

SHIP ARREST IN COLOMBIA

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

The ship arrest practice in Colombia is a procedure known by few judges. Unfortunately, in our country there is not a proper Maritime Jurisdiction where this kind of processes can be guided, like there is in Panamá, therefore, the arrest petitions are known and decided by residual Judges who award at Civil Circuit Courts. Because of this, it is the duty of the attorney not only to file the petition itself, but also to educate the Judge about its nature and urgency.

In order to achieve a successful arrest, there are several variables like, the immediacy to obtain the documents to file the petition, the accurate information about the ETA and departure of the vessel and the pressure given to the local authorities to proceed with the decree of the arrest, its execution and final lift. It is very important to mention that a preventive arrest petition is not a lawsuit and its main purpose is to obtain a satisfactory security over a maritime credit/lien, so it will not constitute itself as an action to define in the merits of the credit claimed, under any circumstance.

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

The Decision 487 of 2000 of the Andean Community of Nations.

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

Yes, there is.

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

Neither. The alternatives given by the Colombian General Process Code are precautionary measures that are derived from the lawsuit that contains the substantive claim (the merits); these are the attachment of the vessel and the sequestration.

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

Article 1 of the Decision 487 of 2000, includes 22 kinds of maritime credits, which are all related to the use of vessel, like: losses and damages caused by her, death and injuries, salvage, tugging and piloting operations, environmental damages, fees of the shipping agent, general average, charter parties, wages of the master and crew members and others.

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

Yes, it is possible.

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

Article 41 of the Decision 478 of 2000 establishes that the arrest of any vessel that has an outstanding maritime credit will proceed if:

- The person who is the owner of the vessel at the moment of birth of the credit is obliged to pay it and is also the current owner at the moment that the arrest is executed.
- If the bareboat charterer at the moment of birth of the credit is obliged to pay it and is also the current bareboat charterer at the moment that the arrest is executed.

- If the credit is based on a mortgage or lien of the same nature over the ship.
- If the credit relates to the ownership or possession of the vessel.
- If the credit is against the owner, the bareboat charterer, the manager or the shipowner of the vessel and is guaranteed by a maritime privilege granted by Article 22 of this Decision.

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

According to Article 42 of the Decision 478 of 2000, it is possible to arrest sister ships and ships owned by the person who is personally bound by the maritime credit.

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

In Colombia it is possible to proceed against Bareboat, TimeChartered and Voyage-Chartered vessels, taking into account articles 41 and 42 of the Decision 478 of 2000.

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

Yes, they do, according to article 590 of Colombian General Process Code. The claimant must provide an insurance policy issued by a local insurer, a bank guaranty, or a cash deposit; these counter securities must cover the 20% of the amount claimed.

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

No, the arrest petition and procedure is the same for both cases.

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

Yes, the maritime liens are recognized under the rules of the Decision 478 of 2000 of the Andean Community of Nations.

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

There is not a specific time required; everything depends on the ETA of the vessel and its date of departure. The attorneys in charge of filing the petition must “press” the judge in order to obtain a quick decree for the arrest order. Few judges in Colombia understand the nature of this kind of petition; therefore, the attorneys have to be as explicit as possible at the moment of explaining it to the judge. Once the arrest order is issued, this must be sent to the Harbor Master Office of the Port where the vessel is berthed.

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

Yes, a POA is required to file an arrest petition as attorney; it must be accompanied by a document that certifies that the undersigned has the faculty to submit it (This could be done by means of the certificate of incorporation or the certificate of incumbency of the creditor).

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

The POA must be an original document. If the peson granting the POA of attorney is foreign, the document, along with the certificate that indicates that the undersigned has the faculty to submit it must have an apostille or the seal of a Colombian consul. This last one must be obtained if the Country where the POA is submitted has not ratified the Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents.

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

Yes, they do. The article 51 of Decision 478 of 2000 of the Andean Community of Nations establishes that the Court that orders the arrest is entitled to accept jurisdiction over the substantive claim, unless the parties have agreed any litigation before another State's Court or Arbitration.

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

Once the parties agree upon the given security and the claimant accepts and receives it for its claim, the creditor must proceed as soon as possible at the Judge's office to inform about it and to ask for the lift of the arrest measure. Usually, and in order to obtain the release order quickly, the petition is submitted from both parties. Once the Judge issues the writ releasing the arrested vessel, this must be immediately informed to the Harbor Master Office of the Port where the vessel is berthed.

If there is no agreement between the petitioner and the debtor (vessel) with respect to the type of warranty, the judge, according to the local rules of procedure, has 3 options:

- To require a local bank guaranty.
- To require a local insurance bond.
- To require a cash depot in a local bank.

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

The security must be satisfactory for the claimant party and it must be negotiated with the debtor. If such parties do not achieve a settlement regarding the security issue, the Judge may have the power to choose a proper security and its amount. The judge will be entitled to choose between an insurance policy issued by a local insurer or a bank warranty. As mentioned above, in some cases and depending on the nature of the credit, the judge can require a cash deposit in a local bank.

19. Does security need to cover interest and costs?

No, it doesn't need to cover interest and costs, but if the parties agree so, it could cover them.

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

Yes, they are, but the claimant party must consider them as satisfactory, otherwise they will not be accepted.

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

There is not a specific time limit to release the ship; everything depends on the time taken for the negotiations between the parties and the speed of the Court to issue the writ that ceases the arrest order.

22. Is there a procedure to contest the arrest?

Once the debtor is notified of the writ that orders the arrest, the debtor has the right to challenge such decision if the arrest is considered wrongful.

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

The article 53 of Decision 478 of 2000 entitles the Judge that decrees the arrest to establish a deadline to file the lawsuit on the merits, however, this is not specified in such treaty and the Colombian Laws do not have an analogue rule that can cover the gaps in the treaty, therefore the fixation of such deadline is subject to the Judge's legal reasoning.

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

Yes, they do. Therefore, counter-security is requested to the claimant party before the arrest order is issued.

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

Yes, the Courts acknowledge the piercing and lifting of the corporate veil.

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

Any procedure that results in a Ship's auction must be supported in an execution title and after an execution procedure with a final judgment that order the auction.

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