Ship Arrests in Practice

Fifteenth Edition
2026

A Comprehensive Guide to
Ship Arrest & Release Procedures

Written by Members of
the ShipArrested.com Network

SHIP ARRESTED.COM™

Welcome to the fifteenth edition of *Ship Arrests in Practice*.

For more than two decades, this publication has served as a trusted reference for maritime professionals navigating one of the most effective and complex tools in international shipping law.

Each chapter is authored by local practitioners with direct, hands-on experience in their respective jurisdictions. They offer not only an overview of the legal framework, but also practical considerations that arise in real-world scenarios: timing, documentation, local procedure, and the often decisive informal practices that are not found in statutes.

In today's environment, marked by increasing regulatory complexity and fast-paced global maritime commerce, the ability to act swiftly and effectively across borders has never been more important. ShipArrested.com was founded to meet this need by connecting professionals and facilitating access to reliable, jurisdiction-specific expertise.

We trust that this edition will continue to serve as a valuable resource for shipowners, charterers, P&I clubs, financial institutions, traders, and legal practitioners alike.

On behalf of the ShipArrested Network, we extend our sincere thanks to all contributing authors for their commitment, professionalism, and continued support.

Dr. Felipe Arizon
Founder, ShipArrested.com Network

N.B.: The information contained in this book is for general purposes, providing a brief overview of the requirements to arrest or release ships in the said jurisdictions. It does not contain any legal or professional advice. For a detailed synopsis, please contact a Shiparrested.com member. The law is stated as of January 1, 2026.

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SHIP ARREST IN *ANGOLA*

*José Miguel Oliveira & Francisco Campos Braz & Marcelo Mendes Mateus**
Vieira de Almeida & Associados (VdA) &
ASP Sociedade de Advogados (exclusive member of VdA Legal Partners in Angola)
jmo@vda.pt
www.vda.pt
Luanda, Angola
Tel: +244 942 402 549 | +351 21 311 34 00

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

Further to the enactment of the 2021 National Master Plan for the Transport Sector and Road Infrastructures ("Master Plan"), the Angolan government announced the implementation of several structural reforms to the transport sector. As to maritime and port activities, the Master Plan aims to:

- Modernise infrastructure for maritime and port activities.
- Promote national ports and adapt its activities to the requirements of the legal framework in place.
- Re-evaluate the model for port concessions.
- Establish new partnerships and international agreements in order to re-launch the international maritime transport in Angola.
- Strengthen the national capabilities in management and control of maritime traffic.
- Promote training to Angolan personnel specialised in hydrography, cartography, oceanography, navigation and nautical signage.

The Angolan government's commitment to the Master Plan is evidenced in the projects that have been announced (some of which are under way) for the renovation of the national port infrastructures (the renovation of the Ports of Namibe and Luanda being an example) and the construction of a new oceanic terminal in Barra do Dande (North of Luanda). The Master Plan also contemplates the restructuring of the national maritime authorities (being an example the creation of the National maritime Agency ("AMN"), an agency that is the product of the merger between the Maritime and Port Institute of Angola ("IMPA") and the Hydrographic and Maritime Signalling Institute of Angola ("IHSMA"), by means of Presidential Decree 292/21 of 8 December 2021). It is also worth noting the creation of the National Institute for Transport Accident Research and Prevention ("INIPAT"), upon the enactment of Presidential Decree 29/22 of 27 January 2022. This institute will be responsible for the investigation and response to any maritime casualty in Angola, in collaboration with AMN – a duty that previously fell solely under the responsibility of IMPA. As to the future, the Master Plan also shines some light on the new legislative endeavours that the Angolan government proposes to achieve, from which we highlight, inter alia, the (i) regulation of all international conventions of the International Maritime Organisation ("IMO") to which Angola has acceded, (ii) regulation of the procedures and activities for the investigation of maritime accidents, (iii) regulation of the registration of ships and other marine engines, (iv) regulation of the maritime authority system, and (v) approval of a general regulation of captaincies. If enacted, all the above-mentioned legislative proposals would be a major step forward in the continuous work of consolidation of the national legal framework for the maritime sector in Angola, with inherent impact on the ship arrest practice.

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

Angola is a signatory of the 1952 International Convention Relating to the Arrest of Sea-Going Ships (the "Brussels Convention").
The United Nations Convention for the Law of the Sea ("UNCLOS") also applies in relation to vessels arrested for the suspicion of participation in criminal activity.

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

Outside the scope of the Brussels Convention, Angola's Civil Procedure Code and Commercial Code apply.

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

Apart from ship arrest, the claimant may seek to obtain security through the attachment of any other property owned by the debtor (other than vessels) and non-specified injunctions as per the Civil Procedure Code.

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

Maritime claims in respect of which a vessel may be arrested are those set forth in Article 1(1) of the Brussels Convention:

a. damage caused by any ship either in collision or otherwise;
b. loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
c. salvage;
d. agreement relating to the use or hire of any ship whether by charterparty or otherwise;
e. agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
f. loss of or damage to goods including baggage carried in any ship;
g. general average;
h. bottomry;
i. towage;
j. pilotage;
k. goods or materials wherever supplied to a ship for her operation or maintenance;
l. construction, repair or equipment of any ship or dock charges and dues;
m. wages of Masters, Officers, or crew;
n. Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
o. disputes as to the title to or ownership of any ship;
p. disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
q. the mortgage or hypothecation of any ship.

Ships may also be arrested when there is the suspicion of participation in criminal activity, before or after criminal proceedings are initiated, under the UNCLOS.

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

Yes. Under Article 2 of the Brussels Convention a ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim. However the Convention does not extend or restrict any right or powers vested in any governments or their departments, public authorities, or dock or harbour authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.
A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1(1) (please refer to previous question 5.) or of any other claim for which the law of the Contracting State permits arrest.

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

It is not required that the owner be liable in persona for an arrest of a vessel to be accepted. Pursuant to Article 3(4) of the Brussels Convention, if the charterer (and not the registered owner) is liable (i.e., debtor) in respect of a maritime claim relating to a vessel, in the context of a charter by

demise of a vessel, the claimant may arrest such vessel or any other vessel in the ownership of the charterer by demise, even though no other vessel in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The above-mentioned regime shall apply to any case in which a person other than the registered owner is liable in respect of a maritime claim relating to that vessel.

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

A claimant may seek the arrest of either the vessel in respect of which the maritime claim arose or any other associated vessel as long as both vessels are owned by the same person(s). Associated ships may not be arrested in situations foreseen in article 1.1, (o), (p) or (q) of the Brussels Convention (please refer to question 5.).

Outside of the Brussels Convention, sister-ships may only be arrested when the owner is personally liable for the debt.

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

Pursuant to paragraph (4) of article 3 of the Brussels Convention, in the case of a claim against a bareboat charterer, the claimant may seek the arrest of the bareboat (demise) chartered vessel or any other vessel in the ownership of the bareboat charterer, as the charterer and not the registered owner is liable in respect of such maritime claim relating to that vessel. However, no other vessel of the ownership of the registered owner may be arrested in respect of such maritime claim. The above mentioned legal regime also applies to any case where a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

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

As a matter of principle, no security is required. Still, the judge is free to decide otherwise and ask the applicant to provide security in an adequate amount and form. Unless otherwise determined by the judge, the amount of the security generally corresponds to the amount of the claim. The security can be posted in any form acceptable by the court, cash deposits and bank guarantees (in terms to be agreed) being the most usual forms.

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

Maritime claims are dependent upon the ownership of the ship. The ship can only be arrested provided that the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to file a claim and to arrest the ship despite a change of ownership. The arrest procedure is the same, though.

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

Although it is understood that the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages is not applicable in Angola, article 578 of the Angola Commercial Code specifies the following categories of claims which afford maritime liens:

(1) court costs incurred in the common interest of the creditors;
(2) remuneration for salvage;
(3) pilotage and towage expenses;
(4) tonnage, lights, anchorage, public health and other harbour dues;
(5) expenses made in connection with a vessel's maintenance and storage of her appurtenances;
(6) master and crew wages;
(7) costs incurred in connection with the repair of the vessel, her appurtenances and equipment;
(8) reimbursement of the price of the cargo that the master was forced to sell;
(9) insurance premiums;
(10) any unpaid portion of the price due in connection with the purchase of a vessel;

(11) costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the past three years;
(12) unpaid amounts arising from shipbuilding contracts;
(13) outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances, not mentioned in (11); and
(14) sums due to shippers in respect of loss or damage to cargo.

Claims mentioned in (1) to (9) refer to those incurred in the last voyage and as a cause of it.

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

Experience tells us that the issuance of an arrest order is likely to take between 24h to 72h to secure, counting as from completion of the relevant submissions. Sometimes, before the arrest is order granted, it is also possible to secure an "interim detention order" from the Court immediately following the initial submissions.

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

Yes, an original power of attorney must be provided to the court. Where issued abroad, and as a condition for their local acceptance and enforceability, powers of attorney must be previously notarised, legalised (before the Ministry of Foreign Affairs or equivalent body), translated into Portuguese language (by a sworn translator) and then consularized before the Angolan Embassy or Consulate with jurisdiction over the country of their issuance (Angola is not a party to the 1961 Hague Apostille Convention).
The original power of attorney must be attached to the arrest application at the time of its filling. When that is not possible, lawyers may ask the court to grant additional time for submitting the original (where the original power of attorney is not available, the arrest application must be submitted along with a scanned (coloured) copy of the original 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?

Although the submission of original documents is required, it is common practice to present scanned copies of the same, which in most cases is accepted. However, courts are always entitled to disregard copies or ask the parties to submit the relevant originals.
Documents submitted to the court must be written in Portuguese. When written in a different language, parties are required to submit the relevant originals along with their translation into the Portuguese language (the translation should be certified by a sworn translator).
Where, in view of the urgency, there is not sufficient time available to file the arrest application in compliance with all the required formalities, it is still possible to set the arrest procedure in motion while undertaking to the court to complete the formalities in a reasonable period of time (typically, no more than 10 calendar days).
Documents cannot be filed electronically.
There is no specific term for the preparation of an arrest application; this will typically depend on the urgency of the relevant arrest and on the complexity of the underlying claim.

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

Claims on the merits should be initiated before the court having jurisdiction for such by reference to the law governing the contract. The arrestor may, therefore, pursue the main claim on its merits with a foreign court. The claimant is required to file the initial claim for the main proceedings of which the arrest will form an integral part within 30 days of the arrest order. However, an extension of this 30-day deadline may be required considering the difficulties of commencing procedures before a foreign court.
In this regard, both under and outside the Brussels Convention, the vessel shall also be released in the event the main claim is not commenced within 30 days – or a different time period established by

the court when the claim is subject to a jurisdiction of a foreign court – from the arrest being ordered or has had no developments for a period of more than 30 days for reasons imputable to the creditor.

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

Pursuant to Article 5 of the Brussels Convention, the vessel shall be released upon sufficient bail or other security being furnished, save in arrests in respect of any of the maritime claims regarding disputes as to the title or ownership of the ship, or in disputes between co-owners of the ship as to the possession, employment or earnings of any vessel (foreseen in article 1.1, (o) and (p) of the Brussels Convention - please refer to question 5.). In such cases, the court may allow the person in possession of the vessel to continue trading it, upon such person furnishing sufficient bail or other security.
Outside the Brussels Convention, the vessel will also be released if security is provided in the form and amount deemed sufficient by the court.
The security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.
Both under and outside the Brussels Convention, the vessel shall also be released:

- upon payment of the debt;
- in the event the main claim is not commenced within 30 days – or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court – from the arrest being ordered or has had no developments for a period of more than 30 days for reasons imputable to the creditor;
- the main claim is definitively dismissed;
- if the main claim is upheld but the debt remains outstanding and the creditor does not initiate the enforcement proceedings within six months from the claim being definitively upheld or they have no development for a period of more than 30 days for reasons imputable to the creditor; or
- if the credit ceases to exist.

