis.

## 2. Which International Convention applies to arrest of ships in your country?

KSA is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the Arrest of Ships of 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Ships may be arrested in KSA in reliance to the Enforcement Regulations which contain general provisions in relation to conservatory attachment of assets (please see above question no. 1).

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No. The saisie conservatoire procedure will apply to the arrest of ships in KSA.

## 5. For which types of claims can you arrest a ship?

In general, a ship can be arrested for any claim which the claimant has against the owner of the ship or the ship, provided the claim is proven, on the face of things, to be serious and grounded.

## 6. Can you arrest a ship irrespectively of her flag?

Yes. A ship anchored within the territorial waters of KSA can be arrested irrespective of the flag she is flying.

## 7. Can you arrest a ship irrespectively of the debtor?

In general, a ship can be arrested for any claim which the claimant has against her current owner provided that the claim is proven, on the face of things, to be serious and grounded. However, in certain circumstances especially where the claim is secured by a maritime lien, it could be argued in court that the creditor has a recourse against the ship regardless of the owner's identity.

## 8. What is the position as regards sister ships and ships in associated ownership?

According to KSA regulations, there is no legal provision which gives the creditor the right to arrest a ship unless its owner is responsible for the maritime debt. The arrest of a sister ship might be possible (without being guaranteed) providing that they are both owned by the same party who is a debtor of the arresting party.

The arrest of associated ships is not possible in KSA.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The arrest of a ship for a charterer's might be possible if it is proved that the creditor has a maritime lien (see question no. 7).

10. Do your Courts require counter-security in order to arrest a ship?

Yes.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice there is no difference between the arrest of a ship for any debt and the arrest of ship for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any? KSA did not accede to any of the International Conventions relating to Maritime Liens.

The Commercial Court Regulations which regulates maritime transport in KSA and article 154 of the Regulations enumerates the following maritime lines:

- a) The costs of a court action and other costs involved in the sale of the ship and the distribution of the sale proceeds.
- b) The pilotage fees, tonnage dues and any other general charges made by ports, harbours and docks, also all compensation payable for damage caused to the technical installations of ports, harbours and docks.
- c) The costs of guarding and maintaining the security of the ship from the time that the ship enters port preceding its sale until such time as the sale is concluded.
- d) The cost of rental for the warehouse in which the tools and equipment of the ship are deposited.
- e) The maintenance costs of the ship and its machinery and other equipment during its last voyage and from the time it enters and moors in port.
- f) The wages of the master and crew who were employed on the vessel for its last voyage.
- g) Money borrowed by the master during the vessel's last voyage and the price of the goods sold out of the cargo for the vessel's necessities.
- h) The balance remaining as a debt to the vendor of the ship before it left for the voyage, also loans, and the wages of employees engaged on the construction of the ship, sums paid out for the necessities and repair of the ship before sailing, and , in general, all monetary amounts expended on the ship before departure.
- i) Maritime loans taken out on the vessel and its appurtenances before sailing for the purpose of provisioning the ship and purchasing necessary stress as well as preparing it for the voyage.
- j) The insurance premiums for the ship and its appurtenances during the last voyage.
- k) The ship's share in general average loss which includes compensation to be paid to the shippers as a result of the loss and damage of goods and items shipped, also the loss and damage of cargo on account of some default on the part of the master and crew.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in KSA, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the KSA Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in KSA is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in KSA prior to submission.

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 arrest application must be submitted manually to the competent Court of First Instance as electronic filing is not available. The documentation supporting the claim must be attached to the application and if this documentation is in foreign language it must be translated into Arabic language. Only official documents must be legalised up to the KSA Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in KSA.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No they will not.

17. What is the procedure to release the ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The only type of security acceptable by the court is bank guarantee issued by a local bank.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are unacceptable by KSA Courts.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file an appeal before the Court of Appeal. Upon hearing the appeal, the Court may make an order lifting the arrest order and such judgment shall be enforceable through the normal channels.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must, within ten days starting from the issue of the arrest order, file substantive proceedings before the competent court to sustain the arrest order, failing which the arrest order will be void *ab initio*.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This concept is not recognised in KSA.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

In principle, it is not possible unless we succeed in proving to the Court that the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

*\*Zeina has graduated from the University of Southampton in 2007 and has practised maritime and transportation law for more than 7 years. She acts for clients in a wide range of contentious and non contentious matters in her field of expertise including ship arrest, maritime claims, charterparty disputes and ship finance. She is member of the Women's international Shipping and Trading Association in Lebanon and a member of the International Bar Association.*



# SHIP ARREST IN SCOTLAND (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

The right to arrest a ship in Scotland derives from Part V of the Administration of Justice Act 1956. This part is headed "Admiralty Jurisdiction and Arrestment of Ships in Scotland". This has been amended over the years, most recently by the Bankruptcy and Diligence etc (Scotland) Act 2007 which is an Act of the Scottish Parliament.

For the ship to be capable of being arrested in Scotland in security of a claim it must be the very ship with which the dispute is concerned and the defender must either own at least one share in the ship or be the bareboat charterer. Alternatively, a ship can be arrested where the defender owns all the shares even if it is not the ship with which the dispute is concerned.

If the Scottish courts would not otherwise have jurisdiction, the ship can be arrested in a Scottish Port "to found jurisdiction". Arresting in this way however merely gives the court jurisdiction, but does not create any security over the ship itself.

A Claimant (Pursuer/Plaintiff) can often obtain a significant advantage by being able to arrest a ship at the outset of a court action for payment. This is one of the few instances in Scots Law where it is feasible for a Claimant to obtain security pre judgement. It is necessary to go to the court (either the Court of Session in Edinburgh or the local Sheriff Court) to seek the permission of the Judge to arrest the ship if the case can be brought within one of the many categories listed in the 1956 Act. If the Judge grants the permission then the ship can be arrested by Court Officers even without the alleged debtor (or anyone else associated with the ship) necessarily being aware up to that point that an arrest is being contemplated, far less that it is imminent. The court papers then require to be served on the Defender (Defendant) albeit that the papers can be served on the ship itself if what is raised is an action in rem in respect of a maritime lien such collision, salvage or for crew wages. The Defender then has an opportunity to challenge the arrest with the Pursuer being liable in damages if it is found to be an unlawful arrest.

## 2. Which International Convention applies to arrest of ships in your country?

The United Kingdom (of which Scotland forms part) is a signatory to the International Convention Relating to the Arrest of Seagoing Ships 1952. This was brought into UK domestic law by the 1956 Act. Jurisdiction is governed by the Brussels Convention 1968 and the Lugano Convention 1988. These were introduced into UK Law by the Civil Jurisdiction and Judgements Act 1982 as amended.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Port Authorities in Scotland have the right to detain a ship for non-payment of harbour dues in terms of the Harbours, Docks and Piers Clauses Act 1847. Detention under the 1847 Act is the equivalent of arrestment. It is also possible to arrest a ship in a Scottish port in implementation of an order of a foreign court. Such an arrestment must comply with the Civil Jurisdiction and Judgements Act 1982. In certain circumstances, arbitration judgements can also result in ship arrest in Scotland.

## 4. Are there alternatives, for example saisie conservatoire or freezing orders?

Scots Law does not provide any alternatives beyond arrestment under the 1956 Act, detention by a Port Authority and in respect of a foreign action, all as referred to above.

## 5. For which types of claims can you arrest a ship?

A ship can be arrested in a Scottish port in implementation of a Court or Arbitration Judgement.

More common, however, is an attempt to arrest on the dependence of an on-going court action. Where the entrance requirements set out at number 1 above apply, 47 (2) of the 1956 Act lists various circumstances in which arrestment on the dependence is permissible. These categories include damage done or received by any ship, loss of life or personal injury relating to the ship, salvage, any agreement relating to the use or hire of any ship, loss of or damage to goods carried in any ship, towage, pilotage, liability for dock charges or dues and Master's disbursements.

#### 6. Can you arrest a ship irrespectively of her flag?

The question of flag is irrelevant to arrest in Scotland except that UK ships owned by the Crown and ships which themselves are owned by foreign states cannot be arrested unless they have been contracted for commercial purposes.

#### 7. Can you arrest a ship irrespective of the debtor?

Scots Law recognises the exercise of a right in rem in certain specific circumstances, for example in relation to collision damage and salvage. Where there is a right in rem a court action can be raised directly against the ship with the court papers served on the ship itself. This can create a significant advantage for a Claimant since it obviates the need which would otherwise exist to serve the court papers on the owner which of course might be abroad in a remote jurisdiction.

#### 8. What is the position as regards sister ships and ships in associated ownership?

As set out above, it is possible to arrest sister ships and ships in associated ownership so long as all the shares in the ship being arrested are owned by the Defender in the court action. Common ownership is however now relatively unusual.

#### 9. What is the position as regards bareboat and time-chartered ships?

Bareboat chartered ships can be arrested in Scotland where the alleged debtor is the bareboat charterer. Ships under time charter can however only be arrested in respect of an action in rem.

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# SHIP ARREST IN SCOTLAND (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

No, counter-security is not required

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

A ship may be arrested to satisfy a maritime lien or it may be arrested to secure a debt pending the outcome of a court action. A maritime lien gives rise to a real right: a right which is good against the world and not just an individual. Where the pursuer has a real right by virtue of a maritime lien, an action is brought to arrest the vessel in rem. This means the action is brought against the ship itself i.e. the ship is named as defender in the action. Therefore an action to enforce a maritime lien can be brought against the relevant ship, regardless of any change of ownership that has taken place.

By contrast, where an action is raised against the owner of a ship, and the vessel arrested as security against the debt litigated upon, this is an arrestment in personam. The right to arrest a ship in a maritime claim based on a personal right will not survive a change of ownership. An action can be raised both in rem and in personam where the pursuer has rights against the owner and the vessel.

## 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Scotland recognises maritime liens. Liens can arise from things such as collisions, where a lien is created over the vessel at fault, from the contractual claims of seamen for their wages, or from salvage where a maritime lien is created in favour of the salvor.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

The time required will depend on the complexity of the facts. If the papers are available and in order, it might be possible to obtain a warrant from the court and have the arrestment formally executed in a matter of hours.

## 14. Do you need to provide a POA, or any other documents of the claim to the Court?

No. Power of Attorney is not required, however the Court would expect to see evidence of ownership of the vessel to be arrested and proof of the debt alleged to be owed.

## 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 documents required will depend on the facts of the case. Generally, copy (not original) documents are lodged with the court. Documents cannot currently be filed electronically.

## 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The general answer to this is yes, however there are numerous complexities and advice would need to be taken with regard to the specific circumstances of each case. Scotland is subject to Council Regulation (EC) 44/2001 as well as the 1968 Brussels and the Lugano Conventions. These instruments would be applied by the court in deciding whether to accept jurisdiction over the underlying dispute. The existence of any exclusive jurisdiction clause or arbitration clause in an agreement between the parties would also be a relevant factor.

## 17. What is the procedure to release a ship from arrest?

The procedure for release of a ship from arrest in Scotland is by way of motion to the Court in which

the warrant for arrest was granted for recall of arrestment either on the basis that the arrestment is incompetent or otherwise not lawful or is not a reasonable use of diligence having regard to all the circumstances (including the strength of the arrestor's prima facie case and the debtor's financial standing) or else on the basis of sufficient alternative security being provided.

#### 18. What type of security needs to be placed for the release?

The normal form of alternative security for release of a ship from arrest is a letter of undertaking from owners' P&I Club or other reputable insurer to settle any award or agreed settlement sum in respect of the arrestor's claim in full. However, cash consigned in Court or a bank guarantee or bond from a reputable insurer are also potentially acceptable forms of security.

#### 19. Does security need to cover interest and costs?

Security requires to cover interest and costs. Judicial rate interest in Scotland is 8% (although in some situations this may be subject to challenge as out of line with commercial interest rates) and expenses are recoverable on a scale which tends to allow for recovery of roughly 60% of actual costs incurred. The figure for security in respect of interest and costs will be an estimated figure.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I Club Letters of undertaking are usually accepted as sufficient security for release of an arrestment provided it is a reputable Club and the terms of the letter are adequate.

#### 21. How long does it take to release the ship?

Release of the arrestment can be immediate. A hearing can be fixed at short notice outside normal Court hours if necessary and if the arrestment is deemed to be invalid or if suitable alternative security is provided the Court will grant recall and on provision of the Court's order or agreement from the arrestor to release to the Harbour Master the arrestment will be released with immediate effect.

#### 22. Is there a procedure to contest the arrest?

When the arrestment order is granted a hearing will be fixed shortly afterwards at which the ship owner is entitled to attend and contest the arrestment. If there is urgency, it is possible for the ship owner to apply for recall immediately at any point from the time of arrestment and such an application can be heard within hours.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The action is deemed to have commenced at the point at which the summons or writ is served on the defender, after having been approved by the court. Defenders within the EEA are given 21 days' notice and defenders domiciled outwith the EEA are given 42 days' notice before the case then calls in court.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Yes, wrongful arrest is a delict (tort). Care should be taken in deciding whether to arrest a ship as wrongful arrest can result in significant damages being awarded against the arresting party.

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, however piercing of the corporate veil will only occur in exceptional circumstances, generally where it can be shown that the corporate structure has been used to defraud or evade liabilities.

#### 26. Is it possible to have a ship sold pendent lite; if so how long does it take?

This is not possible in Scotland.

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# SHIP ARREST IN SENEGAL



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## 1. Please give an overview of ship arrest practice in your country.

The procedure of arrest enables a natural or legal person who has a maritime claim relating to a ship to detain her it when there is not any enforcement title and obtain a Bank guarantee. This Bank guarantee enables the creditors to recover their debt after having obtained an enforceable decision against the ship/her Master/her Owner or after having obtained an enforceable decision to sell the ship.

The arrest order issued by the President of the Court is notified to the ship, to the Port Harbour Master and to some other Competent Port Authorities.

## 2. Which International Convention applies to arrest of ships in your country?

Senegal did not ratify the Brussels International Convention dated 10th May 1952 but accepted to apply it after having accessed independence.

## 3. Is there any other way to arrest a ship in your jurisdiction?

The answer is no. There is however a difference between "saisie conservatoire" and "saisie exécutoire de navire".

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

These alternatives are "saisie conservatoire" which means "arrest" and not freezing orders.

## 5. For which types of claims can you arrest a ship?

In such procedure, when the Brussels Convention applies, the arrest must be justified by a maritime claim as defined by the article 1 § 1 of the Brussels Convention. Usually, the Courts easily issue easily an arrest order when the claim appears to be justified.

## 6. Can you arrest a ship irrespectively of her flag?

The answer is yes because, as per the Article 8 § 2 of the Brussels Convention "A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest".

## 7. Can you arrest a ship irrespectively of the debtor?

The debtor is usually either the owner or the charterer of the ship. The quality of the debtor is however not so important given that the debt is "in rem".

## 8. What is the position as regards sister ships and ships in associated ownership?

The article 3 §2 of the Brussels Convention provides that "Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons". Consequently, the ship which is directly linked with the maritime claim or which is owned by the same owner or associated owner can be arrested by the creditor.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

The article 3 §4 of the Brussels Convention provides that "When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the



charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship”.

The international Convention points out the cause of the debt, i.e. a maritime claim relating to the ship.

#### 10. Do your Courts require counter-security in order to arrest a ship?

The answer is no. It is sufficient to evidence that the claim is a maritime claim and relates to the ship.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The procedure is exactly the same, i.e. obtain an arrest order from the Court by evidencing the reality of the maritime claim relating to the ship.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Senegal recognizes Maritime Liens and Mortgages but does not apply any International Convention but local Laws.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

If the file is complete, the arrest could be obtained within the same day of reception of the file.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

The commercial invoices, the Bills of Lading, the preliminary survey report if any would be required. However, there is no need to submit any power of attorney.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

It is usually better to submit original documents. If it is impossible however, copies of the documents sustaining the claim can be transmitted by e-mail or fax. The Documents in English Language must be translated into French.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

In principle, once the vessel is arrested in Senegal, the Courts accept jurisdiction.

#### 17. What is the procedure to release a ship from arrest?

If the claim is not denied, the best procedure is to negotiate with claimants so that they accept a security. If the claim is denied, then it is possible to proceed under short notice before a judge who would be able to examine the request and order the release when arguments to do so are consistent.

#### 18. What type of security needs to be placed for the release?

The best security would be to offer a bank guarantee so as to obtain the ship release.

#### 19. Does security need to cover interest and costs?

It could be required by claimants that the security covers interest and costs.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, P&I LOUs are accepted sometimes, but no one can force a claimant to do so. When it comes to procedure to lift the arrest before the judge, the LOU can only prevail when claimants agree to accept it.

#### 21. How long does it take to release the ship?

The procedure to get a Court order can take two to three days. But once there is an agreement between parties, the release is effective the same day.

#### 22. Is there a procedure to contest the arrest?

Yes. Such a procedure exists under Senegalese law.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Once the vessel is arrested, the claimant must take legal action on the merits within one (1) month.

24. Do the Courts of your country acknowledge wrongful arrest?

Senegal recognizes wrongful arrest if evidence show that an arrest is abusive and the claimant can be condemned to pay damages. However, this situation is rare because when the Judge considers that the claim is not justified, he rejects the motion for the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The answer is yes.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is not possible to sell a ship pendente lite.

A ship can be sold by Court decision to do so and supposes that the debtor has kept low profile during the procedure.

# SHIP ARREST IN SINGAPORE



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## 1. Please give an overview of ship arrest practice in your country.

Ship arrests are frequently carried out in Singapore due to various factors, including Singapore's being one of the world's busiest ports, being a key bunkering port, and having an efficient Court system with specialist Admiralty judges to promptly handle arrest matters and the adjudication of the substantive disputes.

As a key maritime port, Singapore has a few specialised maritime law firms, including JTJB, that handle arrest cases on a regular basis, and that are therefore very familiar with the processes, as well as the procedural laws and requirements. Recent developments in Admiralty law in the past few years have imposed greater obligations of disclosure on the part of the arresting party in the application for a warrant of arrest, however that has not significantly dampened the rate of arrest, given the popularity of Singapore as a key port of call for many vessels.

## 2. Which International Convention applies to arrest of ships in your country?

Singapore is a signatory to the Convention on Limitation of Liability for Maritime Claims, 1976, which has been given effect and incorporated into Singapore's Merchant Shipping Act.

## 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?

It may be possible to seek to detain a vessel as part of a Mareva Injunction taken out against the shipowners, but practically it may be costly, may impose more difficult threshold hurdles and be time consuming. It is therefore not attempted.

## 5. For which types of claims can you arrest a ship?

Section 3 of the High Court (Admiralty Jurisdiction) Act [HC(AJ)A] sets out a closed list of claims for which the Court may exercise its Admiralty Jurisdiction to arrest a vessel. This list is similar to section 20(2) of the U.K. Supreme Court Act.

## 6. Can you arrest a ship irrespective of her flag?

Yes.

## 7. Can you arrest a ship irrespective of the debtor?

Yes.

