

SHIP ARREST IN *COLOMBIA*

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

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

In Colombia, national and international maritime laws on the arrest of vessels apply. The international embargo agreement and Decision 487 of 2000 of the Andean Community of Nations.

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

It is only required that it be in Colombian territorial waters and that a maritime credit be alleged.

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

There is preventive arrest of ship and ordinary arrest of ship.

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

For all the credits that the boat may generate or because of it; Credits can be privileged or ordinary.

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

In Colombia, all ships can be seized except warships or those protected in maritime law.

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

Article 41 of the Decision 478 of 2000 establishes that the arrest of any vessel that has an outstanding maritime credit will proceed if:

- The person who is the owner of the vessel at the moment of birth of the credit is obliged to pay it and is also the current owner at the moment that the arrest is executed.
- If the bareboat charterer at the moment of birth of the credit is obliged to pay it and is also the current bareboat charterer at the moment that the arrest is executed.
- If the credit is based on a mortgage or lien of the same nature over the ship.
- If the credit relates to the ownership or possession of the vessel.
- If the credit is against the owner, the bareboat charterer, the manager or the shipowner of the vessel and is guaranteed by a maritime privilege granted by Article 22 of this Decision.

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

They can also be seized.

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

They can be seized while the maritime credit default is alleged and the ship is in Colombian waters.

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

Judges require insurance policies, but in some cases judges may waive this requirement if the applicant can show that he or she has no means of obtaining such a policy; In Colombia, a deposit must be made in favor of the insurance for the insured value, unless the amount of the seizure is very low and the creditor has sufficient funds in Colombia.

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

The claim for maritime lien is faster and is processed as a maritime embargo, the other credits are initially processed through a preventative lien.

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

Yes, maritime liens are recognized under the rules of the Decision 478 of 2000 of the Andean Community of Nations.

The recent IMO convention shielded shipowners, but in Colombia a ship that has debts must be very careful because the arrest is quick to process and the release is not so fast.

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

It depends on several factors; that the information is translated and complete, an agreement has been signed and a power of attorney is obtained with the formalities required by the law of Colombia (before a Colombian notary or consul). Delivered the case, we estimate that the demand is presented in 3 days maximum and the seizure could take between 10 and 20 days, depending on the complexity of the case, experience of the judge, urgency request, etc.

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

Yes, answered in question 13.

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

1. POA
2. Evidence of the applicant company
3. Proof of the breached agreement

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

Absolutely.

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

Get a good maritime lawyer and make a deposit for double the default. Achieve a fair payment agreement or fight in the process to lift the embargo, which can significantly harm the ship and its interests.

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

An insurance policy that guarantees twice the amount claimed. It is not easy to get because the interested party must pay the cost of insurance and make a deposit for twice the value claimed and even having it, the plaintiff can attack the policy.

19. Does security need to cover interest and costs?

It is for twice as much as is alleged. It is something that cannot be taken lightly because they could also ask for a policy from whoever requests the embargo.

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

P&I are not accepted to lift an embargo because their nature is civil liability.

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

It can take months. It all depends on the skills of the lawyer, the knowledge of the judge, the availability of a hearing on the judge's agenda and other factors.

22. Is there a procedure to contest the arrest?

Yes there is a procedure, the problem is that the plaintiff can delay a process and delay the removal of a vessel. Sometimes the judge may notice a total disproportion and lift the measure if the debtor has another way to pay the credit that is alleged as defaulted.

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

Three days after being notified

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

Of course, and therein lies the skill of an expert lawyer in the field.

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

It is not something that is aired in an embargo, unless the credit has the character of labor and the claimant wants to extend the actions to the partners of the debtor company.

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

The process is immediate and the risk is borne by the buyer. Usually this figure occurs when the buyer has reached an agreement with the debtor.

The maritime litigation in Colombia is balanced, however there is a third actor and it is the DIAN or customs agency of the Colombian state, which could stay with a ship that exceeds a very long time in national territory, regardless of who is right.

Our firm has an extensive 30 years of experience in seizure and auction of vessels, as well as the judicial defense of ships.

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