

SHIP ARREST IN COSTA RICA

By Abraham Stern Feterman*
PACHECO COTO
abraham.stern@pachecocoto.com
www.pachecocoto.com
Forum II, Edificio Pacheco Coto, 4º
San Jose, Costa Rica
Tel: +506 2505 0900
Fax: +506 2505 0907



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 out-dated 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 irrespective of her flag?

Yes, the vessel can be arrested irrespective of her flag.

7. Can you arrest a ship irrespective 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.

*Abraham Stern Feterman is a partner at PACHECO COTO, a multinational firm which in addition to its important experience in the field of shipping, presently advises its clients in a wide range of legal, commercial, financial, insurance and taxation matters. The firm is headquartered in San José, Costa Rica, with full operative offices in Guatemala, Honduras, El Salvador, Nicaragua, Switzerland, Spain and New Zealand. Mr. Stern has a Masters of Laws in Admiralty from Tulane University. He has specialized in Maritime and International Law since 1995 and was admitted to practice law in the State of Louisiana in 1997. Prior to joining Pacheco Coto, he worked at Chaffe McCall in New Orleans, Louisiana, where he focused his practice on maritime law, aviation accident law and international corporate transactions.