

# SHIP ARREST IN VIETNAM

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

Vietnam's extensive coastline has played a crucial role in bolstering the country's economic activities, particularly after its accession to the World Trade Organization in 2007. The maritime industry, operating within a highly competitive environment, has witnessed a continuous occurrence of maritime claims, including ship arrest claims. The initial instance of such a claim resulting in a ship arrest can be traced back to the early 1990s when a request was filed with the people's court of Da Nang city, Vietnam. Since then, there has been a progressive development in the legislation pertaining to ship arrest. Under the Ordinance on Ship Arrest of 2008, along with the Vietnam Maritime Code of 2015 and the Civil Procedure Code of 2015, provisions have been established to govern the process of ship arrest. Here is an overview of ship arrest practice in Vietnam:

**Legal Framework:** The primary legislations governing ship arrest in Vietnam are Ordinance on Ship Arrest of 2008, along with the Vietnam Maritime Code of 2015 and the Civil Procedure Code of 2015.

**Admiralty Jurisdiction:** The provincial-level people's courts in the provinces or centrally run cities where seaports or inland waterway ports are located have the authority to arrest seagoing ships operating at these ports. This jurisdiction applies to secure the settlement of maritime claims, enforce civil judgments, or exercise jurisdiction granted by foreign courts.

Courts that are currently handling civil cases, as well as provincial-level people's courts in localities where arbitration councils accept disputes, have the power to decide on the arrest of seagoing ships as a provisional urgent measure.

If there is a disagreement among the provincial-level people's courts regarding the jurisdiction to decide on the arrest of seagoing ships, the President of the Supreme People's Court will consider and make a decision to assign the appropriate court with the jurisdiction.

**Maritime Claims:** Ship arrest in Vietnam can be pursued for various maritime claims, such as unpaid crew wages, damage caused by a collision, salvage services, breach of contract, maritime liens, and mortgage enforcement.

**Procedures for Ship Arrest:** To initiate ship arrest in Vietnam, a claimant must file a formal application with the competent court, providing evidence of the claim and demonstrating a valid reason for the arrest. The court will review the application and supporting documents and documents evidencing the furnished financial security for their applications before deciding whether to issue an arrest warrant.

**Arrest Warrant:** Once the court grants an arrest warrant, it authorizes a court officer to deliver the decision to the port authority director within twelve hours. The port authority director executes the decision and coordinates with other state agencies for enforcement. Ship owners/operators are responsible for maintaining ship operations.

**Release of Arrested Vessel:** A seagoing ship arrested for a maritime claim will be promptly released under certain conditions, including the provision of substitute security or full payment of debts, guarantees or insurance from reputable organizations, applicant's request, cancellation of the arrest decision, or expiration of the court-ordered arrest period. If parties cannot agree on substitute

security, the court will determine it, ensuring it does not exceed the ship's value or the property obligation that led to the arrest.

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

To the best of our knowledge, Vietnam has not ratified any International Convention on ship arrest even though Vietnam has been encouraged to accede to International Convention on the Arrest of Ship Geneva, March 12, 1999.

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

There are the following ways to arrest ship in Vietnam:

- Filing request with civil enforcement bodies for ship arrest for the enforcement of judgment/ decision of the court or arbitration;
- Filing request with Chief of sea ports for the detainment of ship for a maximum period of 30 days for the settlement of maritime claims;
- Filing request with the court for ship arrest during the settlement of a civil lawsuit;
- Filing with domestic arbitration tribunal for ship arrest during the dispute arbitration process; and
- Filing a request with a foreign court or foreign arbitration tribunal for ship arrest as a matter of international judicial assistance.

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

These measures correspond to saisie conservatoire or freezing order.