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

Security can be posted in any form acceptable by the court or by the arresting party (e.g., cash deposits, bank guarantees, P&I LOUs).

19. Does security need to cover interest and costs?

Typically, the amount of the security corresponds to the amount of the claim (which usually includes interests). Nevertheless, the judge may end up reviewing it subsequently, namely where the amount being claimed does not reflect the amount being effectively disputed. The amount of the security is not likely to exceed the value of the ship.

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

Although not common, courts have already accepted P&I LOUs as security, dependant on the other party's agreement.

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

Once security has been posted the request for release can be lodged with the court immediately, but it will depend upon the availability of local court officials where the ship is located. Usually it takes between 24 and 36 hours.

22. Is there a procedure to contest the arrest?

After examination of the evidence produced, the arrest may be ordered without hearing the arrested party, provided that the legal requirements have been met; however, where the arrest has been requested to cover more assets than the sufficient to secure the debt/obligation, the guarantee shall be reduced to the just limits. In the particular case of arrest of a ship or its cargo, the arrest will not

take place if the debtor immediately offers a guarantee that the creditor accepts or that the judge, within twenty-four hours, deems adequate.
Upon notification to the arrested party of the order granting the arrest, the latter may appeal against the order or lodge an opposition ("embargos"), or use both means of defence simultaneously.
The opposition shall be offered in duplicate within a period of eight days and shall be especially aimed at claiming facts that dismiss the grounds for the arrest or at requesting that the precautionary measure be reduced to its just limits where it has covered more property than necessary.
The arresting party is then notified to answer to the opposition; thereafter, without further pleadings, the terms of the summary proceedings shall follow.
Where the opposition is directed against the grounds of the arrest, the arrested party may claim that the arresting party or the witnesses knowingly failed to tell the truth and request that a fixed sum be fixed as compensation for the damage suffered; in such case, the witnesses shall be summoned to answer the opposition and, if the opposition is upheld, the arresting party and the witnesses in bad faith shall be jointly and severally liable for the compensation.

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

Please refer to question 16. above. The claimant is required to take action on the merits within 30 days of the arrest order, or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court.

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

Yes. In the event of wrongful arrest of a vessel or where the arrest is lifted for reasons imputable to the applicant, the latter is liable for the damages caused to the arrestee, provided that the applicant has not acted with normal prudence or due care, as set out by Article 621 of the Civil Code.

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

The courts will be prepared to accept the piercing and lifting of the corporate veil in very limited circumstances. Usually there must be an element of improper conduct with intent to defraud. The use of the corporate structure must have been established to evade liabilities imposed by the law.
The piercing and lifting of the corporate veil, or, in other words, the disregard of legal entity still does not have an unequivocal legal basis in Angola that may cover all types of commercial companies (namely, multi-person companies). However, the rationale of some rules is similar to the values and purposes inherent to the disregard of legal entity, showing that the Angolan legislator has addressed concrete situations in which it promoted the overcoming of corporate liability and the imputation of responsibility to their shareholders. Examples are some of the provisions of the Consumer Defence Law (Law 15/03, of 22 July) and the Single-Member Companies Law (Law 19/03, of 22 July).
Thus, it can be concluded that the Angolan legal system accepts the notion of disregard of legal personality as an instrumental criterion that can be resorted to in the concrete case to ensure a more efficient and broader protection of the company's creditors.

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

In principle, a judicial sale of a ship cannot take place during the arrest proceedings, and require the bringing of a subsequent enforcement proceedings, in which the arrest is converted into a seizure of the vessel, after the existence of the credit has been recognised by the competent court.
After an enforcement application is lodged, the court shall notify the debtor (owner or charterer and other interested parties) to settle the claim or oppose the enforcement and the seizure. If the debtor fails to pay or if no opposition is lodged within an appropriate period, the court will order the sale. To that end, the court will then decide on how the sale will take place (public auction, private negotiation, sealed bids) and will appoint an auctioneer who will be responsible for the relevant proceedings and arrangements (such as organising the tender and visits to the vessel, collecting the

bids, getting the proceeds of the sale and liaising with the court). The debtor will have the power to recover the vessel at any time before completion of the judicial sale, provided it deposits with the court the amount of the credit plus fees and expenses.
The proceeds arising from the sale of the vessel will be used to pay the claimant or other creditors with prevailing rights over the vessel that have claimed credits in the proceedings, the court costs and expenses (including auctioneer's fees) and other credits and expenses.
The judicial sale of a vessel can take several months to complete.
The judicial sale of a vessel in a foreign jurisdiction (as any other judgment awarded by a foreign court) will also be valid and enforceable in Angola provided that it is revised and confirmed by the Angolan Supreme Court.

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José Miguel Oliveira *joined VdA in 2015. He is a partner of VdA's Infrastructure, Energy & Natural Resources Group and responsible for the firm's Shipping practice. He is also Of Counsel at ASP – Sociedade de Advogados, an Angolan law firm established in the capital Luanda and serving as the exclusive member of VdA Legal Partners network in the country. José is qualified to practice in Angola, Portugal and Timor-Leste, and leverages his fifteen-plus years' international experience in African jurisdictions, including Angola and Mozambique, where he has been involved in projects and operations across the energy and oil & gas industry's value chains and provided advice regarding regulatory issues, contractual matters, corporate and commercial, restructurings, M&A, foreign direct investment, foreign exchange, and shipping and maritime matters. Over the years, he has acted for the full spectrum of those involved in the shipping industry, including ship-owners and charterers, cargo interests, P&I clubs, banks, ship-yards, port operators, brokers and agents, in all sort of wet and dry shipping matters.*

Francisco Campos Braz *joined VdA in 2019 and is a senior associate of the Oil & Gas practice, with strong ties to the Equatorial Guinean jurisdiction, where he accumulated 10 years of experience in the areas of oil and gas, construction, corporate, employment, litigation, OHADA, foreign investment and maritime matters. Francisco has advised and assisted, particularly in Equatorial Guinea and Angola, international oil companies and oilfield services companies in the incorporation, registration and closure of local entities and branches, labour proceedings and collective dismissals, local content requirements, among other matters.*

Marcelo Mendes Mateus *collaborates with VdA Legal Partners since 2016, integrating ASP – Sociedade de Advogados, as a Senior Associate. He has been actively involved in criminal, civil, labour and litigation cases, representing and advising the most relevant national and international companies, inclusively in shipping disputes.*

SHIP ARREST IN *ARGENTINA*

*Francisco J. Venetucci**
Venetucci Maritime
ffv@venetucci.net
www.venetucci.net
3 de Febrero 167 - San Lorenzo
S2220CNC - Santa Fe
Alicia Moreau de Justo 1150, piso 3, oficina 306A,
Buenos Aires, CPAAX1107
Mobile: +54 9 341 5615441
Tel: +54 11 52783452

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

Argentina is a friendly jurisdiction for ship arrest. A claimant seeking to obtain security for a maritime claim may consider arresting the vessel in Argentina irrespective of whether it is a foreign-flagged vessel. The federal courts are expeditious and prepared to hear maritime claims. The arrest procedure is straightforward and is carried out *inaudita altera parte*.

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

Argentina has not ratified any arrest convention.

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

Vessels may be arrested pursuant to the provisions of the Argentine Navigation Act.

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

Under Argentine law, it is possible to arrest by way of *saisie conservatoire* the specific vessel in respect of which the intended action is brought. However, if the claimant seeks a freezing order, the general provisions of the Civil and Commercial Procedural Code shall apply, rather than those of the Argentine Navigation Act.

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

Vessels can be arrested on the basis of:

a. Preferred claims;
b. Maritime claims regarding debts incurred in Argentina and in connection with the ship; or
c. Claims regarding any debt where Argentine courts have jurisdiction on the merits.

The Navigation Act lists 'preferred claims' in Article 476, which coincides with Articles 1(1)(a)–(q) of the 1952 Arrest Convention, even though Argentina is not a signatory thereto.
Argentina has adopted a long list of preferred claims which can be found in Article 476 of the Navigation Act, as follows:

- judicial expenses incurred in the common interest of creditors for:
  - the preservation of the vessel; or
  - its sale and the distribution of its price;
- claims of the captain and other crew members arising:
  - from employment contracts; or
  - under labour laws;
- claims for credits associated with the construction of a vessel that has been mortgaged;
- taxes, duties, contributions and service fees arising from:
  - navigation activities; or
  - the commercial operation of the vessel;

- claims for death or personal injury occurring on land, on board or in the water, directly related to the operation of the vessel;
- claims for unlawful acts against the owner, the operator or the vessel, not based on a contractual relationship, for damages to property located on land, on board or in the water, directly related to the operation of the vessel;
- claims for:
  - assistance and salvage;
  - removal of wreckage; and
  - contributions to general average;
  - claims for damage to cargo and luggage;
- claims arising from contracts for the lease or chartering of a vessel or a transport contract;
- claims for the supply of products or materials to a vessel for its operation or maintenance;
- claims for:
  - the construction, repair or equipment of the vessel; or
  - dockyard expenses;
- claims for:
  - disbursements by the captain; and
  - expenses incurred by shippers, charterers or agents on behalf of the vessel or its owner; and
- claims for the price of the last acquisition of the vessel and interest due in the last two years.

A comparison of Article 476 of the Navigation Act and Articles 1(1)(a)–(q) of the 1952 Arrest Convention reveals that the preferred claims under the act are mostly based on the convention, even though Argentina is not a signatory thereto.

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

Yes. Foreign flag vessels can be arrested.

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

Argentina – a civil law country – recognises 'preferred claims', which are the equivalent of maritime liens under common law and the arresting party may commence *in rem* proceedings irrespective of the debtor.
Based on the Supreme Court decisions in *The Pavlo* (1997) and *The Oceana* (2024), the characterisation of a preferred claim will be established according to the *lex forum* – that is, Argentine law.

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

According to the Navigation Act, the claimant of a debt incurred in Argentina may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. As regards associated ownership, ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

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

In the case of a charter by demise, the charterer and not the registered owner will be liable in respect of a maritime claim relating to that ship, save for claims based on a maritime lien. The claimant may arrest such ship or any other ship in the ownership of the charterer by demise, but no other ship in the ownership of the registered owner will be liable to arrest in respect of such maritime claim.

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

Typically, the court will request a counter-security of 30% of the amount claimed, which can be replaced by a local surety bond.

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

The proceeding does not differ.

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

Yes. Argentina –civil law country- recognises "preferred claims" which are the equivalent to "maritime liens" under common law. Based on latest precedents from the Federal Court of Appeal and the Supreme Court, the characterisation of the "preferred claim" will be established according to the *lex forum*, i.e., Argentine law.

Furthermore, Argentina ratified the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages which stands above the navigation act.

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

The timing will depend on the port of call; however, in practice it usually takes between 6 and 12 hours. Argentine courts handling maritime matters are generally very expeditious, particularly in recovery cases, and arrest orders are often granted within a matter of hours.

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

The Civil and Commercial Procedural Code requires a notarised PoA is submitted within 40 working days.
As regards the documentation, it is recommended to submit all relevant material as soon as possible (invoices, terms and conditions, delivery orders), as Argentine courts require documents drafted in a foreign language to be duly translated.

