

SHIP ARREST IN MEXICO

By Ignacio Melo, Partner*

MELO ABOGADOS

imelo@meloabogados.com

meloabogados.com

Río Hudson # 8, Col. Cuauhtémoc, 06500 Mexico

Tel: (52) 55 52112902

Fax: (52) 55 55207165

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

Mexico has no special procedural legislation on this matter neither in their old Codes of Commerce, nor in the Navigation and Maritime Commerce Act 1963 and was until 1994, when there was a draft chapter for procedural rules on this matter, but was not adopted because it was not considered appropriate to include adjective law in this Act. This project basically followed the concepts of the 1952 Convention on the ground that at the time it was far from the concepts of the Convention that was signed later in 1999. On the Navigation and Commerce Act 2006, currently in force, it included adjective law provisions within that Act related to the arrest of ships.

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

In Mexico there is no International Convention in force but our internal legislation basically followed the concepts of the 1952 Convention.

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

Executive seizure.

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

There are not within the Mexican Legal system.

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

- (a) Loss or damage by the use of the ship;
- (b) Death or injury occurring, whether on land or on water, in direct relation to the use of the ship;
- (c) Assistance or salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations or assistance to a ship that by itself or its cargo threatened to damage the environment; Damage or threat of damage from the ship to the environment, coastline or related interests, measures taken to prevent, reduce or eliminate such damage; compensation for the damage, the costs of reasonable measures for restoration of the environment actually undertaken or to be taken, actual losses or losses that may occur in connection with such damage; Costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a sunken, wrecked, stranded or abandoned ship, including anything that is or has been on board, and costs and expenses relating to the conservation of a vessel and its crew maintenance;
- (d) Any contract related to the use or hire of a whether vessel formalised in a charter party or otherwise;
- (e) Any contract related to the carriage of goods or passengers on the ship whether formalised in a bill of lading, passenger ticket or otherwise;
- (f) The loss or damage to the goods, including luggage, carried on board the vessel; General Average; Tugging services,
- (g) Pilotage;
- (h) Goods, materials, supplies, fuel, equipment, including containers supplied or services rendered to the ship for her use, management, conservation or maintenance;

- (i) The construction, reconstruction, repair, alteration or fitting of the vessel;
- (j) The rights and duties of ports, canals, docks, harbours and other waterways;
- (k) Salaries and benefits due to the master, officers and other crew members under their employment on the vessel including costs of repatriation and social security contributions payable on their behalf;
- (l) Disbursements incurred on account of the vessel or its owners;
- (m) Insurance premiums, including P&I, payable by the owner of the vessel, or the bareboat charterer, or on their own in relation to the boat;
- (n) The commissions, brokerages or agency fees payable by the owner of the vessel, or the bareboat charterer, or on their own, in relation to the boat;
- (o) Any dispute concerning the ownership or possession of the vessel;
- (p) Any dispute between co-owners of the vessel related to its use or exploitation of the vessel;
- (q) Claims secured by mortgage or pledge, and
- (r) Any dispute arising from a contract of sale of vessels.

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

Yes, the vessel can be arrested irrespective of her flag.

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

Yes, a ship can be arrested irrespective of the debtor, but only if this debtor is the owner or the Bareboat or Time Charterer.

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

Yes, sister ships and ships in associated ownership can be arrested.

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

Under Mexican Legislation any owner, disponent owner, bareboat charterer, operator and/or time charterer can be subject to the arrest of their vessel.

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

The Court, when granting an arrest order, sets the amount of the counter-security to be posted by the claimant to respond for the damages resulting of a wrongful arrest. The Court arrest order shall have no effect until the counter-security is filed at the Court. The counter-security can be posted either in a cash or by a bond issued by a Mexican bonding company.

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

The Mexican Law states the cases in which a ship can be arrested and it's a close list mentioned in point number 5 of this document.