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

The types of claim which can give rise to a ship arrest are stipulated in Article 11 of the Ordinance on Ship Arrest of 2008 including: Damages for the loss of life, personal injuries and other human health damage directly caused by the operation of seagoing ships; Freight, maritime security charge, pilotage, wharfage, and other seaport dues and charges; Seagoing ship salvage remunerations; Property losses and damage outside contract directly caused by the operation of seagoing ships; Loss of or damage to cargoes, including luggage carried on board seagoing ships; General average; Towing; Pilotage; Goods, materials, food, fuels and equipment (including containers) supplied or services provided to seagoing ships for their operation, management, preservation and maintenance; Building, transformation, reconstruction, repair or equipping of seagoing ships; Sums of money paid on behalf of ship owners; Insurance premiums paid by ship owners or other parties on behalf of ship owners or bareboat charterers; Commissions or charges for brokerage or agency for seagoing ships payable by ship owners, bareboat charterers or authorized parties; Disputes as to the title to or ownership of seagoing ships; Disputes between co-owners of seagoing ships over the use of these ships or earnings of these ships; Mortgage or hypothecation of seagoing ships; Disputes arising from contracts of seagoing ship purchase and sale....

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

Yes, we can. Under Vietnamese law, a ship can be arrested regardless of its flag. The jurisdiction to arrest a ship in Vietnam is determined by the location of the ship within Vietnamese territorial waters or ports, rather than its flag or nationality. If a ship is operating in Vietnamese waters or ports and meets the criteria for arrest, it can be detained irrespective of its flag.

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

Yes, we can. Under Vietnamese law, a ship can be arrested irrespective of the debtor. Ship arrest is primarily focused on securing the settlement of maritime claims, or for settlement of a civil lawsuit, or for the enforcement of civil judgments, or for dispute arbitration process, or as a matter of international judicial assistance. The arrest is typically initiated based on the claim or obligation associated with the ship itself, rather than solely relying on the identity of the debtor. Therefore, a

ship can be subject to arrest regardless of who the debtor is, as long as there are valid grounds for the arrest based on the applicable laws and regulations.

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

The Ordinance on Ship Arrest of 2008 allows the arrest of sister ships in the following instances:

- The owner of the sister ship is also the owner of the ship concerned with the arising of the maritime claim;
- The owner of the sister ship is also the bareboat charterer, time - charterer or voyage charterer of the ship concerned with a maritime claim.

On the other hand, ships in associated ownership, which refers to vessels owned or controlled by different entities are generally not automatically subject to arrest when one ship is arrested. The Ordinance on Ship Arrest of 2008 is silent on the arrest of ships in associated ownership. To our experience, arrest of ships in associated ownership is not possible.

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

Kindly refer to answer no. 8.

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

Article 5 of the Ordinance on Ship Arrest of 2008 requires the arresting party to provide a valid bond or guarantee fixed by the court which is equivalent to the possible losses or damages resulting from wrongful arrest (if any). It means that the provision of counter-security is required as a condition for ship arrest. The arresting party must provide counter-security to cover any potential damages or costs that may arise from the arrest if it is later found to be wrongful or invalid. The specific amount and form of counter-security may be determined by the court handling the case, ensuring it is sufficient to protect the interests of the ship owner, charterer, or operator. The requirement for counter-security aims to balance the rights of both the arresting party and the ship owner, charterer, or operator during the arrest process.

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

Arresting a ship for a maritime claim: The arrest of ship is sought against the ship owner/bareboat charterer of the ship related to the maritime claim. Other ships of the ship owner can be arrested if, at the time the maritime claim arose, such party was also (a) the owner of the ship related to the maritime claim, or (b) the bareboat charterer, time charterer or voyage charterer of the ship related to the maritime claim.

Maritime lien: Maritime lien is sought against the ship related to the maritime claims giving rise to the maritime lien. Maritime lien over a ship shall not be affected by a change of owner, charterer or operator.

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

Yes, Vietnam recognises maritime lien in accordance with the Maritime Code of Vietnam.

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

Usually, it may take us from 03 [three] to 05 [five] working days from receipt of supporting documents to arrest a ship.

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

Yes, we do need to submit to the court a written request for the arrest of the ship and other documents in order to support the request for the arrest of the ship, including a POA for us to represent the claimant before the court and relevant authorities.

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

All documents to be submitted to Vietnamese court to apply for the arrest of a ship must be original documents or certified true copies. In the case of documents and evidence proving the request for the arrest of a vessel in a foreign language, they must be accompanied by a translation into Vietnamese and legally authenticated in accordance with Vietnamese laws. Documents and papers prepared, issued, or certified by competent foreign authorities in accordance with foreign laws, must undergo notarisation and/or apostille unless exempted under the provisions of international treaties to which the Socialist Republic of Vietnam is a member.

