

SHIP ARREST IN SOUTH KOREA

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

There are mainly three kinds of ship arrest in Korea.

1. Provisional Arrest
2. Arrest for enforcing a maritime lien or mortgage
3. Arrest for the execution of the court decision or arbitration awards, etc.

In Korea, ships are treated similarly to real estate. The provisional arrest is completed by registering the provisional arrest in the ship register. Ships with more than 20 tons can be registered. The ship can leave the port despite the provisional arrest. If it is a foreign ship, the provisional arrest is completed by receiving the ship's nationality certificate from the ship's captain and submitting it to the court.

No arrest or provisional arrest shall be imposed on a ship which has finished preparations for a voyage and its appurtenances.

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

In Korea, no International Convention applies to the arrest of the ship.

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

Only Korean laws can be applied to the arrest of ship.

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

No.

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

1. Provisional Seizure

For monetary claims against a shipowner, a claimant can arrest a ship

2. Arrest by enforcing mortgage or maritime lien.

a. Mortgage:

If the claimant has monetary claims against the shipowner and the mortgage is registered in the Ship Registry, the claimant can apply for the public auction. Then the ship will be arrested, and the public auction will start.

b. Maritime Lien: 4 types of claims can have a maritime lien.

- i. The cost of litigation for common interests of creditors, all the taxes imposed on the ship concerning the voyage, pilotage dues, towing fees, maintenance charges, and inspection charges of the ship and its appurtenances after final entry into a port.
- ii. A claim arising out of an employment contract for a crewman or any other employee.
- iii. A salvage charge due to rescue operations at sea and a claim concerning a share in general average.
- iv. Claims for damages for any loss and damage incurred due to collision of the ship and

other navigation accidents, loss of and damage to navigation facilities, port facilities and routes, and the life and body of a crewman or a passenger.

If the claimant has a maritime lien and the claimant applies for public auction, then the ship will be arrested, and the public auction will start.

3. Arrest by execution of the court decision or arbitration award, etc.

If the claimant wins the litigation or arbitration and the claimant applies for public auction, then the ship will be arrested, and the public auction will start.

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

Yes.

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

1. Provisional Seizure: A debtor must be a shipowner

2. Maritime lien: A debtor must be a shipowner.

3. Mortgage: Mortgagor does not need to be a debtor. A shipowner who is not the debtor can provide his ship as an object of mortgage to the mortgagee for a debtor.

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

Arrest of sister ships is allowed.

Arrest of ships in associated ownership is basically not allowed. The theory of piercing the corporate veil can be applied, but it is not common.

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

Bareboat charterer and time-charterer can create a maritime lien on the ship by the claims against the shipowner.

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

1. Provisional Arrest: Yes

2. Arrest for enforcing the maritime lien or mortgage: No

3. Arrest for the execution of the court decision or arbitration awards, etc.: No

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

They are different.

Claims from maritime claims are treated as normal monetary claims. The claimant should use provisional arrest with the security. To satisfy the claim, the claimant needs to get court judgment or arbitration award, etc. and should enforce the court judgment, etc.

Maritime lien is similar to mortgage. A claimant who has claims from a maritime lien can arrest a ship and enforce the maritime lien by selling the ship at public auction.

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

Korea did not ratify the International Conventions of 1952 and 1999. However, Korean Commercial Act recognizes the maritime lien.

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

1. Provisional Arrest: about 5 days

2. Arrest for enforcing the maritime lien or mortgage: about 14 days

3. Arrest for the execution of the court decision or arbitration awards, etc.: about 14 days

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

Yes. There should be notarization and apostille on the Power of Attorney.

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

Korean court receives documents electronically, for the most part.
There should be notarization and apostille on the Power of Attorney.

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

It depends on the case.

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

1. Provisional Arrest: Cash deposit.

2. Arrest for enforcing the maritime lien or mortgage:

By depositing cash and filing a suit based on the fact that the claim does not exist against the creditor; or if it is deemed that there exists any need for business or other proper reason, the court may permit the ship's operation, upon a motion of the debtor. In this case, there shall be a consent of the creditor, highest bidder, next highest bidder, and successful bidder.

3. Arrest for the execution of the court decision or arbitration awards, etc.:

By depositing cash and filing a suit based on the fact that the claim does not exist against the creditor; or if it is deemed that there exists any need for business or other proper reason, the court may permit the ship's operation, upon a motion of the debtor. In this case, there shall be a consent of the creditor, highest bidder, next highest bidder, and successful bidder.

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

Claim amount cash shall be deposited.

19. Does security need to cover interest and costs?

The cash deposited in the court covers interest and costs.

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

No

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

About 3~5 business days.

22. Is there a procedure to contest the arrest?

Yes.

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

1. Provisional Arrest: 3 years. However, if the debtor requests, the court orders the creditor to file a suit within 2 weeks.
2. Arrest for enforcing the maritime lien or mortgage: No additional legal action is needed.

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?

Yes, but it is not easy to apply the theory of piercing the corporate veil.

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

No.

***Taejin Kim**

Experience

Managing Partner, K&P Law Firm (2014~Present)

Public Prosecutor (2007~2011)

Director of Foreign Affairs, Incheon Bar Association (2016~2018)

Education

UC DAVIS, School of Law (LL.M. 2011)

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