## 8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships but not ships in associated ownership.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

The HC(AJ)A states that where a claim arises in connection with a ship, a warrant of arrest may be issued against that ship, if at the time the writ is issued, that ship is bareboat chartered to the person who would be liable to the Plaintiff for the claim. It is not possible to arrest a vessel that is under time charter to the person liable for the claim.

#### 10. Do your Courts require counter-security in order to arrest a ship?

No. However, the Sheriff is entitled to request that the arresting party place security to cover the Sheriff's expenses in maintaining the vessel while under arrest, as the arresting party is obliged to maintain the vessel during the period of arrest. This can be requested at the outset of the arrest, and from time to time, when the Sheriff deems necessary. If funds are not provided to maintain the vessel, the Court may release the vessel from arrest.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes, maritime claims are divided into maritime liens and statutory claims (non maritime lien claims listed in the HC(AJ)A). Maritime liens will survive a change of ownership such that it is still possible to arrest for claims incurred by the ex-owners, notwithstanding a change of ownership. For statutory claims, the right of arrest will be extinguished if ownership of the vessel changes before a writ is issued for the claim. It is possible, but difficult, to challenge the change of ownership, on the basis that it is a sham transaction designed to avoid liability.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, in respect of claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia. This is recognised as a matter of common law, and not by Convention or statute.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Due to the strict requirements of disclosure of all relevant documents and information that may have an impact on the Court's decision to grant a warrant of arrest, we will usually request for at least 48 hours to review the supporting documents and correspondence, more if the matter appears complicated and/or if the documents are voluminous. However, once the documents are prepared and ready for an arrest, the Court hearing for the issuance of the warrant of arrest can be very quickly arranged within a few hours, and once the warrant of arrest is issued, a vessel can be arrested within a matter of a few hours, depending on the location of the vessel.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA is not required for the arrest. It is necessary for the arresting party to file a writ that briefly describes the claim, and to prepare an affidavit which is in support of the application for a warrant of arrest for the vessel.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Original documents are usually not required to effect an arrest, though the Plaintiff must retain the originals of the documents, and to make these available for inspection, if and when necessary / ordered by the Court. Copies of all relevant documents must be exhibited in the supporting affidavit, including those that may be detrimental to the claim. All Court documents for the arrest are filed electronically to the Court's system. Only the affidavit in support needs to be signed before a Commissioner of Oaths (if in Singapore), or a Notary Public (if affidavit is executed overseas).

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Court generally assumes jurisdiction over the substantive claim, following an arrest. However, it is possible to arrest to obtain security for a foreign arbitration proceedings (ongoing or anticipated), and it is the obligation of the arresting party to indicate that fact in the supporting affidavit, as otherwise there might be complications when applying for a stay of proceedings. Following provision of adequate security, the vessel can be released, and the action stayed in favour of the foreign arbitration.

#### 17. What is the procedure to release a ship from arrest?

An application will have to be put into court for the release of the ship, and certain documents (as set out in Order 70 of the Singapore Rules of Court) will have to be filed. The arresting Plaintiff's counsel will also have to attend in court to have the application heard. Once the court approves the release, notification of the release and copies of the release papers may be given to the ship's agents and/or counsel for the arrested party. There is no need to serve the release papers on the vessel.

18. What type of security needs to be placed for the release?

Usually, a first class guarantee from a Singapore bank, a bail bond, payment into court, or a letter of undertaking from a reputable and internationally recognised P&I club / H&M underwriter will be sufficient.

19. Does security need to cover interest and costs?

It can, even though it does not have to. Security is usually sought for the arresting Plaintiff's reasonably arguable best case, together with interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes if the P&I club is a reputable and internationally recognised one.

21. How long does it take to release the ship?

Assuming there are no complications, this may be done within a day.

22. Is there a procedure to contest the arrest?

Yes. A Defendant who wishes to challenge the arrest may enter appearance and put in an application to court to set aside the writ and/or service of the writ.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

As stated above, a writ is filed at the time the application is made for the warrant of arrest. The writ has to be served on board the vessel, together with the warrant of arrest. Upon the issuance of the writ, the Singapore proceedings are deemed to have commenced, and the procedural timelines for the progress of the substantive claim will start to run once service of the writ is effected.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. However, in order to be entitled to damages for wrongful arrest, the Defendant will have to show that the arrest was carried out in bad faith or with gross negligence.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

While the Courts have allowed the piercing/lifting of the corporate veil, it is a power done only in exceptional cases, as the Courts do generally give effect and recognise the principle of separate legal entities, with each company having its own legal rights and liabilities. One exception, as mentioned above, is where the vessel is sold to a separate legal entity for the purposes of evading the claim.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

It is possible to do so. The application for sale of the vessel can be done fairly quickly once the arresting party can show that the vessel has been arrested for some time but no security is forthcoming, and in the meantime the vessel is a wasting asset and continues to incur costs. After the order has been granted for the vessel to be sold *pendente lite*, the question as to how long it will take it actually sell the vessel will depend on the commercial circumstances, i.e. the prevailing market conditions and demand for that type of vessel. The vessel will usually be put up for public auction and the potential purchasers will have to meet the reserve price put up by the Sheriff. In bad market conditions, it may take several auctions to sell the vessel. It may be possible to sell the vessel by way of a private treaty if that will result in a better return for the vessel, as opposed to a public auction. The sale by private treaty will have to be sanctioned by the Court.

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# SHIP ARREST IN SLOVENIA



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## 1. Please give an overview of ship arrest practice in your country.

There is exclusive jurisdiction of the District Court of Koper for all maritime cases. The eventual appeal should be filed before the Court of Appeal of Koper. Under certain circumstances it is possible to file extraordinary appeal before the Supreme Court of the Republic of Slovenia.

It is essential for both parties to retain local lawyers as all the documents must be filed in Slovenian and the proceedings before the court are in Slovenian. The POA could be a fax or scanned document but during the procedure (before the court decision) the original has to be presented. For the defendant attorney the vessel's master signature of POA would suffice.

Article 8 of Constitution of the Republic of Slovenia provides: Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

There are two situations for the non-contracting states of International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, 1952 (the 1952 arrest convention). The first situation would be when there is reciprocity between the state whose flag the ship flies that could potentially be arrested in Slovenia. If a vessel flying a Slovenian flag could be arrested in that state only as a security for maritime claims also a ship flying the flag of that state could be arrested in Slovenia only for maritime claims as provided in Maritime Code 2001. The second situation is when there is no reciprocity. In that case the ship could be arrested in Slovenia for any kind of claim.

In order to achieve the arrest of ship the claimant should submit the following documents:

- An application (usually filed by a local attorney) and POA,
- A description of the claim, the amount and eventual claim for interest and costs,
- Documents that support the claim (translation in Slovenian by sworn in translators).

Usually the court would issue the arrest order without hearing. In some cases a hearing could be possible (e.g. oral evidence is needed).

## 2. Which International Convention applies to arrest of ships in your country?

Slovenia is a party of the 1952 arrest convention since 1967 (at the time still as a part of ex Yugoslavia) and has adopted the 1952 arrest convention also after 1991 as a sovereign state, on 13 October 1993.

## 3. Is there any other way to arrest a ship in your jurisdiction?

In cases when the 1952 arrest convention is not applicable the Maritime Code 2001 would apply. In these cases Maritime Code 2001 is a *lex specialis* governing the type of claims, other maritime matters and procedure whereas the Enforcement and Security Act 1998 applies in all civil proceedings and is *lex generalis* for enforcement in Slovenia.

## 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

In certain circumstances (see the answer to question 1) there are some alternatives for arrest of ship through temporary injunctions under Enforcement and Security Act 1998.

## 5. For which types of claims can you arrest a ship?

For the parties (i.e. ships flying a flag of contracting state) of the 1952 arrest convention the types of claims are the ones from the original text - exclusively maritime claims listed in article 1 of the 1952 arrest convention. For non-contracting states of the 1952 arrest convention the list of claims from Maritime Code 2001 applies. Claims in Maritime Code 2001 are broader than the ones listed

in article 1 of the 1952 arrest convention and are almost identical to the claims of International Convention on Arrest of Ships, 1999 (the 1999 arrest convention).

6. Can you arrest a ship irrespectively of her flag?

Yes, taking into account the differences mentioned above.

7. Can you arrest a ship irrespectively of the debtor?

The Article 948 of the Maritime Code 2001 provides:

Any ship may be arrested which is owned by the same personal debtors, or which is for the claim for which arrest is sought, encumbered by maritime lien of hypothec for another right of pledge based on the foreign law, and or another claims listed in Maritime Code 2001, which relate to the ship.

If the debtor is the bareboat or demise charterer of the ship or a charterer, who according to the law applicable to the contractual relation between him and the shipowner or ship operator is alone liable to the third persons - this ship may be arrested or any other ship which is owned by the debtor.

The provisions of the previous paragraph shall also apply in all other cases where an operator or employer who is a personal debtor, and who is not the owner of the ship is himself liable for the claims for which the arrest of the ship is sought.

In respect of a claim that relates to the ownership, co-ownership or a hypothec on the ship, only the ship to which this claim relates may be arrested.

Slovenian law does not allow "actio in rem" therefore the personal liability is relevant.

8. What is the position as regards sister ships and ships in associated ownership?

The claimant must prove that at the time of arrest the sister ship(s) are in the ownership of the debtor.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The ship can be arrested for claims against the Bareboat and Time-Chartered vessels.

10. Do your Courts require counter-security in order to arrest a ship?

Usually not but it might happen that the court demands the necessary funds for maintenance of the ship and of the crew and necessary funds for the watching of the ship. This happens when a ship owner or a carrier fails to perform his obligation to maintain the ship and the crew.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is a difference. The action could be filed directly against the ship in cases of maritime lien. On the other hand in cases of a maritime claims actio in rem is not permitted.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, it does recognize the maritime liens. The provisions governing the maritime liens are in Maritime Code 2001 and are more or less the same as the one in International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages. Slovenia is not party of any international convention governing maritime liens, though.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

The arrest of ship would be usually obtained the same day when it is applied or the following day.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

The original POA is required but in the first phase the copy (e.g. fax or scan of original POA) would suffice.

The proof of the claim is required (probability of existence of claim) and the claimant has also proof the danger that without the arrest there is a risk that the debtor will alienate the ship, conceal, take away the ship or in any other way prevent or make difficult enforcement of the claim.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Copies of documents suffice at the stage of petition for arrest. Sworn translators should translate the documents that are not in the Slovenian language.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The court in Slovenia will grant an arrest even if the contract contains a jurisdiction or arbitration clause. Anyway, any arrest has to be justified by commencement of proceedings of the merits. If the parties do not agree on the jurisdiction or arbitration clause the court will in most cases also decide the case on the merits.

17. What is the procedure to release a ship from arrest?

There is no special procedure. When debtor presents an adequate security the temporary injunction is removed and the arrested ship is immediately released.

18. What type of security needs to be placed for the release?

Debtor has to provide an adequate security. If there is agreement between creditor and debtor on type of security the court will accept it. Usually if debtor would present the bank guaranty of reputable bank the court of law would accept it as suitable security. There is on going debate on this topic.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, if debtor and creditor agree with that kind of security.

21. How long does it take to release the ship?

The proceedings are fast as the decision is issued within duty judge of the court of law that has exclusive jurisdiction in maritime cases.

22. Is there a procedure to contest the arrest?

Debtor has a right to file objection against the temporary injunction by which a ship is arrested. Once the court receives the debtor's objection against the decision of arrest it shall without delay convene a hearing. At this hearing the court weigh the facts and evidence upon which the temporary injunction for arrest was issued.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claimant has to start the legal action on the merits within 15 days.

24. Do the Courts of your country acknowledge wrongful arrest?

Courts in Slovenia do acknowledge a wrongful arrest. The claimant is liable to pay damages to the debtor if the arrest subsequently turns out as not justified. There is no need for "mala fide" in order to prove a wrongful arrest. Damages are assessed in special proceedings on classic civil law ground (e.g. ordinary damages and loss of profit).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

There are provisions regarding the piercing and lifting of the corporate veil but in practice there have not been decisions like that in past in connection to arrest of ship.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is possible but in practice it does not happen. Procedures for a sale of ship are anyway quite long.

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# SHIP ARREST IN SOUTH AFRICA



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## 1. Please give an overview of ship arrest practice in your country.

There are essentially three ways in which one can arrest or attach a ship in South Africa:

### (i) An arrest in rem-

A maritime claim may be enforced by an action in rem:

- if the claimant has a maritime lien over the property to be arrested; or
- if the owner of the property to be arrested would be liable to the claimant in an action in personam – where he/she would be personally liable in a direct action against them.

### (ii) An arrest in personam

A maritime claim may be enforced by an action in personam when the Defendant is a:

- person resident or carrying on business at any place in South Africa;
- person whose property within the Court's area of Jurisdiction has been attached by the claimant to found or confirm jurisdiction;
- person who has consented or submitted to the jurisdiction of the Court;
- company, if the company has a registered office in South Africa.

Note that it is only where the defendant is a foreigner and therefore it is necessary to found jurisdiction that their property has to be attached to establish that jurisdiction. An "attachment" is the term used for this proceeding, borrowed from Roman Dutch law, as distinct from an "arrest" which is the procedure to commence an action in rem, based on the English in rem Admiralty procedure.

(iii) A security arrest; A court may order the arrest of any property for the purpose of providing security for a claim which is or may be the subject of arbitration or any proceedings contemplated, pending or proceeding, either in the Republic of South Africa or elsewhere, and whether or not it is subject to the law of South Africa.

The Court will have jurisdiction over all matters pertaining to the arrest itself and any security furnished in relation thereto. The claimant, however, does not submit to South African jurisdiction for the merits of the claim in respect of which security is sought.

## 2. Which International Convention applies to arrest of ships in your country?

South Africa has not acceded to any International Convention related to the arrest of ships. The law and practice in respect of the arrest of ships in South Africa is regulated by the Admiralty Jurisdiction Regulation Act of 1983 as amended with effect from 1 July 1992 ("the Act"). In the drafting of the Act, certain aspects of the Arrest Convention 1953 were taken into account and incorporated into the legislation, such as the provision for the arrest of "associated ships", which is a wider concept than "sister ships". The Act provides the formula to determine what law applies to the substantive merits of a maritime claim, but the arrest procedures are determined by the provisions of the Act itself.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Apart from the procedure to "attach" a ship in personam there is no other procedure to detain a ship for a maritime claim. The Act is specific in its requirements for the arrest or attachment of a ship, where the claim is a maritime claim as defined in Section 1 of the Act. If the claim is not a maritime claim as defined and the claimant has a claim enforceable in personam against its owner, then subject to certain restrictions such as that the claimant must be domiciled locally and the defendant must be a foreigner, the ship could be attached by order of the High Court

in exercise of its parochial (non-admiralty) jurisdiction to found jurisdiction to sue in common (Roman Dutch) law.

#### 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

See above. They might have certain similarities, but they are not identical.

#### 5. For which types of claims can you arrest a ship?

The definition of a maritime claim in the Act effectively covers all causes of action in relation to ships, the carriage of cargo and matters maritime. The definitions are also wide enough to cover matters which are ancillary to “shipping” matters. A comprehensive list of maritime claims can be found in Section 1 of the Act.

#### 6. Can you arrest a ship irrespective of her flag?

Yes, a vessel can be arrested within our jurisdiction irrespective of the flag she is sailing under.

#### 7. Can you arrest a ship irrespective of the debtor?

No - the claim must be enforceable in personam against the owner or demise charterer (who is deemed to be the owner for this purpose). However a vessel can also be arrested on an associated ship basis, meaning that where the maritime claim arises in respect of one ship, it is possible to bring an action in rem, or a security arrest, by arresting an “associated ship” instead of the ship in respect of which the maritime claim arose. The ship will be an “associated” one, effectively where the respective companies which own the “guilty” ship and the “associated” ship, are controlled directly or indirectly by the same person or persons.

#### 8. What is the position as regards sister ships and ships in associated ownership?

A sister ship as well as an associated ship can be arrested (in fact the former falls within the definition of the latter) for liabilities of the owner or bareboat charterer of what is termed the “ship concerned” or “guilty ship”. An associated ship is one (in simple terms) which is owned by a company which is controlled directly or indirectly by the same person who controlled the company which owned the “guilty ship” (the ship concerned) at the time the cause of action arose.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat charterers (or “demise charterers”) are deemed to have been and to be, the owner of a vessel for purposes of an arrest in rem. As such, if the liability sought to be enforced, is that of the bareboat charterer, the ship can be arrested in rem for the liabilities of the bareboat charterer. The same does not however apply to a time chartered vessel. Nevertheless, for purposes of an associated ship arrest, the charterer (whether bareboat, time or voyage) is deemed to have been the owner of the ship concerned (the “guilty ship”) for purposes of the arrest of an associated ship (i.e. one owned by a company which is controlled by a person who controlled the company which was the charterer and therefore the deemed owner of the guilty ship, at the time the cause of action arose)

#### 10. Do your Courts require counter-security in order to arrest a ship?

No, South African courts do not require counter-security as a pre-condition for ordering the arrest of a ship. However, the owner of the ship arrested can seek an order for counter security to be put up, if they can make out a case that the arrest has *prima facie* been obtained without reasonable and probable cause, or the security demanded to obtain its release, is excessive.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. The concept of a maritime lien is different to a maritime claim. A ship can always be arrested in rem for the claims recognised by South African law as maritime liens (but not for claims giving rise to a maritime lien in a foreign jurisdiction), even if the ship has been sold. It is a claim which properly lies in rem against the ship, notwithstanding in personam liability of its owner. In addition a vessel can be arrested for enforcement of a maritime claim, as defined in the Act, even if not a maritime lien, where the owner is liable in personam.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, but only those restricted maritime liens recognised in terms of our common law as being so classified, which are in effect those claims recognised by English law. These are those that were recognised by the Colonial Courts of Admiralty in 1890, i.e. claims for bottomry, salvage, seamen’s wages, master’s wages, disbursements and liabilities, and any claims for damage cau



sed by a vessel. No International Convention applies and no claim classified as a maritime lien by a foreign law, will be enforced as such.

**13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?**

In the case of an in rem arrest, an arrest can generally be effected as soon as the papers are drafted and issued at Court. This can be achieved within a few hours after instructions are received. In the case of a security arrest however, an Affidavit is required to be deposed to and as soon as a Judge is available to hear the application, an order can be granted and the arrest effected. Although a more substantive application therefore, a security arrest can still be effected within a few hours of the receipt of the instruction, subject to the availability of a Judge to hear the matter, but this should be capable of being arranged the same day, including over weekends and after hours.

**14. Do you need to provide a POA, or any other documents of the claim to the Court?**

No power of attorney has to be filed at the time of seeking an arrest order. All that is needed initially in order to place a vessel under arrest is –

(i) the issuing and service of a Summons that includes a statement of the facts upon which the claim is based, as well as the issuing and service of a Warrant of Arrest; and

(ii) a Certificate in terms of Rule 4(3) of the Act, deposed to by the attorney representing the claimant, or by the claimant itself, in support of the Summons and the Warrant, which sets out the necessary averments as required by the Act and confirms the accuracy thereof.

