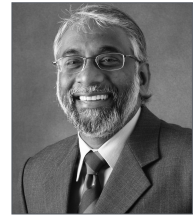


SHIP ARREST IN SINGAPORE

By Dato Jude P Benny, Senior Partner*
JOSEPH TAN JUDE BENNY LLP
judebenny@jtjb.com
www.jtjb.com
6 Shenton Way, #23-08, OUE Downtown 2
068809 SINGAPORE
Tel: 65-62209388
Fax: 65-62257827



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

Ship arrests are frequently carried out in Singapore due to various factors, including Singapore's being one of the world's busiest ports, being a key bunkering port, and having an efficient Court system with specialist Admiralty judges to promptly handle arrest matters and the adjudication of substantive maritime disputes. As a key maritime port, Singapore has a few specialised maritime law firms, including JTJB, that handle arrest cases on a regular basis, and that are therefore very familiar with the processes, as well as the procedural laws and requirements. Recent developments in Admiralty law in the past few years have imposed greater obligations of disclosure on the part of the arresting party in the application for a warrant of arrest. However, that has not significantly dampened the rate of arrest, given the popularity of Singapore as a key port of call for many vessels.

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

Singapore is a signatory to the Convention on Limitation of Liability for Maritime Claims, 1976, which has been given effect and incorporated into Singapore's Merchant Shipping Act.

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?

It may be possible to seek to detain a vessel as part of a Mareva Injunction taken out against the shipowners, but practically it may be costly, may impose more difficult threshold hurdles and be time consuming. It is therefore not attempted.

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

Section 3 of the High Court (Admiralty Jurisdiction) Act [HC(AJ)A] sets out a closed list of claims for which the Court may exercise its Admiralty Jurisdiction to arrest a vessel. This list is similar to section 20(2) of the U.K. Senior Courts Act.

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

Yes.

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

Yes, but for certain claims the debtor will need to satisfy the ownership requirements set out in the HCAJA.

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

It is possible to arrest sister ships but not ships in associated ownership.

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

The HC(AJ)A states that where a claim arises in connection with a ship, a warrant of arrest may be issued against that ship, if at the time the writ is issued, that ship is bareboat chartered to the person who would be liable to the Plaintiff for the claim. It is not possible to arrest a vessel that is under time charter to the person liable for the claim.

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

No. However, the Sheriff is entitled to request that the arresting party place security to cover the Sheriff's expenses in maintaining the vessel while under arrest, as the arresting party is obliged to maintain the vessel during the period of arrest. This is requested at the outset of the arrest, and from time to time, when the Sheriff deems necessary. If funds are not provided to maintain the vessel, the Court may release the vessel from arrest.

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

Yes, maritime claims are divided into maritime liens and statutory claims (non-maritime lien claims listed in the HC(AJ)A). Maritime liens will survive a change of ownership such that it is still possible to arrest for claims incurred by the ex-owners, notwithstanding a change of ownership. For statutory claims, the right of arrest will be extinguished if ownership of the vessel changes before a writ is issued for the claim. It is possible, but difficult, to challenge the change of ownership, on the basis that it is a sham transaction designed to avoid liability.

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

Yes, in respect of claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia. This is recognised as a matter of common law, and not by Convention or statute.

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

Due to the strict requirements of disclosure of all relevant documents and information that may have an impact on the Court's decision to grant a warrant of arrest, we will usually request for at least 48 hours to review the supporting documents and correspondence, more if the matter appears complicated and/or if the documents are voluminous. However, once the documents are prepared and ready for an arrest, the Court hearing for the issuance of the warrant of arrest can be very quickly arranged within a few hours. Once the warrant of arrest is issued, a vessel can be arrested within a matter of a few hours, depending on the location of the vessel.

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

A POA is not required for the arrest. It is necessary for the arresting party to file a writ that briefly describes the claim, and to prepare an affidavit which is in support of the application for a warrant of arrest for the vessel.

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 usually not required to effect an arrest, though the Plaintiff must retain the originals of the documents, and to make these available for inspection, if and when necessary / ordered by the Court. Copies of all relevant documents must be exhibited in the supporting affidavit, including those that may be detrimental to the claim. All Court documents for the arrest are filed electronically to the Court's system. Only the affidavit in support needs to be signed before a Commissioner of Oaths (if in Singapore), or a Notary Public (if the affidavit is executed overseas).

