

SHIP ARREST IN SRI LANKA



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

A ship can be arrested under the Admiralty Jurisdiction Act No. 40 of 1983 for claims arising under Section 2 of the Act. In an Action in rem filed in the Admiralty High Court of Sri Lanka, a ship can be served with a Writ of Arrest for claims arising on matters as set out in Section 2(1)(e) to (q) in the Admiralty Jurisdiction Act No. 40 of 1983.

In the first instance application to arrest a ship is made ex-parte by filing an affidavit by the plaintiff, setting out his full claim with all the supporting documents and supported by way of a motion with a draft copy of the warrant of arrest to be issued by the judge of the High Court to the Marshal commanding him to arrest the vessel and until further orders are given by court. As a matter of practice, copy of a draft of a writ of summons in rem, a copy of the warrant of arrest to be signed by the registrar, copy of a certificate of service of the warrant of arrest by the Marshal of the High Court to be filed in court after the arrest are also filed along with the affidavit of the plaintiff.

2. Which international Convention applies to arrest of ships in Sri Lanka?

Sri Lanka is a signatory to the 1952, Brussels Convention on the arrest of sea going ships. Sri Lanka was in the committee which drafted the "INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999" under the auspices of the UN. If the provisions of this convention are not in conflict with any other legislation of Sri Lanka, the provisions of these two conventions will also apply to matters relating to the arrest of ships in Sri Lanka.

3. Is there any other way to arrest a ship in the Sri Lankan jurisdiction?

Other than under the provisions of the Admiralty Jurisdiction Act No. 40 of 1983, there are no other ways to arrest a ship within the Sri Lankan jurisdiction.

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

These legal concepts are not applicable under the Sri Lankan law.

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

Admiralty Jurisdiction Act No. 40 of 1983 sets out the following types of claims under Section 2(1)(e) to (q) for which a ship can be arrested.

"2. (1) (e) any claim for damage done by a ship;

(f) any claim for loss of life or personal injury sustained in consequence of

(i) any defect in a ship or in her apparel or equipment; or

(ii) 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, neglect 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;

(k) any claim in the nature of pilotage in respect of a ship;

- (l) any claim in respect of
 - (i) goods or materials supplied, or
 - (ii) services rendered, 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 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 law in force for the time being is recoverable as 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;"

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

Yes. Irrespective of the flag of the vessel anyone can file papers to arrest a vessel, if you have a claim arising under Section 2(1)(e) to (q) under the Admiralty Jurisdiction Act No. 40 of 1983.

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

Yes. Arresting of a ship is with respect to any of the claims for damages under Section 2(1)(e) to (q) of Admiralty Jurisdiction Act No. 40 of 1983. Therefore immaterial of the debtor, if there is a prima facie claim for damages a ship can be arrested.

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

If the owner of a ship or ships is liable to a maritime claim, then not only the ship in respect of which the maritime claim arose may be arrested but also all other ships in the same ownership, when all the shares of those ships are owned by the same person or persons. However, Admiralty Jurisdiction Act is silent, on sister ships and associated ownership.

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

If the registered owner of the ship is not liable for a maritime claim, then an arrest of a vessel under the bareboat or time charter is not possible. Only where the owner is found to be the debtor of the maritime claim an arrest is possible. Arrest of the vessel is not possible, if the time charterer or bareboat charterer is solely liable for the claim. A vessel can be arrested for a maritime lien, even if the vessel is on a bareboat or time charter. However if the claim is in respect of the property itself such as relating to the supply of bunkers to the vessel or unpaid repair bills which has enhanced the value of the property, the ship may be arrested even if it is under the bareboat or the time charter.

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

No. It is the debtor who has to provide security to have the arrested vessel released.

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

Maritime claims for which a ship can be arrested are mentioned under the Sri Lankan law under Section 2(1)(e) to (q) in the Admiralty Jurisdiction Act No. 40 of 1983. On the basis of these claims, a ship can be arrested provided the owner is the same at the time, the cause of action arose and is still the owner at the time of the arrest of the vessel. However maritime liens can be enforced irrespective of the ownership of the vessel. Maritime lien can be enforced even if the ownership has changed. The procedure for arrest of a ship is the same whether it be for a maritime claim or arising out of a maritime lien.