If a security arrest is sought however, an affidavit must be filed and this must have the relevant documents in support of the cause of action (if any) attached to it. The owner of the ship can after the arrest is granted, challenge the authority of the attorney who obtained the arrest, in which case a power of attorney must be filed.

**15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?**

For an arrest no original or notarised or authenticated documents are required. It is permissible to file electronically transmitted documents, whether faxed or scanned and emailed. If however a matter proceeds to trial and documents are required to be submitted in proof of the claim, it may be necessary to produce the original document or a copy thereof, which would then have to be authenticated by notarisation and apostille.

**16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?**

If an action is commenced before this court in rem or following an attachment to found jurisdiction, in personam then it is the court seized of the matter notwithstanding where the cause of action arose, or where the claimant or the defendant are domiciled and the court will as a matter of domestic law have inherent and statutory jurisdiction. The defendant can however seek an order that the court thereafter decline to continue to exercise jurisdiction, or stay the action on the merits, on the basis of forum non conveniens where e.g. there is a choice of forum clause in a contract or where it is more appropriate that the matter be heard in the jurisdiction where e.g. a collision occurred. The test of when the court should consider deferring jurisdiction in favour of another court or forum, is determined by the common law of South Africa, which however follows the test applied by the English courts.

**17. What is the procedure to release a ship from arrest?**

Once a ship has been arrested by service through the Court Sheriff of an arrest order or warrant, served on the ship and the harbour master, it can only be released again by service by the Sheriff of a warrant of release issued by the High Court (Admiralty) Registrar, again service being effected on the ship and the harbour master.

The party who arrested the ship must apply to the Registrar for the issue of the warrant of release, either because the claim has been settled, or because security for payment of the claim has been provided, or because the claimant abandons the arrest for any reason.

If the arrest is challenged and the Court upholds the challenge and sets aside the arrest, the release will be ordered by the court and that order will be served on the ship and harbour master.

If agreement on the form of security or the amount thereof cannot be agreed by negotiation between the parties, then again application can be made to the Registrar or the Court for a ruling on what amount or form would be acceptable and if it is provided in that amount and

form, either to the claimants lawyers or to the Registrar, the Registrar will issue a release warrant without the arresting party's express agreement.

#### 18. What type of security needs to be placed for the release?

Security has to be provided by cash paid into court (which is unusual), a Bank Guarantee from a South African bank, an Insurance Company or an acceptable P&I Club, Letter of Undertaking. In the case of an arrest *in rem*, the amount is either for the amount of the claim plus interest and costs, or for the value of the ship or other asset arrested, whichever is the lesser.

With an attachment to found jurisdiction *in personam* however, the full value of the claim has to be secured, whatever the value of the asset attached.

#### 19. Does security need to cover interest and costs?

Yes. For purposes of calculating the amount to be secured in respect of the interest portion, apart from interest already accrued, customarily interest for three or four further years is calculated and provided for, on the basis that this is how long it could take for the action on the merits to be disposed of, if the action is being pursued here. The amount to be allowed for possible costs is a matter for negotiation, or the Registrar can be requested to set a figure.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, if the P&I Club providing the LOU is a member of the International Group. For non-IG Club's or insurers, it is a matter for negotiation, or an application to court could be required, with the Club or other P&I insurer's financial statements being required to be disclosed to persuade the Court that they will be able to pay any judgment rendered in due course.

#### 21. How long does it take to release the ship?

If the ship is in port and security is provided in normal working hours when the Court Registrar's office is open to arrange the issue of the Release Warrant, the release can be effected within an hour or two.

Over weekends, or after normal office hours, it can take longer and if the Sheriff has to then proceed off shore to the anchorage by launch to serve the Release Warrant on the ship, that will obviously delay matters still further.

#### 22. Is there a procedure to contest the arrest?

Yes. Generally the ship owner who wishes to contest the right of the claimant to have arrested the ship on some technical basis (such as that the cited defendant does not own the ship, or that the ship is not an "associated ship" as defined in the Act) will have to make application to court to set aside the arrest, filing affidavits to support the argument that the ship should not be susceptible to the arrest.

The court will however not entertain such an application to set aside simply because the owner disputes that the underlying debt is due on the merits and as long as a *prima facie* case was made out for the claim at the stage of arrest, the owner needs to provide security to release the ship and then defend the merits of the substantive action (or arbitration).

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The arrest procedure *in rem* is itself the commencement of the substantive proceedings on the merits and is not merely a conservatory procedure, as a summons is served simultaneously with the warrant of arrest which has to be answered with a defence on the merits. With an attachment to found jurisdiction *in personam* the court will normally authorize and direct that particulars of claim be served within one month of the attachment.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Yes. It is however termed an arrest "without reasonable and probable cause", which is a narrower concept to one of "wrongful arrest".

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, but strictly speaking only when circumstances of fraud have been proven. The associated ship arrest provisions also allow a measure of piercing the corporate veil, but only where the strict issues of common control of owning companies is proven.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes. From the time of the order the ship can be sold within 6 weeks but the time period can be longer if the owner or another creditor opposes the sale or the terms for sale stipulated by the Court.

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*He has specialized in Maritime Law since he joined the firm and has been involved in most, if not all, of the many major shipping casualties along the Southern African coast in the last 40 years. He is recognized as one of the leading international transport lawyers in South Africa and has been published widely on both maritime and air law in numerous international publications.*

# SHIP ARREST IN SPAIN



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## 1. Please give an overview of ship arrest practice in your country.

Arresting a ship in Spain is a good tool to enforce claims against ship owners and other operators. The recent implementation of specialized mercantile Courts in Spain has improved the swiftness of the procedure and reaction of the Court where an arrest application is presented. Likewise, the perception of a ship arrest as a tool to obtain security rather than as a way to proceed to the ship's auction has increased. A ship arrest can be carried out in 3 or 4 hours from the client's first call. A power of attorney is required in order to aver the representation of the plaintiff. A lawyer and a bailiff need to be employed before the Court. Registration of a lawyer before any Spanish province entitles him to act before all Spanish ports for a ship arrest, including the Canaries and Balearics islands, Ceuta and Melilla.

## 2. Which International Convention applies to arrest of ships in your country?

As from 14 September 2011 the 1999 Geneva Arrest Convention applies in Spain due to its signature by Albania last 14 March 2010 and the amendment of the Procedural Law Act, the scope of maritime claims is now wider than under the 1952 Convention (1). Indeed until very recent times in Spain the 1952 Brussels Arrest Convention was the main tool to arrest a ship in Spain, offered a high degree of certainty gained over many years of application. In addition, the recent enactment of the 2014 Spanish Shipping Act has introduced some changes into the law for the arrest of ships.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Ships flying a 1999 Arrest Convention State flag can be arrested in Spain for the claims listed in the 1999 Arrest Convention only. Those ships not flying a 1999 Arrest Convention State flag can be arrested for the 1999 listed claims and for any other claim.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

No, they are not. In practice the stoppage of a ship can only be made by an arrest of the ship. A different scenario may come up where the ship is detained by her involvement in a criminal matter, or for having breach Administrative Laws.

## 5. For which types of claims can you arrest a ship?

It depends on the flag of the ship, see response to question number 3.

Under the 1999 Brussels Convention you may arrest a ship for the following claims:

1. "Maritime Claim" means a claim arising out of one or more of the following: (a) loss or damage caused by the operation of the ship;
- (b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- (c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- (d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
- (e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering har

(1) Nestor gives fighting power to P&I, Lloyd's List 2003 by Felipe Arizon

mless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

(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 of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage; (k) pilotage;

(l) goods, 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, brokerages 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 irrespectively of her flag?

In Spain the 1999 Arrest Convention applies irrespectively of the ship's flag but the list of claims is restricted where the ship flies a 1999 Arrest Convention flag.

## 7. Can you arrest a ship irrespectively of the debtor?

Not in all cases, but in some, depends on the facts of the case. This question needs to be paid careful attention. The response is to be positive where the claim is based upon a maritime lien.

Equally, the same result can be reached by application of Article 586 of the Spanish Commercial Code, which reads "The shipowner and the ship operator, "navier" shall be civilly liable of the acts of the Master and of the obligations undertaken by the latter to repair, habilitate, and supply the ship, provided that the creditor proves that the amount claimed was invested in benefit of the ship".

This article provides creditors with a generous safety net to collect their claims arising from time charterer, voyage charterer, or even a ship manager. The ship owners will be held under this article responsible for the claims against the other parties.

Moreover, where the ship is under a time charter or a voyage charter, or operated under the management of a third Company the 1999 Geneva Convention establishes the possibility of arresting a ship for those cases in which a person different to the owners shall respond of the maritime claim.

Therefore, to undertake the arrest itself, the claimant by pleading the aforesaid provision, will be entitled to obtain from the Court the arrest order. However, in order to enforce his claim on the arrested ship, the claimant will need to bring an action against the current ship owners in personam, either based on the aforesaid art. 586 CCo, or in a lien. As an alternative in some cases the claimant may bring an action against the actual debtor by enforcing the bank guarantee placed in substitution for the arrested ship.

## 8. What is the position as regards sister ships and ships in associated ownership?

Sister ships can be arrested in accordance to the provisions of the 1999 Arrest Convention. For cases of associated ownership see below "lift of the corporate veil".

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

There is no case law setting out the position on these cases. However, as far as bareboat chartered



ships are concerned, the 1999 Arrest Convention sets it clear that the ship can be arrested. Time and voyage charterers ships can also be arrested if the claim amounts to a maritime lien, or where the ship owner is legally liable for the claim.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Yes, the amount varies according to the criterion of the Judge. A certain practice has been accepted whereby Courts admitted as sufficient counter-security an amount of circa 10% of the claimed amount. However, the 2014 Spanish Shipping Act sets out that security shall be fixed in a minimum of 15% of the amount of the alleged maritime claim.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien? There is no procedural difference.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

The International Convention on Maritime Liens and Mortgages 1993 that has recently entered into force in Spain sets out the regime of maritime liens applicable in Spain. Other liens recognized under Spanish or foreign laws will rank after the list provided by this international Convention.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Provided all the necessary items are fulfilled, namely a copy of the POA is advanced by fax, and supporting documents are likewise delivered, the arrest can be carried out in less than 3 or 4 hours. The concrete timing will depend on the reaction of the Court's officials and Judges towards the writ.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA is indeed needed, a faxed copy may suffice, but originals duly legalized shall follow. In some recent arrest applications some Commercial Court Magistrate are requesting original POAs to proceed with the arrest. Moreover, while the documents of the claim are not necessary in the arrest application it is very advisable to provide the Court with some of them enabling the Judge to foresee a good claim, which also may play a role in the Magistrate agreement to fix a low amount of countersecurity.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Initially most commercial Courts will accept copies of any documents. The only document which production is mandatory is the power of attorney. Other documents related to the claim should be provided to the Court in order to ensure the best understanding of the case by the Magistrate, which in turn may assist in getting his agreement to a low countersecurity.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Under the 1999 Convention, article 5 sets out the following:

Article 7. Jurisdiction on the merits of the case:

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

- (a) does not have jurisdiction to determine the case upon its merits; or
- (b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal (...).

In accordance to article 479 of the 2014 Spanish Shipping Act the Court, for those cases where Spain is not competent will fix a time period from 30 to 90 days for the claimants to commence proceedings on the merits.

17. What is the procedure to release a ship from arrest?

It is necessary to appear before the Court and place the security requested by the arrest order. In the alternative, the arrest can be challenged, following the presentation of the challenge writ, the Court will fix a hearing to hear both parties, and this will be followed by a new judgment on the arrest.

18. What type of security needs to be placed for the release?

A Bank guarantee or cash is most common.

19. Does security need to cover interest and costs?

It depends on what the Court has ruled in the arrest order

20. Are P&I LOUs accepted as sufficient to lift the arrest?

If the claimant agrees, yes. If no agreement is reached, the position has been that they are not.

21. How long does it take to release the ship?

The time to appear before the Court (few hours), normally with the Master of the ship, and put the security.

22. Is there a procedure to contest the arrest?

Yes, within a period of 20 days from service of the arrest order the arrest can be challenged.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Normally, the Court grants 20 working days for presentation of the action on the merits if the case the Spanish Courts are competent.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Where the claimant fails in his action on the merits or in the arrest procedure per se, the Court will normally hold the plaintiff to pay for the legal costs of the defendants and the damages flowing from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, in fact it is an up-rising tendency. Spanish jurisprudence accepts both, the lifting and the piercing of the veil. The former aimed at discovering the reality behind the corporation, while the latter goes a step further, by unmaking the illegality sought under the corporation. In Spain, for it to be able to pierce the corporate veil, the claimant needs to establish the following; enough evidence to prove the unity of assets, interest, management, and actions between the Companies; the existence of an aim to defraud or prevent the application of the law, damaging the creditors' rights; no other possibility to obtain satisfaction of his credit.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

A ship's auction will normally take place as an enforcement of an action, hence at the end of the proceedings. Unless all parties agree to have the ship sold at an earlier stage, the action will take place at the very end of the process. Alternatively, in some cases the parties have reached an agreement to bring the ship to Gibraltar for an urgent auction.

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# SHIP ARREST IN TAIWAN



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## 1. Please give an overview of ship arrest practice in your country.

An arrest of ship in Taiwan shall be subject to either the Chapter on Precautionary Proceedings under the Civil Procedure Code, promulgated on 1st February, 1935, effective from 1st July, 1935, and last amended on 8th May, 2013 (the "CPC"), the Compulsory Execution/Enforcement Act, promulgated on 19th January, 1940, effective from 21st January, 1940, and last amended on 4th June, 2014 (the "CEA"), and the Maritime Act, promulgated on 30th December, 1929, effective from 1st January, 1931, and last amended on 8th July, 2009 (the "MC"). In addition to the foreclosure of ship mortgage and the enforcement of a final and irrevocable Court Judgment or Arbitration Award in favour of the claimant/creditor against the registered shipowner as the debtor; wherein, any ship of the same shipowner shall be at stake under the CEA, the competent Court may grant a Civil Ruling to provisionally seize/attach or dispose the ship in question, upon an application therefor submitted by the creditor/claimant. The criteria thereof, however, are stringent, and the procedures involved are cumbersome.

## 2. Which International Convention applies to arrest of ships in your country?

Taiwan is not the signatory country to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952. Ship arrest is governed by the CPC, CEA and/or MC as mentioned under Question 1.

## 3. Is there any other way to arrest a ship in your jurisdiction?

No, there is no other way to arrest a ship, in terms of securing the creditor's/claimant's alleged claim.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

Under certain circumstances, the ship could be subject to freezing order or saisie conservative, if she violates specific Taiwan administrative laws and/or regulations.

## 5. For which types of claims can you arrest a ship?

Arrest ship is available for general claims, no matter maritime or not, under the *lex causae*, vis-à-vis the registered shipowner of ship to be arrested, and for maritime liens according to the law of ship's flag, albeit the debtor in this context may be different from the registered shipowner of her.

MC provides, *inter alia*, that:

The claims listed hereunder may be secured by maritime liens and are entitled to a preferential right of compensation:

- (1.) Claims of the shipmaster, seafarer or other members of the ship's complement which have arisen from their contracts of employment;
- (2.) Claims against the shipowner, in respect of loss of life or personal injury directly arising from the operation of the vessel;
- (3.) Claims for salvage rewards, expenses for wreck removal or ships' contribution on general average;
- (4.) Claims against the shipowner, based on tort in respect of damage to or loss of property occurring, whether on land or on water, in direct connection with the operation of the vessel; and
- (5.) Harbour charges, canal or other waterway dues or pilotage dues.

6. Can you arrest a ship irrespectively of her flag?

Yes.

7. Can you arrest a ship irrespectively of the debtor?

Yes, as long as the debtor/opponent is the registered shipowner, or whom the maritime lien claim is against.

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships owned, at the time when arrest is effectuated, by the identical registered shipowner who is liable for the general claims mentioned hereinabove. The "ships in associated ownership" has not been defined under Taiwanese laws, including the MA.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Unless the alleged claim constitutes a maritime lien against the subject ship, the ship may not be arrested for any claims vis-à-vis her bareboat charterer, or time charterer.

10. Do your Courts require counter-security in order to arrest a ship?

With the exception of an arrest based upon the final and irrevocable Court Judgment, Arbitration Award, or Civil Ruling granting the foreclosure of ship mortgage, the Court would only grant, without adjudicating the validity of claimant's application or claims on the merits of the case, such an arrest, seizure/attachment against a counter-security in the form of cash, the amount of which is subject to the Court's discretion, normally one-half (1/2) or more of the alleged claim amount. In addition, the claimant should pay around decimal eight percent (0.8% or 8/1,000) of its claim amount to the Court for the provisional seizure execution/enforcement fees when submitting the subject application, which shall be deductible when the compulsory enforcement/execution of the final and irrevocable Court Judgment is eventually lodged.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Subject to the law of ship's flag, an arrest for a maritime lien can be done irrespective of ship's ownership, who may be not identical to the registered shipowner. The application for arrest in this context should be thoroughly elaborated upon since generally speaking, the Court adjudges such an application prudently and strictly, as there is no concept of "action in rem" under Taiwanese legal system.

12. Does you country recognise maritime liens? Under which International Convention, if any?

Yes, but it is subject to the law of ship's flag. As to the maritime liens under Taiwanese law, please refer to above-mentioned 5. Taiwan is not a signatory country to any International Conventions on maritime liens.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Provided the required information, documents and counter-security, if necessary, are well-prepared, an arrest may be completed within three (3) to five (5) days, should no complications arise.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes, notarized and legalized Powers of Attorney (the "POA") as well as the following documents/information are required:

(1) The full style of claimants, including their full name, registered address of headquarters and the name of their legal/statutory representative, i.e., the chairman of board of directors, the managing director, the president or the general manager who is the legal/statutory representative for the claimants under the law of the country/state where the claimants are duly incorporated;

(2) The information set forth in the preceding Item (1) of the debtors/opponents and if necessary, the proof in this context;

(3) The proof as to the ownership of the vessel to be arrested, i.e., a Certificate issued by the competent authorities of the state/country of her flag, which could sufficiently certify that she is currently owned by and registered under the name of debtors, or a similar statement on search therefor issued by the lawyer practising in the state/country of her flag;

(4) The description of claimants' claims vis-à-vis the debtors;



- (5) Copies of all the relevant documents regarding the claimants' claims; and
- (6) ETA and ETD of the vessel.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Certain numbers of type-written originals each of POA duly and separately executed by the chairman of directors board, the managing director, the president, or the general manager, who is deemed to be the legal/statutory representative therefor under the laws of the country where the claimants have been incorporated, of the claimants, before a notary public (notarization) and legalized/authenticated by the Taiwanese consulate or de facto consulate stationed in the country where POAs shall have to be issued and then sent to us by e-mail, facsimile and post. For the purpose of arresting ship, other documents could be submitted in copies thereof at the outset. Nevertheless, all the respective originals thereof shall be required to present before the court of trial, if any, at a later stage.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Unless the claim arising from a contract contains an exclusive foreign jurisdiction clause, or an arbitration in foreign forum clause, the Taiwanese Court accepts jurisdiction over the substantive claim once the vessel has been arrested.

