

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 irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective 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 irrespective 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?

We shall prepare the papers to release the ship. Once we file sufficient documents in the court, we can usually release the ship within one day. In the recent case of the arrest of JRS CORVUS our ship was arrested in the Tuesday afternoon. We prepared the paper and could release the ship next early morning.

22. Is there a procedure to contest the arrest?

Yes we have procedures. Recently six ships were arrested by the HK bunker supplier in Japan within two weeks due to collapse of a HK time-charterer. We had a big success to set aside the arrest of all ships in the 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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Matsui's focus has been collisions, cargo defense, arrest, and maritime disputes in court and TOMAC arbitration. He also has substantial experience in ship mortgage enforcement. He is qualified as Maritime Proctor in the Japanese Maritime Court. In 1999 he earned a LL.M. in Admiralty from Tulane Law School, New Orleans. He is an arbitrator and also a board member of the Documentary Committee of the Japan Shipping Exchange. He is an author of Time Charter Party, published in 2004. His hobby is arrest of a ship.