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 is no need to file the original documents at the time of submitting the arrest application, as scanned copies will suffice. As regards the Power of Attorney, it must be notarised and either apostilled in accordance with the Hague Apostille Convention or otherwise duly legalised through the competent foreign authority of the country of issuance. Argentina is a party to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

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

Yes. Federal courts shall have jurisdiction over the merits in any case where the owner of a foreign-flagged vessel is a party and, pursuant to Argentine law, the vessel may be subject to arrest.

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

The arrest order may be lifted upon the posting of sufficient security. However, the release of the vessel is not automatic and requires the approval of the arresting party. The time it takes to lift the arrest will vary depending on the port at which the vessel is arrested. The scenarios vary depending on whether the vessel is located:

- upriver on the Parana river;
- on the River Plate; or
- at southern Atlantic ports.

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

Cash deposit, banking guaranty or a surety bond issued by local insurer are the most common. The protection and indemnity letter of undertaking may be accepted if there is no objection by the arrestor.

19. Does security need to cover interest and costs?

Yes.

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

Following the strict public policy in the field of insuring, the P&I's LOUs are not binding, but may be accepted if there is no objection by the arrestor.

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

It would depend upon the circumstance of the case and the court. The court must request prior approval of the security from the arrest petitioner. Naturally, the ship could be released by mutual agreement of the parties and the arrest would be lifted in a matter of hours, otherwise the whole process could take 3 to 5 days.

In case of casualties and collisions in Argentina, the Coastguard may order the detention of the vessel irrespective of any arrest order and the release would depend upon completion of the safety measures ordered by the Coastguard.

22. Is there a procedure to contest the arrest?

There is a five (5)-day deadline to appeal the arrest order. The appeal does not stay the arrest order.

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

The time bar to bring proceedings on the merits is 10 days. The time runs from the moment any party requests the court intervening to compel the arresting party to file the claim on the merits.

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

A claim for wrongful arrest may have no link to the arrest proceeding itself; but if the arrestor is the losing party in the proceedings on the merits, the shipowner may seek to claim damages for losses incurred while the vessel was arrested.

The only reference to wrongful arrest in the Navigation Act concerns the situation where a claimant seeks arrest but fails to commence a claim on the merits. In such case, the arrestor will be liable for damages caused by the immobilisation of the vessel from the moment the arrest order was enforced until the arrest is lifted (eg, by means of security). However, the claim will succeed if the claimant can prove that the arrestor acted with the intent to cause such loss.

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

Courts have pierced and lifted the corporate veil in bankruptcy and labour proceedings. However, courts are reluctant to do so in arrest proceedings involving one-ship companies.

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

Yes. The court may authorise the sale of the ship *pendente lite* in two scenarios. First, whereas the ship-owner exercises its right to abandon the ship having complied with the limitation of liability proceeding. Secondly, where such sale is necessary to avoid a depreciation of the vessel's value.

*__Francisco J. Venetucci__ *holds an LL.M. in Maritime Law from the University of Southampton and is a fully licensed attorney in Argentina. He has over 10 years of experience handling a broad range of disputes on the Paraná River involving both dry and wet cargoes. Francisco advises and has acted on behalf of shipowners, charterers, traders, shipyards, hull and machinery insurers, cargo insurers, bunker suppliers, among others, on a wide variety of maritime matters. He currently works as an external consultant for both local and international law firms.*

SHIP ARREST IN *ARUBA*

*By Mr. Dirk Ormel**
De Cuba Wever Attorneys at Law
dirk@decubawever.com
decubawever.com
Caya Ernesto O. Petronia 62
Oranjestad, Aruba
Tel: +297 583 8144
Mov: +297 730 2100

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

The procedure for a conservatory arrest (before an enforceable judgment or arbitral award is obtained) of a ship in Aruba is fairly simple. A ship can be arrested after leave has been obtained from the Court of First Instance of Aruba, which leave can be requested ahead of the expected arrival of the ship in Aruba. The request for leave should, in principle, be submitted with the Court in writing and should set out claimant's claim, its basis as well as any further relevant information. Although not required, it is advisable to substantiate the claim with supporting documentation or other evidence supporting the claim. The request should also contain a description of the ship (i.e. its name, IMO-number, flag etc.). Typically, the principal amount of the claim is increased with 30% to cover any interest that accrues on the claim as well as costs in connection with the arrest and subsequent proceedings.
The leave is typically granted (or denied) within 24 hours upon submission of the request, and is handed over by the Court directly to a court appointed bailiff that will place the arrest by going onboard of the ship and draw up a writ of arrest. As a measure to prevent the ship from leaving the bailiff typically obtains the ship's original documentation and informs the local authorities about the arrest. Depending on the hour of the day, the location of the ship and the availability of transportation for the bailiff (for which we usually offer a helping hand to arrange this), the arrest procedure generally takes two (2) business days from the moment our firm receives instructions and all necessary information and documentation up until the moment that the arrest is actually placed, although this process may be expedited depending on the circumstances. If, after the arrest is placed, the parties reach a settlement, the arrest can typically be lifted within a couple of hours.

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

The International Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Ships (Brussels 1926, the "Brussels 1926 Convention")) and the supplementary protocol thereto and the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships (Brussels 1952, the "Brussels 1952 Convention") have been ratified by Aruba. Furthermore, Aruba has ratified the International Convention Relating to the Liability of Owners of Seagoing Ships (Brussels 1957) as well as the Convention on Jurisdiction and Unification and the Enforcement of Judgments in Civil and Commercial Matters (Brussels 1968), which may be relevant in the context of a ship arrest.

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

If the arrestor has obtained a title that is enforceable in Aruba (e.g. a judgment, arbitral award or deed of mortgage), then the arrestor is able to have an executory arrest placed on the ship.

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

The available alternatives to arrest a ship in Aruba are described above under 1. and 3.

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

Any claim on the owner of the ship can, in principle, serve as the basis for a conservatory arrest of the ship. The respective claim does not necessarily have to be a maritime claim. However, If the debtor and owner of the ship is a state, then the ship may only be arrested for commercial claims, as provided in the 1926 Brussels Convention that Aruba ratified.

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

If the ship is flying the flag of a contracting state under the Brussels 1952 Convention then a conservatory arrest is only allowed on the basis of the maritime claims that are listed in Article 1 thereof.

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

Aruban law provides, in principle, that a claim can be recovered from all assets of the debtor. Therefore, the starting point is that, if the debtor is the owner of the ship, then the ship can be arrested. As a consequence, in principle, a ship can only be arrested on the basis of a claim against its owner.
There are exceptions though, as Aruban law provides that certain maritime claims are attached to the ship. As a result thereof those claims can be enforced on the ship irrespective of the owner or (bareboat) charterer of the ship.

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

A sister ship of the ship in respect of which a claim against a debtor has arisen can, in principle, only be arrested if that debtor is (also) the owner of the sister ship. Only under exceptional circumstances will an arrest of a sister ship, that is not owned by the debtor of the claim, be allowed when invoking the doctrine of piercing the corporate veil. To do so successfully, it will need to be argued, and proven, that the corporate shield of the owner of the sister ship is legally abused.

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

A claim against a debtor that is the bareboat (demise) and/or time-charterer of a ship can only serve as a basis for an arrest of that ship if a maritime claim is concerned (see answer 7 above).

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

That is possible under Aruban law, but not typically ordered by the Court (the leave for the arrest is granted ex-parte, so the debtor is typically not in a position to demand counter-security at that stage).

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

Under Aruban law there is no clear distinction between these two concepts, although the term ‘maritime claim’ is used in the 1952 Brussels Convention to describe claims (in Dutch: zeerechtelijke vordering) for which a ship that carries the flag of a contracting party can be arrested and maritime liens seems to refer to a type of maritime claims (in Dutch: scheepsvoorrechten) that are attached a ship irrespective of its owner. For both claims, a ship can be arrested in Aruba.

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

Yes, under Aruban law maritime liens (in Dutch: scheepsvoorrechten) are recognized, but Aruba is not a party to any international convention in that respect.
When assessing the existence and validity of any claim, including a maritime lien, the Aruban Court will do so on the basis of the law governing the claim. When presented with a foreign maritime

claim or lien, the Aruban Court will assess whether it can be 'assimilated' into Aruban law, for which purpose it will be compared with existing legal concepts under Aruban law (such as maritime liens).

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

In urgent situations, depending on the Court's and the bailiff's availability, a ship that is within Aruban territorial waters could be arrested the same day or the day after our firm has been instructed to arrange for the arrest.

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

No, it is not necessary to file a power of attorney or other documents with the Aruban Court when the request for arrest is filed, although it is recommended to provide documentation to substantiate the claim.

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

For a conservatory arrest, the claim only needs to be stated in the request. No evidence is required to be produced. Still, it is recommended to substantiate the request for leave to place a conservatory arrest (to be submitted at the same time the request is filed) with documentation in support of the claim e.g. the ship's ownership etc. This documentation, in the arrest-phase, can be provided to our firm electronically and does not yet require notarisation and/or apostille at this juncture.

For the preparation of the request, we typically include the following information:
- details of the claimant and debtor (and registered owner of the ship, if this not the same party as the debtor in which event a substantiation should be provided for the basis of the claim since the debtor is not the owner of the ship);
- a description of the claim and the outstanding amount due by debtor;
- details of the ship (name, IMO-number etc.) and its location at the time the request is filed.

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

Yes, if there is no other way to obtain an enforceable title in Aruba, then the main proceedings can be commenced with the Aruban Court (forum arresti-principle). This only applies in the event that the debtor is located in a country with which Aruba has no treaty for the recognition and enforcement of judgments.

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

The arrest can be released by the arrestor without involvement of the Court if sufficient security is provided by or on behalf of the debtor. If the arrestor does not cooperate with the lifting of the arrest then the debtor or another interested party may commence summary proceedings with the Court in which the lifting of the arrest is requested on the basis that statutory requirements were not complied with for the arrest, the claim that is the basis for the arrest is unfounded or the arrest is unnecessary, if sufficient security is provided or on the basis of assessing each party's interests. Other reasons to lift the arrest can also be provided.

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

Aruban law provides that sufficient security should be offered. The type may differ depending on the circumstances, but typically it will involve a bank guarantee (or P&I LOU).

19. Does security need to cover interest and costs?

In principle, the amount of the security should be equal to the amount for which leave for the arrest was granted by the Court. If the Court orders the release of the arrest in lifting proceedings against security, then it will be up to the Court to determine the amount (and type of) security to be provided.

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

Depending on the circumstances, these may be accepted.

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

(i) As soon as an agreement is reached with the arrestor, in which event the arrestor shall inform the bailiff that the arrest is lifted and the bailiff returns the ship's documentation and informs the relevant local authorities of the lifting of the arrest. Depending on the circumstances this may take a couple of hours.
(ii) Through summary proceedings to lift the arrest: depending on the urgency of the matter these proceedings from the moment an application is filed until judgment is rendered take one to three weeks in general.

22. Is there a procedure to contest the arrest?

Yes, see above under 17 and 21.

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

When granting leave to place the conservatory arrest on the vessel the Aruban Court also provides the timeframe within which the arrestor should commence main proceedings in order to obtain an enforceable title for its purported claim. The standard time period granted for this is 28 calendar days, although this period is (easily) extended if requested and sufficient reasons are given for the requested extension (e.g. proceedings need to be commenced abroad and require more time for preparation).

