

SHIP ARREST IN IRAN

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

There are not any provisions in respect of ship arrest in the Iranian Maritime Code or Civil Procedure Act neither is Iran a party to the International Conventions in respect of ship arrests. However, it is generally possible to arrest a ship in Iranian waters as an asset of the shipowner debtor. A claimant can request a provisional order or attachment order to arrest a vessel. These orders are usually requested and granted when the Iranian courts have jurisdiction to consider the case on the merits. If the arrest order is granted and a ship is arrested, the claimant should file a petition on the merits of the case, within 10 to 20 days from the date of order depending on the procedural route pursued, to the competent court. Failing this, the arrest order can be cancelled by the court upon request of the defendant.

2. Which International Convention applies to arrest of ships in your country?

Iran is not party to the 1952 and 1999 Arrest Conventions, therefore, these International Conventions are not applicable in Iran.

3. Is there any other way to arrest a ship in your jurisdiction?

There are two legal methods of ship arrest in Iran.

- i. Under Article 108 of Iranian Civil Procedure Act, a claimant can petition the court for an attachment order over the debtor's assets. After payment of a counter-security into the court account, in a sum determined by the judge in his discretion, the attachment order can be obtained. For the enforcement of the attachment, the claimant can introduce a ship as an asset of the defendant to which execution can apply. Upon such request, the court will send a letter to the port guard authorities to arrest the named ship, if it belongs to the particular defendant. If the claimant does not submit his petition on the merits of the case within 10 days after issuance of the order, the court will cancel the attachment order upon the request of the defendant.
- ii. Under Article 310 of Iranian Civil Procedure Act, as a matter of urgency, the court will hear an application, *ex parte*, and where satisfied, will issue a provisional order upon request of the claimant. As per Article 316 of the Act, provisional orders may involve the confiscation of property or the compulsion to perform or refrain from doing an act. For obtaining a provisional order for arrest of a ship, a claimant has to provide the court with a convincing argument that if a ship leaves an Iranian port, there would not be any possibility of obtaining any other asset over which security could be held for purposes of enforcing any final judgment against it. For issuance of the provisional order, the court will require a suitable counter-security for the estimated/probable losses of the defendant in the event the claimant's case is not proved. After service of the arrest order and arrest of the ship, the claimant should provide the court with a certificate evidencing submission of the petition on the merits, within 20 days from the date of the arrest order, otherwise the order will be cancelled upon request of the defendant. In such an eventuality, the arrest would be lifted and the vessel would be granted port clearance.

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

The above mentioned orders are mainly to preserve/secure the defendant's assets until judgment can be enforced.

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

Under the Iranian Civil Procedure Act, arrest of a ship is possible for any types of claims whether they are marine or non-marine in nature. However, there is a minimum claim amount of IR 200,000 (approximately USD 65,000) required before a provisional attachment will be granted.

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

Yes, regardless of flag.

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

As it was explained above, the vessel should be the registered property of the debtor. It is extremely difficult to convince the courts to arrest the assets/vessels of subsidiary companies.

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

If the sister-ship shares registered ownership with the debtor then it can be arrested.

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

Bareboat and Time-Chartered vessels, chartered by the charterer defendant, cannot be arrested for the debt of the charterer arising from his use of the vessel because the claim is against the charterer and not the vessel or its owner.

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

Yes. The amount of the counter-security is at the discretion of the judge but will be at least 10% of the claim amount.

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

There is no difference.

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

Yes, Iran is a party to the International Convention for the Unification of Certain Rules of Law Relating To Maritime Lien and Mortgages signed in Brussels 1926, however in practice there is not a special procedure for enforcing maritime liens and the enforcement aspect of maritime liens is as per the local Iranian law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

If the required documents are provided, a ship arrest usually takes a few days. In theory a ship could be arrested in one day, but in practice the formalities of submitting the application, referring it to a branch of public court, verifying the documents by the clerk of the court, determining the amount of security by the judge, depositing the amount into the court bank account, issuing the order by the judge, enforcing the

order by the enforcement department of the court, and notifying the port guard authorities will usually take more than one day.

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

A legalised POA and the claim documents in the Persian language are required.

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

A legalised original POA and certified copies of documents proving the nature of the claim are required. According to the law, all the documents should be original in form and officially translated into the Persian language, within Iran. However in practice the courts may accept copies by emails or fax.

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

Generally the answer to this question is 'yes'. However in the absence of any Iranian jurisdiction clause, there has to be a real connection between the claim and the Iranian territory in order for the courts to accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

If there is an agreement between the parties, or, the defendant provides the court with the acceptable guarantee, the ship will be released immediately. The court will send a letter to the port guard authorities informing them of lifting arrest of the vessel.

18. What type of security needs to be placed for the release?

Cash deposit or bank guarantee.

19. Does security need to cover interest and costs?

At least the security should be equal to the claim amount inserted in the claimant petition.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No. The Iranian courts do not recognize a Club's LOUs as security. Club LOU's are not recognised as a good form of security by the Iranian courts however there is nothing that prohibits the parties from agreeing to provision of a Club LOU and for the Claimant to request the lifting of the arrest.

21. How long does it take to release the ship?

The ship can be released on the same day of provision of security so long as the request is made within working hours of the court. The port authorities may accept a court letter of release outside of usual working hours and grant port clearance.

22. Is there a procedure to contest the arrest?

If the ship is arrested by an attachment order, as per Article 116 of Iranian Civil Procedure Act, the defendant can protest against the order within 10 days from the date of notification. The courts should consider the protest in the first court hearing, but the courts do not usually decide on the protest at that time. Any decision on the protest will be made together with the decision of the court on the merits of the

case. If the claim is rejected and the defendant wins, the court shall condemn the claimant to pay the defendant's losses arising from the arrest and will be paid through the counter-security deposited with the court.

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

10 or 20 days respectively, depending on whether the claimant requested an attachment order under Article 108 or a provisional order under Article 316 (both outlined above).

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

In the case of wrongful arrest, the claimant will be condemned to pay the defendant's losses. Wrongful arrest can be established by the rejection of the claim by the court. This may happen when the substantive claim cannot be proved by the claimant.

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

No.

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

In principle, it is not possible unless we succeed in proving to the Court that the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

The ship can only be sold after a final judgment is issued in favour of the claimant by the enforcement department of the court. Sale by auction may take a few months since the ship's value should be evaluated by an official court expert and subsequent notice of the auction details must be given to the litigant parties and the public to attend the auction.

**In 2008 Omar joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries. Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.*

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He has acted on behalf of a bunker suppliers caught up in the O.W.Bunker liquidation. Successfully arrested vessels to recover maritime debts. Successfully acted on behalf of a private yacht owner against his insurers further to grounding his yacht on a breakwater, amounting to a constructive total loss. Recently instructed by a leading London-based P&I Club to defend a claim against its Member for damage to a cargo of onions, managing to minimize losses and settle on favourable terms for Members.