

SHIP ARREST IN ICELAND

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

An arrest may generally be instituted in Iceland if the ship is situated in Iceland at the time of the arrest. The request for arrest must be submitted in writing to the relevant District Magistrate's office. It must contain the information of the facts necessary to enable the District Magistrate (Icelandic: sýslumaður) to consider the matter and, also, be supported by copies of the documents on which the claimant relies on to prove the existence of the claim. In practice, the District Magistrate performing the arrest will usually go on board the ship and grant the order for the arrest by obtaining the certificate of the registry, certificate of seaworthiness and other ship's certificates from the master. The District Magistrate will keep these documents in his possession during the course of the arrest procedure. The shipowner will usually keep the possession of the ship and bear the responsibility and costs of maintenance of the vessel during the arrest procedure. In order to secure the arrest of the ship it can be necessary to register the arrest in the ship's registry with the relevant authority so that a bona fide third party does not acquire rights over her in an agreement with the defendant.

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

Iceland is neither a party to the International Convention on the Arrest of Ship (Geneva, 1999) nor the International Convention for the unification of certain rules relating to Arrest of Sea-going Ships (Brussels, 1952). The International Conventions which are in some part applicable in Iceland when ship arrest is at issue are:

- i. The Lugano Convention on jurisdiction and the enforcement of judgments, in civil and commercial matters (2007), cf. Icelandic Act No 7/2011, whereas general rules on the venue under chapter II of the Lugano Convention apply to the arrests of ships in Iceland.
- ii. The Convention on future multilateral cooperation in North-East Atlantic fisheries (NEAFC) (1980). The convention provides that ships committing illegal fisheries shall be arrested.
- iii. Convention on future multilateral cooperation in the Northwest Atlantic Fisheries. The convention provides that ships committing illegal fisheries shall be arrested.

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

Icelandic law does not contain specific rules on arrest of ships. The arrest of ships, and cargo, is thus regulated by general rules found in Icelandic Act No. 31/1990 on Arrest, Injunctions etc.

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

No, in practice the arrest of a ship is the way to guarantee payment of claim against the shipowner under Icelandic law.

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

Generally only property belonging to the defendant (with the exception of claims secured by maritime lien, see further answer to question 11 below) can be arrested in order to secure a payment of a claim if the claim cannot immediately be enforced by an attachment and it is probable that without the arrest, the likelihood of securing the claim will decrease or become more difficult. Therefore, a ship can be arrested in respect of a monetary claim against the owner of the ship. It is

not a condition for the arrest that the claimant proves his claim. However, the request for the arrest will be dismissed by the District Magistrate if the evidence provided on the claim shows that the claimant is not the lawful owner of the rights he seeks to secure by the arrest.

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

Icelandic rules on arrest of ships described herein apply irrespective of the ship's flag as long the ship is within Icelandic jurisdiction. It is permitted to request arrest from the District Magistrate of the district where the defendant's ship will be at the time of the arrest, irrespective of her flag.

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

Arrest can generally only be performed in respect of ships owned by the debtor of the claim which the arrest is to guarantee the payment of. However, in case of claims secured by maritime lien, arrest can be performed irrespective of the debtor, see further answer to question 11 below.

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

Arrest in respect of maritime lien can only be made in the ship which the lien is made. However, arrest for other claims than those under maritime lien may be performed in respect of other assets of the defendant which fall under the jurisdiction of the respective District Magistrate, irrespective of the ship being in an associated ownership.

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

A ship can under Icelandic law only be arrested in respect of a claim against the party leasing the ship (under a Bareboat or Time-Chartered arrangement) if the claim is made under a maritime lien regarding the ship. For other claims arrest can only be made in order to guarantee payment against the shipowner.

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

A claimant will generally need to provide guarantee in order to have the arrest performed. The District Magistrate decides case-by-case whether a security is needed or not and the form and amount of such security. The claimant shall to place the security within a given deadline but otherwise the arrest application submitted shall be null and void.

In determining the guarantee's amount the District Magistrate shall mainly take into account to what extent the arrest affects the functions of the defendant in terms of doing him harm, whether it is likely that the arrest or request for the arrest will harm his credit status or his business interests and whether he has a chance to make remarks about the validity of the claimant's claim and the arrest. The cost that the defendant might later have to endure through court procedure due to the arrest should also be taken into account.

If security is required it should be in the form of money or in a comparable form. A bank guarantee is usually required. The District Magistrate can, by demand of the claimant, arrest a ship without any security being submitted if one of the following conditions is fulfilled:

- The arrest is demanded pursuant to a debenture, a draft or a cheque and the defendant does not protest the claim;
- the defendant waives his right for a security in front of the District Magistrate;
- the defendant acknowledges the claim as being valid in front of the District Magistrate or court and that conditions for an arrest are prevailing;
- a judgment has been rendered regarding the claimant's claim, but the enforcement period has not yet come to an end; or
- the claimant's claim is in other terms so that the District Magistrate considers both it and the arrest undoubtedly valid given the conditions prevailing.

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

A claim secured by a maritime lien may be enforced by means of arrest irrespective of the shipowner's identity while maritime claims can only be enforced by means of arrest if the debtor is the shipowner. The following claims enjoy a maritime lien in the ship under Article 197 of the Icelandic Maritime Act No. 34/1985:

- Wages or other payments due to the Master, Crew and other persons employed on board;
- claims for damages due to loss of life or personal injury in so far as such claims have arisen in direct connection with the use of the ship;
- claims for damages due to damage properties in so far as the claim has arisen in a direct connection with the use of the vessel and provided that such claim is not based on contract;
- salvage, compensation for removal of wrecks and general average contributions; and
- ship charges. This refers mainly to claims for port, canal and waterway dues and pilotage.