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

Yes, under certain circumstances, an arrest could be deemed to have been placed wrongfully (e.g. the claim was unfounded, the ship was not owned by the claim's debtor). As a result, the arrestor may be liable for damages consisting of, amongst others, the costs and damages resulting from the arrest.

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

The doctrine of piercing/lifting of the corporate veil is not easily acknowledged by the Aruban Courts, but it is possible under certain circumstances if the protection offered by the corporate veil is (clearly) abused.

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

In general, a sale of the ship is only permitted by the Aruban Court after the claimant has obtained an enforceable judgment on the merits (or an exequatur has been obtained in respect of a foreign deed of mortgage, judgment or arbitral award). Notwithstanding the foregoing, it is possible to obtain a Court order through summary proceedings – which typically take between three to six weeks instead of the one to a year and half for proceedings on the merits or the approximately six months to obtain an exequatur – as a result of which the ship can be sold by means of a public sale. Typically, a mortgagee, whose claim is not disputed by the debtor, is able to easily obtain the afore

described summary judgment and is then able to proceed with the public sale in a relatively short timeframe after the arrest.

***Dirk Ormel** is an attorney at law based in Aruba and admitted to the bar for all six islands that make up the Dutch Caribbean (Aruba, Curaçao, Bonaire, St. Maarten, St. Eustatius and Saba). He works with the Aruban law firm De Cuba Wever Attorneys at Law (link to our website). He has been practicing law since 2012. On a regular basis, he is involved in maritime matters, mostly in connection with arrests of vessels and related matters in Aruba.*

SHIP ARREST IN *AUSTRALIA*

*By Stephen Thompson, Partner**
COLIN BIGGERS & PAISLEY
Stephen.Thompson@cbp.com.au
www.cbp.com.au
Level 42, 2 Park Street
Sydney NSW 2000, Australia
Tel: +612 8281 4500
Fax: +612 8281 4567

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

Initial ship arrest in Australia is fast, simple and inexpensive. All that is required is a Writ, Application for Arrest Warrant, Arrest Warrant and a pro-forma affidavit. There is a filing fee and the court requires a deposit on account of its costs and expenses of the arrest (insurance, travel of court staff, vessel moves etc). Once the papers are filed a court officer or his/her delegate attends on the vessel to effect the arrest. Officers are available to travel to remote ports for that purpose. Alternatively, the Federal Court has entered into Memoranda of Understanding with various government agencies (Border Force, state police etc) who may be deputized to effect service of the arrest papers on defendant ships in regional locations.

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

None. Ship arrest is governed by the Admiralty Act 1988 (Cth) (the Act). However, there are many similarities between the Act and the 1952 Convention.

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

While freezing orders – which could extend to a ship – are available from Australian courts, they are considerably less attractive than ship arrest under the Admiralty Act. To obtain a freezing order it is generally necessary to demonstrate a strong prima facie case, establish a balance of convenience in favour of the injunction, and give an undertaking as to damages. None of those measures is required for ship arrest.

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

See above.

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

Arrest is available for maritime liens, proprietary maritime claims and general maritime claims.

Maritime liens

Arrest can be made in respect of a proceeding on a maritime lien, which includes liens for:

(a) salvage;
(b) damage done by a ship;
(c) wages of the master or member of the crew; or
(d) master's disbursements.

Overturning a first-instance decision to the contrary, the Full Court of the Federal Court of Australia has reaffirmed that Australia adopts the majority decision in the Halcyon Isle, namely that the lex fori is the proper law for the classification of a foreign maritime lien (The Sam Hawke). Accordingly, it seems unlikely that the classes of maritime lien historically recognized under Australia law will be significantly expanded in the foreseeable future.

Proprietary Maritime Claims

A proprietary maritime claim relates in broad terms to ownership of the vessel, and includes:
(a) a claim relating to:

(i) possession of a ship;
(ii) title to, or ownership of, a ship or a share in a ship;
(iii) a mortgage of a ship or of a share in a ship; or
(iv) a mortgage of a ship's freight;

(b) a claim between co-owners of a ship relating to the possession, ownership, operation or earnings of the ship;

(c) a claim for the satisfaction or enforcement of a judgment given by a court (including a court of a foreign country) against a ship or other property in a proceeding in rem in the nature of a proceeding in Admiralty; or

(d) a claim for interest in respect of a claim referred to in paragraphs (a), (b) or (c).

General Maritime Claims

A ship may be arrested for a general maritime claim, when the "relevant person" (see Question 8 below):

(a) was, when the cause of action arose, the owner or charterer of, or was in possession or control of the ship; and
(b) is, when the proceeding is commenced, the owner of the ship

A general Maritime Claim is:

(a) a claim for damage done by a ship (whether by collision or otherwise); or
(b) a claim in respect of the liability of the owner of a ship arising under Part II or IV of the Protection of the Sea (Civil Liability) Act 1981 or under a law of a State or Territory that makes provision as mentioned in subsection 7(1) of that Act; or
(c) a claim under:
  (i) the applied provisions (within the meaning of the Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008); or
  (ii) a law of a State or Territory of a kind referred to in subsection 10(1) of that Act; o
(d) a claim for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship; or
(e) a claim (including a claim for loss of life or personal injury) arising out of an act or omission of:
  (i) the owner or charterer of a ship
  (ii) a person in possession or control of a ship; or
  (iii) a person for whose wrongful acts or omissions the owner, charterer or person in possession or control of a ship is liable; being an act or omission in the navigation or management of the ship, including an act or omission in connection with:
  (iv) the loading of goods on to, or the unloading of goods from, the ship;
  (v) the embarkation of persons on to, or the disembarkation of persons from, the ship; and
  (vi) the carriage of goods or persons on the ship; or
(f) a claim for loss of, or damage to, goods carried by a ship; or
(g) a claim arising out of an agreement that relates to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charterparty or otherwise; or
(h) a claim relating to salvage (including life salvage and salvage of cargo or wreck found on land); or
(i) a claim in respect of general average; or
(j) a claim in respect of towage of a ship; or
(k) a claim in respect of pilotage of a ship; or
(l) a claim in respect of goods, materials or services (including stevedoring and lighterage services) supplied or to be supplied to a ship for its operation or maintenance; or
(m) a claim in respect of the construction of a ship (including such a claim relating to a vessel before it was launched); or
(n) a claim in respect of the alteration, repair or equipping of a ship; or
(o) a claim in respect of a liability for port, harbour, canal or light tolls, charges or dues, or tolls, charges or dues of a similar kind, in relation to a ship; or
(p) a claim in respect of a levy in relation to a ship, including a shipping levy imposed by the Protection of the Sea (Shipping Levy) Act 1981, being a levy in relation to which a power to detain the ship is conferred by a law in force in Australia or in a part of Australia; or

(q) a claim by a master, shipper, charterer or agent in respect of disbursements on account of a ship; or
(r) a claim for an insurance premium, or for a mutual insurance call, in relation to a ship; or
(s) a claim by a master, or a member of the crew, of a ship for:
  (i) wages; or
  (ii) an amount that a person, as employer, is under an obligation to pay to a person as employee, whether the obligation arose out of the contract of employment or by operation of law, including the operation of the law of a foreign country; or
(t) a claim for the enforcement of, or a claim arising out of, an arbitral award (including a foreign award within the meaning of the International Arbitration Act 1974) made in respect of a proprietary maritime claim or a claim referred to in one of the preceding paragraphs; or
(u) a claim for interest in respect of a claim referred to in one of the preceding paragraphs.

As can be seen, the categories of general maritime claims are very wide, and substantially reflect arrestable categories of claim in other major jurisdictions and under the Arrest Convention.

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

Yes.

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

Yes, although foreign states are immune from the jurisdiction of Australian courts, unless engaged in commercial transactions.

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

There is a right to proceed against a sister ship (surrogate ship). A proceeding on a general maritime claim concerning a ship (Ship #1) can be commenced as an action in rem against some other ship (Ship #2) if:

(a) a "relevant person" in relation to the claim was, when the cause of action arose, the owner or charterer of, or was in possession or control of Ship #1; and
(b) that person is, when the proceeding is commenced, the owner of Ship #2. A "relevant person", in relation to a maritime claim, means a person who would be liable on the claim in a proceeding commenced as an action in personam.

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

A ship can be arrested for a general maritime claim, when the "relevant person":

(a) was, when the cause of action arose, the owner or charterer of, or was in possession or control of the ship; and
(b) is, when the proceeding is commenced, the demise charterer of the ship. Arrest is not available of a ship under time charter in respect of a liability of the time charterer.

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

No.

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

No.

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

Yes, see Question 5 above. Australia is not a party to any convention on maritime liens, and the Act provides an inclusive definition.

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

Provided the required information is provided, the arrest papers can be prepared and filed on the same day. The arrest itself is then in the hands of the court, and the time may depend on the availability of court staff and possibly the location of the ship (e.g. if there is a need for the Marshal to travel to a remote port). However, arrests can usually be effected within 48 hours.
Under the courts' "user pays" approach, the solicitor filing the application for arrest must give a personal (either individual or on behalf of the law firm) undertaking to be responsible to the court for the costs of arrest. Many practitioners therefore require a substantial trust account deposit before agreeing to file the arrest papers. For clients in some jurisdictions this may cause a short delay in the timing of commencement of proceedings.

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

No.

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

No original documents are required, and in the Federal Court, all documents are lodged electronically. Notarisation is not required.

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

Yes, although in some instances the court will recognise and enforce a valid forum clause if the dispute is contractually based. Courts will, generally speaking, recognise and enforce an arbitration clause.

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

There are two ways to release a ship from arrest. The first is by application to the Registrar which is the most frequent method of release. The second is by application to the Court. Upon application to the Registrar (in accordance with the relevant form), a ship may be released from arrest if the Registrar is satisfied that:

a) an amount equal to the amount claimed or the value of the ship or property has been paid into court, whichever is less; or
b) a bail bond for the same amount as set out in a) above has been filed in the proceeding; or
c) the party who applied for the ship's arrest has made arrangements for and consented to the ship's release.

Alternatively, upon application to the Court (in accordance with the relevant form), the Court has the discretionary power to order the release of a ship from arrest on such terms that are just. If the Registrar or Court orders the release of the ship, a notice will be given to the Marshal who will then proceed to release the ship. The Marshal may refuse to release the ship if satisfactory arrangements have not been made for payment of the Marshal's costs and expenses in respect of the custody of the ship while it was under arrest, including the costs and expenses associated with its release.

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

In order for a ship to be released, the owner must provide the plaintiff with an alternative security for the claim. This can be in the form of a bank guarantee, a letter of undertaking from a P&I club or insurer, a bail bond pursuant to Part VII of the Admiralty Rules 1988 (Cth), or cash deposited with the Court.

19. Does security need to cover interest and costs?

A plaintiff is entitled to obtain security for its claim in an amount equal to:

(a) its "reasonably arguable best case" including interest up to the likely date of judgment and its costs in the proceeding; or
(b) the value of the ship arrested, whichever is the lesser.

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

Generally yes, especially in respect of International Group clubs. The court is entitled to be satisfied as to the adequacy and reliability of the security proposed.

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

An arrested vessel can usually be released within a day of security being provided and accepted, or of an order of the court being made.

22. Is there a procedure to contest the arrest?

If the plaintiff's claim does not fall within the requirements of the Admiralty Act 1988 (Cth) (being sections 15-19 of the Act), the claim can be challenged in Court for lack of jurisdiction. In addition, a claim can be made for damages for unjustified arrest by a person with an interest in the ship (or who has suffered loss or damage as a direct result), when:

a) a party unreasonably and without good cause:
   i. demands excessive security in relation to the proceeding; or
   ii. obtains the arrest of a ship; or
b) a party or other person unreasonably and without good cause fails to give a consent for the release of the ship.

