

SHIP ARREST IN PHILIPPINES

By Domingo G. Castillo*
SYCIP SALAZAR HERNÁNDEZ & GATMAITAN
dgcastillo@syciplaw.com
www.syciplaw.com
SyCip Law Center, 105 Paseo de Roxas
1226 Makati City, The Philippines
Tel: +632 9823500
Fax: +632 8173896



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 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 Philippines does not allow sister ship arrest or ships in associated ownership. However, if the ship is to 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 recognise maritime liens? Under which International Convention, if any?

Yes, the Philippines recognise 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 authorised 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 notarisation 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.

*Domingo G. Castillo obtained his Bachelor of Science in Business Administration (BSBA) and Bachelor of Laws (LI B) from the University of the Philippines in 1973 and 1977, respectively. He then obtained his Master of Laws (LI M) in 1981 from New York University. He is currently a partner in the firm of SyCip Salazar Hernandez & Gatmaitan, with offices at the Seventh Floor, SyCipLaw Center, 105 Paseo de Roxas, 1226 Makati City, Philippines, Tel. Nos. (63-2) 982-3540, 982-3600, and 982-3700, Fax Nos.: 817-3896 and 818-7562; e-mail address: dgcastillo@syciplaw.com. Mr. Castillo has handled various cases involving vessel arrest, collisions, oil pollution, cargo claims, personal injury, and insurance claims.