17. What is the procedure to release a ship from arrest?

In the case of an arrest based upon the final and irrevocable Court Judgment, Arbitration Award, or Civil Ruling granting the foreclosure of ship mortgage, the debtor, registered shipowner, or the interested party may apply, relying upon CEA, etc., to the Court for releasing the arrested ship against the lodgement of security in the amount of the alleged claim amount as well as the execution fees as court costs; or an equivalency of the ship's value; or an appropriate assets. As to the provisional seizure/attachment or disposal proceedings, the Court, when granting a Civil Ruling to provisionally seize/attach or dispose the ship in question, mentioned under Question 1, would normally allow the debtor/opponent or registered shipowner to revoke the provisional seizure/attachment or disposal proceedings, resulting in the release of arrested ship, against the lodgement of security, the amount of which is normally tantamount to the creditor's alleged claimed amount or more.

18. What type of security needs to be placed for the release?

The security could be in form of: (1) cash; (2) the interest bearing term deposit/certificate issued by a local bank, (3) an appropriate assets; or (4) a letter of guaranty issued by local underwriter/insurer, or local bank running insurance business, which should explicitly undertake, inter alia, that the issuer shall be responsible for recouping the alleged debt and/or compensating the creditor for a certain sum in the event that the debtor, or registered shipowner does not fulfil its obligation. Items (2) to (4) shall be subject to Court's discretionary approval.

19. Does security need to cover interest and costs?

The security need to cover the alleged claim amount and the court costs, or execution fees.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs would not be accepted, unless it is a local underwriter/insurer.

21. How long does it take to release the ship?

It would take around ten (10) business working days, should no complications arise.

22. Is there a procedure to contest the arrest?

There are several approaches to contest the arrest under CEL and CPC.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The shipowner of arrested ship, or the named debtor may apply with the Court for a Ruling ordering the claimant to take legal action on the merits within normally seven (7) days, failing which the arrest may be left. Such a Ruling shall be rendered within two (2) to three (3) weeks upon an application.



24. Do the Courts of your country acknowledge wrongful arrest?

Yes, but the substantiation of damages and/or loss shall be subject to another lawsuit.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Very rarely.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is very impossible.

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# SHIP ARREST IN THAILAND



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## 1. Please give an overview of ship arrest practice in your country.

In Thailand, the ship arrest procedure is subject to The Arrest of the Ships Act, B.E. 2534. The vessel subject to a potential procedure of arrest must be a seagoing ship used in the international carriage of goods or passengers. The arrest must be made by way of petition before the Court which has jurisdiction. If the creditor provides evidence before the Court that his claim is a maritime claim as stated by the section 3 of the aforementioned Act, the Court would order the arrest of the ship concerned.

Under the provision of the Arrest of the Ships Act, B.E. 2534, the arrest procedure must be urgent. For instance, upon acceptance of a petition for ship arrest, the Court would hold an ex parte inquiry without delay.

However, the creditor who would like to apply for a petition to arrest a ship must be domiciled in Thailand. If not, the Court would not allow the arrest of the ship.

## 2. Which International Convention applies to arrest of ships in your country?

Thailand does not apply any International Convention. However, the Arrest of the Ships Act, B.E. 2534 is based on the content of the International Convention Relating to the Arrest of Seagoing Ship, signed at Brussels, on May 10th, 1952.

## 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?

No.

## 5. For which types of claims can you arrest a ship?

The maritime claims which could base an arrest procedure in accordance with the Arrest of the Ships Act, B.E. 2534, are the following:

-Loss of life or personal injury caused by any ship or which occurs in connection with the operation of the ship;

-Salvage;

-Agreement relating to the use, hire, hire-purchase or loan of any ship, provision of transport service, or any other similar agreement;

-General average act where the ship owners, the carriers and the owners of such goods as carried in a ship are bound to compensate the owners of a particular property in consequence of an international act which is necessarily incurred for the common benefit of all the parties concerned or for the common safety of the ship and goods carried therein, provided that there exists a specific law or mutual agreement governing liability in this regard;

-Loss or damage to properties carried in any ship;

-Towage;

-Pilotage;

-Goods or materials wherever supplied to a ship for its operation or maintenance;

-Construction, repair or equipment of any ship or dock charges and dues;

- Port facilities or port charges or dues;
- Stevedoring charges;
- Wages of ship masters or personnel;
- Master's disbursements, including disbursements made by the charterers, the agents, or the shippers on behalf of the owner or controller of a ship;
- Disputes between co-owners of a ship as to its possession, employment or earning;
- Mortgage of a ship.

#### 6. Can you arrest a ship irrespective of her flag?

The answer is yes. Basing on a maritime claim as mentioned in item 5, if the vessel is a sea-going ship in accordance with the definition stipulated in Section 3 of the Arrest of the Ship Act, B.E. 2534, the creditor can file a motion regarding the application of an arrest of a ship regardless of the flag of the ship.

#### 7. Can you arrest a ship irrespective of the debtor?

The creditor who is domiciled in Thailand can apply before the Court for obtaining an order to arrest a ship owned by a debtor or which is in his possession, i.e. time chartered vessel etc; thus, the arrest of the ship's procedure as regards sister ship is possible in Thailand.

#### 8. What is the position as regards sister ships and ships in associated ownership?

With regards to the arrest of sister ships, please refer to point 7.

With regards to the arrest of the ships in associated ownerships, a ship owned by the associated ownership cannot be arrested due to it is not owned by the debtor or in possession of the debtor.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

Please refer to our comment point 7.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Before ordering the arrest, in practice, the Court would direct the creditor to furnish such security as it thinks fit to cover any damage arising out of the arrest.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

In Thailand, there is the specific Law regarding the maritime lien, namely, the Ship Mortgage and Maritime Lien Act, B.E. 2537.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

In case the information and all documents are complete, the arrest and release procedure can be completed within 1-2 business day.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA is not required in case of arrest of a ship. However, in case of release of a ship owned possessed by a debtor who is not domiciled in Thailand, a POA or LOA (Letter of Appointment) would be required.

#### 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 electronic submission of the documents has not yet been available before Thai Courts' procedure, but in ex parte inquiry, the creditor may adduce the copy document certified by the creditor to support the claim before the Court.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

In principle, once the vessel is arrested in Thailand, the Courts accept jurisdiction.

17. What is the procedure to release a ship from arrest?

The debtor or any person who has sustained damage by reason of ship arrest is entitled to apply to the Central Intellectual Property and International Trade Court for release of the ship. Once the application being filed, the Court would set up the trial and order the release on being satisfied that the security furnished by the applicant is valued or worth no less than the amount stipulated in the arrest order.

18. What type of security needs to be placed for the release?

Normally, cash or bank guarantee. Letter of Undertaking issued by P&I Club is unacceptable for the Court.

19. Does security need to cover interest and costs?

No (see our answer to question no. 17 above)

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No (see our answer to question no. 18 above)

21. How long does it take to release the ship?

Normally, one day.

22. Is there a procedure to contest the arrest?

No. The application for ship arrest is *ex parte*, and the Court order for arrest is final. However, the debtor is entitled to initiate an action to recover damage arising from wrongful arrest against the creditor.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Once a ship has been arrested, the creditor has to initiate an action based on his maritime claim within 30 days after a warrant of arrest has been posted on the vessel. If not, the Court shall have the power to order the release of the ship.

24. Do the Courts of your country acknowledge wrongful arrest?

Thailand recognizes wrongful arrest. The debtor can make a counter claim to recover damages in respect of the arrest applied for the creditor.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This concept is not yet acknowledged by the Courts.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

In Thailand, there is not any apparent statute prohibiting the selling of the vessel *pendente lite*.

# SHIP ARREST IN TUNISIA



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## 1. Please give an overview of ship arrest practice in your country.

Through five trade ports, Tunisia is one of the best forums in the world for vessel arrests with simple and fast procedure. Not only can you sue the vessel here but you can also have it arrested and held under arrest until claim is settled. Tunisian Maritime Trade Law N° 13 /1962 and the Civil Procedure Code is the cornerstone of ship arrest and they remain the major source in Tunisia.

## 2. Which International Convention applies to arrest of ships in your country?

Tunisia has not ratified any of the International Conventions related to Ship Arrests but the Tunisian legislator was inspired by the International Convention Relating to the Arrest of Sea-Going Ships Brussels, May 10, 1952.

## 3. Is there any other way to arrest a ship in your jurisdiction?

There are some others ways to arrest ship in Tunisian ports:

- Under procedures of execution
- Administrative arrest by Harbour Master
- Under Criminal matter
- Arrest in accordance with court or arbitration awards

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

These measures are similar to saisie conservatoire or freezing order.

## 5. For which types of claims can you arrest a ship?

The types of claims which can lead to an ship arrest are covered by Tunisian Maritime Trade Law n° 13 /1962 identified in Article 101 CCM: disputes relating to ownership, damage to goods carried on a vessel, the costs of goods or materials supplied to a vessel, construction or repair of a vessel, and claims arising out of charter agreements. wages of Masters, Officers, or crew, towage, pilotage, construction, repair or equipment of any ship or dock charges and due,...

## 6. Can you arrest a ship irrespectively of her flag?

In Tunisia the presence of any vessel at Tunisian waters gives the court jurisdiction in rem over the vessel and in personam over the owners, operators and charterers. Tunisia does not recognize governmental immunity for state owned commercial trading vessels. Any vessel capable of being used in navigation can be arrested therefore pleasure vessels can be arrested.

## 7. Can you arrest a ship irrespectively of the debtor?

In Tunisia, the claims subject to Tunisian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer.

Under Tunisian Law anyone with authority binds the vessel in rem (in rem" actions, meaning that the action is against a thing, rather than against a person). The ship can be arrested even if the ship owner's is not the debtor of the maritime claim. In order to have his ship released from arrest, the ship owner's have to pay the claim or to give a Bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasure Department of Tunisia .The ship owner's will have to guarantee the payment of the claim, even if a third person charterer, issuer of the Bill of Lading is the debtor toward the arresting party. Generally, the vessel, itself, is responsible for payment of claims, liens, mortgages or any other maritime lien that may arise. When the



owner encumbers a vessel with a First Preferred Ship's Mortgage, it is the vessel that guarantees payment, rather than the owner. However, the owner may be personally liable if they signed a personal promise or guaranty to pay.

#### 8. What is the position as regards sister ships and ships in associated ownership?

In the context of a legal claim against a particular ship, and in certain circumstances, Tunisian Maritime Trade Law allows the arrest of another ship belonging to the same owner.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

A vessel that is in the ownership of the charterer can be arrested for a maritime claim against a time charterer.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Tunisian law practice does not impose on the claimant the deposit of a counter-security to cover costs, charges, damages, fees or other expenses deriving from a potential wrongful arrest. But under the Tunisian Maritime Trade Law n° 13 /1962 Article 104 the seizure may be subject to the condition that a bond or guarantee is validated from Applicant.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no substantial difference between arresting a ship for a maritime claim or a maritime lien.

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Tunisia recognizes maritime liens under the Tunisian Maritime Trade Law n° 13 /1962, not under any Convention but the Tunisian legislator was inspired by the International Convention Relating to the Arrest of Sea-Going Ships Brussels, May 10, 1952.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Usually two working days is enough for our law office to arrest a ship.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

No power of Attorney is requested.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

According to Tunisian Law, the arrest of a vessel is made through an order on request. For this purpose, all documents proving the debt and the expenses are required (please note here that all the documents to be presented to the judge must be translated into Arabic language). Documents filed electronically are accepted.

#### 17. What is the procedure to release a ship from arrest?

There are two types of releases:

- By the Defendant: It is necessary to make an emergency action called "référé" before the competent court.

- By the Claimant: There is no need for the claimant to go to the court. The only requirement is a notification of the release by a bailiff following the payment of the claim by the Defendant or an agreement between the latter and the Claimant involving payment or the issuance of an acceptable bank guarantee or a cash deposit.

#### 18. What type of security needs to be placed for the release?

A bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasury Department of Tunisia.

#### 19. Does security need to cover interest and costs?

In some cases, but it always depends on the judge's ordinance.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

No, Club LOUs are not accepted in Tunisia.

21. How long does it take to release the ship?  
Between 4 and 10 hours.

22. Is there a procedure to contest the arrest?  
An emergency action called "référé" to be presented within 8 days from the date of notification of the arrest.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

We must introduce a case validation within a period of one month if the arrest is lifted once this period surpassed.

24. Do the Courts of your country acknowledge wrongful arrest?

In an only case if the claimant knew it had no maritime lien or right of arrest and nonetheless proceeded with the arrest and with the intention to cause damage to the defendant. The burden of proof in relation to these matters rests on the Defendant who claims damages for wrongful arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Tunisian courts are not generally inclined to lift the veil of corporate personality.

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# SHIP ARREST IN TURKEY (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

As a part of preparations for EU membership, Turkey is in the process of amending or promulgation its primary and secondary legislation. Within this framework, the long pending Turkish Commercial Code, a key element for the accession negotiations, was promulgated on 14 February 2011 and entered into force on 1 July 2012 ("New TCC"). New TCC regulates the maritime matters as well as other areas of commercial transactions and radically amended many aspects of Turkish maritime law, including arrest of ships. Until the enactment of the New TCC, there were no specific rules on ship arrest. The arrest of a ship was in general terms no different than any other conservatory measure or conservatory attachment of any other assets of a debtor. The New TCC, however, has specific provisions on the arrest of vessels and aims to bring a full and unified set of rules dealing with all aspects of arrest of ships and to tackle the special needs of the different parties in maritime transport.

## 2. Which International Convention applies to arrest of ships in your country?

Turkey is not a party to any of the international conventions on the arrest of ships.

During the preparatory stage, the committee that has prepared the New TCC looked the arrest rules of various states such as England, Germany, US, South Africa as well as international arrest conventions. The arrest provisions of the New TCC mainly reflect the provisions of the International Convention on the Arrest of Ships 1999 even though Turkey is not a party to the aforesaid convention. In addition, relevant provisions of the International Convention on Maritime Liens and Mortgages 1993 are also reflected in the New TCC.

## 3. Is there any other way to arrest a ship in your jurisdiction?

The New TCC regulates the arrest of ships specifically and prohibits any other ways to arrest a ship.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

From the procedural point of view, conservatory attachment leading to the arrest of the vessel is the only conservatory measure permitted under the New TCC. Other conservatory measures such as a freezing order or similar shall not be applicable with respect to a maritime claim.

## 5. For which types of claims can you arrest a ship?

Before the enactment of the New TCC, in principle, arrest of a ship in Turkey can take place for all types of claims regardless of whether the claim has a maritime character or is connected with the ship to be arrested or not. The New TCC, however, adopts the definition of "maritime claim" provided in the International Convention on Arrest of Ships, 1999 and restricts the arrest of ships for maritime claims enumerated in the New TCC.

## 6. Can you arrest a ship irrespectively of her flag?

A ship can be arrested in Turkey irrespectively of her flag.

## 7. Can you arrest a ship irrespectively of the debtor?

Except for arrests in order to enforce a maritime lien, only the vessels owned by the debtor can be arrested.

8. What is position as regards sister ships and ships in associated ownership?

The New TCC specifically deals with the issue and permits the arrest of any other ship of the debtor provided that they are owned by the debtor liable for the maritime claim.

9. What is the position as regards Bareboat and Time-chartered vessels?

Except for arrests based on a maritime lien, only the vessels owned by the debtor can be arrested. The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant a maritime lien.

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# SHIP ARREST IN TURKEY (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

Under Article 1363 of the new Turkish Commercial Code (TCC), the applicants are required to deposit lumpsum SDR (Special Drawing Rights) 10,000.00 counter security irrespective of the claim amount. The counter-security can be by way of cash deposit or Turkish Bank Guarantee. Provision of the counter-security is a pre condition for the arrest application and the court will not even review the application if the counter-security is not deposited. The respondent (Owners) may apply to the court requesting the counter-security to be increased. If the court accepts such application to increase the amount of the counter-security, it will set a deadline for the arresting party to supplement the counter-security. If the additional security is not provided within such deadline, the arrest order will automatically become null and void. In the same sense, the arresting party may also request the court to decrease the counter-security.

Arrest applications for crew wages are exempted from providing counter-security. No objection in this regard can be listened by the court.

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

If the claim grants a right of maritime lien under Turkish Law, the theory that the maritime lien attaches upon the vessel applies and the vessel can be arrested even if the Ownership has been changed. There is no difference with regard to the applicable procedure.

## 12. Does your country recognise maritime liens? Under which International Convention, if any?

The primary sources of the TCC as to the arrest regime and the maritime liens are two significant conventions which are International Convention on Maritime Liens and Mortgages (Geneva 6 May 1993) and International Convention on Arrest of Ships (Geneva 12 March 1999). Relevant Part of Article 1320 of TCC which is very identical to Article 4 of the Geneva 1993 Convention is as follows:

"Each of the following claims against the owner, demise charterer, manager or operator of the vessel grants a right of maritime lien to its claimant on the vessel:

- (a) Claims for wages and other sums due to the crew members in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
- (b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- (c) Claims for reward for the salvage of the vessel;
- (d) Claims for port, canal, and other waterway dues and pilotage dues;
- (e) Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.
- (f) The general average contribution credit claims"

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

The court will attend the arrest application as a matter of priority. Once the application is filed with all the supporting documents properly translated, it is possible to obtain the arrest order within the same (even within a couple of hours) or latest the next working day of the application.



#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

We need to provide a valid POA to the court. The POA has to be notarised and apostilled (or attested by the Turkish Consulate). In practice, the courts generally find it sufficient that the executed POA is sent electronically in the first instance. The original POA has to be provided at a later stage. The documents in support of the claim also have to be provided.

#### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

It is possible to obtain the arrest order with fax or electronic copies of the documents in support of the claim. Only the POA requires notarisation and apostille. However, should the counter party files an objection against the arrest order, there may be a requirement for submission of the originals of the major supporting documents depending on the nature of the objection. All the documents are required prior to filing the application.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Under Article 1359 of TCC, the Turkish Court granting the arrest order has jurisdiction over the substantive claim provided that there is no jurisdiction agreement between the Arresting Party and the Respondents.

#### 17. What is the procedure to release a ship from arrest?

A ship can be released from arrest either;

17.1. By provision of security,

17.2. Or if the objection against the arrest order is accepted and the arrest order is set aside by the Court

17.3. Or if a final Judgement dismissing the maritime claim is rendered.

The court should send a written notice to the Enforcement Office which has executed the arrest order that the arrest has been lifted and that Enforcement Office should send orders to the relevant authorities such as the Harbor Master, Coast Guard and the Customs Authorities. Upon receipt of the release order such authorities have to complete the formalities for releasing the ship promptly.