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

Yes. In fact Sri Lanka is a signatory to the International Convention on Maritime Liens and Mortgages 1993, held in Geneva. Maritime liens under the law of Sri Lanka are set out in Section 83 of the Merchant Shipping Act No. 52 of 1971 as follows:

"83. Maritime liens of a ship shall arise out of-

- (a) 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;
 (b) port, canal and other waterway dues and pilot age dues;
 (c) claims against the owner (which term shall for the purposes of this section also include the charterer, manager or operator of the ship) in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship;
 (d) claims against the owner, based on a wrongful act and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship;
 (e) claims for salvage, wreck removal and contribution in general average.”
 Further priority of liens it is set out in the Merchant Shipping Act, Section 84 as follows:
 “84. The maritime liens set out in section 83 shall take priority over mortgages and preferential rights registered under Chapter 4, or arising under the Crown Debtors Ordinance or the Insolvency Ordinance, and no other claim shall take priority over them, except as is provided in section 86.”

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 court can be made almost immediately, if all the documents to support the maritime claim or lien is ready with the affidavit of the plaintiff on an urgent basis once filed can be supported even after normal hours in the chambers of the judge.

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

No Power of Attorney is required to arrest a ship. Normal proxy form has to be signed by the plaintiff, authorizing the instructing attorney appearing for the plaintiff to file papers. Thereafter an affidavit of the plaintiff fully setting out the maritime claim with all the supporting documents should be prepared and filed in court to proceed to arrest a vessel.

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

Under the Sri Lankan legal system filing of documents electronically is not yet in practice. All documents filed in courts can be certified as true copies by the instructing attorney of the plaintiff. When the case proceed to hear on merits, the original documents need to be produced in court.

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

Once the Admiralty Court orders the arrest of a ship, it retains jurisdiction to adjudicate the substantive claim of the plaintiff, unless there is exclusive agreement between the relevant parties to litigate in another jurisdiction or to submit their dispute to arbitration. In such a situation the arrest of the ship may not be maintainable.

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

Once the ship is arrested on the ex-parte application of the plaintiff, court will grant time to file objections to the arrest. If no objections are filed to the arrest of the vessel, court acting under rules framed under the Admiralty Jurisdiction Act, will grant time to the plaintiff to file by way of a petition all matters to be adjudicated by court on the merits of the case.

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

Yes. The plaintiff is liable in damages for any wrongful arrest. These damages will arise irrespective of the fact that the plaintiff did not act in bad faith or negligently, when enforcing the arrest of the vessel.

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

If a vessel is sold to a separate legal entity for the purpose of evading a claim the court can examine the circumstances of the sale and in exceptional situations will allow the piercing of the corporate veil on grounds of fraud.

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

Pendente lite is a Latin term meaning “awaiting litigation” or “pending litigation”. A vessel can be sold, if the party who made the application for the sale of the vessel can show that the vessel had been arrested for some time and the ship is losing its value by deterioration.

Therefore court can sanction the sale of the vessel by public auction and deposit auction money in a court account to settle claims arising in respect of the vessel.

It is specifically provided under Section 7(3) of the Admiralty Jurisdiction Act No. 40 of 1983 that if the property arrested is "subject to speedy decay the court may on an application made in that behalf by the marshal direct that such property be sold and the proceeds deposited in courts, pending the determination of the action".

** Mr. Somaratne was admitted to the Bar in the Year 1973. He is a Senior Partner at the CMathew & Co. Law Office in Sri Lanka. He along with the other partners assists in all Shipping & Admiralty matters in Sri Lanka besides all the other services offered by the C. Mathew & Co. Law Firm.*

Mr. Somaratne has more than 40 years of professional experience. His key practice areas are Admiralty and Maritime Law and other related areas not limited to Maritime Commercial Law, Customs Law, Ship Registration, etc. He is a member of the Bar Association and the Organization of Professionals Association. Among his many achievements, he is the Author of 'Shipping Laws & Regulations of Sri Lanka'. He is also the former advisor to the Ministry of Ports and Shipping and a former member of parliament.