

SHIP ARREST IN SRI LANKA

By S.A. Cader*
JULIUS & CREASY
jcship@sltnet.lk
www.juliusandcreasy.com
No.41, Janadhipathi Mawatha, Colombo 1, Sri Lanka
Tel: 0094 11 2345506
Fax: 0094 11 2446663



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

In terms of the Admiralty Jurisdiction Act No. 40 of 1983, a ship can be arrested in terms of claims arising under Section 2 of the Act. In an Action in rem filed in the Admiralty High Court of Sri Lanka, a ship can be served with a Writ of Arrest for claims arising on matters as set out in Section 2(1)(e) to (q) in the Admiralty Jurisdiction Act No. 40 of 1983.

An application to arrest a ship is made ex-parte by filing an affidavit by the plaintiff, setting out the full claim with all the supporting documents and supported by way of a motion with a draft copy of the warrant of arrest to be issued by the judge of the High Court to the Marshal commanding him to arrest the vessel and until further orders are given by court

2. Which international Convention applies to arrest of ships in Sri Lanka?

Sri Lanka is a signatory to the 1952, Brussels Convention on the arrest of sea going ships. Sri Lanka was also in the committee which drafted the "INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999.

3. Is there any other way to arrest a ship in the Sri Lankan jurisdiction?

Other than under the provisions of the Admiralty Jurisdiction Act No. 40 of 1983, there are no other ways to arrest a ship within the Sri Lankan jurisdiction.

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

These are not applicable under the Sri Lankan law.

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

Section 2(1)(e) to (q) of the Admiralty Jurisdiction Act No. 40 of 1983 sets out the following types of claims under for which a ship can be arrested.

Section 2(1) states that :

- (e) any claim for damage done by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of
 - (i) any defect in a ship or in her apparel or equipment; or
 - (ii) 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, neglect 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 good 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;
- (k) any claim in the nature of pilotage in respect of a ship;
- (l) any claim in respect of
 - (i) goods or materials supplied, or
 - (ii) services rendered, to a ship for her operation or maintenance ;
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which under any law in force for the time being is recoverable as 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;”

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

Yes. Irrespective of the flag of the vessel, anyone can file papers to arrest a vessel.

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

Yes. Immaterial of the debtor, if there is a prima facie claim for damages a ship can be arrested.

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

If the owner of a ship or ships is liable to a maritime claim, then not only the ship in respect of which the maritime claim arose may be arrested but also all other ships in the same ownership, when all the shares of those ships are owned by the same person or persons. However, Admiralty Jurisdiction Act is silent, on sister ships and associated ownership.

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

If the registered owner of the ship is not liable for a maritime claim, then an arrest of a vessel under the bareboat or time charter is not possible. Only where the owner is found to be the debtor of the maritime claim is an arrest possible. Arrest of the vessel is not possible, if the time charterer or bareboat charterer is solely liable for the claim. A vessel can be arrested for a maritime lien, even if the vessel is on a bareboat or time charter. However if the claim is in respect of the property itself such as relating to the supply of bunkers to the vessel or unpaid repair bills which has enhanced the value of the property, the ship may be arrested even if it is under the bareboat or the time charter.

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

No. It is the debtor who has to provide security to have the arrested vessel released.

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

Maritime claims for which a ship can be arrested are mentioned under the Sri Lankan law under Section 2(1) (e) to (q) in the Admiralty Jurisdiction Act No. 40 of 1983. On the basis of these claims, a ship can be arrested provided the owner is the same at the time that the cause of action arose and is still the owner at the time of the arrest of the vessel.

Maritime liens can be enforced irrespective of the ownership of the vessel. Maritime liens can be enforced even if the ownership has changed. The procedure for arrest of a ship is the same whether it be for a maritime claim or arising out of a maritime lien.

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

Yes. Sri Lanka is a signatory to the International Convention on Maritime Liens and Mortgages, 1993.