#### 18. What type of security needs to be placed for the release?

The Owners should provide sufficient security covering the claim, interest and costs thereof for the release. In practice, the security is provided in the form of Turkish Bank Guarantee. However, other forms of security by means of cash deposit, mortgage on real estate may also be accepted. The parties are also free to agree for the production of a P&I Letter of Undertaking as security. Otherwise, the court will decide the form of the security which will be either a Turkish Bank Guarantee or Cash Deposit. Beyond the Owner, the time charterer, manager or the mortgagee is also allowed to provide security for releasing the vessel. If so, the court will ensure that the final title issued against the person liable is also enforceable against the security provided. If the maritime claim exceeds the value of the ship, security covering the value of the ship will be sufficient for the release.

#### 19. Does security need to cover interest and costs?

Yes. The security must cover interest and costs.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs can only be accepted as sufficient to lift the arrest if the parties agree. Otherwise, the court will not accept a P&I LOU for lifting the arrest.

#### 21. How long does it take to release the ship?

If acceptable security is provided or the arrest order is set aside by the court upon an objection against the arrest order or by a final judgement dismissing the maritime claim, the ship can be released within a couple of hours.

#### 22. Is there a procedure to contest the arrest?

The Owners may challenge the arrest order immediately upon execution of the arrest and in any event within 7 days after learning the arrest order. This period commences on the date when the objecting party receives the information about the arrest. The time will in any event

start from the day of execution of the arrest. The Owner and all other parties like mortgagee, charterer may also file objections against the arrest order. If the claimant has filed its substantive claims, before the competent court, objections have to be filed before such court; otherwise the objection has to be filed before the court which has granted the arrest order. The objection has to be filed in writing and can be against the jurisdiction as to place, the security and the cause of the arrest. The objecting parties must enclose all evidence they rely on for their objections. The court must open a hearing and invite the arresting and the objecting parties. The court generally makes its decision during such hearing. The court is limited with the reasons set out by the objecting party. Based on the validity of the objections, the court may uphold, set aside or modify the arrest order.

### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Under Article 1376 of TCC, the legal action on the merits has to be taken within one month after obtaining the arrest order by filing a case before the Competent Court or by initiating enforcement proceedings before the Enforcement Offices. Otherwise, the arrest order will become null and void.

### 24. Do the Courts of your country acknowledge wrongful arrest?

Under Turkish Law no particular provisions have been set out in respect of the wrongful arrest of the ships. The Respondents may at any stage claim that the arrest is wrongful and unjustified. If the arrest is found wrongful, the applicant is liable against the Respondents and the third parties for any and all damages arising from or in connection with the arrest. The mere dismissal of the substantive proceedings (proceedings on merits) is sufficient to invoke liability against the arresting party for a wrongful arrest. Thus, it simply has to be established that the claim, for which the arrest was granted, is rejected in full. However, if the claim was partly upheld, the liability would not arise.

The court granting the arrest order has the jurisdiction for the claims arising out of wrongful arrests.

The losses and damages arising out of the wrongful arrest may be satisfied from the counter-security deposited by the Arresting Party if the amount of the same is sufficient (if not, enforcement proceedings have to be initiated against the Arresting Party)

### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The task of piercing the corporate veil under Turkish law is extremely difficult. Before the corporate veil can be lifted the following facts must exist:

- (a) The persons vested with authority to represent and bind both companies are the same;
- (b) Both companies have the same shareholders and board of directors/managers;
- (c) Transfer of the shares of the relevant company to a third party with the intention of escaping its liabilities i.e. bad faith.

### 26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Under Article 1386 of TCC, it is possible to have a ship sold *pendente lite* if:

The value of the ship reduces substantially and cost of maintaining the ship is excessive, the ship or her cargo causes danger for the safeties of human being, properties and environment. There is no certainty regarding the time for this issue.

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# SHIP ARREST IN UAE (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

Under the UAE Federal Maritime Law (Law No. 26 of 1981) ("FML") a right of arrest as provisional relief may be exercised in respect of a maritime debt. Claims constituting "maritime debts" are listed in Article 115 of the FML (see question 5).

An ex parte application is made to the Civil Court having jurisdiction over the port where the vessel is and the grant of any relief is entirely discretionary. A Plaintiff must provide prima facie evidence that it has a maritime debt against the Defendant, and that unless an arrest order is made, the Defendant is likely either to leave the Emirates permanently or to act in a manner which is likely to prejudice the Plaintiff's rights.

The court will after examination of the application and the supporting documents filed arrive at a decision - often without hearing Counsel. The Court may require counter security from the Plaintiff in the form of a bank guarantee (see question 10). If an arrest order is granted a substantive suit has to be filed within 8 days of the grant of the arrest order. The court will also require the following from the Plaintiff:

(a) An undertaking to pay all official fees and expenses relating to the towing or moving of the vessel or in any way connected with the arrest of the vessel including any amounts due to the crew;

(b) An undertaking to compensate the owners of the vessel against any delay or damage that may arise from the arrest of the vessel if the arrest is held to be wrongful by a judgment of the court.

(c) The Dubai courts have in the past been known to require confirmation from the port that the Defendant is the owner of the vessel and that the vessel is within port limits.

The FML (Article 122) provides that the civil court in whose area of jurisdiction the arrest took place shall be competent to decide on the subject matter of the claim in certain circumstances even if the vessel does not fly the UAE flag (see question 16).

The FML (Article 325) contains certain provisions as to the jurisdiction of the courts in cases involving collisions.

The (UAE Civil Procedure Code of 1992 as amended by Federal Law No. 30 of 2005) ("CPC") appears to confer jurisdiction upon the UAE courts to hear a case against a foreign defendant who has no domicile or residence in the UAE and also to order provisional relief (such as the arrest of a vessel) even when the courts do not have jurisdiction to adjudicate upon the substantive merits of the matter.

The UAE courts have granted arrest applications as security for arbitration proceedings in another jurisdiction. In addition to the powers of arrest conferred by the Maritime Law, the Port Authorities of each Emirate also have certain powers of arrest and detention.

The UAE courts do not award legal costs other than in a token amount. Accordingly, the costs relating to the arrest and substantive suit will not be recoverable.

## 2. Which International Convention applies to arrest of ships in your country?

The UAE is not a party to any International Convention relating to arrest of ships. The arrest will be under the FML.

## 3. Is there any other way to arrest a ship in your jurisdiction?

See questions 1 and 2 above. The arrest is under the FML.

#### 4. Are these alternatives e.g. saisie conservatoire or freezing order?

The arrest is under the FML.

#### 5. For which types of claims can you arrest a ship?

Claims which constitute "maritime debts" as listed in Article 115 of the FML. These are:

- (a) damage caused by a vessel as a result of a collision or other accident;
- (b) loss of life or personal injury occasioned by the vessel and arising out of the use thereof;
- (c) assistance and salvage;
- (d) contracts relating to the use or exploitation of the vessel under a charter party or otherwise;
- (e) contracts relating to the carriage of goods under a charter party, bill of lading, or other documents;
- (f) loss of or damage to goods or chattels transported by a vessel;
- (g) general average;
- (h) towage or pilotage of a vessel;
- (i) supplies of products or equipment necessary for the use or maintenance of the vessel, in whichever place the supply is made;
- (j) building, repairing or supplying a vessel and dock dues;
- (k) sums expended by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof;
- (l) wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment;
- (m) disputes over the vessel's ownership;
- (n) a dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof;
- (o) a maritime mortgage.

#### 6. Can you arrest a ship irrespective of her flag?

Yes.

#### 7. Can you arrest a ship irrespective of the debtor?

Yes, assuming that it is not a sovereign asset enjoying immunity in law.

#### 8. What is the position as regards sister ships and ships in associated ownership?

The Plaintiff may arrest not only the vessel to which the claim relates, but also any vessel owned by the Defendant provided it was owned by him at the time the claim arose. The courts are not generally inclined to lift the veil of corporate personality. There is no right to arrest other vessels owned by a Defendant in the following circumstances (Article 116.2 and 117 of the FML):

- a) in a dispute regarding the ownership of the vessel;
- b) in a dispute relating to the co-ownership of the vessel, or the possession or use thereof, or the right to profits arising out of the use thereof;
- c) in a claim arising from a maritime mortgage;
- d) where the vessel was chartered by demise.

In relation to a claim against a vessel not owned by the owner but by the demised charterer, the Plaintiff may arrest either the vessel in respect of which the claim arose or any other vessel owned by the demisecharterer. The Plaintiff may not arrest other vessels owned by the owner of the vessel in respect of which the claim arose.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

See question 8.

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# SHIP ARREST IN UAE (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

There are no provisions in the UAE Federal Law No. 26 of 1981 (the Maritime Code) setting out the arresting party's obligation to provide counter-security and this is dealt with at the discretion of the judge. This is a difficult aspect of the process because the claimant does not know with certainty whether or not he will be required to put up counter-security and, if so, how much. The UAE Court will not accept P&I letters of undertaking as forms of security, so counter-security normally takes the form of cash or a local bank guarantee.

Recently UAE Courts have been more and more consistent in requesting for counter-security, however there is no possibility to anticipate the quantum of such counter security required.

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The Maritime Code does not make differences between a maritime claim and a maritime lien. Accordingly, an arrest application by the court would only be accepted if the claim falls within the purview of a "maritime debt" as listed in Art. 115 of the Maritime Code (similar to the "maritime claim" under the 1952 Arrest Convention).

## 12. Does your country recognise maritime liens? Under which International Convention, if any?

The concept of maritime liens does not exist with regards to arrest of vessels, however, the Maritime Code refers to "maritime debts" which are somehow analogous to maritime liens.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

If the arrest is urgent, the Urgent Matters Judge can be approached for the issuance of an arrest order within the same day (or maximum the day after) provided the documents listed in point 15 below are presented to the Courts. In practice however, the time frame will depend on the availability of (i) an original power of attorney, and (ii) translation of the supporting documents.

## 14. Do you need to provide a POA, or any other documents of the claim to the Court?

To arrest any vessel in the UAE, the claimant shall provide a POA to lawyers having right of audience before the UAE courts. Please also note the POA shall be presented in original and no copies will be accepted by the Courts. The UAE are not a party to the 1952 so if the POA is executed abroad, it shall be notarised in the foreign country and then attested by the relevant Ministry of Foreign Affairs of the country of execution and by the UAE Embassy in that country. The POA so legalised will then need further attestation in the UAE by the Ministry of Foreign Affairs and Ministry of Justice, along with translation into Arabic by a certified legal translator. This could be a lengthy process and in case of urgency, these procedures are often an impediment to complete the arrest process.



15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

As an absolute minimum, to file an arrest application in the UAE, the Court must be provided with the following documents as evidence of the prima facie claim

- (a) a notarised and legalised POA;
- (b) all the relevant documents indicating the debt together with Arabic translations by a certified legal translator;
- (c) evidence that the ship is owned by the debtor or is a sister vessel, if applicable; and
- (d) payment of the appropriate Court fees, levied as a percentage of the claim (3.75%) but capped at a total of AED 15,000.

No other documents are necessary, although it may be good practice to also provide evidence that the vessel is in territorial waters, and only the POA is required to be notarised/legalised. It has to be stressed however that all documents need to be translated into Arabic by a certified legal translator.

There are no provision for filing electronically, thus documents have to be physically presented to the court. Further, apart from the POA, copies of the documents can be filed, subject however to the possibility for the respondents to request the claimant to provide the originals.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Once the arrest order is granted, the claimant shall mandatorily file substantive proceedings (i.e. proceedings on merits) within eight days of an order, failing which the arrest will lapse. Jurisdiction over the substantive claim is regulated by Article 122 of the Maritime Code, which – in addition to the circumstances set out in the procedural laws of the UAE – provides for jurisdiction of the civil court granting the arrest on the subject matter of the claim, regardless of whether the vessel flies the UAE flag, if:

- (a) the claimant's usual address or main office is in the UAE;
- (b) the maritime claim originated in the UAE;
- (c) the maritime claim arose during the voyage upon which the vessel was arrested;
- (d) the maritime claim arose out of a collision or assistance over which the court has jurisdiction; and
- (e) the claim is secured by a maritime mortgage over the arrested vessel.

Once the arrest is granted the aspect of jurisdiction can be argued at the scheduled court hearing and a decision and interpretation of the law rests with the court alone, however the UAE Courts tends to have an exorbitant jurisdiction and is thus unlikely they will decline jurisdiction on the merits making the arrest order lapse.

17. What is the procedure to release a ship from arrest?

Article 118(2) of the Maritime Code stipulates that the Court shall cancel the arrest upon the presentation of a guarantee or other security sufficient to satisfy the debt. Please note in this respect that the provision of security under UAE law does not amount to an admission of liability nor does it deny the shipowner his right to limit liability.

If security cannot be provided then the shipowner's only other recourse will be to successfully resist the claim and obtain release of the ship but this will obviously result in a longer period of non-use of the arrested ship.

It should be noted that the ship will not automatically be released, regardless of provision of security, if the arrest relates to a dispute regarding the ownership of a ship or the possession, use or rights to profits arising from it. In such an instance, the Court has the discretion to order that, upon provision of security, a third party management company take control of the ship so that the owner can make commercial use of the ship but she will legally remain under arrest and under the control of a neutral third party.

Once the Court has issued its order to release the vessel (which is normally in the form of a letter), copies must be made and served as soon as possible on the concerned authorities, which normally are the Harbour Master, the Coast Guard and the relevant maritime authority.

18. What type of security needs to be placed for the release?

There are three types of security which are commonly accepted by the Courts for a maritime debt, namely cash or a managers cheque deposited into Court or a bank guarantee from a UAE domiciled bank. A party may also offer alternative assets as security in lieu of the vessel.

Although the Maritime Code states that security for a maritime debt will be "reasonable", the Courts in practice only accept security equivalent to the full value of the claim, which is not always a reasonably calculated claim.

19. Does security need to cover interest and costs?

No.

## 20. Are P&I LOUs accepted as sufficient to lift the arrest?

Although the wording of Article 118(2) is broad, a Club letter of undertaking (Club LOU) is not recognized in the UAE despite Club LOUs being considered good security in many jurisdictions. This position (similarly to a bank guarantee which needs to be issued by a bank domiciled in the UAE) is based on the fact that the P&I Clubs are not domiciled in the UAE, and therefore Courts are reluctant to accept security which has no value beyond the reputation of a P&I Club domiciled in a foreign jurisdiction.

It is however obviously possible for the parties to agree on acceptance of a Club LOU, in which case the Courts will not be involved and the Claimants will need to approach the Court to withdraw the arrest upon receipt of the LOU.

## 21. How long does it take to release the ship?

It is usual for the ship to be released the same day or the next working day from issuance of the Court's order, although much does depend on the timing of receipt of the release order. In our experience we have seen delay where the release order has been granted in the afternoon or too close to the weekend.

## 22. Is there a procedure to contest the arrest?

Once the party whose vessel has been arrested has been informed and notified of the arrest they will be able to register a grievance/objection to the arrest. This process is treated entirely separately from the main proceedings and is dealt with under the Civil Procedure Code. The grievance will seek to challenge the correctness of the procedure and/or facts of the arrest pursuant to the Maritime Code.

## 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

As mentioned above the claimants have eight days to file the substantive suit after the arrest is granted.

## 24. Do the Courts of your country acknowledge wrongful arrest?

There is no provision within the law claiming for a wrongful arrest. The wronged party may not claim damages unless he can show that the application for arrest was (i) malicious, in bad faith and with the intention to cause damages, or (ii) insignificant in comparison with the damage caused to the owner of the vessel, conditions which are extremely difficult to prove. So far there is no history of any claim for a wrongful arrest in the UAE.

## 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

There is no provision in this sense in the UAE legal system, and the UAE Courts are not generally inclined to do so, hence it may prove very difficult to pierce or lift the corporate veil.

## 26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

A *pendente lite* injunction is not possible if a vessel is arrested and proceedings are ongoing, unless the respondents consent to such sale. If however the claimants are unsuccessful in making good their damages pursuant to their claim from the defendants and have a favourable judgement from the court, then the Maritime Code contains provision for the judicial sale of the vessel.

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*\*Alessandro Tricoli specializes in ship finance, ship sale & purchase, construction and conversion and has acted for owners, yards and banks alike in contentious and non-contentious matters relating to ship building and ship finance contracts.*

*Alessandro's broad practice further encompasses many areas of the firm's contentious work, with a particular emphasis on charterparty and cargo disputes in which he advises a number of the firm's shipping clients and P&I Clubs, allowing him to deal with local counsel in different jurisdictions as well as drafting counter expert reports for the UAE Courts.*

*Before joining Fichte & Co Alessandro practiced in Italy with a top-tier insurance law firm, during which time he also assisted the Chair of Maritime Law at the University of Bologna. He then moved to the UK to enhance his knowledge of Maritime Law at the University of Southampton and gained international work experience in London. Alessandro is fluent in English and Italian.*

# SHIP ARREST IN UKRAINE (Questions 1 to 9)



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## 1. Please give an overview of ship arrest practice in your country.

Ship arrest in Ukraine is not simple though relatively inexpensive. The practice of ship arrest is rather wide, especially in the ports of Big Odessa (Odessa, Ilyichevsk, and Yuzhny). On the 7-th of September 2011 Ukraine joined the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952. On the 16-th of May 2012 the Convention took effect for Ukraine.

Previously, the matters of ship arrest were governed almost exclusively by the Merchant Shipping Code, which stipulated the possibility of the arrest, but did not set out the procedural rules. Thus the procedure for arresting a ship was governed by the common regulations of national procedural law. Arrests of ships were usually realized by the attachment of bunker fuel as security for the commercial suit or as a precautionary measure (pre-trial attachment), in which case the petition on arrest had to be followed by the filing of a lawsuit on the merits with the same court which imposed the arrest.

In order to implement the Convention into national law, Ukraine adopted amendments to the Commercial Procedural Code and the Civil Procedural Code. Now, matters involving ship arrest are subject to the competence of the relevant local commercial court or the court of general jurisdiction at the port of registration of the ship or the port of ship's call. However, Ukrainian commercial procedure exists only in the form of adversarial proceedings, meaning that a person with a maritime claim must initiate an action in a Ukrainian court and then apply for the arrest within the framework of such proceedings.

Brussels convention covers the situations where the arrest is being imposed by one court and the case on the merits is being heard by another court. This concept is not peculiar to Ukrainian legislation; therefore, in most cases the arrest of the ship must be followed by an action on the merits in a Ukrainian court.

The legislation provides that the Ukrainian courts may hear a case on the merits if the defendant has movable or immovable property in the territory of Ukraine. A ship calling at a Ukrainian port may act as such property, but in practice it may be difficult to arrest the ship under the Convention since the Ukrainian court may declare a lack of jurisdiction, particularly where the contract giving rise to a maritime claim explicitly provides for commercial arbitration outside Ukraine. Court practice is not uniform, and generally the courts tend to avoid disputes involving complicated issues of jurisdiction. Under such conditions, the practice remains rather controversial.

