

SHIP ARREST IN CHILE

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

According to the rules of Chilean law, it is possible to arrest a vessel if the requesting party is in possession of a privileged credit under the Commercial Code or a general credit. One of the remarkable aspects of the Chilean law is that the lien or privileged credit on the vessel can be exercised against the offending ship and regarding a sister vessel, and the concept of sister vessel includes a ship in the same ownership or a ship in the same management or operated by the same person.

The shipowner is the 'person or corporation, whether or not the proprietor of the vessel, who trades or dispatches it under his name'. Operator is 'the person who is not the owner but who executes transport and other vessel exploitation contracts according to a power of attorney granted by the former, assuming liability therefrom'. Manager is not expressly defined in the Commercial Code and usually courts accept a commercial manager and ISM manager.

It is also remarkable the rule established regarding the agility of the process to arrest a vessel. According to article 1231 of the Commercial Code:

"The holder of a credit who enjoys any privilege over a ship, established in this Code or in the laws that complement it, may occur before the civil court on duty of the place where that is located or before the civil court on duty that may be competent according to the standards of this Book, to request that the departure of that ship be prohibited, from the port or place where it is located, with the aim of guarantee the exercise of privileged credit or ensure compliance with a judicial decision that may involve the sale of the affected ship.

The requested court must grant that request, without further delay, as long as background information is provided that constitute a presumption of the right claimed.

If said background or the petitioner states that he does not yet possess them, the court may require that a guarantee be constituted for the possible damages that may be caused if later it turns out that his request was unfounded."

These credits may be found:

- i) Those named as privileged credits established in articles 844, 845 and 846 of the Chilean Commercial Code, and,
- ii) What we mention as general credits different from privileged credit if the arresting party fulfills the general rules of Code of Civil Procedure.

Privileged credits are, in this regard, the general rule in the case of ship arrest in Chile. It is possible to differentiate different orders of importance.

- a) International treaties in force in Chile and in the Navigation regarding privileges in pollution or for avoiding damages from spills of hazardous substances, have preference over the provisions of Book III, Title III of the Commercial Code and local law.
- b) Credits of article 844 of the Commercial Code.
 - Legal costs and other disbursements caused by reason of a lawsuit, in the common interest of the creditors, for the preservation of the vessel or for its forced alienation and distribution of the yield;
 - the remuneration and other benefits arising from the contracts of embarkation of the vessel's crew, in accordance with labour regulations and civil law that regulate the concurrence of these

credits, together with the emoluments paid to the pilots at the service of the vessel. This privilege applies to the indemnities that are due for death or bodily injuries of the surviving employees ashore, on board or in the water, and always provided that they stem from accidents related directly to the trading of the vessel;

- the charges and rates of ports, channels and navigable waters, together with fiscal charges in respect of signaling and pilotage;
 - the expenses and remunerations due in respect of assistance rendered at sea and general average contribution. This privilege applies to the reimbursement of expenses and sacrifices incurred by the authority or third parties, in order to prevent or minimise pollution damages or hydrocarbon spills or other contaminating substances to the environment or third-party property, when the fund of limitation of liability has not been constituted as established in Title IX of the Chilean Law of Navigation; and
 - the indemnities for damages or losses caused to other vessels, to port works, piers or navigable waters or to cargo or luggage, as a consequence of the collision or other accidents during navigation, when the respective action is not susceptible to be founded upon a contract, and the damages in respect of bodily injury to the passengers and crew of these other vessels.
- c) Credits of article 845 of the Commercial Code
- Mortgage credits on large vessels (ie, vessels over 50 GT) and secured credits on minor vessels (ie, vessels up to 50 GT).
- d) Credits of article 846 of the Commercial Code
- Credits in respect of the sale price, construction, repair and equipping of the vessel;
 - credits in respect of supply of products or materials that are indispensable for the trading or conservation of the vessel;
 - credits arising from contracts of passage money, affreightment or carriage of goods, including the indemnities for damages, lack and short deliveries in cargo and luggage, and the credits deriving from damages in respect of contamination or the spilling of hydrocarbons or other contaminating substances;
 - credits in respect of disbursements incurred by the master, agents or third parties, for account of the owner, for the purpose of trading the vessel, including agency service; and credits in respect of insurance premiums concerning the vessel, be they hull, machinery or third-party liability.

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

Chile has not ratified any of the international conventions that regulate the arrest of ships. The legal basis for arrest can be found in Book III of the Code of Commerce.

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

There are two ways to arrest a vessel in Chile. 1) Being in possession of a privileged credit (maritime lien) through the process described in the Chilean Code of Commerce and 2) without a privileged credit, fulfilling the general rules of Code of Civil Procedure.

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

Ship arrest is a judicial procedure employed to exercise the right of pursuit. The arrest, prohibition of sailing, detention, or immobilization of a ship represents a unique precautionary measure designed to ensure the enforcement of a privileged credit or to secure compliance with a judicial decision that may involve the disposal or sale of the involved vessel.