Maritime liens under the law of Sri Lanka are set out in Section 83 of the Merchant Shipping Act No. 52 of 1971 as follows:

"Maritime liens of a ship shall arise out of-

- (a) wages and other sums due to the master, officers and other members of the ship's complement, in respect of their employment on the ship
- (b) port, canal and other waterway dues and pilot age dues;
- (c) claims against the owner (which term shall for the purposes of this section also include the charterer, manager or operator of the ship) in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship;
- (d) claims against the owner, based on a wrongful act and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship;
- (e) claims for salvage, wreck removal and contribution in general average."

Priority of liens it is set out in the Merchant Shipping Act, Section 84 as follows:

"84. The maritime liens set out in section 83 shall take priority over mortgages and preferential rights registered under Chapter 4, or arising under the Crown Debtors Ordinance or the Insolvency Ordinance, and no other claim shall take priority over them, except as is provided in section 86."

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

An application to court can be made almost immediately, if all the documents to support the maritime claim or lien is ready with the affidavit of the plaintiff on an urgent basis once filed can be supported even after normal hours in the chambers of the judge.

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

No Power of Attorney is required to arrest a ship. Normal proxy form has to be signed by the plaintiff, authorizing the instructing attorney appearing for the plaintiff to file papers. Thereafter an affidavit of the plaintiff fully setting out the maritime claim with all the supporting documents should be prepared and filed in court to proceed to arrest a 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?

Under Sri Lankan Law, filing of documents electronically is not yet in practice. All documents filed in courts can be certified as true copies by the instructing attorney of the plaintiff. When the case proceed to hear on merits, the original documents need to be produced in court.

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

Once the Admiralty Court orders the arrest of a ship, it retains jurisdiction to adjudicate the substantive claim of the plaintiff, unless there is exclusive agreement between the relevant parties to litigate in another jurisdiction or to submit their dispute to arbitration. In such a situation the arrest of the ship may not be maintainable.

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

See Section 37(1) Admiralty rules

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

Normally a Bank Guarantee issued by a first class Bank subject to the jurisdiction of Sri Lanka.

19. Does security need to cover interest and costs?

Yes.

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

No.

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

It all depends on when security for claim is made.

22. Is there a procedure to contest the arrest?

Yes.

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

Once the ship is arrested on the ex-parte application of the plaintiff, court will grant time to file objections to the arrest. If no objections are filed to the arrest of the vessel, court acting under rules framed under the Admiralty Jurisdiction Act, will grant time to the plaintiff to file by way of a petition all matters to be adjudicated by court on the merits of the case.

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

Yes.

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

If a vessel is sold to a separate legal entity for the purpose of evading a claim, the court can examine the circumstances of the sale and in exceptional situations will allow the piercing of the corporate veil on grounds of fraud.

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

A vessel can be sold, if the party who made the application for the sale of the vessel can show that the vessel had been arrested for some time and the ship is losing its value by deterioration. Therefore court can sanction the sale of the vessel by public auction and deposit auction money in a court account to settle claims arising in respect of the vessel. It is specifically provided under Section 7(3) of the Admiralty Jurisdiction Act No. 40 of 1983 that if the property arrested is "subject to speedy decay the court may on an application made in that behalf by the marshal direct that such property be sold and the proceeds deposited in courts, pending the determination of the action".

Sakeen Cader mainly focuses on the area of Admiralty and Maritime, Litigation and Arbitration and Customs Law. He has extensive experience in acting for many local foreign clients, including many P & I Clubs, Charterers, Salvors and Ship-managers. He advises the top 5 P&I Clubs in respect of their legal matters and handles assignments on the instructions of several leading City of London Solicitors Firms specializing in shipping, and law firms in the USA. Mr. Cader acts for clients in the Admiralty Court. He is also involved in handling alternate dispute resolution proceedings including arbitration proceedings in respect of shipping matters. He has acted for Sri Lanka Ports Authority and also for the Pakistan National Shipping Corporation in several matters, He is the consultant for Ceylon Association of Shipping Agents (CASA) and Lanka Ship Owners Association (LASO). He also advises on legal issues of the Sri Lanka Medical Council. He was a former legal advisor to the Sri Lanka Rugby Football Union.