## 2. Which International Convention applies to arrest of ships in your country?

The International Convention for the Unification of Certain Rules Relating to the Arrest of

Sea-Going Ships (Brussels, May 10, 1952) is the basic Convention. Also Ukraine adhered to the International Convention on Maritime Liens and Mortgages 1993 on 22 November 2002.

### 3. Is there any other way to arrest a ship in your jurisdiction?

There are many ways to arrest a ship in a Ukrainian port. As a rule vessels are arrested in Ukraine by means of:

- a) preliminary arrest in security of a maritime claim pursuant to the order of the Court/ Commercial court;
- b) arrest within the frame of enforcement of Court or arbitration award in accordance with national legislation;
- c) arrest of a ship under a criminal matter.

Commercial courts and courts of general jurisdiction are the state courts which exercise jurisdiction over maritime disputes. The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine is a domestic arbitral institution with a panel of arbitrators specializing in maritime arbitration.

### 4. Are these alternatives e.g. *saisie conservatoire* or freezing order?

These measures are similar to *saisie conservatoire* or freezing order.

### 5. For which types of claims can you arrest a ship?

In Ukraine the ship, being the debtor's property, can be arrested regardless whether claims are maritime or not. Nevertheless, according to the maritime law of Ukraine the vessel may be arrested only upon at least one of the following conditions:

(i) a claim referred to the category of privileged claims, particularly:

- claims arising out of labour relations, claims for recovering damage inflicted by injury, other impairment of health or death;
- claims arising out of nuclear damage and maritime environment pollution as well as elimination of said pollution consequences;
- claims regarding port and channel dues;
- claims regarding salvage and payment of general average contribution;
- claims for reimbursement of losses resulting from collision of vessels or from other sea casualty, or from damage to port facilities and other property located in the port as well as to navigational aids;
- claims for reimbursement of losses related to cargo or baggage;

(ii) a claim based upon the vessel's registered mortgage;

(iii) claim referring to the rights of ownership or possession of a vessel;

(iv) a claim not indicated hereinabove and referring to the person that is the vessel owner by the moment of origination of the said claim and is responsible for this claim by the moment of starting a procedure connected with vessel's arrest;

(v) charterer of the vessel on bareboat charter is liable for the said claim and is the vessel's bareboat charterer or her owner by the moment of starting a procedure connected with vessel's arrest.

### 6. Can you arrest a ship irrespectively of her flag?

It is possible to arrest a ship irrespectively of her flag in Ukraine.

### 7. Can you arrest a ship irrespectively of the debtor?

Ukrainian legislation recognizes jurisdiction in personam and does not support the action *in rem*, therefore it is impossible to bring a suit in rem against the vessel to satisfy debts arising from the operation or use of the vessel, by the person other than the owner.

### 8. What is the position as regards sister ships and ships in associated ownership?

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the proprietor/owner of the vessel to which the said claim has arisen.

## 9. What is the position as regards Bareboat and Time-Chartered vessels?

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the charterer of her on bareboat, time or voyage charter basis. The exceptions to this rule are claims with regard to ownership or possession of vessels.

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# SHIP ARREST IN UKRAINE (Questions 10 to 26)



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## 10. Do your Courts require counter-security in order to arrest a ship?

The Courts may require counter-security as a prerequisite for arrest of a ship, but in practice it happens rarely. The better evidences are arranged and presented with the claim to the court the more chances to avoid the payment of counter-security.

## 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no procedural difference in respect to arresting a ship for maritime claim and a maritime lien.

## 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Ukraine ratified the International Convention on Maritime Liens and Mortgages (Geneva, 1993) on 22.11.2002.

## 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Two-three business days will be required in order to arrest a ship.

## 14. Do you need to provide a POA, or any other documents of the claim to the Court?

No, we do not need a POA, Ukrainian advocates may represent claimant's interests in a court and the State Enforcement Service of Ukraine (bailiff service) on basis of an Advocate's Warrant being submitted along with extract from the Legal Agreement certified by the advocate and by his Client.

We need all documents relating to the claim, which are in possession of the claimant, - the presence of the written evidences may help to avoid a payment of counter-security to the Court.

## 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 Court may require an original or its notarized and legalized copy of any document the plaintiff referred to in his claim.

It is worth noting that Courts very formalize the issue of acceptance of evidences. Written evidences are welcomed.

We recommend preparing most important written evidences (contracts, BLs, charter parties, survey reports etc.) in original or its notarized and legalized (apostilled) copies. Other copies can be certified by the claimant's corporate seal and by signature of authorized officer. In case your Ukrainian advocate received a document in original he may hold the original in his office and the certified copy that is arranged by him will be served to the court. Documents cannot be filed electronically.

## 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Unless a forum had been chosen by parties to consider the substantive claim in a foreign jurisdiction, the case may proceed on its merits in Ukraine as per the Art 7 of the Ship Arrest Convention (1952), and in some cases when domestic law otherwise gives the local Court jurisdiction, e.g.: (a) any claims if one of defendants is domiciled in Ukraine; (b) proprietary claims relating to the possession of a ship, title to or ownership of a ship or a share in a ship; (c) claims arising out of employment contract with ship's crew if a claimant is domiciled in Ukraine; (d) claims arising out of loss of life or personal injury to a person who is domiciled in Ukraine or in case the accident took place in Ukraine; (e) claims arising out of damage caused in Ukraine to property of private persons or legal entities during the operation of a ship; (f) claims arising out of any contract which specified a place of its execution or has

to be executed in Ukraine only.

#### 17. What is the procedure to release a ship from arrest?

There are two options: (i) a court, which arrested a ship may lift the arrest itself; (ii) a court of appeals may dismiss an order of arrest that was issued by a court of first instance.

#### 18. What type of security needs to be placed for the release?

Best security that would be accepted by Ukrainian courts is a bank guarantee issued by a Ukrainian bank. It is also possible to propose to a court a deposit arranged with a Ukrainian bank or real estate property that is situated on the territory of Ukraine.

#### 19. Does security need to cover interest and costs?

Ukrainian courts require that a security covers all amount demanded by claimant in his statement of claim submitted to the court.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

No Ukrainian courts do not accept LOU of P&I Clubs.

#### 21. How long does it take to release the ship?

In case of option (i) mentioned in para 17 above: 3-4 days.

In case of option (ii) mentioned in para 17 above: 20-30 days.

#### 22. Is there a procedure to contest the arrest?

Yes, you may write a reasoned petition to judge who arrested a vessel, or you may appeal his decision to court of appeals within 5 days.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Civil proceedings: the Code does not provide a certain time – subject to a Court's decision.

Commercial proceedings: there is no special reference to the ship arrest procedure, but generally, pursuant to the Art. 43-3 (3) of the Commercial Procedure Code of Ukraine a claimant must commence legal actions on the merits within 5 (five) days from the day of obtaining the arrest order.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Yes, Ukrainian Courts on request of defendant acknowledge a wrongful arrest in case of:

(a) The arrest is cancelled by decision of a Court.

(b) The claimant fails to commence proceedings on the merits within the given time.

(c) The claimant recalled his claim.

(d) The claimant fails in his legal action on the merits. In case a wrongful arrest is acknowledged defendant may claim to an initiator of arrest to cover all losses and damages incurred.

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No, Ukrainian Courts do not acknowledge the pierce and lift of the corporate veil. The basic principle of civil law is that a shareholder or director/officers of a legal entity could not be held liable for any debts or liabilities of the corporation.

#### 26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No. A vessel's auction will take place only after the end of Court proceeding as an enforcement of the final Court judgment entered into force.

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# SHIP ARREST IN USA



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## 1. Please give an overview of ship arrest practice in your country.

The Federal Rules of Civil Procedure (F.R.C.P.)'s Supplemental Rules for Certain Admiralty and Maritime Claims (hereinafter "the Supplemental Rules") govern the procedure for arresting or attaching a vessel in the United States. The Supplemental Rules apply to all admiralty and maritime claims within the meaning of F.R.C.P. 9(h). Rule C of the Supplemental Rules (hereinafter "Rule C") is the procedural mechanism used to arrest property (i.e. – a vessel) that is subject to a maritime lien or other U.S. statute that creates an in rem cause of action. Once the arresting party has obtained a warrant of arrest from the Court, the U.S. Marshal Service will serve the Court's warrant on the vessel to affect the arrest. Rule C(3)(b) provides that only the marshal may serve the warrant to seize the vessel.

## 2. Which International Convention applies to arrest of ships in your country?

None.

## 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?

Supplemental Rule B (hereinafter "Rule B") provides for the pre-judgment attachment of a defendant's property (including a vessel) if the claimant has an *in personam* maritime claim against the owner of the vessel, provided that the defendant/owner cannot be "found" in the district where the attachment is sought.

## 5. For which types of claims can you arrest a ship?

Under the applicable U.S. law, a vessel may either be arrested (under Rule C) or attached (under Rule B).

- **Rule C arrest:** Procedural mechanism used to arrest property subject to maritime lien or where U.S. statute provides for maritime action in rem

- o Property arrested must be related to the Plaintiff's claim

- o Maritime lien claims include: ship repairs; ship supplies; towage; use of dry dock or maritime railway or other necessities to any ship; crew wages; tort claims arising from a collision; personal injury claims (excluding Jones Act claims against employer); wharfage; stevedoring; cargo damage/loss; certain maritime contracts (e.g. – breach of charter party); preferred ship mortgages; salvage; claims for maritime pollution.

- **Rule B attachment:** Allows a party to obtain quasi in rem jurisdiction over a defendant's property for any debt arising out of a maritime claim, when the defendant "cannot be found within the district."

- o The property attached may be unrelated to the events giving rise to the claim,

and the Plaintiff need not have a maritime lien on the vessel.

o Maritime claims include maritime torts and any claim arising from breach of a "maritime contract" such as a charter party or bill of lading. Under U.S. law, "maritime contracts" generally do not include shipbuilding contracts; vessel sale and purchase contracts; brokerage or other preliminary service contracts; or commodities sale and purchase contracts.

#### 6. Can you arrest a ship irrespective of her flag?

Yes.

#### 7. Can you arrest a ship irrespective of the debtor?

Yes, except that you cannot arrest a vessel owned by a government or other foreign sovereign, as per the Foreign Sovereign Immunities Act.

#### 8. What is the position as regards sister ships and ships in associated ownership?

Arrest of sister ships/associated ships is not possible, unless you can show an alter-ego relationship or other common ownership of assets.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

A Rule C arrest can only be made for an *in rem* claim, as an arrest is made against the ship, not its owner or charterer.

However, a Rule B attachment can only be sustained where there is a valid *prima facie* claim against a party *in personam* (including the bareboat or time charterer).

#### 10. Do your Courts require counter-security in order to arrest a ship?

U.S. Courts do not require countersecurity in order to arrest or attach a ship.

However, Rule E(7) provides that when a Defendant who has posted security for damages in an action asserts a counterclaim arising from the same transaction, a Plaintiff must post countersecurity in the amount of damages demanded in the counterclaim (unless the Court, for good cause shown, directs otherwise).

Additionally, Rule E(2)(b) allows the Court to require any party to post security, in an amount directed by the Court, to pay all costs and expenses that shall be awarded against the party by any interlocutory order, final judgment, or on appeal.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Under the applicable U.S. law, a vessel may either be arrested under Rule C (which requires a maritime lien) or attached under Rule B (which simply requires a maritime claim).

- Rule C: Procedural mechanism used to arrest property subject to maritime lien or where U.S. statute provides for maritime action *in rem*

- o The property arrested must be related to the Plaintiff's claim

- o The U.S. Marshal must be engaged to arrest the property

- Rule B: Allows a party to obtain *quasi in rem* jurisdiction over a defendant's property for any debt arising out of a maritime claim, when the defendant "cannot be found within the district."

- o Property attached may be unrelated to the events giving rise to the claim, and the Plaintiff need not have a maritime lien on the vessel

- o A special process server may be appointed by order of the Court to attach the property, instead of a U.S. Marshal

#### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Ordinarily, an attachment and/or arrest order can be obtained within a few hours, when filing an emergent motion. Rule C(3)(a)(ii) and Rule B(1)(c) require the Clerk to issue the summons and warrant for arrest of the vessel or process of attachment and garnishment, respectively, where the Claimant's attorney certifies that exigent circumstances exist that make court review impracticable. The Claimant has the burden of demonstrating at a post-

arrest/post-attachment hearing that exigent circumstances existed.

#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

A POA is not required to arrest or attach a vessel. The documents to be submitted to U.S. Courts vary depending on the type of proceeding commenced.

##### 1. For Both Rule C arrests and Rule B attachments:

- Verified Complaint asserting that the Claimant's underlying claim is an admiralty/maritime claim within the meaning of Rule 9(H) of the Federal Rules of Civil Procedure, accompanied by supporting claim documentation
- Summons
- Agreement of Indemnity, agreeing to hold the Marshal harmless for damages if the arrest/attachment is later found to have been wrongful
- Form USM-285/U.S. Marshal Service Process Receipt and Return
- A bank or certified check (for an amount which varies by jurisdiction) as a deposit to cover insurance, guard services, and other costs related to arresting/maintaining the vessel
- Motion for appointment of substitute custodian, with supporting declaration of proposed substitute custodian and proposed order (not mandatory) - reduces the costs that must be deposited with the Marshal

2. For Rule C Arrests: To commence a Rule C proceeding, the following additional documents are required:

- Affidavit containing the grounds for arrest
- Motion for Issuance of Warrant for Arrest
- Proposed Order for Issuance of Warrant Arrest – authorizing Clerk of the Court to issue a Warrant of Arrest providing the U.S. Marshal with authority to arrest the vessel
- Motion to Permit Vessel to Continue Cargo Operations and to Shift Berths (not mandatory) – requests authorization for the vessel to continue cargo operations during the period of arrest and to move within the district
- Proposed Order Allowing Vessel to Shift Between Berths – allows the Marshal or substitute custodian to move the vessel without petitioning the Court
- Warrant of Arrest
- Notice of Arrest – accompanies Complaint and Warrant of Arrest when the Marshal physically arrests the vessel

3. For Rule B Attachments: To commence a Rule B proceeding, the following additional documents are required:

- Affidavit certifying that the defendant cannot be found within the district
- Application for Order issuing writ of maritime attachment
- Proposed Order authorizing writ of maritime attachment
- Writ of maritime attachment, which is issued to the Marshal and provides authority to attach the defendant's property located in the district
- Notice of Attachment (to accompany writ of maritime attachment)

#### 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 Complaint must be verified by the Claimant, but if the Claimant resides outside the district where the arrest application is filed, the Complaint must be verified by the Claimant's attorneys. This verification must be notarized.

The original documents required by each Court and the documents which may be electronically filed vary by jurisdiction. Most Courts require an original signature on all initiating documents, but require electronic filing of subsequent documents. Other Courts permit a claimant to commence an action by filing the Complaint and all related documents electronically.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Once a vessel has been attached/arrested, U.S. courts will assume quasi in rem or *in rem* jurisdiction, respectively, up to the amount of the claim. Accordingly, the courts will have jurisdiction over the substantive claim, unless a forum selection clause requires that the claim be brought in a foreign jurisdiction.



#### 17. What is the procedure to release a ship from arrest?

A ship may be released voluntarily by the Plaintiff, if a settlement is reached and/or if the vessel interests post substitute security in place of the vessel. In such cases, depending on the terms of the Order authorising the arrest, the vessel may be released without a further Court Order upon the Plaintiff's counsel providing notice in writing to the U.S. Marshal, the substitute custodian (if one has been appointed), and the Court that the vessel may be released from arrest. Additionally, the Vessel may be released by Court Order if, after conducting a post-seizure hearing pursuant to Rule E(4)(f) of the Supplemental Admiralty Rules, the Court determines that the arrest was improper and should be vacated.

#### 18. What type of security needs to be placed for the release?

Rule E(5) of the Supplemental Admiralty Rules permits the owner of a vessel to secure the release of the vessel by posting a bond or stipulating to another form of security, such as cash security or a Club Letter of Undertaking. In the event that the parties cannot reach an agreement as to the form or quantum of the substitute security, Rule E(5)(a) provides that the Court may order the posting of a bond and fix the principal sum of the bond. Although other forms of security can be agreed between the plaintiff and the vessel interests, the Court may only require the plaintiff to accept a bond a substitute security.

#### 19. Does security need to cover interest and costs?

Yes. Rule E(5) allows a vessel to be released upon the posting of substitute security at an amount sufficient to cover the amount of the plaintiff's claim, fairly stated with accrued interest (at six (6) cents per annum) and costs; provided that the quantum of the bond does not exceed (i) twice the amount of the plaintiff's claim; or (ii) the value of the property on due appraisal, whichever is smaller. Rule E(5)(a) provides that interest should be set at that rate of six percent (6%) per annum.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

Although an arresting plaintiff may agree to accept a P&I LOU as substitute security to lift an arrest, the Court cannot require the plaintiff to accept this form of security in lieu of the arrest of the Vessel.

#### 21. How long does it take to release the ship?

The vessel will typically be released from arrest permitted to continue on her voyage within hours of Plaintiff's counsel providing notice to the U.S. Marshal and/or substitute custodian that the ship may be released.

#### 22. Is there a procedure to contest the arrest?

Rule E(4)(f) of the Supplemental Admiralty Rules provides that any person claiming an interest in arrested or attached property is entitled to a prompt post-seizure hearing, where the plaintiff will be required to show cause why the arrest or attachment should not be vacated. While the time frame in which this hearing must be held varies pursuant to the Local Rules of the jurisdiction in which the vessel is arrested, most Courts will hold the "Rule E(4)(f)" hearing within seven (7) days following the arrest and the challenge to same.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Although there is no set period of time in which a Claimant that has caused a vessel to be attached/arrested must commence substantive proceedings, the answer to this question will depend largely on the judge assigned to the case. Many judges require that such proceedings be commenced as soon as possible.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Yes; however, an arrest will only be set aside as wrongful in exceptional circumstances (i.e. – if the Defendant shows that the claimant acted with bad faith, malice or gross negligence).

#### 25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. In arresting a vessel under Rule C, a Plaintiff need not pierce the corporate veil because the action is *in rem* against the vessel. However, in a Rule B attachment action, the corporate veil may be pierced. Although there are no mandatory requirements, the U.S. Courts con

sider ten (10) factors in determining whether the corporate veil may be pierced, including: disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors, and personnel; common office space, address & telephone numbers of corporate entities; the degree of discretion shown by the allegedly dominated corporation; whether the dealings between the entities are at arms length; whether the corporations are treated as independent profit centers; payment or guarantee of the corporation's debt by the dominating entity; and intermingling of property between entities.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Rule E(9) authorizes a Court to Order the marshal to conduct an interlocutory sale of a vessel if the property is perishable or subject to deterioration, decay, or injury by being detained in custody pending the action; the expense of keeping the property is excessive or disproportionate; or there is an unreasonable delay in securing the release of the property. The time frame for conducting the interlocutory sale of a vessel varies by jurisdiction/judge.

