

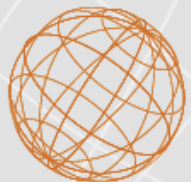
ShipArrested Network

16th Annual Members' Conference

Panama: Using injunctions when arrests are not available



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ARREST VS. INJUNCTION

Arrests to enforce a maritime lien or another in rem right:

- Claimant must have a claim that gives rise to a maritime lien or other in rem right (for instance, a statutory right in rem) against the vessel, prima facie evidence of the claim must be filed.
- Claimant must post US\$1,000 as counter-security and US\$2,500 on the Court Marshall's expenses and custodial costs.
- Arrest can only be executed within Territorial waters, as defined by the 1982 Law of the Sea Convention (12 nautical miles).

Injunctions on Panama flagged vessels to guarantee a claim:

- Claimant is not required to have a privileged maritime lien, the injunction will guarantee the outcome of proceedings.
- Claimant must prove a "*justified fear*" of "*imminent or irreparable danger*", prima facie evidence of the claim must be filed.
- Claimant must post court-set counter-security, which may range from US\$1,000 to US\$50,000.
- A notation will be made in the Ships Registry preventing sale or transfer of the vessel's title.



The Ship Mortgage as a privileged maritime lien

The ship mortgage is deemed a privileged maritime lien in Panama.

Originally, the maritime trade law established by legal order, the classification of the mortgage in a seventh place. However, in order to stimulate the growth of the Panamanian flag and give higher priority to the mortgagees, the Law No. 27 of 2018 was enacted thus ***upgrading the ship mortgage to fourth place.***

Given that the ship mortgage is considered a privileged maritime lien, its judicial execution would continue the process established for such need, based on Law No. 8 of 1982 on Maritime Procedure.



However, if the ship in question is not trading in Panamanian waters this execution may be complicated as the arrest cannot be performed and thus proceedings will not start.



DRAFTING PANAMANIAN NAVAL MORTGAGES



In drafting Panamanian naval mortgages, parties may include provisions granting special powers to mortgagee in the event of default. These special powers, recognized by the Maritime Commerce Law, provide that a mortgagee may take possession of the ship and execute an extrajudicial sale.

In order to reach this stage, a series of notices must be performed in a timely manner. During this period of notices, before the mortgagee may take control, the mortgagor may attempt to transfer or dispose of the ship, even scrapping it.



INJUNCTION AS A REMEDY

A remedy for this situation is requesting an injunction before the Maritime Courts of Panama. The injunction effectively blocks the transfer, sale or disposal of title, through a notation made in ship's record in the Registry.

The injunction guarantees that the mortgagee will be able to enforce the mortgage, taking control of the ship and duly executing the extrajudicial sale.

All procedural steps must be taken in conjunction of the judicial and extrajudicial proceedings in order to complete enforcement.





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