

# SHIP ARREST IN JAPAN

By Takayuki Matsui\*

MAX LAW OFFICE

office@marinelaw.jp

www.marinelaw.jp

5F Izumi Garden Wing 6-3

Roppongi 1-chome Minato-ku, Tokyo

Tel: 81 3 3568 3691

Fax: 81 3 3568 3692



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

In Japan there are two main types of ship arrest. One is an arrest relating to a lien or a mortgage. The other is a pre-judgment arrest.

Arrest relating to a Lien or a Mortgage – A holder of a maritime lien or a mortgagee can arrest a ship to execute a maritime lien or enforce a mortgage on the particular ship. They can arrest the ship without putting up any counter security. To release the arrested ship, the shipowners are usually requested to put up security (although recently, in the case of the “Fairwind 308”, our office had success to release the arrested ship without any security).

Provisional Arrest – A creditor of registered shipowners can arrest a ship owned by the shipowners to obtain security for their claim (regardless of whether such claim is maritime or not and regardless of whether the claim is related to the arrested ship). To obtain a pre-judgment arrest order, the arrestor must put up counter-security. To release the arrested ship, the shipowners are usually requested to put up cash, which is usually the same amount of the arrestor’s claim amount.

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

No International Convention applies to the arrest of ships in Japan. Japan has not ratified the arrest conventions of 1952 and 1999.

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

A claimant can arrest a ship by (i) an arrest relating to a lien or a mortgage or (ii) pre-judgment arrest.

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

No.

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

For pre-judgment arrests, the claimant can arrest a ship for any monetary claim of whatsoever nature against the shipowner. You may arrest a ship to secure your claim subject to London arbitration (the “Aventicum” case). As regards an arrests pursuant to a lien or mortgage, an arrestor must have a maritime lien or a mortgage on the arrested ship and prove it.

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

Yes.

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

In respect of a pre-judgment arrests, a debtor must be a registered owner of the ship. As to arrests pursuant to a lien or a mortgage, a holder of a maritime lien or mortgage can arrest the subject ship, irrespective of the identity of the debtor.

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

It is possible for a claimant to arrest a sister ship if the ship is owned by the debtor. It is possible but not easy to arrest an associated ship by piercing the corporate veil.

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

Under our new maritime law (which was enforced in 2019), a bareboat charterer or time charterer can create a lien on the ship. Therefore, a claimant of a time charter or bareboat charterer of a ship may arrest the ship. However, based on the principal of the famous case of the Hansa Altenburg in the Yokohama District Court, this new law shall be interpreted narrowly.

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

With respect to arrests pursuant to a lien or a mortgage, a claimant does not need to put up counter-security.

In contrast, in case of a pre-judgment arrest, a claimant must deposit counter-security. The counter-security must be cash, insurance bond or bank guarantee. The amount of the counter security is usually 20% - 50% of the claim amount or the value of the ship, at the discretion of the judge. In case of the “Aventicum the amount of the counter-security was 35% of the claim amount. In case of Jia Hui, it was 55% of the claim amount. In case of the Baltic Winter it was 30% of the claim amount. The arrested party is entitled to demand an increase of the counter-security after having been arrested.

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

Yes. If a claim gives rise to a maritime lien, the claimant can arrest the ship pursuant to the lien. Otherwise, a claimant may only arrest the ship pursuant to a pre-judgment arrest.

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

Yes. Although Japan is not member of any of the related International Conventions, the Japanese courts recognize maritime liens. Importantly our maritime lien law includes the concept of “necessaries,” which creates lots of disputes.

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

It depends on how complicated the claim is. We have had several experiences where we were able to arrest ships within 48 hours from the receipt of instructions. For example, in the arrest of the Three Tulip, we received instruction on a Thursday and arrested her next day. In the pre-judgment arrest of the Aventicum, we received instructions on a Thursday at midnight and arrested her the next Tuesday morning. In the arrest of the Pegasus Prime, we received the instructions on a Friday morning and arrested her the next Monday. It all depends on the case. Our advice is to appoint an experienced shipping lawyer for any ship arrest in Japan.

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

Yes, we need a POA.

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

Original POA and corporate certificates of good standing of the relevant parties are required. However, some courts accept a copy of the documents on the condition that original documents will be supplied later.

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

It is possible to establish jurisdiction in Japan by arresting a ship but it depends on the case.

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

File a motion to release the arrested ship in the court and put up security in the court.

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

In case of a ship arrest pursuant to a lien or a mortgage, cash, bank guarantees, insurance bonds or P&I club LOUs can be accepted as security to release the ship. In case of a pre-judgment arrest, cash is generally the only way to release the arrested ship.

Sometimes, however, counter-security is not required to release an arrested ship. We had success in releasing the Fairwind 308 without any counter-security (Yokohama District Court 4 June 2007).

#### 19. Does security need to cover interest and costs?

Usually the claim amount secured by the arrest already includes interests and costs.

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

In case of an arrest pursuant to a lien or a mortgage, you can release the ship by putting up P&I Club LOU (although such P&I club must have a license in Japan). In case of a pre-judgment arrest, P&I club LOU is not accepted and you can release the ship only by putting up cash.

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

Once the relevant documents are filed in the court and security is provided to the court, the ship can usually be released within one day. For example, in the recent case of the arrest of the JRS CORVUS, the ship was arrested on a Tuesday afternoon, and was released again the next morning. In case of the arrest of the DS Blue Wave, we managed to release the arrested ship in 4 hours in the Kobe District Court.

#### 22. Is there a procedure to contest the arrest?

Yes, there is. Recently, six ships were arrested by a HK bunker supplier in Japan in the span of two weeks due to the collapse of a HK time-charterer. Our office set aside the arrest of all six ships and successfully recovered damages due to the wrongful arrests.

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

In a case of pre-judgment arrest, it is a minimum of two weeks. With respect to an arrest pursuant to a lien or a mortgage there is no need to take legal action on the merits.

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

Yes. Recently our office successfully set aside ship arrests of Ocean Dragon, Hansa Altenburg, DS Blue Wave and JRS Corvus arising out of claims between time charterers and bunker suppliers and we were able to recover damages of about USD300,000 from the bunker suppliers for wrongful arrest of four ships in the Tokyo District court.

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

Yes, but it is not easy to pierce the corporate veil.

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

During proceedings, the ship can only be sold by a public auction at the discretion of the Court.

*\*Takayuki Matsui graduated with a LL.B. degree from the Hitotsubashi University in 1986. After graduation, he practiced for five years in a Hull Section of a Maritime Claim Department of a Japanese Insurance Company. He was admitted to the bar in 1993. He is a partner of Max Law Office specializing in shipping laws in Japan. Matsui's focus has been collisions, cargo defense, arrest, and maritime disputes in court and TOMAC arbitration. He also has substantial experience in ship mortgage enforcement. He is qualified as Maritime Proctor in the Japanese Maritime Court. In 1999 he earned a LL.M. in Admiralty from Tulane Law School, New Orleans. He is an arbitrator and also a board member of the Documentary Committee of the Japan Shipping Exchange. He is an author of Time Charter Party, published in 2004. His hobby is arresting ships.*