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

The Court generally assumes jurisdiction over the substantive claim, following an arrest. However, it is possible to arrest to obtain security for a foreign arbitration proceedings (ongoing or anticipated), and it is the obligation of the arresting party to indicate that fact in the supporting affidavit, as otherwise there might be complications when applying for a stay of proceedings. Following provision of adequate security, the vessel can be released, and the action stayed in favour of the local/foreign arbitration.

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

An application will have to be put into court for the release of the ship, and certain documents (as set out in Order 70 of the Singapore Rules of Court) will have to be filed. The arresting Plaintiff's counsel will also have to attend in court to have the application heard. Once the court approves the release, notification of the release and copies of the release papers may be given to the ship's agents and/or counsel for the arrested party. There is no need to serve the release papers on the vessel.

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

Usually, a first class guarantee from a Singapore bank, a bail bond, payment into court, or a letter of undertaking from a reputable and internationally recognised P&I club / H&M underwriter will be sufficient.

19. Does security need to cover interest and costs?

It can, even though it does not have to. Security is usually sought for the arresting Plaintiff's reasonably arguable best case, together with interest and costs.

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

Yes if the P&I club is a reputable and internationally recognised one.

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

Assuming there are no complications, this may be done within half a working day from security being provided.

22. Is there a procedure to contest the arrest?

Yes. A Defendant who wishes to challenge the arrest may enter appearance and put in an application to court to set aside the writ and/or service of the writ.

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

As stated above, a writ is filed at the time the application is made for the warrant of arrest. The writ has to be served on the vessel, together with the warrant of arrest. Upon the issuance of the writ, the Singapore proceedings are deemed to have commenced, and the procedural timelines for the progress of the substantive claim will start to run once service of the writ is effected.

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

Yes. However, in order to be entitled to damages for wrongful arrest, the Defendant will have to show that the arrest was carried out in bad faith or with gross negligence.

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

While the Courts have allowed the piercing/lifting of the corporate veil, this is done only in exceptional cases, as the Courts do generally give effect and recognise the principle of separate legal entities, with each company having its own legal rights and liabilities. One exception, as mentioned above, is where the vessel is sold to a separate legal entity for the purposes of evading the claim.

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

It is possible to do so. The application for sale of the vessel can be done fairly quickly once the arresting party can show that the vessel has been arrested for some time but no security is forthcoming, and in the meantime the vessel is a wasting asset and continues to incur costs. After the order has been granted for the vessel to be sold *pendente lite*, the question as to how long it will take it actually sell the vessel will depend on the commercial circumstances, i.e. the prevailing market conditions and demand for that type of vessel. The vessel will usually be put up for public auction and the potential purchasers will have to meet the reserve price put up by the Sheriff. In bad market conditions, it may take several auctions to sell the vessel. It may be possible to sell the vessel by way of a private treaty if that will result in a better return for the vessel, as opposed to a public auction. Any sale by private treaty will have to be sanctioned by the Court.

**Jude P. Benny is a Senior Partner at Joseph Tan Jude Benny LLP (JTJB). He commenced practice in 1983, after completing his legal education at Queen Mary College, University of London, and being admitted as a Barrister at Middle Temple. In 1988, he set up the firm of JTJB. Jude has an extensive maritime practice, in both the wet and dry side, including ship financing and sale and purchase. In addition, he is a panel / accredited / associate arbitrator with the Emirates Maritime Arbitration Centre (EMAC), Singapore International Arbitration Centre (SIAC), Singapore Chamber of Maritime Arbitration (SCMA), Singapore Institute of Arbitrators (SIArb), Singapore Trade Development Board (Timber), Korean Commercial Arbitration Board (KCAB), Badan Arbitrase Nasional Indonesia (BANI), Kuala Lumpur Regional Centre for Arbitration (KLRCA), and London Maritime Arbitrators Association (LMAA). He is the Editor of Halsbury's Laws of Singapore, Shipping Volumes and has previously served on the Maritime and Port Authority of Singapore and BW LPG Boards. He is currently a Board Member with PACC Offshore Services Holdings Ltd.*