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

Australian courts will apply any legislative and contractual limitation periods applicable to the claim in question.

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?

Rarely.

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

Yes. The time period depends on how long the claimant takes to make an application, whether the application is contested, and the availability of a reasonable market for the ship.

**Stephen* *is a partner in Colin Biggers and Paisley's Transport & Logistics Group. Stephen's practice is primarily transactional and advisory, with a focus on the shipping, maritime, ports and supply chain industries. His clients number among the leaders in the transport and logistics field, and he has extensive experience advising Australian and overseas shipping lines, logistics companies, port operators and government organisations. He has also worked with shipping specialists in London.*
Stephen advises clients on business acquisitions and disposals, regulatory issues, negotiation and drafting of contracts, carriage of goods and passengers by sea, air and lad, ship arrest and admiralty.
Stephen is a member and former Director of the Maritime Law Association of Australian and New Zealand, as well as a member of the Legal Committee of Shipping Australia Ltd. Stephen has also participated in several working groups, on the invitation of the Federal Court, addressing the potential for reform of the Admiralty Act.
Stephen is recognised in Chambers and Partners as one of Australia's leading shipping lawyers, and is listed in the 2014-2015, 2016 and 2017 editions of Best Lawyers in Australia for transport law. In 2016, Doyle's Guide listed him as a leading shipping and maritime lawyer.

SHIP ARREST IN *AUSTRIA*

*By Dr. Friedrich Schwank, Managing Partner**
LAW OFFICES DR. F. SCHWANK
schwank@schwank.com
www.schwank.com
Stock Exchange Building, Wipplingerstrasse 34
A-1010 Vienna, AUSTRIA
Tel: +43 1 533 5704
Fax: +43 1 533 5706

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

Since 1918 Austria, is a landlocked country. Ship arrest is limited to inland waterways, in particular the Austrian stretch of the Rhine-Main-Danube, Europe's most important waterway connecting the Atlantic with the Black Sea. The Austrian ports are as follows: Enns, Ennsdorf, Krems, Linz, Linz Ind. Hafen, Ybbs, and Vienna. There is no developed maritime law practice in the courts. The arrest of inland waterway vessels follows the general rules of the Enforcement Code. The arrest takes the form of a court order for taking the vessel in the custody of the court. Vessels ready to sail must not be arrested. The Enforcement Code provides for the attachment of a debtor's assets in circumstances where

(i) either a final judgment or an arbitral award are to be enforced or
(ii) there is a risk that the debtor removes, destroys, depletes or hides assets with a view to prevent the enforcement of a future judgment or arbitral award.

In the latter case, such a risk is assumed in case the claim is against a non-resident debtor and any future enforcement of a judgment or award would have to be carried out abroad. An inland waterway vessel sailing under a non-Austrian flag owned or chartered by a non-resident debtor would meet these criteria.

An application for the enforcement of a judgment or an award has to be filed with the court in whose district the vessel is currently staying. The same applies for arresting a vessel for securing the payment of a future judgment or award.

The arrest of a vessel for securing payment of future judgments or awards takes place in the form of a temporary injunction. It requires prima facie evidence of the existence of a claim as well as prima facie evidence of the risk that a future judgment or award may not be able to be enforced due to actions of the debtor to remove, destroy, deplete or hide the assets with the intention to frustrate the creditor. The mere possibility that the debtor may become insolvent, prior to a judgment or arbitral award becomes enforceable, is not sufficient for meeting this requirement. Prima facie evidence has to be submitted in the form of documentation written statements of witnesses or oral statements before the judge.

Their contact details have to be included in case the judge wishes to verify written statements. All documentary evidence which is not in, German language has to be submitted in translations certified by Austrian court interpreters. It is advisable to offer together with the application payment of a counter-security for any damages the debtor may suffer as a result of an unjustified arrest.

Together with the application for an arrest, by temporary injunction, a filing fee of approximately 0.7% of the value of the claim has to be paid to the court. The application together with all supporting documentation has to be filed electronically within the special electronic mail system between courts and Austrian lawyers.

If the judge has been pre-warned by the applicant lawyer of the incoming application and the judge is satisfied with the prima facie evidence submitted, the temporary arrest order may be issued on the day of application. As Austrian judges are dealing very infrequently with ship arrests this result may not be achieved easily.

As a general rule, applications for temporary injunctions for ship arrest are ex parte proceedings. The debtor is served with the arrest order by the bailiff together with a copy of the application. The debtor may file within a non-extendible period of 14 days objections or an appeal against the court order. Objections are filed in case of the court order being based on factual errors and will result in a hearing before the court having issued the order. An appeal will deal with errors in law and procedure. The appeal will be decided by the appeal court. It is advisable to combine both remedies. In case the judge dealing with an application for ship arrest is not fully satisfied about the merits and the prima facie evidence submitted, he or she may serve the application on the debtor giving the debtor an opportunity to provide comments or objections within a short period of time. At the judge's discretion a hearing may be ordered. While this would result in a delay of time, there is a risk that the vessel leaves the Austrian stretch of the inland waterway. However, an unscheduled departure or readiness to sail may persuade a judge that there is prima facie evidence of an intention by the debtor to remove the vessel from the jurisdiction of the Austrian court with a result of frustrating the enforcement of a future judgment or award.

Together with the order for a temporary injunction, the court will set an extendible time limit for filing a court action or a request for arbitration for justifying the temporary injunction. If no action is filed by the creditor, the order will elapse and the arrest lifted. At any time the debtor may deposit with the court a security for lifting the arrest. The security has to cover the claim plus interest and costs. The security is either a payment into court or placing with the court a guarantee by a prime Austrian bank. Guarantees of foreign banks or P&I Clubs will only be accepted as sufficient security in case the creditor does not object.

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

Austria is not a member of any arrest conventions.

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

No, unless the lien holder has the vessel under control and refuses to release the vessel.

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

No. The temporary injunction for taking the vessel into the custody of the court is a saisie conservatoire or freezing order.

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

Arrests can be made for any types of claims including payment of debt, ownership of vessel or cargo, rights under charter party, damage caused by the vessel, unpaid bunker bills, etc.

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

The flag does not matter when applying for arrest.

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

A ship can be arrested irrespective of the debtor, always provided the vessel is in the possession of the debtor. It is then up to the third party ship owner to prove title of ownership. Arrests against immune or sovereign debtors (e.g. police boats or UN-vessels) will not be allowed by the court.

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

An arrest of a sister ship is possible provided she is in the possession of the same debtor.

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

Bareboat and time-chartered vessels may be arrested for claims against bareboat charterers and/or time-charterers with a view either to have the charter party carried out under the supervision of a court or to obtain security from the charterer.

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

While there is no legal precondition for obtaining an arrest to provide a counter-security, the judge may be more easily persuaded to grant the order when the applicant is offering a counter-security. The judge may also make the arrest conditional of payment of a counter-security.

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

There is no difference whether an arrest is for a claim or a lien.

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

Maritime liens properly established will be recognized irrespective that Austria is not a member of any international conventions.

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

On the assumption that all documents are in the file together with the court filing fee, an arrest order may be obtained on the same day. However, if the necessary documents are not in German, a few days may be required for obtaining certified translations into German by a court sworn interpreter. The arrest order will be executed by the court's bailiff under an order issued by the court. We usually liaise with the bailiff to expedite the immediate enforcement.

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

A POA is not required as it is sufficient for an Austrian lawyer to state in the application that he has been properly authorized by the client. As a matter of legal practice the lawyer is likely to ask for a POA for his own files. But a submission of the POA is not required for filing the application.

Together with the application, documents have to be filed which provide prima facie evidence of the identity of the debtor and the vessel to be attached, the existence of the claim and the actions or behavior of the debtor to frustrate the collection of a future judgment or award. Documents should be available in originals. If this is not feasible, copies can be submitted. While there is no legal requirement of copies of documents to be certified as conforming and apostilled, it is advisable to do it in order to avoid the risk that the judge queries their authenticity.

Statements of witnesses should be signed but do not have to be notarized. However, they should indicate addresses and telephone numbers in case the judge wishes to contact the witness directly. Documents in languages other than German have to be submitted together with a certified translation. For the sake of speed it is sufficient to translate the parts which may be relevant for the judge to grant the order. Also documents in English have to be translated irrespective a judge's knowledge of English as the court file has to be kept in the German language. For the sake of speed, we sometimes submit together with the application English documents together with the undertaking to deliver certified translations a few days later.

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

The documents required, as set out in Section 14 above, have to be filed online with the electronic document archive of the court. The number allocated by the archive to the document file will be

quoted in the application. As a result, the judge deciding on the application has online access to the document supporting the application.

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

The arrest of a vessel does not result in the Austrian court assuming jurisdiction over the substantive claim. The Austrian court will only have jurisdiction if there is jurisdiction according to the Austrian and EU rules on jurisdiction in civil procedure. Arbitration clauses deprive Austrian courts of their jurisdiction but not of their power to issue arrest orders.

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

Upon application of the debtor/ship owner a ship will be released from arrest provided the security or bank guarantee is deposited with the court is sufficient to cover the claim together with interest and cost.

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

The best form of security is payment of cash into the court as this would not result in any further queries by the court. The same applies to an abstract and unconditional bank guarantee issued by a leading Austrian bank. Guarantees issued by other banks might raise queries on part of the judge or objections by the applicant. The same applies for P & O Club letters. In case the applicant is agreeable with these types of security, the court will accept that as well.

19. Does security need to cover interest and costs?

Yes, the security should also cover interest and costs incurred in case the creditor-applicant is successful in the litigation or arbitration on the merits of the case.

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

The judge will not accept P&I LOUs as a sufficient security to lift the arrest unless the creditor-applicant agrees to it.

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

The court practice is to structure a release order in such a manner that the release is contingent on proving the deposit of the security. Once the condition is met the ship will be released immediately.

22. Is there a procedure to contest the arrest?

The debtor/ship owner has the following procedures available to contest the arrest:

(i) Objections stating that the facts on which the arrest order has been based are incorrect or incomplete. The debtor/ship owner will submit, with his objections, documentation as a prima facie evidence and/or witness statements together with their contact details and apply for a hearing, if he deems a hearing to be useful.

(ii) Appeal to a higher court on the basis that the order is based on errors in law and/or procedure.

(iii) Combining objections and appeal which may be the preferred way to have the arrest order removed depending on the circumstances.

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

The usual court practice is to grant a period of 6 (six) months for taking legal action on the merits. Depending on the circumstances, the court might grant a longer or shorter time limit. If legal action on the merits has already, initiated, a copy of the claim filed with the court or the request for

arbitration should be included amongst the documents filed together with the application for an arrest. This would serve as an additional prima facie evidence of the existence of the claim. In case the arrest court is also the court of jurisdiction over the substantive claim, it is advisable to combine the application for arrest with the substantive claim for saving court filing fees.

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

In case the arrest proves to be wrongful, the defendant can claim compensation for all damages resulting from the wrongful arrest whereby payment can be made from the claimant's counter security deposited with the court.

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

Austrian courts acknowledge the piercing and lifting of the corporate veil in special circumstances such as in insolvency situations where the application for insolvency has been unduly delayed or where special circumstances are present such as fraud. There is a court practice of enhanced liability of directors in case of their misconduct or negligence in management of the company.