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# SHIP ARREST IN VENEZUELA



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## 1. Please give an overview of ship arrest practice in your country.

Rules related to the arrest of ships in Venezuela have significantly improved with the enactment of the Law on Maritime Commerce (LMC) published in the Official Gazette No.38,351 dated 5th January 2006. To some extent the notion of an action in rem has been included in the LMC, in the sense that actions can be exercised against the ship and her Master, without being necessary to make mention of the owners (art. 15 LMC), whereas the writ can be served by handing it over to anyone onboard the ship, and even by fixing one cartel in the ship in the presence of two (2) witnesses, if there is no anybody onboard (art.110 LMC). The arrest or the prohibition from sailing will be carried out by notification effected by the court to the Port Captaincy where the vessel is found. In urgent cases, the legislation allows to inform prohibition from sailing by electronic means, as prescribed by article 104 of the LMC.

## 2. Which International Convention applies to arrest of ships in your country?

Arrest of ships under Venezuelan law is governed by the provisions contained within the LMC, incorporating very much the 1999 International Convention of Arrest of Ships.

## 3. Is there any other way to arrest a ship in your jurisdiction?

Together with the exercise of the arrest of a ship in the terms allowed by law or "preventive embargo", art. 103 of the LMC includes another mechanism for guarantee of a maritime claim according to which the holder of a maritime claim in respect of a ship may request from the competent court a "precautionary measure of prohibition from sailing", in order to guarantee the existing maritime claim. The court shall agree on the petition without mayor formality, provided antecedents are submitted from which it can be inferred presumption of the right that is claimed. If these antecedents are not sufficient, the court may request a guarantee to decree this precautionary measure.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

Following a ruling by the Supreme Court of Justice in 2004 it has been held that the arrest or preventive embargo does only proceed in the event of maritime claims as listed by the law. In case of credits different than those regarded as maritime claims then the prohibition from sailing is available pursuant the rules of the Civil Procedure Code.

## 5. For which types of claims can you arrest a ship?

Article 93 of the LMC contains the list of maritime claims giving rise to an arrest (embargo preventivo) of ship: a.- Loss or damage caused by the operation of the ship; b.- Loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship; c.-Salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment; d.- Damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs for reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature; e.- Costs or expenses relating to the raising, removal, recovery, destruction or the rendering armless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew; 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 of or damage to or in connection with goods (including luggage) carried on board the ship; i.- General average; j.- Towage; k.- Boating (Lanchage); l.- Pilotage; m.- Goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance; n.- Construction, re-construction, repair, converting or equipping of the ship; o.- Port, canal, dock, harbor and other waterway dues and charges; p.- 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; q.- Disbursements incurred on behalf of the ship or its owners; r.- Insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer; s.- Any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer; t.- Any dispute as to ownership or possession of the ship; u.- Any dispute between co-owners of the ship as to the employment or earnings of the ship; and, v.- A mortgage or a "hypothèque" or a charge of the same nature on the ship.

#### 6. Can you arrest a ship irrespectively of her flag?

Yes. As per art. 13 of the LMC domestic maritime courts are competent to know of proceedings involving a foreign flag ship in cases where according to domestic legislation it can be arrested, unless there is an arbitration agreement or attributing competence to another jurisdiction, in which case the arrest will be granted for the purposes of obtaining a guarantee to execute the eventual arbitration award or judicial decision.

#### 7. Can you arrest a ship irrespectively of the debtor?

Yes, it is possible to arrest a ship irrespective of the debtor being national or foreign.

#### 8. What is the position as regards sister ships and ships in associated ownership?

The provisions set by the LMC allows the arrest of the ship in respect of which the maritime claim arose, as well as the arrest of a sister ship, but not one in associated ownership.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

As per art. 95 of the LMC the arrest of the bareboat ship is possible if the bareboat charterer by the time the maritime claim arose is obliged by virtue of the relevant credit. Time-Chartered ships, however, may be subject to a preventive measure of prohibition from sailing.

#### 10. Do your Courts require counter-security in order to arrest a ship?

Art. 97 of the LMC states that the court as a condition to grant the arrest of the ship may request to the claimant, the submission of a guarantee in the amount and subject to the conditions determined by the former, for the claimant to answer for the damages that may cause as a consequence of the arrest. Usually this guarantee may take the shape of a bond equivalent to 30% of the claim amount as a maximum legal costs, plus the double of the said claim amount. As per art. 98 of the LMC the defendant may oppose the arrest or request the lifting of it, if in the opinion of the court sufficient security has been provided, save in cases in which a ship has been arrested in respect of any of the maritime claims related to ownership or co-owners disputes. In these cases, a bond or a Letter of Undertaking issued by a reputable P&I Club can be used if acceptable by claimants.

#### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice there is no difference, other than for the purposes of the priorities in the concurrence of credits.

#### 12. Does you country recognise maritime liens? Under which International Convention, if any?

The LMC has incorporated the main provisions of the 1993 Convention on Mortgages and Maritime Liens. Consequently, the country does recognize maritime privileges or liens on a ship.

#### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Petition of arrest has to be filed before the First Instance Maritime Court, and formalities can be arranged preferably 96 hours in advance, provided needed documentation is available.



#### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

Power of Attorney will be needed to appear in court, together with any public or private document, accepted invoice, charter-party, bill of lading or similar document proving the existence of a maritime claim.

#### 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 Law on Maritime Procedures (published in the Official Gazette Extraordinary No.5,554, dated 13th November 2001) allows the use of the electronic Power of Attorney; for the purposes of submittal and admission of a lawsuit or any other petition, representation of the plaintiff may be proved by written or electronic means, provided it is accompanied by a guarantee of 10,000 units of account; however, this must be later replaced by the formally granted POA. All supporting documentation must be submitted in original duly notarized with the Apostille formalities as per the 1961 Hague Convention and translated into Spanish by public interpreter.

#### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

According to art. 100 of the LMC the Court granting the arrest or receiving the guarantee to allow the release of the ship will be competent to deal with the merits, unless the parties have validly agreed to submit the matter to arbitration or to a foreign jurisdiction.

#### 17. What is the procedure to release a ship from arrest?

A writing of opposition to the arrest (embargo or prohibition from sailing) must be submitted, either before the serving of the writ or within the three days following it. An eight days period is then opened to promote evidence, at which time the court should take a decision on the second day. This decision is subject to appeal before the Superior Maritime Court.

#### 18. What type of security needs to be placed for the release?

Security may take the shape of a bond issued by an insurance company or a bank of recognised solvency, as well as a cash deposit.

#### 19. Does security need to cover interest and costs?

Procedural rules only prescribe that the security must be equivalent to 30% of the claim amount for legal costs (interest included), plus de double of the said claim amount.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

LOUs by reputable P&I Clubs can be used before the maritime courts, provided it is acceptable to the opponent party or claimant. Even so, it is a matter of discretion for the court.

#### 21. How long does it take to release the ship?

Difficult to give a precise time frame, since this may depend upon the facts of the specific case. Bearing in mind that maritime courts work only by court days, so excluding the non working days and weekends, the release could take not less than 13 days.

#### 22. Is there a procedure to contest the arrest?

The Law on Maritime Commerce refers to the opposition as the mechanism to contest the arrest; however, the governing provisions are prescribed by the Civil Procedural Code and some others of the maritime legislation.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Art. 14 of the LMC states that the court shall suspend any anticipated arrest granted prior to legal proceedings, if within the following ten (10) running days to be counted from the date of the arrest was effected, the lawsuit is not filed. This happens when the arrest is requested by way of petition for prohibition from sailing without filing the lawsuit with arrangement to art. 10 and 103 of the LMC. If granted the arrest or submitted the guarantee to release the ship, the Court is not competent to deal with the merits a period of time shall be given for the lawsuit to be brought either in the competent court or arbitration as per art. 101 of the LMC.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Eventual damages for wrongful arrest are prescribed by article 99 of the LMC, according to



which the court which grants the arrest of a ship, will be competent to determine the extent of liability of the claimant, for any loss which may be incurred by the defendant as a result of the arrest in consequence of: a) the arrest having been wrongful or unjustified; or b) excessive security having been demanded and provided.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Although it has been accepted in some employment cases, this has had little development and there are no precedents in the maritime field at the moment.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

Art. 106 of the LMC states that after 30 continuous days following the arrest of the ship, without the shipowner not attending to proceedings, the court at the request of the claimant, may order the anticipated auction of the ship, subject to the claimant submitting sufficient guarantee, provided the claim exceeds the 20% of the value of the ship and it is exposed to ruin, obsolescence or deterioration.

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# SHIP ARREST IN VIETNAM



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## 1. Please give an overview of ship arrest practice in your country.

Having a long coastline, Vietnam maritime industry has played a key role in developing national economic activities, especially when Vietnam acceded to the World Trade Organization in 2007. Maritime claims, including ship arrest claim, has unceasingly occurred in the much more competitive maritime industry. The first claim about ship arrest took place in early 1990' at the request filed with the people's court of Da Nang city, Vietnam. Since that time, legislation covering ship arrest has increasingly developed. The vessel can be arrested and detained until the claim is settled. Vietnam Maritime Code 1990, as amended in 2005, Ordinance on Ship Arrest 2008 and Civil Procedure Code are the major sources of ship arrest.

## 2. Which International Convention applies to arrest of ships in your country?

To the best of our knowledge, Vietnam has not ratified any International Convention on ship arrest even though Vietnam has been encouraged to accede to International Convention on the Arrest of Ship Geneva, March 12, 1999.

## 3. Is there any other way to arrest a ship in your jurisdiction?

There are the following ways to arrest ship in Vietnam:

- Filing request with civil enforcement bodies for ship arrest for the enforcement of the judgment/ decision of the court or arbitration;
- Filing request with Chief of sea ports for the detainment of ship for a maximum period of 30 days;
- Filing request with the court for ship arrest during the settlement of a criminal or civil lawsuit;
- Filing with domestic arbitration tribunal for ship arrest during the settlement of an arbitration case; and
- Filing a request with a foreign court or foreign arbitration tribunal for the ship arrest as a matter of international judicial assistance.

## 4. Are these alternatives e.g. saisie conservatoire or freezing order?

These measures correspond to saisie conservatoire or freezing order.

## 5. For which types of claims can you arrest a ship?

The types of claim which can give rise to a ship arrest are governed under Article 11 of the Ordinance on Ship Arrest: Damages for the loss of life, personal injuries and other human health damage directly caused by the operation of seagoing ships; Freight, maritime security charge, pilotage, wharfage, and other seaport dues and charges; Seagoing ship salvage remunerations; Property losses and damage outside contract directly caused by the operation of seagoing ships; Loss of or damage to cargoes, including luggage carried onboard seagoing ships; General average; Towage; Pilotage; Goods, materials, food, fuels and equipment (including containers) supplied or services provided to seagoing ships for their operation, management, preservation and maintenance; Building, transformation, reconstruction, repair or equipping of seagoing ships; Sums of money paid on behalf of ship owners; Insurance premiums paid by ship owners or other parties on behalf of ship owners or bareboat charterers; Commissions or charges for brokerage or agency for seagoing ships payable by ship owners, bareboat charterers or authorized parties; Disputes as to the title to or ownership of seagoing ships; Disputes between co-owners of seagoing ships over the use of these ships or earnings of these ships; Mortgage or hypothecation of seagoing ships;

Disputes arising from contracts of seagoing ship purchase and sale....

6. Can you arrest a ship irrespective of her flag?

Yes, we can.

7. Can you arrest a ship irrespective of the debtor?

No, we cannot. The debtor must be the owner of the ship which is subject to arrest.

8. What is the position as regards sister ships and ships in associated ownership?

In certain instances, Ordinance on Ship Arrest allows the arrest of another ship belonging to the same owner under Article 13.2 of the Ordinance on Ship Arrest and Article 42 of Maritime Code. The Ordinance on Ship Arrest is silent on the arrest of ships in associated ownership. To our experience, arrest of ships in associated ownership is possible.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Under the Ordinance on Ship Arrest, ship arrest can be applied without distinction between Bareboat and Time-Chartered vessels.

10. Do your Courts require counter-security in order to arrest a ship?

Article 5 of the Ordinance on Ship Arrest requires the claimant to provide a valid bond or guarantee fixed by the court which is equivalent to the possible losses or damages resulting from wrongful arrest (if any).

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Arresting a ship for a maritime claim: The arrest of ship is sought against the ship owner/ bareboat charterer of the ship related to the maritime claim. Other ships of the ship owner can be arrested if, at the time the maritime claim arose, such party was also (a) the owner of the ship related to the maritime claim, or (b) the bareboat charterer, time charterer or voyage charterer of the ship related to the maritime claim.

Maritime lien: Maritime lien is sought against the ship related to the maritime claims giving rise to the maritime lien. Maritime lien over a seagoing ship shall not be affected by a change of owner, charterer or operator.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Vietnam recognises maritime lien in accordance with the Maritime Code of Vietnam.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Usually, it may take us from 03 [three] to 05 [five] working days to arrest a ship.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

Yes, we do.

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 documents to be submitted to Vietnamese court in the application for the ship arrest order which are issued by competent authorities in foreign countries, must undergo notarisation and/or apostille and be translated into Vietnamese in accordance with Article 8 of the Ordinance on Ship Arrest. Documents filed electronically are not accepted.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

It depends on the fact if it has the jurisdiction over the dispute under the applicable law. As advised in questions 3, the court can issue order for ship arrest at the request of arbitration or foreign court. In such cases, the court will not accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

The release procedure includes the following steps:

- Submission to the court of a written request for the release of the arrested ship and supporting documents, in which the lawful reason for the release of the arrested ship must be presented;
- Within 24 hours as from the receipt of the written request the court issue either the release order or a letter presenting the reason for which the release is not granted;
- In case of a release order, the court immediately sends the order to the relevant port authority for implementation thereof;
- The director of the relevant port issues a notice for the implementation of the court's release order and assigns a port officer to release the ship.

#### 18. What type of security needs to be placed for the release?

Type of security to be placed for the release shall be agreed between the parties or decided by the court. Normally, it can be a bank guarantee or a letter of undertaking (LOU) issued by a reputable insurers listed by Vietnam's competent authority.

#### 19. Does security need to cover interest and costs?

Yes.

#### 20. Are P&I LOUs accepted as sufficient to lift the arrest?

There has been no provision for the acceptance of P&I's LOUs as sufficient to lift the arrest.

#### 21. How long does it take to release the ship?

24 hours from the court receipt of a written request for the release of the arrested ship.

#### 22. Is there a procedure to contest the arrest?

Yes.

#### 23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

With regard to *loss or damage to cargo*, one year from the date on which the cargo was delivered or should have been delivered to the consignee. With regard to performance of voyage charter parties, two years from the date on which a complainant knows or should have known of the infringement of its interests.

With regard to damages for the death, personal injury or damage to health of a passenger or for loss or damage to luggage, two years.

With regard to charter parties, two years from the date of termination of the charter party.

With regard to dispute over shipping agency contract, two years from the date on which the dispute arose.

With regard to dispute over maritime brokerage contract, two years from the date on which the dispute arose.

With regard to dispute over contracts for towage of seagoing ships, two years from the date on which the dispute arose.

With regard to dispute over contracts for maritime salvage, two years from the termination of the rescue operations. With regard to recovery of compensatory amount in excess of its liability, one year from the date of payment of the compensatory amount.

With regard to general average, two years from the date of the general average occurrence. The time taken for apportionment of general average shall not be included in this limitation period.

With regard to marine insurance contract, two years from the date on which the dispute arose.

#### 24. Do the Courts of your country acknowledge wrongful arrest?

Under Article 4 of the Ordinance on Ship Arrest, in the event of wrongful arrest, applicants for the wrongful arrest shall be held responsible for the wrongful arrest. All losses or consequences of an application for the wrongful arrest shall be remedied under agreement between the involved parties. In case no agreement can be reached and a dispute arises, the involved parties may bring the case to a court or an arbitration center for settlement.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

In principle, shareholders of a company with limited liability shall not be personally liable for the obligations of the company. In practice, the Vietnamese courts have not acknowledged the piercing and lifting of the corporate veil.

26. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

An arrested ship can be put on auction in accordance with a court's decision only in case where the ship owner abandons the arrested ship. The timing for auctioning a ship is not specified by laws.

*\*Mr. Thuan has more than 13 years of experience working for the People's Court of Ho Chi Minh City. In March 2003, Mr. Thuan left the Court and joined the leading firm Vilaf – Hong Duc as a key litigator of the firm for more than 5 years, before joining the then rising firm Phuoc & Partners in October 2008, and getting promoted as the fifth partner of the firm in April 2009.*

*Mr. Thuan is highly regarded for his versatility as a labor, commercial, shipping, insurance, construction trial and appellate lawyer. Not only handling dispute resolution works including litigation, Mr. Thuan also work intensively to advise clients on various legal fields including employment and labor, maritime & shipping, insurance, contract, civil, family and other commercial issues.*

*Mr. Thuan has annually spoken at seminars on labor both in Vietnam and overseas.*



# INTERNATIONAL CONVENTION RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

### ARTICLE 1:

In this Convention the following words shall have the meanings hereby assigned to them:

1. "Maritime Claim" means a claim arising out of one or more of the following:
  - (a) damage caused by any ship either in collision or otherwise;
  - (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
  - (c) salvage;
  - (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
  - (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
  - (f) loss of or damage to goods including baggage carried in any ship;
  - (g) general average;
  - (h) bottomry;
  - (i) towage;
  - (j) pilotage;
  - (k) goods or materials wherever supplied to a ship for her operation or maintenance;
  - (l) construction, repair or equipment of any ship or dock charges and dues;
  - (m) wages of Masters, Officers, or crew;
  - (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
  - (o) disputes as to the title to or ownership of any ship;
  - (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
  - (q) the mortgage or hypothecation of any ship.
2. "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.
3. "Person" includes individuals, partnerships and bodies corporate, Governments, their Departments, and Public Authorities.
4. "Claimant" means a person who alleges that a maritime claim exists in his favour.

### ARTICLE 2:

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any governments or their departments, public authorities, or dock or harbour authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

### ARTICLE 3:

1. Subject to the provisions of paragraph. (4) of this article and of article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1, (o), (p) or (q).
2. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.
3. A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threat-

ned arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

4. When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

#### **ARTICLE 4:**

A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the contracting State in which the arrest is made.

#### **ARTICLE 5:**

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, (o) and (p). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest. In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof. The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitations of liability of the owner of the ship.

#### **ARTICLE 6:**

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for. The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

#### **ARTICLE 7:**

1. The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

- (a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;
- (b) if the claim arose in the country in which the arrest was made;
- (c) if the claim concerns the voyage of the ship during which the arrest was made;
- (d) if the claim arose out of a collision or in circumstances covered by article 13 of the International Convention for the unification of certain rules of law with respect to collisions between vessels, signed at Brussels on 23rd September 1910;
- (e) if the claim is for salvage;
- (f) if the claim is upon a mortgage or hypothecation of the ship arrested.

