



14th Annual Shiparrested.com Conference July 7, 2017



1952 Arrest Convention

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 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 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.

Merchant Shipping Code

A **maritime claim** shall be deemed any claim arising out of:

- (a) damage caused during the operation of a vessel;
- (b) loss of life or personal injury...
- (c) salvage operation or any contract on salvage;
- (+) expenses on the measures taken to prevent or minimize damage, including damage to the environment;
- (+) expenses for the raising, removal and destruction of a sunken vessel or its cargo;
- (d) any contract for use of a vessel;
- (e) any contract relating to the carriage...;
- (f) loss of or damage to goods, including baggage carried in a vessel;
- (g) general average;
- (j) pilotage;
- (i) towage;
- (k) supply of provisions, materials, fuel, stores, equipment, ...;
- (l) construction, repair, modernization or reequipment of a vessel;
- (+) port and canal and other waterway dues charges;
- (m) wages and other sums...;
- (n) disbursement expenses, incurred in respect of a vessel;
- (+) insurance premium...;
- (+) commission, broker's or agent's remuneration payable by the owner or charterer by demise...;
- (o) any disputes as to the right of ownership or possession of a vessel;
- (p) any disputes between two or more co-owners of a vessel as to the use of the vessel and the apportionment of earnings;
- (q) a registered mortgage on a vessel or registered charge of the same nature;
- (+) any dispute arising out of a contract of sale of a vessel.

1993 Liens & Mortgages Convention

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.

Merchant Shipping Code

1. The following claims against the owner of the vessel shall be secured by maritime lien on a vessel if they relate to:

- 1) wages and other sums due to the master 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 behalf of the master and other members of vessel's complement;
- 2) compensation for loss of life or personal injury of a citizen occurring, whether on land or on water, in direct connection with the operation of the vessel;
- 3) reward for the salvage of the vessel;
- 4) payment of port, canal, and other waterway dues and pilotage dues;
- 5) compensation for physical damage caused by the operation of the vessel as a result of loss of or damage to property other than cargo, containers and passengers' effects carried on the vessel

1952 Arrest Convention

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;

ARTICLE 6

...

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.

Merchant Shipping Code

ARTICLE 388

...

2. A vessel may be put under arrest only under a maritime claim.

Rules of Procedure

(Commercial Procedure Code)

ARTICLE 90

...the grounds on which the court may apply “security measures” (eg. arrest) are:

- 1) if not imposing such measures will make enforcement of a future judgment difficult or impossible, or
- 2) for preventing serious damages to the applicant.

A party seeking arrest of a vessel amongst having to prove the presence of a **maritime claim** shall prove by evidence on a **probability basis the potential risk of difficulty of or, the impossibility of enforcement of the future judgment** on the merits of the claim.

Rules of Procedure

(Commercial Procedure Code)

Q: How do you prove **the potential risk of difficulty of or, the impossibility of enforcement of the future judgment** on the merits of the claim?

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(Commercial Procedure Code)

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A:

It is the sole discretion of the judge to assess the said probability. Thus 99% of the deal in arresting a vessel is judicial discretion.

The majority of ship arrest applications (as well as applications for other types of security measures) are denied on the grounds that **“the court has not found that [or the party seeking arrest has not proved that...] if the arrest is not imposed, the future judgment will be difficult or impossible to enforce”**.