Claimant can also file documents electronically through courts' web portal, if any. Of note, not every provincial court in Vietnam has its web site/ web portal. Therefore, filing documents electronically through courts' web portal, is not recommended.

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

Vietnam Court accepts jurisdiction over the substantive claim in accordance with the provisions of the Civil Procedure Code of Vietnam, including the circumstance where the defendant has property in the territory of Vietnam. The law does not provide that the property must be real estate. Therefore, we assume that if a ship is arrested in Vietnam, Vietnam court may accept jurisdiction over the substantive claim if the defendant is the owner of the arrested ship.

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

The release procedure includes the following steps:

- Submission to the court of a written request for the release of the arrested ship and supporting documents, in which the lawful reason for the release of the arrested ship must be presented;
- Within 24 hours as from the receipt of the written request the court issue either the release order or a letter presenting the reason for which the release is not granted;
- In case of a release order, the court immediately sends the order to the relevant port authority for implementation thereof;
- The director of the relevant port issues a notice for the implementation of the court's release order and assigns a port officer to release the ship.

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

The determination of substitute security for the ship's release should be agreed upon by the parties involved. If no agreement can be reached regarding the amount and form of substitute security, the court will make a decision in this regard. The substitute security decided by the court should not exceed the value of the arrested seagoing ship or the property obligation that led to the ship's arrest, in case where the property obligation is lower than the value of the ship. Typically, acceptable forms of substitute security include a bank guarantee or a letter of undertaking (LOU) issued by reputable insurers listed by the competent authority in Vietnam. The Ministry of Finance has identified 27 such reputable insurers in accordance with their decision.

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

Yes, it does.

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

According to Article 22 of the Ordinance on Ship Arrest of 2008, one of the grounds for an arrested ship to be promptly released is that the property obligation of the ship owner, charterer, or operator is guaranteed by another party or insured by a reputable insurance organization.

Currently, the following insurance companies are named by the Ministry of Finance as reputable insurance organizations for the purpose of providing guarantee in accordance with Article 22 of the Ordinance on Ship Arrest of 2008:

- i. Bao Viet Insurance Corporation

- ii. Bao Minh Insurance Corporation
- iii. Petrolimex Insurance Corporation
- iv. Post Insurance Corporation
- v. AAA Insurance Joint Stock Company
- vi. Agriculture Bank Insurance Joint Stock Company
- vii. Xuan Thanh Insurance Corporation
- viii. Bao Viet Tokio Marine Insurance Company Limited
- ix. United Insurance Company Limited
- x. Samsung Vina Insurance Company Limited
- xi. QBE Vietnam Insurance Company Limited
- xii. MSIG Vietnam Non-Life Insurance Limited
- xiii. Cathay Vietnam Non-Life Insurance Limited
- xiv. Fubon Insurance Company Limited (Vietnam)
- xv. Bank for Investment and Development of Vietnam Insurance Corporation
- xvi. Military Insurance Corporation
- xvii. Bao Long Insurance Joint Stock Company
- xviii. Aviation Insurance Joint Stock Company
- xix. Hung Vuong Insurance Joint Stock Company
- xx. PVI Insurance Corporation
- xxi. Global Insurance Joint Stock Company
- xxii. Groupama Vietnam Comprehensive Insurance Company Limited
- xxiii. Vietnam Bank for Industry and Trade Insurance Company Limited
- xxiv. Phu Hung Insurance Joint Stock Company
- xxv. AIG Vietnam Insurance Company Limited
- xxvi. Liberty Insurance Company Limited
- xxvii. Saigon-Hanoi Insurance Corporation

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

The ship can be released within 24 hours from the court's receipt of a written request for its release. For additional information regarding the timing of releasing the ship, please refer to question 26 below.

## 22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest of a seagoing ship to secure the settlement of maritime claims. The relevant articles of the Ordinance on Ship Arrest of 2008 provide guidelines for lodging complaints or protests, as well as grounds for the release of the arrested ship and the process for requesting such release.