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

Icelandic courts recognise maritime liens under the Icelandic Maritime Act No. 34/1985 as described further in question 11 above. In case of a claim secured by a maritime lien over a ship, she may be arrested despite being owned by a third party. Claims that are secured by a maritime lien under Article 197 of the Icelandic Maritime Act No. 34/1985 are an exception as the only types of claims that may be pursued "in rem" by way of arrest irrespective of the ship's owner's identity.

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

In theory the arrest procedure is supposed to be only a matter of hours or days. However, in practice the arrest procedure can unfortunately stretch up too few days and even as long as 1-2 weeks.

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

Icelandic attorneys can generally submit claims on behalf of their clients on grounds of lawyer's power of attorney. There is thus no need to issue a special POA in respect of individual claims. The request for arrest procedure shall be made in writing and shall state the identity of the claimant and the defendant, the amount which the arrest is to secure payment of and the grounds which the claimant bases its claim on. As regards supporting documents for the claim the Icelandic Act No 31/1990 on Arrest, Injunctions etc. provides that the request for arrest shall be accompanied by the documents on which the claimant supports his claims. It therefore varies which documentation is necessary, e.g. in case of claim based on debenture a copy of the respective debenture would generally suffice.

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

There are no rules on when the original documents are required, and it is up to the District Magistrate's discretion whether to request originals or have copies suffice. Notarisation and/or apostille are generally not necessary for arrest procedure under Icelandic law.

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

No, the courts will not accept jurisdiction on the substantive claim. In case the substantial claim falls under the jurisdiction of a foreign court the claimant shall have the claim confirmed by the respective foreign court.

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

A ship is released from arrest when the claimant receives payment of the claim, if a confirmation of an arrest is not submitted to Icelandic courts in time (see question 23 below), or if a confirmation of an arrest is not granted by the courts and the arrest set aside. However, if confirmation of an arrest is declined by the District Courts and it set aside, the arrest remains in effect for three weeks, until a time limit for appeal passes. If the claimant neglects to submit a request for confirmation to Icelandic courts within the applicable limitation period, the arrest is set aside when the limitation period has passed, after either one or three weeks from the arrest, see question 23. A shipowner may additionally prevent an arrest by providing an immediate guarantee.

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

No security is necessary for the release when an arrest ceases due to the general reasons above. A shipowner's guarantee to prevent an arrest is subject to similar rules as the claimant's countersecurity, see question 10, and must be in cash or a similar form, e.g. a bank guarantee.

19. Does security need to cover interest and costs?

Yes, to prevent an arrest the shipowner's guarantee must cover the full claim amount, including interests 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?

The shipowner will usually keep the possession of the ship under arrest, see question 1. After the arrest ceases, legal restraints due to the arrest will usually be lifted by the District Magistrate within a few days, although it might vary in relation to the reasons for the arrest ending or being set aside.

22. Is there a procedure to contest the arrest?

Shipowner's protest during arrest procedure does not generally stop the arrest. If the arrest has not yet taken place and is being processed by the District Magistrate the Magistrate must upon shipowner's protest make an immediate decision on whether to proceed. Protests are usually unsuccessful unless the shipowner proves that the request for arrest should have been dismissed *ex officio* or that the claimant's claim is unfounded. The shipowner may only appeal a Magistrate's decision to proceed with the arrest to the District Courts if the claimant approves. After ship arrest completion however, the shipowner may contest the arrest before Icelandic courts in proceedings for confirmation of an arrest pursued by the claimant.

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

A confirmation of an arrest must be submitted to the Icelandic courts within one week from the arrest together with the claim itself as it is subject to Icelandic law. If the claim is subject to a foreign jurisdiction the claimant must within three weeks from the arrest pursue proceedings on the merits in that jurisdiction and within the same three weeks pursue proceedings in Icelandic courts for the confirmation for the arrest. Otherwise, the defendant can request that the arrest be set aside.

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

Yes, if the claim for which the arrest was granted is found to be non-existent or unjustified in other ways, the claimant must compensate the shipowner for all his loss suffered, including damages for

loss of amenities, and for the injury done to the shipowner's professional reputation. The basis of liability in such cases is strict and not dependent upon proof of negligence or other omission on his part. It is possible for the court to decide compensation based on the facts of the case if the shipowner has suffered loss but cannot prove the quantum of his claim. If an arrest turns out to be wrongful for reasons that occurred after the completion of the arrest, the claimant has to compensate the shipowner only if it is presumed that he did not own the claim for which the arrest was granted.

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

Icelandic Courts do not generally 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?

No, parties would generally have to await the outcome of a court case prior to selling a ship. However, court ordered sale can be performed on grounds of lien in the ship, without prior Court proceedings.

**LOGOS legal services has been providing legal services to the shipping and transport sector in Iceland and advising foreign clients on Icelandic maritime law since the foundation of LOGOS in 1907. There has always been at least one partner at LOGOS who specialises in shipping and transport law. As a result LOGOS has considerable experience in this field. One of the partners of LOGOS, Einar Baldvin Axelsson, has a degree of Master of Laws (LL.M) in maritime law from the University of London. Einar Baldvin is a teacher at the Reykjavik University in shipping and transport law and Chairman of the board of the Icelandic Maritime Society. Einar Baldvin is a licensed broker for vessels. Einar Baldvin has been involved in number of arrests cases in Iceland, both for shipowners and claimants. LOGOS's work in the shipping and transport sector includes all maritime and transport related matters, such as arrest, contract of carriage, storage contracts, cargo claims, personal injury, salvage, general average, sale and purchase of new and second hand vessels, shipbuilding contracts and charter party contracts.*