BUNKER CLAIMS

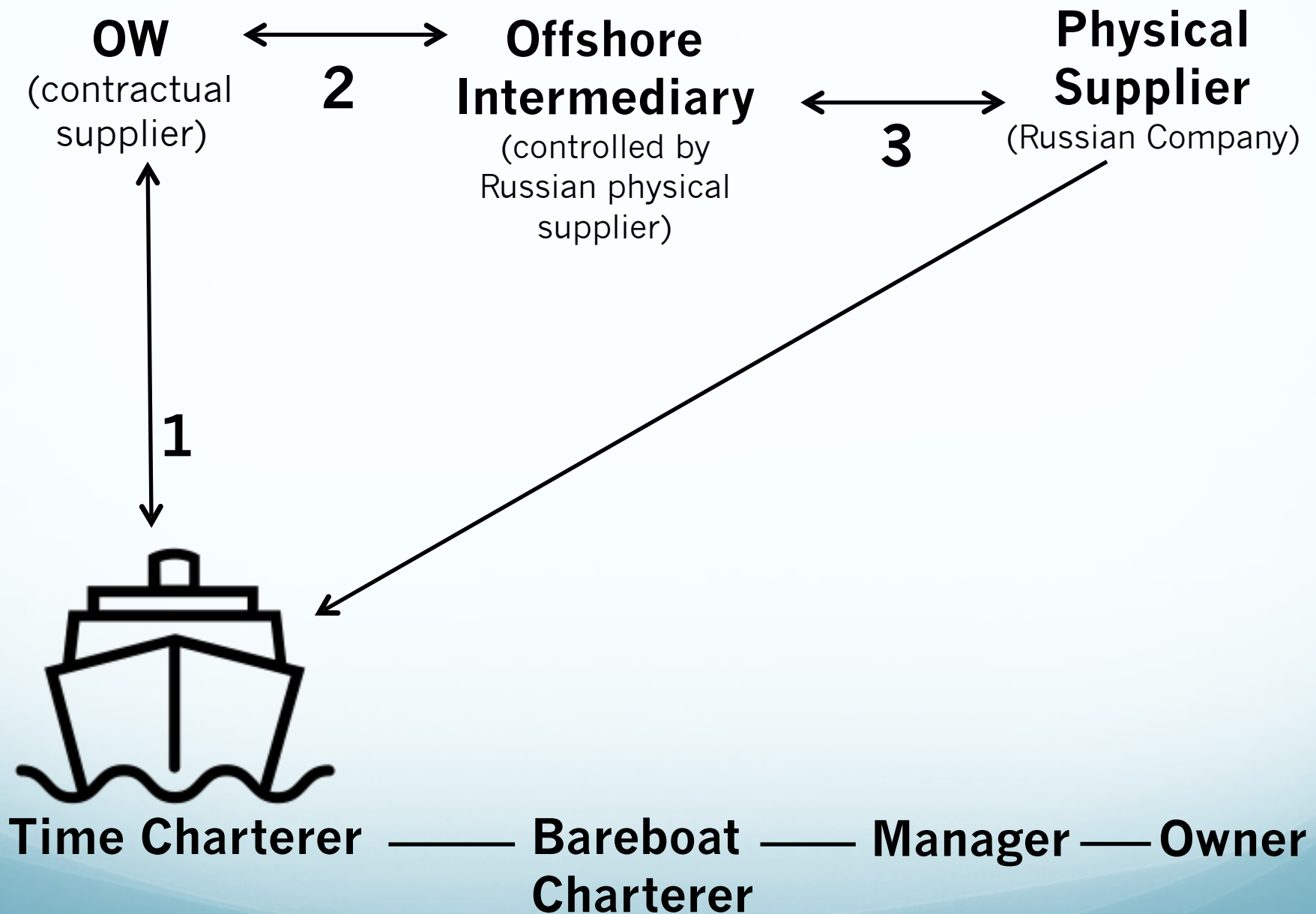
- Maritime claim?