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

As explained in point 1 above, the arrest of a vessel may be pursued to enforce a privileged credit. Indeed, Title III of Book III is titled "On Maritime Privileges and Mortgage," and it contains the following:

- On maritime privileges in general.

- On privileges over the vessel and freight.
- On privileges over vessels under construction.
- On privileges over transported goods.
- On naval mortgage and pledge on smaller vessels.

Therefore, maritime privileges have their origin in the law. Only the legislator can modify the principle of equality among creditors.

Also it is possible to arrest a ship following the general rules of Civil Procedure Code which does not require being in possession of a specific privileged credit.

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

The flag flown by a ship holds no relevance if the conditions for granting the arrest are fulfilled.

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

Yes, ship arrest is an in rem action.

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

There is a wide concept of sister vessel arrest which includes same ownership, same operator and same management linked to the offending vessel.

According to article 1234 of the Commercial Code: "A ship may be subject to vessel arrest, in the first following cases:

- a) When the ship is the material object on which privilege is exercised, or
- b) When the creditor is the holder of a privilege on another ship that belongs to the same owner, or is subject to the same administration, or is operated by that same person".

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

Under Chilean law a bareboat charterer has the status of the shipowner with same rights and obligations. Therefore a bareboat-chartered vessel can be arrested for a claim against the bareboat charterer. As to whether a time-chartered vessel can be arrested for a claim against a time-charterer, there are no express provisions.

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

No, courts do not require counter-security for arresting a ship. However, if the court considers that the information or documents provided are not enough or the petitioner states that he does not yet possess them, the court may require that a guarantee be constituted for the possible damages that may be caused if later it turned out that his request was unfounded.

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

In Chile, the arrest of a vessel is only possible through a privileged credit following the rules of Book III of Commercial Code (the fast way) or through a general process through the rules of Code of Civil Procedure which includes the execution of a final judgment that could lead to the judicial sale.

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

Chile recognizes maritime liens under the terms of Articles 844 to 846 of the Chilean Commercial Code, and international treaties in force in Chile, and in the Navigation regarding privileges in pollution or for avoiding damages from spills of hazardous substances.

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

Taking into account all necessary steps, such as preparing the request, filing the arrest application with the court and the judicial notification, the process can take at least 2 to 3 days. Courts fulfill the

rule established in article 1231: “The requested court must grant that request, without further delay, as long as background information is provided that constitute a presumption of the right claimed”.

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

A Power of Attorney (PoA) is required. The POA must be apostilled. It is also possible act without a PoA granting a guarantee.

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

It is always important to submit to the court all documents that are necessary to support the arrest, whether they are originals or copies. All documents may be filled electronically.

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

In general terms and in all transport cases, the substantive claim will be submitted to arbitration in accordance with the maritime regulation contained in the Book III of the Chilean Code of Commerce unless there's an specific arbitration clause, usually associated with contracts of affreightment.

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

The procedure to release a vessel from arrest involves fulfilling with the guarantee specified requires by the petitioner and / or ordered by the court, or mutually agreed with the arresting party, providing an alternative guarantee.

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

A bank guarantee or its equivalent or other ordered or acceptor by the court.

19. Does security need to cover interests and costs?

The amount of the security usually includes interest and costs.

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

The sole condition for lifting a vessel's arrest is to provide the guarantee specified in the arrest petition. However, if agreed upon with the arresting party, Letters of Undertaking (LOUs) can also be presented and are generally accepted by the Courts as an alternative guarantee.

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

If the security is presented in the proper amount, the court must lift the arrest without any further delay.

22. Is there a procedure to contest the arrest?

Of course, however, this will initiate an incidental proceeding in the respective trial on the arrest of the vessel.

In this incidental proceeding, the court will provide the background information to the counterparty, which will have 3 days to respond.

Following the expiration of the specified time limit, the court will make a decision regarding the vessel's arrest. Nonetheless, the vessel will remain under arrest until the court resolves the matter.

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

Upon the grant of arrest, there is a 10-working-day term to file an arbitration request, which may be extended to 30 days. In Chile, all the shipping cases, specified in the local legislation, are subject to

arbitration. Therefore, the following step after an arrest is an arbitration which usually starts with an arbitration request.

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

Wrongful arrest is not expressly regulated. There's only few regulations linked. The non-fulfillment of the obligation to file an arbitration request (or lawsuit) within a specific term after the vessel arrest has been granted means the cancellation of the arrest and liability for the damages that may have been caused.

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

The Courts in Chile do consider the possibility of piercing and lifting the corporate veil.

26. It is possible to have a ship sold pendent lite, if so how long does it take?

The sale of the ship during the pending litigation is not possible unless authorized by the Court or with the consent of the claimant.