Shipmasters, ship owners, bareboat charterers, ship operators, and the procuracy of the same level have the right to submit written complaints or protests within forty-eight hours of receiving the court's decision to arrest a seagoing ship. The court president will then consider and settle these complaints or protests, making a decision to either uphold or cancel the arrest.

The grounds for releasing a seagoing ship from arrest, may include provision of substitute security, paying debts, having the ship owner's obligation guaranteed or insured, or upon request of the applicant or cancellation of the arrest decision. The court is responsible for determining the amount and form of substitute security if the parties involved cannot reach an agreement.

Ship owners, charterers, operators, shipmasters, applicants for the ship's arrest, and other involved parties may request the release of a seagoing ship in writing, provided they meet the specified grounds. The written request must include certain details, such as the requester's information, the ship's details, the decision to arrest, and the reason for release.

The written requests for release, along with supporting documents and evidence, should be sent to the court that issued the arrest decision.

Once written requests for release are received, the court president will designate a judge to manage the case. The judge will carefully examine the requests and accompanying documents within twenty-four hours. If the requests are found to be valid, the judge will issue a decision to release the ship.



However, if the requests lack merit and are deemed groundless, the judge will inform the requesters in writing of the non-acceptance.

The decision to release a seagoing ship from arrest is promptly executed and involves notifying the port authority director, sending copies to the relevant parties, and informing the Consular Department of the Ministry of Foreign Affairs if foreign elements are involved.

Based on these provisions, if a seagoing ship's arrest is contested, the concerned parties can follow the outlined procedure to present their complaints or protests, and the court will assess and make a final decision.

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

- With regard to the loss of or damage to cargo, it is one year from the date on which the cargo was delivered or should have been delivered to the consignee.
- With regard to performance of voyage charter parties, it is two years from the date on which a complainant knows or should have known of the infringement of its interests.
- With regard to damages for the death, personal injury or damage to health of a passenger or for loss or damage to luggage, it is two years.
- With regard to charter parties, it is two years from the date of termination of the charter party.
- With regard to dispute over shipping agency contract, it is two years from the date on which the dispute arose.
- With regard to dispute over maritime brokerage contract, it is two years from the date on which the dispute arose.
- With regard to dispute over contracts for towage of seagoing ships, it is two years from the date on which the dispute arose.
- With regard to dispute over contracts for maritime salvage, it is two years from the termination of the rescue operations.
- With regard to recovery of compensatory amount in excess of its liability, it is one year from the date of payment of the compensatory amount.
- With regard to general average, it is two years from the date of the general average occurrence. The time taken for apportionment of general average shall not be included in this limitation period.
- With regard to marine insurance contract, it is two years from the date on which the dispute arose.

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

Under Article 4 of the Ordinance on Ship Arrest of 2008, in the event of wrongful arrest, applicants for the wrongful arrest shall be held responsible for the wrongful arrest. All losses or consequences of an application for the wrongful arrest shall be remedied under agreement between the involved parties. In case no agreement can be reached and a dispute arises, the involved parties may bring the case to a court or an arbitration center for settlement.

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

Vietnamese laws do acknowledge the concept of piercing and lifting the corporate veil. While the Law on Enterprises of 2020 itself does not explicitly use these terms, it provides provisions that recognize the circumstances under which the corporate veil can be pierced or lifted.

For example, Article 13 of the Law on Enterprises of 2020 establishes the responsibilities of at-law representatives of enterprises and imposes personal liability on them for damage caused to the enterprise due to their breach of responsibilities. This can be seen as a recognition of the potential for personal liability to extend beyond the corporate entity, effectively piercing the corporate veil in certain situations.

Additionally, in specific circumstances, such as when a company is used as a vehicle for fraud, evasion of legal obligations, or to achieve unjust results, Vietnamese courts may disregard the separate legal personality of the company and hold the shareholders or directors personally liable.

While the concept of piercing and lifting the corporate veil is not explicitly codified, Vietnamese laws and court practices do provide the basis for applying these principles when necessary to achieve justice, protect creditors' rights, and prevent abuse of the corporate structure.

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

An arrested ship can be put on auction in accordance with a court's decision. The timing for auctioning a ship is not specified by laws.

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