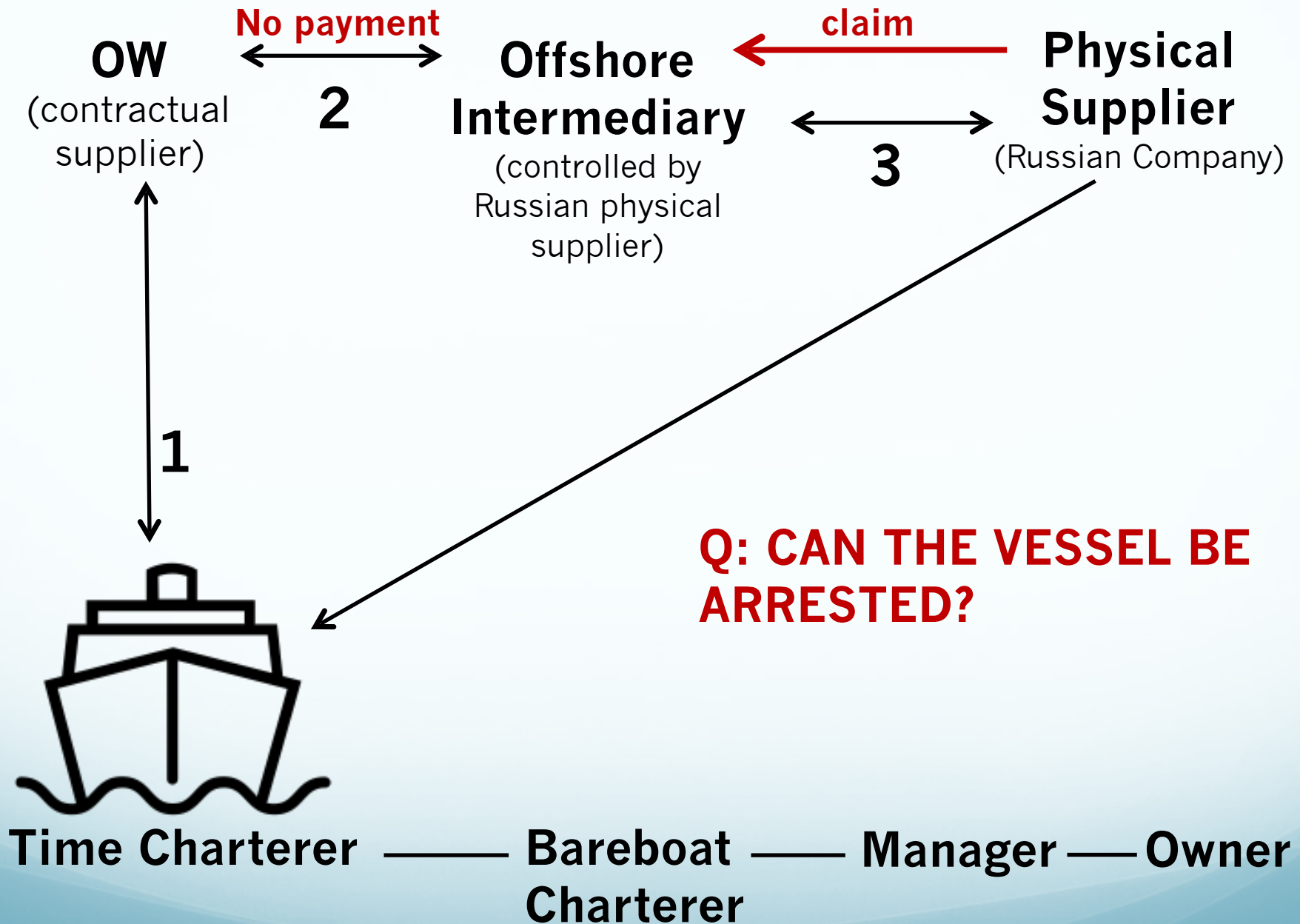
Yes

- Secured by a maritime lien?

No

- Bunkers usually ordered by time charterers
- Contractual supplier / physical supplier
- Intermediaries