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

With the consent of all parties concerned, in particular creditor, debtor and ship owner, it is possible to sell the ship pendente lite. The agreement would involve the requirement that the proceeds of the sale are paid by the buyer directly to the court and thereby replace the arrested ship. At the same time an order from the court could be sought to lift the arrest whereby such order becomes operative once the payment of the proceeds of the sale into the court has been effected and duly acknowledged.

***Dr. Friedrich Schwank** is the senior partner of Law Offices Dr. F. Schwank established in 1986 and situated in the Vienna Stock Exchange Building. The firm is dedicated to providing commercial and financial law services for international clients. Dr. Schwank has contributed to the law firm his experience from working with a London City firm of solicitors and with the legal secretariat of the International Court of Arbitration of the International Chamber of Commerce, Paris. In his career he has focused on international transport law, letters of credit, bank guarantees, international trade and aviation. He is the Austrian contributor to the European Transport Law, Antwerp. He is also the author of leading publications relating to aviation, secured transactions, enforcement of judgments and related areas. As a lecturer he taught a course on international transport law at the University of Economics Vienna. He is frequently acting as an arbitrator and is a Fellow of the Chartered Institute of Arbitrators, London.*

SHIP ARREST IN *BAHAMAS*

*By A. Kenra Parris-Whittaker**
PARRISWHITTAKER Counsel & Attorneys
kw@parriswhittaker.com
www.parriswhittaker.com
Suite 10, Seventeen Centre Bank Lane
P.O. Box F- 43018, Freeport, Grand Bahama
Tel: 242.352.6110
Fax: 242.352.6114

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

A simple arrest of a vessel would involve the commencement of proceedings providing an overview of the claim with supporting documents exhibiting any documents relevant to the claim. The application for the arrest of a vessel will usually be an ex parte application. Once the arrest warrant is executed the Admiralty Marshall will proceed with the arrest.

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

The Bahamas is party to the 1952 Arrest Convention (ratified 1979). The Convention applies to all vessels flying the flag of states which are signatory to the Convention, and (under article 8 of the convention) to vessels flying the flag of states which were not signatory to the Convention where there is a claim for which the contracting state permits a vessel arrest.

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

All ship arrests are carried out under the terms of the 1952 Arrest Convention (which is followed by the Supreme Court Act [SCA] and Rules of the Supreme Court). In order to arrest a ship, it is necessary to prove the vessel is connected to the claim, as required by s8 of the SCA.

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

(Not applicable; see above)

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

There is a huge range of claims for which a vessel might be arrested. These include:

- Claims for possession or ownership of a vessel, including disputes between co-owners and charterers;
- Claims for damages either suffered by the ship, or caused by it;
- Claims for injury (including fatal injury) caused by negligent behaviour of owners or crew, or defects in the vessel;
- Claims for loss of or damage to cargo;
- Claims relating to an outstanding mortgage or debt secured against the ship;
- Payment of outstanding wages to crew members and others employed on the vessel;
- Payment for repair, equipment, construction and dock charges;
- General costs such as towage and pilotage;
- Claims relating to salvage; and
- Claims for payment relating to use of the ship, such as chartering the vessel.

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

Yes. It is not necessary for the vessel to be flying the flag of a state which is party to the 1952 Arrest Convention.

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

Yes, with the possible exception of ships which are under the ownership of another State. Under these circumstances, the vessel may be considered immune from arrest. It will be for the Bahamian courts to make a decision in these cases.

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

Under the 1952 Arrest Convention, sister ships (i.e. vessels which are deemed to be in the same ownership as an arrested vessel) may also be arrested, until a satisfactory outcome is achieved. Sister ships constitute a significant financial asset, and are often very important to the settlement of a claim.

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

Section 3.4 of the Convention provides that in the case of claims made against a Bareboat or Time-Chartered vessel the charterer – and not the owner – is liable. Vessels under the ownership of the charterer may be arrested – but no other ship under the ownership of the registered owner.

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

It is not necessary to post counter-security in order to undertake a vessel arrest. It is at the discretion of the courts whether the claimant should be required to post counter-security in the event of a wrongful vessel arrest. The courts are more likely to request a counter-security payment if there are substantive doubts that the claim is made on good grounds, and is therefore unlikely to be successful.

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

The procedures by which a vessel may be arrested for either a maritime claim or a maritime lien are the same, and governed by the 1952 Arrest Convention. A maritime lien holder may have a priority to any funds generated for example by the sale of the vessel but it would depend on whether there are other lien holders whose liens rank in priority.

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

Yes. The Bahamas recognises maritime liens, under the 1952 Convention.

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

Instructions to the firm should ideally arrived no more than 48 hours before an application to make a ship arrest is submitted. It is best practice to file applications early in the day, with the aim of making a successful arrest of the vessel on the same date. Speedy action is essential because of the nature of maritime law, in which vessels are by their nature likely to move out of port at any time.

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

Applications are made by virtue of a Power of Attorney. Once a Claim Form has been issued, a number of documents in support of the claim should be supplied to the court.
These must include:

- Details of the nature of the claim or counterclaim, including compensation sought
- The name of the vessel for which arrest is being sought
- Full details of the vessel to be arrested, including the name and port of registry and the ownership of the ship

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 not necessary to submit any original documentation in order to undertake a ship arrest. Notarisation is only required to secure Power of Attorney.

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

Yes. Under the terms of the 1952 Arrest Convention, the Courts of those states signatory to the Convention have jurisdiction over the claim. However, there are instances when forum is argued and the Courts have selected not to allow the substantive proceedings to be adjudicated where there is a more suitable forum.

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

The procedure required will depend on whether a caveat against release has been filed. Where a caveat has been filed it is a requirement to seek the consent of the Caveator or provide notice to the Caveator of the application for release. The Court will then make a determination on the application.

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

In most cases the party who has obtained the arrest warrant will only agree to the release of the vessel where an LOU or bank guarantee has been provided.

19. Does security need to cover interest and costs?

It is best for the security to cover interest and costs. It will depend on the whether the party with the warrant for arrest is willing to accept a P&I LOU. However, this is usually acceptable.

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

The release of a Ship can be done within 24 hours of filing an application with the Court for the release.

22. Is there a procedure to contest the arrest?

Yes a party can contest an arrest by filing an application with the Court in the proceedings.

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 courts have confirmed that an arrest is to be made, the applicant will have a maximum of up to 60 days (the precise deadline to be set by the Court) within which to complete the vessel arrest.

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

Claims for wrongful arrest are not specifically covered by the 1952 Arrest Convention, but will be governed by local state law. There are provisions for handling claims for wrongful arrest within Bahamian Law, which will have jurisdiction over the claim. However, it is important to bear in mind that claims for wrongful arrest will generally be based on issues which are hard to prove, such as bad faith or gross negligence.

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

Recent cases in the Bahamas have demonstrated that the Courts are acknowledging the piercing and lifting of the corporate veil. This matter refers to company owners seeking to conceal their identity by hiding behind the 'veil' of the creation of a corporation, which in effect separates an individual (and their liability) from the corporate entity. Where the Courts decide that this separation of the

individual(usually the company owner) and the incorporation should not be maintained, the 'veil' is said to be lifted. Under these circumstances the owner or director of a company may be held liable for the debts of the company, which goes against the usual principle that such individuals would be immune from liability, since the corporation would instead be liable. There is no single legal principle under which the 'corporate veil' might be lifted, but the Bahamian courts will act when it is held to be in the interests of justice to do so – including in cases relating to ship arrests.

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

It is possible to sell a vessel pending the outcome of a judgment, but it is usually necessary to make a strong case for a pendente lite sale. Generally, this kind of sale will be sought when the value of the vessel is decreasing dramatically, so that it is in the best interests of the claimant to make a sale as soon as possible in order to maximise the asset. If a sale is made pendente lite, the proceeds are likely to be frozen under the direction of the Courts until the judgement is made.

**Kenra Parris-Whittaker*, *partner, is a seasoned young litigator with an exceptional track record across all practice areas. Her dedicated and rigorous approach has been crucial to the Firm's success.*
The Nassau-born, Canadian-educated litigator attributes her success to thinking a few steps ahead of her opponent. The daughter of Bahamas real-estate guru Arthur Parris, Kenra always knew that she would be an attorney. She enrolled in law school (University of Buckingham, 2001, and later Inns of Court School of Law, 2004), then joined Callenders & Co., where she became a senior associate litigating commercial and maritime cases.
Now, as an admiralty, maritime, and commercial litigator, Kenra frequently represents crew members, vessel repair shops, shipyard owners, insurers, adjusters and others. She has been uncannily successful in these endeavors. With her reputation for securing successful outcomes for clients across a broad range of practice areas, Mrs. Parris-Whittaker is a wise investment- whether for small firms, major corporations or individuals.

SHIP ARREST IN *BANGLADESH*

*By A.B.M. Shamsud Doulah**
Doulah & Doulah
info@doulah.com
www.doulah.net
Plot 153/2, Road 2/2, Mirpur-12A,
Dhaka, Bangladesh
T: +88 01911482175
F: +88 028016442

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

Arrest of ships in Bangladesh is regulated by the Bangladesh Admiralty Court Act, 2000 (BACA) and the Bangladesh Admiralty Rules,1912 (BAR). As per BACA the Admiralty Court of Bangladesh (COURT) has been established as an original jurisdiction of the High Court Division of the Supreme Court of Bangladesh.

The BACA allows arrest of ships against in rem claims and also against certain in personam claims under specific circumstances. To arrest a ship, an arrest petition is required to be filed with the COURT under affidavit from the petitioner. Upon admission of the admiralty suit the COURT tries the admiralty suit as per the procedure laid under the Bangladesh Code of Civil Procedure. If there is no existing caveat filed against the arrest of the ship, the COURT may upon hearing the petitioner (ex-parte hearing also allowed) order for the arrest of the ship if it is prima facie satisfied that arrest of the ship is essential to preserve the subject matter and/or secure the claim of the petitioner. In case of a preexisting caveat, the COURT gives a time bound opportunity to the defendant to contest the arrest application but in any case may order for the arrest if it deems it appropriate and essential.

Upon order of arrest, the ship is required to be served with the arrest order with the cooperation of the relevant port marshal. The ship is required to be kept under arrest until the adjudication of the claim. However, the ship may be released from arrest against a security in the form of a Bank guarantee or cash deposit is made with the COURT Registry to secure the claim of the claimant.

After hearing the parties and adjudication of the suit, any sum payable ordered in favour of the claimant may be realized by way of auctioning the ship as per BAR or from the security deposited by the defendant. Otherwise the ship or security is released if the COURT holds that the claim is not maintainable. Appeal lies with the appellate division of the Supreme Court of Bangladesh and is required to be filed within thirty days from the date of issuance of the adjudication judgment.

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

Bangladesh is not a signatory to any International Convention such as International Convention relating to Arrest of Seagoing Ship 1952 or the International Convention of the Arrest of Ships1999 that applies to arrest of ships in Bangladesh.

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

Other than through application of COURT a ship may also be arrested in execution of decree passed by any Superior Court of any reciprocating territory (currently England and India) of a foreign country against the owner of the ship. Other than ships under voyage and/or in territorial jurisdiction of ports ships being assets are also subject to foreclosure, attachment and confiscation under CPC under generic enforcement claims or injunctive reliefs against its owners residents in Bangladesh.

Several other authorities also possess the power to detain ships pertaining to non-compliance to operational regulations and non-payment of fees. Examples include port authorities for unpaid fees or disturbance within port area, customs authorities, Mercantile Marine Department under Merchant Shipping Ordinance, 1983 (MSO) and so on.

