

SHIP ARREST IN PUERTO RICO

By Alberto J. Castañer*
CASTAÑER LAW OFFICES P.S.C.
alberto@castanerlaw.com
www.castanerlaw.com
Maramar Plaza, 101 Ave. San Patricio, Suite 1110
San Juan, PR 00926, Puerto Rico
Tel: 1 787 707 0802
Fax: 1 888 227 5728



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

Puerto Rico is a territory of the United States of America subject to most federal laws enacted by the U.S. Congress. As in the United States, ship arrests must be commenced by filing a complaint *in rem* against the ship in the U.S. District Court. The Federal Rules of Civil Procedure's Supplemental Rules for Certain Admiralty and Maritime Claims ("the Supplemental Rules") govern the procedure for arresting or attaching a vessel or other maritime property in the Puerto Rico. A warrant of arrest or writ of attachment is issued by the Court directing the U.S. Marshal to arrest the ship, maritime property (in *in rem* arrest cases for enforcement of liens), or to attach any property of the *in personam* defendant (in attachment/garnishment cases based on an *in personam* maritime claim).

2. Which International Convention applies to arrests of ships in Puerto Rico?

None.

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

No.

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

Supplemental Admiralty Rule B provides a method to obtain *in personam* jurisdiction over the defendant vessel owner by attaching or garnishing his property (ships, goods, chattels, credits and effects) when the claimant asserts a maritime claim and the defendant cannot be found within the district.

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

As a general rule, the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico. An *in rem* action under Supplemental Admiralty Rule C to arrest a ship may be brought in Puerto Rico only to enforce maritime liens created under the Federal Maritime Lien Act, to enforce liens created under U.S. general maritime law, and as authorized by statutes such as the Ship

Mortgage Act. When foreign laws determine a claimant's rights, only a maritime lien created under the applicable foreign law will sustain an *in rem* arrest. A right of arrest under foreign law is not sufficient without a maritime lien. However, in an *in personam* action under Supplemental Rule B, there is no need for a lien on the vessel to be able to attach it as long as the claim is maritime in nature.

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

Yes.

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

Yes. However, vessels owned by the U.S. government or other foreign nations may not be arrested as per the Foreign Sovereign Immunities Act.

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

Under U.S. law, arrest of a sister or associated ship is not allowed. Nevertheless, sister ships may be attached if the claimant asserts a maritime claim against the owner.

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

A maritime lien attaches at the beginning of the charter, yet only will be enforceable at the time of breach: the lien remains "inchoate" until "perfected." The lien exists from the beginning of the charter to provide security for the parties. The obligations of shipowners, the shipper, consignee, or owner of the cargo are reciprocal, and the maritime law creates reciprocal liens for their enforcement. The vessel may be arrested only after the lien is "perfected" by a breach of the charter.

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

No. But, the court may at any time, require any party to give security or additional security, to pay all costs and expenses that may be awarded. Also, the execution of the arrest or attachment may be stayed, or the property released, on the giving of security, to be approved by the court or stipulated by the parties. See Supplemental Admiralty Rule E(5). In addition, when the person who has given security to stay execution of the arrest or to release the vessel asserts a counter claim that arises from the same transaction or occurrence subject to the original action, the arresting party must give security for the damages in the counterclaim unless the court directs otherwise. See Supplemental Admiralty Rule E(7).

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

Yes. A maritime arrest is allowed only when a maritime lien attaches the vessel. See Supplemental Admiralty Rule C. Not all maritime claims create a maritime lien. However, vessels may be attached under Supplemental Admiralty Rule B, which only requires a maritime claim against a defendant that cannot be found within the district but whose property is or will soon be within the district.

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

Yes. Maritime liens are recognized under U.S. general maritime law, U.S. maritime statutes and international conventions e.g. Federal Maritime Liens and Act, Ship Mortgage Act, and the 1910 Salvage Convention.

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

Vessels are commonly arrested on very short notice to law firms. Sometimes as little as 24 hours before the ship calls port. In such cases, the claimant must show the court that exigent circumstances exist that makes court review impracticable.

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

A POA is not necessary to arrest or attach a vessel. However, it is recommended that the complaint be accompanied by evidence that supports the existence of a maritime lien in in rem arrest cases, or the existence of a prima facie maritime claim in in personam attachment cases.

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

Original documents are not required as prerequisite. Any document may be filed electronically through the U.S. District Court's CM/ECF online system. The complaint must be verified and this may be done by notarisation or by making an unsworn declaration under penalty of perjury pursuant to 28 USC § 1746.

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

Yes. After arresting or attaching the property, the Court will rule on the substantive claim by applying either U.S. law or any foreign law found to be applicable after making a "choice of law" test.

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

The owner of the arrested ship must file security in the form of a bond, or letter of undertaking from its insurer or P&I club. The security may be approved by the court or stipulated by the parties.

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

Supplemental Admiralty Rule E(5) does not specify the type of security necessary to secure release of the vessel. To the contrary, the Rule provides that "the parties may stipulate the amount and nature of such security". Thus, the parties may be creative and agree to one or more of many possible types of security. However, if the parties do not stipulate the nature of the security, "the court shall fix the principal sum of the bond or stipulation".

19. Does security need to cover interests and costs?

Yes.

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

Yes.

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

The party seeking release of a ship may file an emergency motion submitting the bond, LOU, or other security, and asking the court to immediately issue an order releasing the ship from the arrest. If the parties have stipulated the security, the ship will most likely be released expeditiously. If no stipulation is made, the security must be approved by the court prior to releasing the ship, which could take longer.

22. Is there a procedure to contest the arrest?

Yes. Whenever property is arrested or attached, any person claiming an interest in it is entitled to a prompt hearing at which the arresting/attaching party shall be required to show why the arrest or attachment should not be vacated or other relief granted. See Supplemental Admiralty Rule E(4)(f).

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

The time to take judicial action will depend on the type of claim and the controlling law. For example, most claims arising under U.S. general maritime law must be filed within a time determined by the doctrine of laches, which provides flexible approach rather than an arbitrary/fixed period. On the other hand, for

example, because the United States is a signatory of the Salvage Convention of 1910, salvage claims must be filed within two years.

24. Do Courts in your country acknowledge wrongful arrests?

Yes. Damages for wrongful arrest are recoverable when the arrest is made with bad faith, malice, or gross negligence.

25. Do the Courts 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. Supplemental Admiralty Rule E(9)(a) allows interlocutory sale of the arrested ship when:

- (A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;
- (B) the expense of keeping the property is excessive or disproportionate; or (C) there is an unreasonable delay in securing release of the property.

**Attorney Alberto Castañer has a broad wealth of knowledge concerning the area of Maritime and Admiralty Law, including advanced degree from one of the the top maritime law school in the world.*

Castañer is a graduate of University of Puerto Rico, (B.A., Cum Laude), Interamerican University School of Law (J.D., Cum Laude), and Tulane University Law School (Admiralty and Maritime LL.M.), and is currently an adjunct professor of Admiralty and Maritime Law at the Interamerican University of Puerto Rico School of Law.

After obtaining his graduate degree in Maritime Law at New Orleans, Louisiana, Castañer formed his law firm to provide extensive commercial and corporate counseling and litigation representation to the transportation industry in matters such as cargo claims, international trade regulations, vessel arrests, ship mortgages, marine terminal operations, and others.