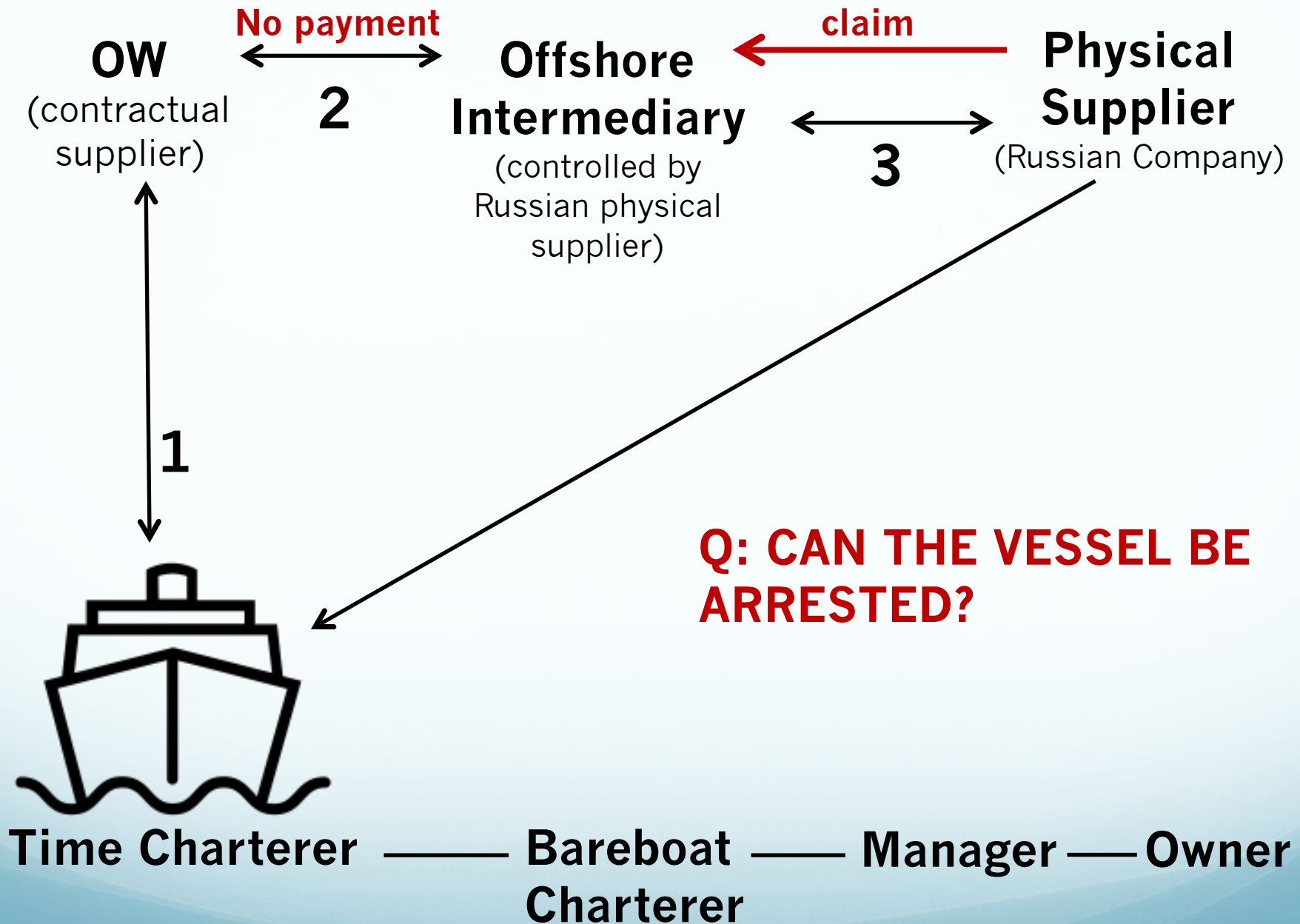


ARTICLE 3

(1) Subject to the provisions of para. (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).

...

(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.**



Q: CAN THE VESSEL BE ARRESTED?

FIRST INSTANCE COMMERCIAL COURT OF ST. PETERSBURG : NO

1. The claim of the Physical Supplier to the Intermediary is **not a maritime claim** because it is addressed to the party who is not the Owner nor the Charterer of the vessel.
2. (*Obiter dictum*) The defendant will not be suffering losses from the arrest and will have no motives to provide counter security.

Q: CAN THE VESSEL BE ARRESTED?

APPELLATE COMMERCIAL COURT : YES !

1. Whilst the vessel was outside Russian jurisdiction.

1. *Article 3(4) of the 1952 Arrest Convention. 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.***