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

Except the above there is no other alternative to arrest a ship.

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

As per BACA the COURT has the power to order for arrest of a ship on the following grounds:

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein or for recovery of documents of title and ownership of a ship, including registration certificate, log book and such certificates as may be necessary for the operation or navigation of the ship;
(b) any question arising between the co-owners of a ship as to possession, employment or income of that ship;
(c) any claim in respect of a mortgage of or charge on a ship or any share therein;
(d) any claim for damage done by a ship;
(e) any claim for damage received by a ship;
(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterer or persons in possession or control of a ship or of the master or crew thereof or any other persons for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
(g) any claim for loss of or damage to goods carried in a ship;
(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
(i) any claim in the nature of salvage of life from a ship or cargo or any property on board a ship or the ship itself or its apparel, whether services were rendered on the high sea or within territorial waters or inland waters or in a port, including any claim arising by virtue of the application by or under section 12 of the Civil Aviation Ordinance, 1960 of the law relation to salvage to aircraft and their apparel and cargo;
(j) any claim in respect of towage of a ship or an aircraft;
(k) any claim in respect of pilotage of a ship or an aircraft;
(l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
(m)any claim in respect of construction, repair or equipment of a ship or dock charges or dues;
(n) any claim for wages by a master or member of the crew of a ship or any claim for any money or property recoverable as wages of master or member of the crew under the MSO, or in the Court;
(o) any claim for disbursements made on account of or for the purpose of a ship by the Master, shipper, charterer or agent of the ship;
(p) any claim arising out of an act which is or is claimed to be a general average act;
(q) any claim arising out of bottomry or respondentia;
(r) any claim for forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty together with any other jurisdiction to grant reliefs as are provided under the provisions of MSO and any other jurisdiction as to any matter in connection with ships or aircraft which has by custom been exercised by the High Court Division as a court of admiralty.

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

A ship can be arrested irrespective of her flag.

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

As long as the admiralty / maritime claim arises from commercial dealings between the parties, the ship could be arrested even if it belongs to the Government or a foreign state.

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

Claims (d) to (q) as referred to in question 5 above is regarded as claims in personam which is recoverable from the owner (defendant) of the subject ship and such claim is also recoverable by action in rem against any other ship on which such defendant has any beneficial ownership interest. This restriction is not applicable in case of maritime liens which are recoverable as claim in rem anyway attached to the subject ship.

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

Bareboat vessels are not treated separately. For time-chartered vessel, in personam claims as referred to in 8 above cannot be exercised in rem against the ship unless such defendant has any beneficial ownership interest over such ship.

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

A counter security to arrest a ship is not a mandatory or essential requirement. As per CPC where, at any stage of the suit, it appears to the Court that the plaintiffs are residing out of Bangladesh, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within Bangladesh other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

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

Maritime lien is exercisable as in rem claim and continues to exist on the vessel notwithstanding any change of ownership or of registration or of flag. Maritime claim is in fact in personam claim which is exercisable in rem against ships which are fully or partially owned by the defendant.

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

Bangladesh does not recognize any maritime lien under any International Convention. It has its own stricti juris definition under MSO which includes to the Seaman's wages and the Master's wages respectively. In addition, there are certain authority liens granted on ships for unpaid dues / fees under authority statutes such as The Chittagong Port Authority Ordinance, 1976.

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

Upon receipt of all documents along with power of attorney, two workdays are required to obtain an arrest order.

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

A POA from the claimant is required to obtain an arrest order. For initial admission of suit and procurement of arrest order the executed POA shall be sufficient. However, thereafter the POA duly notarized and consulate legalization by Bangladesh Embassy is required to be stamped, verified by the Ministry of Foreign Affairs and then lodged with the Court.

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

POA in original, approved plaint and all original documents in support of the claim or photocopies duly notarized (if originals are not in the possession of the clients) would have to be filed in the

Court. Along with the Plaint, a list of all documents and photocopies of all documents irrespective of whether the same is in support of or adverse to the claimants case would also have to be filed.

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

Once the Court orders the arrest of a ship, it retains jurisdiction to adjudicate the substantive claim unless the order of arrest itself or any security filed in pursuance thereof is vacated upon the Court being satisfied on an application made on behalf of the owner of the ship that the arrest is not maintainable. In case of a valid arbitration agreement between the parties the Court may maintain the arrest order to preserve the subject matter and stays the substantive suit.

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

Security in the form of Bank Guarantee or cash deposit needs to be made and the order for release from the Court needs to be obtained thereafter. Otherwise the alleged defendant needs to contest the matter to prove that the claim is not eligible to be realized to procure an order for release. The original order of the Court releasing the ship needs to be served upon the port authorities.

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

To release a vessel, a Bank Guarantee is required to be issued by a local Bank as security. This in turn requires a counter guarantee from another bank from the residing country of the defendant in case it is a non-resident.

19. Does security need to cover interest and costs?

The Bank Guarantee is required to cover the entire claim including reasonable interest, court fees and costs at the discretion of the Court.

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

P&I LOUs are not considered as valid securities and thus are not accepted as sufficient to lift the arrest.

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

Once the security is issued in form of a Bank Guarantee from a bank, it takes one workday to procure order of release of the ship.

22. Is there a procedure to contest the arrest?

To contest an anticipated arrest, a caveat is required to be filed with the Court as per BAR. However, if the defendant is not able to justify clearly why the arrest shall be unlawful in a first few hearings , the court may anyhow issue the order for arrest. In any case it is possible to prevent arrest or obtain an order of release upon furnishing adequate security.

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

It could take anywhere between two to four years to adjudicate a dispute on its merits if both the Claimant and the Defendant contest the matter.

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

Bangladesh Courts do not acknowledge wrongful arrest for the purpose of granting any counter security. In case of wrongful arrest, the Court will annul the order of arrest and award costs of the

suit against the losing party. For fraudulent suits further damage may be awarded in favor of the defendants.

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

Bangladesh Courts acknowledge the principles of piercing and lifting of the corporate veil under common law principles if it can be established that it was a deliberate attempt on the part of the ship owner to create different entities to defraud its payment obligations.

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

A pendente lite sale is possible only if allowed by the Court which may consider to seek security and / or claimants approval before allowing such sale.

***A.B.M. Shamsud Doulah** is a Senior Advocate of the Supreme Court of Bangladesh. He has been practicing in Maritime and Commercial law since 1972. He has successfully handled noteworthy Admiralty and Commercial cases and many of which have been reported in the well-known Law Reports. He is also a leading personality for arbitration matters in Bangladesh and has acted in a number of cross border arbitrations, including maritime arbitrations.*

SHIP ARREST IN *BARBADOS*

By Sir Trevor Carmichael KA, LVO, QC
Chancery Chambers
tac@chancerychambers.com
www.chancerychambers.com
Chancery House, High Street
Bridgetown BB11128 Barbados
Tel: +246 431-0070
Fax:+246 431-0076

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

Part 70 of the Supreme Court (Civil Procedure) Rules 2008 (the "CPR") of Barbados applies to Admiralty proceedings in the High Court of Barbados. These proceedings include claims against ships and such claims are classified as Admiralty proceedings in rem. An arrest warrant of a ship may only be issued where Admiralty proceedings are brought in rem against a ship.

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

The United Nations Convention on the Law of the Sea ("UNCLOS").

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

Yes.
Part 70 of the CPR governs the arrest of ships in Admiralty proceedings *in rem* in Barbados.
Pursuant to s.15(3) of the **Marine Boundaries and Jurisdiction Act, CAP 387** (the "MBJ Act") of the laws of Barbados, whenever a conservation officer reasonably suspects that a person has committed an offense under the MBJ or the regulations, he may seize the vessel suspected of being used in the commission of the offense without a warrant of arrest.
Under s.9 of the **Maritime International Co-operation Act, CAP 13C** of the laws of Barbados, when a law enforcement official reasonably suspects that a ship is engaged in the illicit trafficking of drugs or psychotropic substances, he also has the authority to detain the ship at a port in Barbados.
A ship may be detained under s. (6)(2)(d) of the **Quarantine Act, Cap 53** of the laws of Barbados in order to prevent the spread of infection.
S.260 of the **Shipping Act, CAP 296, 1995 of the laws of Barbados** grants the Registrar or inspector the power to cause an unseaworthy Barbadian ship or foreign ship to be detained until it is fit to proceed to sea.

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

These alternatives involve the seizure and detention of the ship as described above at 3.

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

Under CPR 70.9(1) an arrest warrant may be issued against a ship in Admiralty Proceedings *in rem.* These proceedings involve a claim brought against the ship in connection with which the claim arises.
An arrest warrant will not be issued in Admiralty Proceedings *in personam* except where the person (the "Relevant Person") who would be liable on the claim in proceedings *in personam* was, when the cause of action arose:

a) the owner or charterer (time or bareboat); or
b) in possession or in control of the ship.

In the above mentioned circumstances, a claim *in rem* may be brought against:

a) that ship if at the time when the claim is made the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

b) any other ship if at the time when the claim is made, the relevant person is the beneficial owner as respects all the shares in it.

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

Yes, in specific circumstances as set out below.

a) Where the arrest of the ship is in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through Barbados' waters.

b) Where a ship violates any law or regulation adopted from the UNCLOS relating to Barbados' Exclusive Economic Zone.

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

No, a claimant may only issue an arrest warrant in Admiralty proceedings in rem against:

a) the ship in connection with the claim; or

b) any other ship, if at the time when the claim is made, the Relevant Person is the beneficial owner of all the shares in it.

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

There is no specific provision regarding the arrest of ships with respect to sister ships and ships in associated ownership. However, under CPR 70.9(1) "Ship" is defined as as a vessel used in navigation not propelled by oars. As such, these vessels may be arrested under CPR 70.9(1).

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

There is no specific provision regarding these vessels. Based on the definition of "Ship" as mentioned above, these vessels may be arrested under CPR 70.9(1).

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

No. However, under CPR 70.12 (3) an arrest warrant may not be executed until an undertaking has been recorded in the marshal's office to pay for litigation fees and expenses incurred by the marshal in respect of the arrest, care and custody of the ship.

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

No, the procedure for arrest is the same as set out in detail at 13 below.

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

Yes, the courts do recognise maritime liens under part 8 of the **Shipping Act CAP 296** of the laws of Barbados. They are as follows:

(a) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;

(b) port, canal, and other waterway dues and pilotage dues and any outstanding fees payable under this Act in respect of the ship;

(c) claims against the owner in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

(d) claims against the owner, based on tort and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship; claims for salvage, wreck removal and contribution in general average.

The word "owner" mentioned in this section shall be deemed to include the demisee or other charterer, manager or operator of the ship.

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

Upon receipt of the relevant documentation and instructions from the client, the claim may be filed and served within 1 to 2 days. At the time of filing, a request in the form of a Certificate of Urgency is made to the Chief Justice for an urgent hearing of the matter. If this request is approved, the matter be will be set down for hearing within 1 to 3 days of the request. At the conclusion of the hearing, the order for the warrant of arrest will either be approved or denied. Immediately following the order, the undertaking is lodged at the Marshal's office and the warrant is executed.

