

SHIP ARREST IN KOREA

Byung-Suk Chung
KIM & CHANG LAW FIRM
bschung@kimchang.com
www.kimchang.com

39, Sajik-ro 8-gil, Jongno-gu, Seoul 03170, Korea

Tel: +82-2-3703-1114

Fax: +82-2-737-9091/9092



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

There are several bases to arrest a ship in Korea, e.g., (i) to arrest a ship based on a prejudgment attachment which is to obtain security for the claims against the owner of the ship pending enforceable judgments, or (ii) based on maritime lien and/or mortgage on the vessel which will proceed with the auction sale of the vessel. We note that in rem action/proceedings are not recognized in Korea.

In case of the former (prejudgment attachment), there is no restriction of the claims seeking for the arrest of a ship if and only if the claim is owed by the owner of the ship. In this respect, the Korean court may pierce the corporate veil of the registered owner of the ship and allow the arrest of the ship if the claim is owed by a beneficial owner of the ship.

In case of the latter (arrest based on maritime lien), the Korean court will look to the law of the port of registry of the ship when it determined the existence of the maritime lien.

In case of arrest of a foreign ship, it is usual practice that the maintenance and preservation order will also be sought to preserve and maintain the ship. In such a case, the possession of the ship will be transferred to the maintenance and preservation company.

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

We note that Korea is not a party to any convention relating to the arrest of ships (such as 1952 or 1999 Arrest Convention).

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

There are other ways to arrest a ship such as by obtaining a prejudgment injunction order. This prejudgment injunction order is relevant in order to preserve the *status quo* of the ship if and when e.g., there is a dispute as to the ownership of the ship and/or the validity of the charter party in respect of such ship.

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

Please see 3 above.

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

In case of the arrest based on the prejudgment attachment, there is no restriction on the types of the claims. On the other hand, in order to arrest the ship based on maritime lien, the claims should give rise to a maritime lien under the law of the port of registry of the ship.

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

In case of the arrest based on the prejudgment attachment, the ship's flag is not relevant. On the other hand, in case of arrest based on maritime lien, ship's flag may be relevant (see 5 above) assuming the ship flies the flag of the state of the port of registry. If the ship flies the flag of the country where a bareboat charter is registered (other than the port of registry where the ownership is registered), the Korean court would look to the law of the port of registry of the ship (where the ownership is registered.)

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

Yes. Who is the debtor is not relevant to the arrest of a ship.

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

In case of the arrest based on the prejudgment attachment, sister ship (i.e., a ship belonging to same owner) arrest is allowed so far as the debt is owed by the owner of such ship. Associated ownership arrest may or may not be allowed.

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

In principle, a ship may not be arrested based on the debt owed by bareboat charterer or time charterer unless the claims give rise to a maritime lien.

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

In case of the arrest based on the prejudgment attachment, the Korean court will require a counter security. The amount and the method (surety bond or cash) of the counter security will be determined by the court at its sole discretion. However, under normal practice, it has been the case that the court would require 10 % of the claim amount as counter security and such counter security can be provided by way of a surety bond.

In case of the arrest based on the prejudgment injunction (see 3 above), there is no established practice as to the amount and the method of the counter security.

On the other hand, in case of arrest based on maritime lien, no counter security will be required. However, the applicant is required to advance the auction costs.

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

Please refer to our answer 10 above.

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

Korea recognizes the maritime lien. However, Korea is not a party to any International Convention in this regard.

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

Assuming we are provided with all the relevant documents (including the power of attorney), it may take a half day or one day to prepare the application for the arrest of the vessel (including the translation of the documents made in a foreign language). We then submit the application to the court which has jurisdiction over the arrest of the ship (which is normally the court which has jurisdiction over the port where the ship is staying). The court then considers our application and (if the court is going to grant our application), then the court will issue the deposit order (counter security). It may take one day or so. Then, once the counter security is provided, the court will issue the order for the arrest of the ship based on prejudgment attachment. These whole processes may take 1 to 3 days provided the counter security can be provided without delay.

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

Yes. We need the power of attorney and the company registry (or the equivalent document) of the applicant and the owner of the ship/or the debtor (i.e., respondent) showing the incorporation of the company in question, address of the company and the name of the representative director.

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

At the time of an application for the arrest order, copy will normally be accepted. In case a cash deposit is to be made (as counter security, etc), the court may require the original of the power of attorney and the company registry with notarization and apostille.

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

It depends. If there is an arbitration clause or a valid exclusive jurisdiction clause in favour of a foreign court with respect to the underlying claims, the arrest in Korea would not amount to grant a substantive jurisdiction to the Korean court. If not, the fact that the ship (the debtor's assets) is located in Korea could be a basis for the Korean jurisdiction.

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

In order to release the ship (in the absence of the agreement with the arresting party or prior to the judgment), the owners are required to post the cash deposit equivalent to the claim amount (and plus the costs for the arrest in case of arrest based on the maritime lien). The Korean court would not normally accept a guarantee to be issued by a bank or an insurance company.

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

From practical point, only cash deposit would be acceptable to the Korean court.

19. Does security need to cover interest and costs?

Not necessarily but subject to the claim. If the applicant includes the interests and the costs and the court recognizes such interests and costs, the security should need to cover such interests and costs as well. In case of the arrest based on maritime lien, the costs for the arrest shall also be posted.

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

No (see 17 above).

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

Assuming the required security is posted as ordered by the court, it may take a half day or two days to obtain the cancellation order from the court based on the security provided.

22. Is there a procedure to contest the arrest?

Yes, the owner (or any other interested parties) may contest and challenge the arrest for substantive and/or procedural reasons.

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

There is no set rule. The owner may ask the court to issue the order for the arresting party to commence the proceedings on the merits, then the court will issue the order to that effect within a certain prescribed time. If the arresting party would not comply with the said order or if the prejudgment attachment lasts 3 years without commencing the action on the merits, then the court may cancel the prejudgment attachment order.

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

Yes, if there is negligence on the part of the arresting party assuming Korean law is the governing law. Under Korea law and practice (assuming Korean law is the governing law), if the arresting party lost the action on the merits, then the negligence of the arresting party is presumed and the arresting party is required to prove that there was no negligence on its part in order to avoid liability for the wrongful arrest.

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

Yes, rather broadly in case of a ship registered in the name of a so-called paper company in a flag of convenience country.

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

Yes, in case of the arrest based on maritime lien. It may take 6 to 12 months to complete the auction sale, subject to delay if there is no bidder at the minimum reserve price.

***Byung-Suk Chung** is an attorney at Kim & Chang. He practices primarily in shipping, shipbuilding, insurance and international trade and related international arbitration & cross border litigation.

Mr. Chung has been an arbitrator on the Korean Commercial Arbitration Board since 1994 and the mediator of Seoul Central District Court since 1994. He has served as President of Korea Maritime Law Association (2012-2014) and is serving as the President of the Korean Private International Law Association since 2015. Mr. Chung teaches maritime law at Seoul National University Law School and Korea University Law School as an adjunct professor.

Mr. Chung has authored various publications, including "Shipping & International Trade Law Korea Chapter" (Thomson Reuters). He has been consistently recognized as a "Leading" attorney by both Chambers Global and Chambers Asia-Pacific.

Mr. Chung received an LL.M. from University College London in 1987 and an LL.B. from the College of Law, Seoul National University in 1977. He also attended the Graduate School of Law, Seoul National University in 1980 and the Judicial Research and Training Institute of the Supreme Court of Korea in 1980. He is admitted to the Korea bar.