

# SHIP ARREST IN NEW ZEALAND

By Pauline Davies\*

Fee Langstone

[pauline.davies@feelangstone.co.nz](mailto:pauline.davies@feelangstone.co.nz)

[www.feelangstone.co.nz](http://www.feelangstone.co.nz)

51 Shortland Street, Auckland 1140, New Zealand

Tel: 0064 9 373 0050

Fax: 0064 9 379 3679



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

Please see the below answers.

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

None.

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

The Admiralty Act 1973 sets out the statutory basis on which a ship can be arrested, with the procedure being set out in Part 25 of the High Court Rules.

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

These types of orders can be made in respect of any class of asset and are not limited to ships. However, they tend to be available in a narrow insolvency context, with it needing to be shown that there is an apparent dissipation of assets.

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

The types of claims for which ships can be arrested are set out in section 4(1) of the Admiralty Act 1973:

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein:
- (b) any question arising between the co-owners of a ship as to possession, employment, or earnings of that ship:
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein:
- (d) any claim for damage done by a ship:
- (e) any claim for damage received by a ship:
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the owners, charterers, or persons in possession or control of a ship are responsible, being an act, neglect, or default in the navigation or management of the ship, in the loading, carriage, or discharge of goods on, in, or from the ship or in the embarkation, carriage, or disembarkation of persons on, in, or from the ship:
- (g) any claim for loss of or damage to goods carried in a ship:
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship:
- (i) any claim in the nature of salvage:
- (j) any claim in the nature of towage in respect of a ship or an aircraft:
- k) any claim in the nature of pilotage in respect of a ship or an aircraft:
- (l) any claim in respect of goods, materials, or services (including stevedoring and lighterage services) supplied or to be supplied to a ship in its operation or maintenance:

- (m) any claim in respect of the construction, repair, or equipment of a ship or for dock or port or harbour charges or dues:
- (n) any claim by a master or member of the crew of a ship for wages:
- (o) any claim by a master, shipper, charterer, or agent in respect of disbursements made on account of a ship:
- (p) any claim arising out of an act which is or is claimed to be a general average act:
- (q) any claim arising out of bottomry:
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty.

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

Yes.

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

It depends on the nature of the claim. With a few exceptions, where there is no maritime lien or similar charge being claimed, it is necessary that the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or control of the ship.

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

In most cases an arrest can be made of any ship which, at the time when the action is brought, is beneficially owned or is on charter by demise to the same person who would be liable *in personam* (as above). Claims which cannot be brought against a sister ship are claims for possession or ownership, claims between co-owners, claims in respect of a mortgage, and claims for forfeiture, restoration or droits of Admiralty..

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

The position above applies in relation to bareboat charters. There is no right of arrest of a time chartered vessel in respect of a claim against the time charterer.

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

No, but the court registrar requires to be pre-funded for the costs of arrest (eg harbour dues, crew costs), and for the funded sum to be topped up as it is spent.

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

Where there is a maritime lien, a ship can be arrested regardless of ownership. For other types of maritime claim, the position as outlined in the answer to question 8 applies.

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

New Zealand recognises the common law maritime liens (damage done by a ship, salvage, bottomry, respondentia, master's wages and expenses, seafarers' wages). There are no international conventions that apply.

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

The preparation of the court documents takes only a short time. Delays can occur in having the plaintiff execute the supporting affidavit and remit funds to cover the Registrar's expenses, particularly where different time zones are involved. In theory, and assuming all documents

relating to the claim are available, the arrest documents can be filed on the same day. The timing of the arrest itself can depend on which port is involved and whether the Registrar has to send a bailiff from a main centre to a regional centre.

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

No.

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

No original documents are needed and none need an apostille or notarisation. All court documents prepared by the law firm can be filed in any court registry, and will be accepted electronically in the first instance in cases of urgency.

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

Yes, but this can be subject to challenge on the grounds of *forum non conveniens* or where an arbitration clause or foreign jurisdiction clause applied.

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

Provided there is no caveat against release in place, a short standard form document requesting release can be filed with the court. The release will be issued by the registrar if a court order has been made or if all parties consent. The costs of the arrest must be paid, or an undertaking to pay them must be given.

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

The sum sought in the claim must be paid into court, or alternative security to the satisfaction of the registrar must be given.

**19. Does security need to cover interest and costs?**

Yes. The plaintiff is entitled to security to the level of its best arguable case, inclusive of interest and costs.

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

Yes, when issued by an International Group company. The registrar would likely accept an LOU from a non-IG Club if satisfied as to its means, and provided the plaintiff agrees.

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

Once security is in place, or the claim has been settled and the necessary request has been filed, the release can occur immediately (during working hours, or after hours by prior arrangement).

**22. Is there a procedure to contest the release?**

Yes. A ship owner may file a conditional appearance and then apply to set aside the proceeding.

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

Once a defendant has filed an unconditional appearance, the plaintiff must file a formally pleaded claim within 10 working days.

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

Yes, in the limited situations where a claim has been made in bad faith or with gross negligence.

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

Again, in limited circumstances only and only where a failure to do so would cause substantial injustice.

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

Yes, the court may order a sale *pendente lite* where a ship is deteriorating or losing value. It is not a quick process, requiring an independent valuation and often marketing of the ship offshore.

*\*Pauline Davies is very well known in her specialist field of maritime law and is regarded as a leading lawyer in that area. Her practice covers the full range of both “wet” and “dry” maritime work including Admiralty litigation, marine and aviation insurance, the international sale and carriage of goods, domestic carriage of goods, the law relating to freight forwarders, charterparty advice and the sale and purchase of vessels.*

*Pauline’s clients include major marine insurers from both New Zealand and around the world, a number of New Zealand’s major exporting and chartering interests, and a significant number of freight forwarders and carriers, both domestic and multi-national.*

*She is also regularly instructed by non-marine liability insurers where the claim has maritime aspects, such as claims against yacht and spar designers, ship repairers and builders.*

*Pauline is named in numerous legal guides, including the Guides to the World’s Leading Shipping and Maritime Lawyers and to Women in Business Law, Best Lawyers and the Chambers Asia Pacific Guide. She is also admitted to the Supreme Court of Samoa. In 2016 she was named by Best Lawyers as Auckland Maritime Law’s “Lawyer of the Year”. Aside from her legal practice Pauline is a director of Insured HQ Limited. She is also Secretary of the Raglan Sailing Club.*

*“Within the insurance industry, marine insurance is considered a specialist field and Fee Langstone have marine insurance expertise by way of Pauline Davies and senior associate Bradley Alcorn. Pauline Davies has established herself as a leading expert in all matters marine and we seek her advice on all classes including Marine Cargo, Pleasure Craft, Commercial Hull and Marine Liability products.”*

*“Pauline Davies’ strengths lie in, policy interpretation, recovery action and settlement negotiation. What sets Pauline apart from the others is her ability to articulate complex marine concepts and communicate her response in a way where the insurer is able to understand and in turn relay this information to our end customers.”*

*“I feel when working with Pauline Davies that we are partners ultimately looking for a solution to a problem if one can be found. Pauline also assists with advice on unique marine underwriting risks and is acknowledged for her expertise and sound interpretation of the Institute Clauses. We feel her skills in marine insurance are unique and if not the top is amongst the top marine legal experts in the marine industry.”*

*“Pauline Davies is always available and extremely knowledgeable.”*

*“Pauline Davies is meticulous and considers issues from all possible angles. Her advice is always succinct without sacrificing clarity.”*

— Client testimonials, Legal 500 Asia Pacific Rankings 2020/2023