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

In Mexico, the Navigation and Commerce Act provisions state the liens, in the following order:

- I. Salaries and other amounts owed to the crew of the ship,, including costs of repatriation and social security contributions payable on their behalf;
- II. Claims arising from death or personal injury occurring on land or water, in direct relation to the operation of the vessel;
- III. Claims for the salvage of the vessel; Vessels credits, arising from the use of port infrastructure, maritime signaling, waterways and pilot. Claims arising from tort, by reason of loss or damage caused by the use of the vessel, other than loss, or damage caused to cargo, containers and personal belongings of passengers carried on board. Maritime liens from the last trip will be preferred to those from previous trips.

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 no mandatory period, but based on our experience, it would take approximately between one or two weeks.

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

Yes, we require a POA duly apostilled in order to act on behalf any Legal Entity or Person.

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

Maritime legislation in Mexico, requires the submission of original documents evidencing the credits and unfortunately we have to mention that this is a serious setback of the legislation, as in practice it is extremely difficult to file a claim in different jurisdictions either domestic or foreign, yet use original documents in more than one court.

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

Yes, once the vessel is arrested, the claimant has five working days to file the substantive claim or to produce evidence that has being filed on another jurisdiction. If not, the Judge will lift the arrest order and will declare a wrongful arrest on the claimant. We must point out that the arrest shall be ordered without previous hearing to the other party and run without prior notice, meaning that rulings will be made secret. This is to avoid previous knowledge of the procedure by the debtor could hasten the departure of the vessel and thus evade justice.

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

Once the Court issues the arrest order and the vessel is arrested, Owners must appear before the Court and request the Court to set the amount of the guarantee that must be posted in order to release vessel. The guarantee can be presented either in a deposit bill (cash needs to be deposited to the bank in order for the bank to issue the deposit bill) or by a bond issued by a duly authorized Mexican bonding company.

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

A bond issued by a Mexican Bonding Company, duly authorized by the Treasury Ministry or a cash deposit through a deposit bill issued by a Government Bank or real assets or a P&I LOU provided that the P&I is part of the IG Group and that the party presenting the LOU is the Owner or disponent owner of the vessel or a related entity to them.

19. Does security need to cover interest and costs?

The Judge will set the amount by his own criteria, but always to an figure enough to cover the claimed amount, plus accessories.

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

P&I LOU are accepted by Mexican Judicial system to lift arrests provided that the P&I is part of the IG Group and that the party presenting the LOU is the Owner or disponent owner of the vessel or a related entity to them.

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

Once the guarantee is posted, it will take approximately 24 working hours for the Court to accept the guarantee and order the release of the vessel.

22. Is there a procedure to contest arrest?

The arrest can be contested in the same arrest proceedings. If there are Constitutional Rights violated, an Amparo remedy can be filed.

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

Once the vessel is arrested, the claimant have five business days to file the substantive claim or to produce evidence that has being filed on another jurisdiction.

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

Yes, if the claimant fails to file the lawsuit or the final ruling is adverse, then the counter party have legal action against the claimant of the wrongful arrest.

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

Yes, but the burden of proof is very high in order to lift the corporate veil.

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

Yes, it can be sold pendant the proceedings but its not likely to have a buyer that its willing to take the risk be affected by the procedures.

**Melo Abogados, leading law firm in Mexico was established in 1881 by Macario Melo y Tellez. Since then, and for over a hundred years, the firm has gained national and international reputation in every area of its legal practice. Senior Partner of the firm, Dr. Ignacio L. Melo has been active litigating for over 50 years, specializing in Maritime matters. The firm joins its experience in corporate consulting and litigation, with the advice to various governmental and non-governmental organizations both, in Mexico and abroad. Furthermore, the firm is involved in legal lecturing, researching and publishing in subjects in which we are specialized. From its establishment to the present, the firm has had the practice of Maritime Law as keystone, as our firm has been a pioneer in this area for over a century. In addition the firm also offers its services in other key disciplines such as Civil, Administrative, Tax, Commercial, Environmental, Corporate, Bankruptcy and Labor Law.*