2. If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgment which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the claimant shall bring an action before a Court having such jurisdiction.

3. If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

4. If, in any of the cases mentioned in the two preceding paragraphs, the action or proceeding is not brought within the time so fixed, the defendant may apply for the release of the ship or

of the bail or other security.

5. This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

#### **ARTICLE 8:**

1. The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

2. A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest.

3. Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this convention any government of a non-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

4. Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

5. When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or other-wise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

#### **ARTICLE 9:**

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which was seized of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on maritime mortgages and liens, if the latter is applicable.

#### **ARTICLE 10:**

The High Contracting Parties may at the time of signature, deposit or ratification or accession, reserve:

(a) the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs (o) and (p) of article 1, but to apply their domestic laws to such claims;

(b) the right not to apply the first paragraph of article 3 to the arrest of a ship within their jurisdiction for claims set out in article 1 paragraph (q).

#### **ARTICLE 11:**

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

#### **ARTICLE 12:**

This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

#### **ARTICLE 13:**

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

#### **ARTICLE 14:**

(a) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.

(b) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

#### **ARTICLE 15:**

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention. The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification. The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has

come into force in accordance with the provisions of Article 14(a).

**ARTICLE 16:**

Any High Contracting Party may three years after coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to the Convention. Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

**ARTICLE 17:**

Any High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

**ARTICLE 18:**

(a ) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(b ) A High Contracting Party which has made a declaration under paragraph (a ) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(c ) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

# INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

### ARTICLE 1:

#### Definitions

For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:

- a) loss or damage caused by the operation of the ship;
- b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
- e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
- 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 of or damage to or in connection with goods (including luggage) carried on board the ship;
- i) general average;
- j) towage;
- k) pilotage;
- l) goods, 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, brokerages 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.

2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

4. "Claimant" means any person asserting a maritime claim.



5. "Court" means any competent judicial authority of a State.

## **ARTICLE 2:**

### **Powers of arrest**

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.
2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.
3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.
4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

## **ARTICLE 3:**

### **Exercise of right of arrest**

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:
  - a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or
  - b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or
  - c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or
  - d) the claim relates to the ownership or possession of the ship; or
  - e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.
2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:
  - a) owner of the ship in respect of which the maritime claim arose; or
  - b) demise charterer, time charterer or voyage charterer of that ship.This provision does not apply to claims in respect of ownership or possession of a ship.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

## **ARTICLE 4:**

### **Release from arrest**

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.
2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.
3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.
4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.
5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:
  - a) the claim for which the ship has been arrested, or
  - b) the value of the ship,whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6: Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

#### **ARTICLE 5:**

##### **Right of re-arrest and multiple arrest**

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or

b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or

c) the ship arrested or the security previously provided was released either:

i) upon the application or with the consent of the claimant acting on reasonable grounds, or

ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

a) the nature or amount of the security already provided in respect of the same claim is inadequate; or

b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

#### **ARTICLE 6:**

##### **Protection of owners and demise charterers of arrested ships**

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

a) the arrest having been wrongful or unjustified; or

b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

a) the arrest having been wrongful or unjustified, or

b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.

4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

#### **ARTICLE 7:**

##### **Jurisdiction on the merits of the case**

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

a) does not have jurisdiction to determine the case upon its merits; or

b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall

bringing proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and

b) such recognition is not against public policy (*ordre public*)

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

#### **ARTICLE 8:**

##### **Application**

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

#### **ARTICLE 9:**

##### **Non-creation of maritime liens**

Nothing in this Convention shall be construed as creating a maritime lien.

#### **ARTICLE 10:**

##### **Reservations**

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

a) ships which are not seagoing;

b) ships not flying the flag of a State Party;

c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

#### **ARTICLE 11:**

##### **Depositary**

This Convention shall be deposited with the Secretary-General of the United Nations.

#### **ARTICLE 12:**

##### **Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

- a) signature without reservation as to ratification, acceptance or approval; or
  - b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

#### **ARTICLE 13:**

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

#### **ARTICLE 14:**

Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

#### **ARTICLE 15:**

Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

#### **ARTICLE 16:**

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

#### **ARTICLE 17:**

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

# INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO MARITIME LIENS AND MORTGAGES, 1926

### ARTICLE 1:

Mortgages, hypothecations, and other similar charges upon vessels, duly effected in accordance with the law of the Contracting State to which the vessel belongs, and registered in a public register either at the port of the vessel's registry or at a central office, shall be regarded as valid and respected in all the other contracting countries.

### ARTICLE 2:

The following give rise to maritime liens on a vessel, on the freight for the voyage during which the claim giving rise to the lien arises, and on the accessories of the vessel and freight accrued since the commencement of the voyage;

1. Law costs due to the State, and expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale; tonnage dues, light or harbour dues, and other public taxes and charges of the same character; pilotage dues; the cost of watching and preservation from the time of the entry of the vessel into the last port;

2. Claims arising out of the contract of engagement of the master, crew and other persons hired on board;

3. Remuneration for assistance and salvage, and the contribution of the vessel in general average; 4. Indemnities for collision or other accident of navigation, as also for damage caused to works forming part of harbours, docks, and navigable ways; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;

5. Claims resulting from contracts entered into or acts done by the master, acting within the scope of his authority away from the vessel's home port, where such contracts or acts are necessary for the preservation of the vessel or the continuation of its voyage, whether the master is or is not at the same time owner of the vessel, and whether the claim is his own or that of ship-chandlers, repairers, lenders, or other contractual creditors.

### ARTICLE 3:

The mortgages, hypothecations, and other charges on vessels referred to in Article 1 rank immediately after the secured claims referred to in the preceding Article. National laws may grant a lien in respect of claims other than those referred to in the said last-mentioned Article, so, however, as not to modify the ranking of claims secured by mortgages, hypothecations, and other similar charges, or by the liens taking precedence thereof.

### ARTICLE 4:

The accessories of the vessel and the freight mentioned in Article 2 mean:

1. Compensation due to the owner for material damage sustained by the vessel and not repaired, or for loss of freight;

2. General average contributions due to the owner, in respect of material damage sustained by the vessel and not repaired, or in respect of loss of freight;

3. Remuneration due to the owner for assistance and salvage services rendered at any time before the end of the voyage, any sums allotted to the master or other persons in the service of the vessel being deducted.

The provision as to freight apply also to passage money, and, in the last resort, to the sums due under Article 4 of the Convention on the limitation of shipowners' liability.

Payments made or due to the owner on policies of insurance, as well as bounties, subventions, and other national subsidies are not deemed to be accessories of the vessel or of the freight.

Notwithstanding anything in the opening words of Article 2.(2), the lien in favour of persons in



the service of the vessel extends, to the total amount of freight due for all voyages made during the subsistence of the same contract of engagement.

#### **ARTICLE 5:**

Claims secured by a lien and relating to the same voyage rank in the order in which they are set out in Article 2. Claims included under any one heading share concurrently and rateably in the event of the fund available being insufficient to pay the claims in full.

The claims mentioned under Nos. 3 and 5 in that Article rank, in each of the two categories, in the inverse order of the dates on which they came into existence.

Claims arising from one and the same occurrence are deemed to have come into existence at the same time.

#### **ARTICLE 6:**

Claims secured by a lien and attaching to the last voyage have priority over those attaching to previous voyage.

Provided that claims, arising on one and the same contract of engagement extending over several voyages, all rank with claims attaching to the last voyage.

#### **ARTICLE 7:**

As regards the distribution of the sum resulting from the sale of the property subject to a lien, the creditors whose claims are secured by a lien have the right to put forward their claims in full, without any deduction on account of the rules relating to limitation of liability provided, however, that the sum apportioned to them may not exceed the sum due having regard to the said rules.

#### **ARTICLE 8:**

Claims secured by a lien follow the vessel into whatever hands it may pass.

#### **ARTICLE 9:**

The liens cease to exist, apart from other cases provided for by national laws, at the expiration of one year, and, in the case of liens for supplies mentioned in No.5 of Article 2, shall continue in force for not more than six months.

The periods for which the lien remains in force in the case of liens securing claims in respect of assistance and salvage run from the day when the services terminated, in the case of liens securing claims in respect of collision and other accidents and in respect of bodily injuries from the day when the damage was caused; in the case of liens for the loss of or damage or cargo or baggage from the day of the delivery of the cargo or baggage or from the day when they should have been delivered; for repairs and supplies and other cases mentioned in No.5 of Article 2 from the day the claim originated. In all the other cases the period runs from the enforceability of the claim.

The fact that any of the persons employed on board, mentioned in No. 2 of Article 2 has a right to any payment in advance or on account does not render his claim enforceable.

As respects the cases provided for in the national laws in which a lien is extinguished, a sale shall extinguish a lien only if accompanied by formalities of publicity which shall be laid down by the national laws.

These formalities shall include a notice given in such form and within such time as the national laws may prescribe to the authority charged with keeping the registers referred to in Article 1 of this Convention.

The grounds upon which the above periods may be interrupted are determined by the law of the court where the case is tried.

The High Contracting Parties reserve to themselves the right to provide by legislation in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the vessel to which a lien attaches in the territorial waters of the state in which the claimant has his domicile or his principal place of business, provided that the extended period shall not exceed three years from the time when the claim originated.

#### **ARTICLE 10:**

A lien on freight may be enforced so long as the freight is still due or the amount of the freight is still in the hands of the master or the agent of the owner. The same principle applies to a lien on accessories.

#### **ARTICLE 11:**

Subject to the provisions of this Convention, liens established by the preceding provisions are subject to no formality and to no special condition of proof. This provision does not affect the

right of any State to maintain in the legislation provisions requiring the master of a vessel to fulfil special formalities in the case of certain loans raised on the security of the vessel, or in the case of the sale of its cargo.

#### **ARTICLE 12:**

National laws must prescribe the nature and the form of documents to be carried on board the vessel in which entry must be made of the mortgages, hypothecations, and other charges referred to in Article 1; so, however, that the mortgagees requiring such entry in the said form be not held responsible for any omission, mistake, or delay in inscribing the same on the said documents.

#### **ARTICLE 13:**

The foregoing provisions apply to vessels under the management of a person who operates them without owning them or to the principal charterer, except in cases where the owner has been dispossessed by an illegal act or where the claimant is not a bona fide claimant.

#### **ARTICLE 14:**

The provisions of this Convention shall be applied in each Contracting State in cases in which the vessel to which the claim relates belongs to a Contracting State as well as in any other cases provided for by the national laws. Nevertheless the principle formulated in the preceding paragraph does not affect the right of the Contracting States not to apply the provisions of this Convention in favour of the nationals of a non-contracting State.

#### **ARTICLE 15:**

This Convention does not apply to vessels of war, nor to government vessels appropriated exclusively to the public service.

#### **ARTICLE 16:**

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure or methods of execution authorized by the national law.

#### **ARTICLE 17:**

After an interval of not more than two years from the day on which the Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratifications shall be recorded in a process-verbal signed by the representatives of the powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Belgian Government, and accompanied by the instrument of ratification.

A duly certified copy of the process-verbal relating to the first deposit of ratifications, of the notification referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the powers who have signed this Convention or who have acceded to it. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

#### **ARTICLE 18:**

Non-signatory States may accede to the present Convention whether or not they have been represented at the international Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the states which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

#### **ARTICLE 19:**

The High Contracting Parties may at the time of signature, ratification, or accession declare that their acceptance of the present Convention does not include any or all of the self-governing dominions, or of the colonies, overseas possession, protectorates, or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate or territory excluded in their declaration. They may also denounce the Convention separately in accordance with its provision

in respect of any self-governing dominion, or any colony, overseas possession, protectorate, or territory under their sovereignty or authority.

#### **ARTICLE 20:**

The present Convention shall take effect, in the case of the states which have taken part in the first deposit of ratifications, one year after the date of the process-verbal recording such deposit. As respects the states which ratify subsequently or which accede and also in cases in which the convention is subsequently put into effect in accordance with Article 19, it shall take effect six months after the notifications specified in Article 17, § 2, and Article 18, § 2, have been received by the Belgian Government.

#### **ARTICLE 21:**

In the event of one of the Contracting States wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other states informing them of the date on which it was received.

The denunciation shall only operate in respect of the state which made the notification and on the expiration of one year after the notification has reached the Belgian Government.

#### **ARTICLE 22:**

Any one of the Contracting States shall have the right to call for a new conference with a view to considering possible amendments.

A state which would exercise this right should give one year advance notice of its intention to the other states through the Belgian Government which would make arrangements for convening the conference.

**PROTOCOL OF SIGNATURE:** In proceeding to the signature of the International Convention for the unification of Certain rules relating to maritime liens and mortgages, the undersigned plenipotentiaries have adopted the present Protocol, which will have the same force and the same value as if the provisions were inserted in the text of the Convention to which it relates:

I. It is understood that the legislation of each state remains free (1) to establish among the claims mentioned in No.1 of Article 2, a definite order of priority with a view to safeguarding the interests of the Treasury; (2) to confer on the authorities administering harbours, docks, lighthouses, and navigable ways, who have caused a wreck or other obstruction to navigation to be removed, or who are creditors in respect of harbour dues, or for damage caused by the fault of a vessel, the right, in case of non-payment, to detain the vessel, wreck, or other property, to sell the same, and to indemnify themselves out of the proceed in priority to other claimants, and (3) to determine the rank of the claimants for damages done to works otherwise than as stated in Article 5 and in Article 6.

II. There is no impairment of the provisions in the national laws of the Contracting States conferring a lien upon public insurance associations in respect of claims arising out of the insurance of the personnel of vessels.

## APPENDIX 4

# INTERNATIONAL CONVENTION ON MARITIME LIENS AND MORTGAGES, 1993

### ARTICLE 1:

Recognition and enforcement of mortgages, “hypothèques” and charges  
Mortgages, “hypothèques” and registrable charges of the same nature, which registrable charges of the same nature will be referred to hereinafter as “charges” effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

(a) such mortgages, “hypothèques” and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;

(b) the register and any instruments required to be deposited with the registrar in accordance with the law of the State in which the vessel is registered are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar; and

(c) either the register or any instruments referred to in subparagraph (b) specifies at least the name and address of the person in whose favour the mortgage, “hypothèque” or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the law of the State of registration or if that amount is specified in the instrument creating the mortgage, “hypothèque” or charge, and the date and other particulars which, according to the law of the State of registration, determine the ranking in relation to other registered mortgages, “hypothèques” and charges.

### ARTICLE 2:

Ranking and effects of mortgages, “hypothèques” and charges

The ranking of registered mortgages, “hypothèques” or charges as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

### ARTICLE 3:

Change of ownership or registration

1. With the exception of the cases provided for in articles 11 and 12, in all other cases that entail the deregistration of the vessel from the register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all registered mortgages, “hypothèques” or charges are previously deleted or the written consent of all holders of such mortgages, “hypothèques” or charges is obtained. However, where the deregistration of the vessel is obligatory in accordance with the law of a State Party, otherwise than as a result of a voluntary sale, the holders of registered mortgages, “hypothèques” or charges shall be notified of the pending deregistration in order to enable such holders to take appropriate action to protect their interests; unless the holders consent, the deregistration shall not be implemented earlier than after a lapse of a reasonable period of time which shall be not less than three months after the relevant notification to such holders.

2. Without prejudice to article 12, paragraph 5, a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

(a) a certificate has been issued by the former State to the effect that the vessel has been deregistered; or

(b) a certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect, at such time as the new registration is effected. The date of deregistration shall be the date of the new registration of the vessel.

### ARTICLE 4:

Maritime liens

1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;  
(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;  
(c) claims for reward for the salvage of the vessel;  
(d) claims for port, canal, and other waterway dues and pilotage dues;  
(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or (b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

#### **ARTICLE 5:**

##### **Priority of maritime liens**

1. The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.

2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3. The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank *pari passu* as between themselves.

4. The maritime liens securing claims for reward for the salvage of the vessel shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

#### **ARTICLE 6:**

##### **Other maritime liens**

Each State Party may, under its law, grant other maritime liens on a vessel to secure claims other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

(a) shall be subject to the provisions of articles 8, 10 and 12;

(b) shall be extinguished

(i) after a period of 6 months, from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or

(ii) at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale; whichever period expires first; and

(c) shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.

#### **ARTICLE 7:**

##### **Rights of retention**

1. Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:

(a) a shipbuilder, to secure claims for the building of the vessel; or

(b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.

2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.



## ARTICLE 8:

### Characteristics of maritime liens

Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag.

## ARTICLE 9:

### Extinction of maritime liens because of time.

1. The maritime liens set out in article 4 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.

2. The one-year period referred to in paragraph 1 shall commence:

(a) with respect to the maritime lien set out in article 4, paragraph 1(a), upon the claimant's discharge from the vessel;

(b) with respect to the maritime liens set out in article 4, paragraph 1 (b) to (e), when the claims secured thereby arise;

and shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the arrest or seizure of the vessel is not permitted by law.

## ARTICLE 10:

### Assignment and subrogation

1. The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.

2. Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.

## ARTICLE 11:

### Notice of forced sale

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

(a) the authority in charge of the register in the State of registration;

(b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;

(c) all holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and

(d) the registered owner of the vessel.

2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either: (a) the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or,

(b) if the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.

3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

## ARTICLE 12:

### Effects of forced sale

1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:

(a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; and

(b) the sale has been effected in accordance with the law of the said State and the provisions of

article 11 and this article.

2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

3. A State Party may provide in its law that in the event of the forced, sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sales, before all other claims secured by a maritime lien on the vessel.

4. At the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.

5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

#### **ARTICLE 13:**

##### **Scope of application**

1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.

2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.

#### **ARTICLE 14:**

##### **Communication between States Parties**

For the purpose of articles 3, 11 and 12, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.

#### **ARTICLE 15:**

##### **Conflict of conventions**

Nothing in this Convention shall affect the application of any international convention providing for limitation of liability or of national legislation giving effect thereto.

#### **ARTICLE 16:**

##### **Temporary change of flag**

If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:

(a) For the purposes of this article, references in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to "the authority in charge of the register" shall be deemed to be references to the authority in charge of the register in that State.

(b) The law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, "hypothèques" and charges.

(c) The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require that the authority in charge of the vessel's record

specifies by a cross-reference in the record the State of registration.

(d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, “hypothèques” or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, “hypothèques” or charges has been obtained.

(e) The notice referred to in article 11 shall be given also to the competent authority in charge of the vessel’s record in the State whose flag the vessel is permitted to fly temporarily.

(f) Upon production of the certificate of deregistration referred to in article 12 paragraph 5, the competent authority in charge of the vessel’s record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.

(g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

#### **ARTICLE 17:**

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

#### **ARTICLE 18:**

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1993 to 31 August 1994 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

#### **ARTICLE 19:**

Entry into force

1. This Convention shall enter into force 6 months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect 3 months after the date of expression of such consent.

#### **ARTICLE 20:**

Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended

#### **ARTICLE 21:**

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

#### **ARTICLE 22:**

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

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