A party intending to issue a warrant of arrest must follow the procedure for arresting a ship as set out under CPR 70.9, which is as follows:

a) Commence Admiralty proceedings *in rem* by filing a claim form (Form 22 in the CPR) at the Registry.
b) Serve the claim form on the ship against which the claim is brought by affixing the claim form either on the outside of the superstructure of the ship or on the mast of the ship.
c) File a sealed copy of the claim form at the Registry if the ship has been sold by the appointed marshal.
d) A counter-claiming Defendant is also required to serve the claim form in the manner set out at (b) above.
e) Consult with the caveat book at the Registry to ascertain whether there is a caveat against arrest in force with respect to the ship.
f) File an affidavit made by the party or his agent which includes the following particulars:
    i. The nature of the claim or counter-claim and that it has not been satisfied.
    ii. The name and nature of the ship
    iii. The port of registry of the ship
    iv. Where applicable, the name of the person who would be liable on the claim in a proceedings *in personam*.
g) Ascertain whether the beneficial ownership of the ship has changed since the issue of the claim as a result of sale or disposal by the court.
h) Seek the court's permission to issue the warrant if the beneficial ownership of the ship subject to arrest has changed.
    i) Either serve notice of the Admiralty proceedings *in rem* at the respective consul if the claim is for possession of a foreign ship registered at a port of a State having a consulate in Barbados or seek the court's permission to issue the warrant.
j) Either serve notice of the Admiralty proceedings *in rem* at the respective consul if the claim is for wages against a foreign ship registered at a port of a State having a consulate in Barbados or seek the court's permission.
k) Record the warrant of arrest at the Registry to be sealed by the Registrar.

Execution of warrant of arrest

a) An arrest warrant is valid for 12 months beginning on the date of its issue and it may be executed only by the marshal.
b) Prior to the execution of the warrant, the party in favor of which the warrant has been issued must give an undertaking as described at (10) above.
c) After the undertaking has been recorded in the marshal's office, the warrant of arrest must be served on the ship against which it is issued by affixing the warrant for a short time on any mast of the ship or on the outside of the superstructure of the ship. Within 7 days of such service, the warrant must be filed at the Registry.

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

The party intending to issue the warrant of arrest is only required to provide the following original documents for filing:

a) the Admiralty Claim Form in rem which may be signed by the Claimant's Attorney-at-Law.
b) Affidavit of service of the Admiralty Claim Form in Rem.

c) Warrant of Arrest.
d) Affidavit in support of the Warrant of Arrest.
e) Notice of proceedings (if applicable).

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

The required original documents are listed at 14 above. Those documents are required prior to the initiation of the proceedings. Electronic filing is not a feature of our court system.
The Affidavit in support of the warrant must be sworn to at the Registry. In circumstances where the deponent is outside of the jurisdiction, the Affidavit must be notarized.

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

The court is likely to accept jurisdiction over the substantive claim once the vessel has been arrested in Barbados' internal or territorial waters. Pursuant to s. 10 of the Barbados Territorial Waters Act CAP 386 of the laws of Barbados, the courts of Barbados have jurisdiction over any claims which arise in the internal or territorial waters of Barbados. However, the court may refuse its jurisdiction over the substantive claim where there is a more appropriate forum available to the parties.

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

The procedure is set out under CPR 70.14. Generally, the party applying for the release must:

a. be a party to the proceedings for the warrant of arrest.
b. file a request and undertaking for release form.
c. either seek the permission of the court for the release; or
d. obtain the consent of all other parties for the release, with the exception of a defendant who has not acknowledged issue or service of the claim form,
e. give notice to any person at whose instance a subsisting caveat against release has been entered, or to his attorney-at-law, requesting that the caveat be withdrawn.
f. present the order from the court to the Marshal granting the release of the ship.
g. provide security for the release as described at 18 below.

Exceptions to the aforementioned procedure:

Sale of ship under arrest by court order.
A ship under arrest may be released as a result of a sale under an order of the court.

Release where caveat against release is in force:
Where a caveat against the release of a ship is in force, a release will only be issued if the court so orders.

Bail
Generally, the court must permit the release of a ship upon sufficient bail being provided as stated in CPR 70.17.

Exceptions
Posting bail is not a ground for the release of a ship with respect to the following claims:

a. any claims related to the possession or ownership of a ship or to the ownership of any share therein; or
b. any question arising between the co-owners of a ship as to possession, employment or earnings of the ship

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

Execution of release

The appointed marshal in the proceedings will release the ship provided that the following conditions are satisfied:

a. the party in favor of which the release was issued pays the fees and expenses already incurred by the marshal and undertakes to settle all other fees and expenses in connection with the arrest, care and custody and release of the ship; or
b. undertakes to pay on demand all expenses whether incurred or to be incurred.

19. Does security need to cover interest and costs?

The security only needs to cover the fees and expenses incurred by the marshal in relation to the arrest, custody and release of the ship.

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

A letter of undertaking is sufficient to lift the arrest.

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

It is difficult to estimate the timeline as it relies solely at the discretion of the court.

22. Is there a procedure to contest the arrest?

Yes, this procedure is set out in CPR 70.10.
Generally, a person who wishes to prevent the arrest of a ship must file a request in the prescribed form containing an undertaking:

a) to acknowledge issue or service of the claim form in any claim that may be made against the property described in the request; and
b) within 3 days of receipt of notice that such a claim has been made, give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court.

This request must be signed by the person seeking to prevent the arrest or his attorney-at-law. When the request is filed, the Registrar must enter a caveat against the issue of a warrant to arrest the property described in the request in the caveat book.

Exception

Caveat against arrest in limitation proceedings
Where a claimant in limitation proceedings has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation for Liability for Maritime Claims, 1976 and CPR 70.35, the claimant may file a request in the prescribed form at the Registry stating that a limitation fund in respect of the damage arising from the relevant incident has been constituted and give an undertaking to acknowledge the issue or the service of the claim form in any claim that may be begun against the ship described in the request.
This request must be signed by the claimant or his attorney-at-law. Upon the filing of the request, a caveat against the issue of a warrant to arrest the property described in the request must be entered in the caveat book.
Where a ship with respect to which a caveat against arrest is in force, is arrested due to an arrest warrant, the party at whose instance the caveat was entered may apply to the court for an order discharging the warrant. In these circumstances, the party who procured the arrest must show the court that the arrest of the ship was based on good and sufficient reason in order to prevent the warrant from being discharged and an order for the damages in respect of the loss suffered by the applicant as a result of the arrest.

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

It is difficult to estimate the timeline as it relies soley at the discretion of the court.

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

There is no specific provision with respect to wrongful arrest. However, as outlined at 22 above, damages may be awarded to the party who suffered loss as a result of the arrest in a case where the ship was arrested even though there was a caveat against arrest in force.

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

Yes.

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

Yes, this may take approximately 3 to 6 months.

SHIP ARREST IN *BELGIUM*

*By Steven D'Hoine**
D'HOINE & MACKAY ADVOCATEN
steven.dhoine@dm-law.be
www.dm-law.be
Grote Steenweg 633, B-2600 Antwerp
Tel: +32-3/470.23.00
Fax: +32-3/470.23.10

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

Belgium, and most specifically the ports of Antwerp Bruges and Ghent have with reason a favorable reputation of being a convenient place to arrest ships. The fact that Antwerp is one of the biggest and busiest ports of the world is not the only reason. The arrest of a ship and the accomplishment of the required formalities are well-organized: a simple, fast and short procedure, an experienced Antwerp Maritime bar, local representation of all P&I Clubs of the world, excellent shipping signaling services and, last but not least, several Judges of Seizure who are at the disposal of the parties at every moment 24 hours a day, 7 days a week for all urgent matters related to the arrest of a ship. A vessel can be arrested within a few hours after having received instructions. No power of attorney or original documents are required. The owner of a ship may demand immediate release of the ship upon issuing an acceptable Bank or P&I Club Letter of Guarantee, covering the amount of the claim plus 30% as a retainer for costs and interests. The formalities to lift the arrest are minimal, and can be fulfilled within the hour. The owner of a ship may also request for the withdrawal of the judgment granting authorization to arrest the ship. This request has to be filed before the same Judge of Seizure who granted the authorization and is heard on a contradictory basis in summary proceedings. Moreover, in Belgium some rather unique possibilities with respect to arrest of a ship are available. For instance, a vessel can be arrested for certain maritime claims, even if the owner of the vessel is not the debtor of this claim (see further under n° 7).

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

All arrests of sea-going ships are subject to the Brussels Convention 1952 relating to the arrest of Sea-Going Ships, as enacted in the Belgian legislation (Article 2.2.6.1. and further of the Belgian Shipping Code).

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

No.

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

Not applicable.

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

A sea-going ship can be arrested in Belgian territorial waters as a security for a maritime claim, as specified in letter a to q of art. 1.1 of the Brussels Convention 1952 (as enacted in Article 2.2.6.1. a) to q) of the Belgian Shipping Code – previously Article 1468 of the Belgian Judicial Code).

Article 2.2.6.1. of the Belgian Shipping Code however added 3 more types of maritime claim for which a ship can be arrested in Belgium, i.e.:

r) administrative fines for breaches of the shipping laws;
s) a financial security which might be required by this Code in case of a shipping accident);
t) costs incurred in relation to maritime employment.

It is generally accepted that the claimant only has to present an allegation of right or claim. As soon as the claimant proves that his maritime claim is 'sufficiently probable', i.e. when the judge accepts 'prima facie' evidence presented to him on an ex parte basis, his request for authorization to arrest a ship will be granted.

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

A sea-going ship can be arrested in Belgian territorial waters, whatever the flag it is flying.

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

Yes if the claim relates to the vessel and is based on an obligation that was entered into by the ship owner or the charterer or that can be accounted to them on the basis of the doctrine of trust. So if the debtor is not the ship owner, the arrest is still possible if the arrestor, at the time of entering into the contract which is at the basis of the claim, could rightfully assume that his invoice would eventually be settled or at least secured by either the ship owner or the charterer.
The case being, the ship owner shall, in order to have the arrest lifted, have to provide security for the arrestor's claim.
The only restriction is when the ship to which the maritime claim has changed ownership between the moment the claim arose and the moment of arrest. In that case an arrest is no longer possible unless the claim is secured by a maritime lien or mortgage.

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

If the owner is liable for the maritime claim, not only the ship in respect of which the maritime claim arose may be arrested, but also all other ships in the same ownership. Ships will be deemed to be in the same ownership when all the shares therein are owned by the same person or persons (see also under n° 25).

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

The ship in respect of which the maritime claim arose can be arrested, regardless of whether the vessel is Bareboat – or Time Chartered, upon condition that the claim is based on an obligation that was entered into by the ship owner or the charterer or that can be accounted to them based on the doctrine of trust. See above under n° 7.

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

No. In theory this is a possibility (Article 2.2.6.6. of the 2019 Belgian Shipping Code) however in practice this has been in disuse for many years and the courts currently do not impose a counter-security.

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

There is no procedural difference.

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

Belgium incorporated the Brussels Convention on Maritime Liens and Mortgages of 10 April 1926 in its internal law through Book 2, Title 2, Chapter 5 of the Belgian Shipping Code (previously Articles 19 to 45 of the Belgian Maritime Code). The maritime liens or privileges are listed in Article 2.2.5.11 and 2.2.5.14 of the Belgian Shipping Code (previously: Article 23 of the Belgian Maritime Code).

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

Upon receipt of the instructions to arrest the ship, the arrest of the ship can be effected within approx. 4 hours. The unilateral request to obtain authorization to arrest a sea-going ship can be submitted at any moment of the day, even out of office hours and during the weekend or holidays. A ship under arrest will not obtain the services of a pilot. More specifically in the port of Antwerp an arrested ship will not be able to leave the port since also the lock-keepers are informed.

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

No POA is needed. Belgian counsels represent the client without needing to present power of attorney. Confirmation of written instructions (e.g. by e-mail) are sufficient.

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

No original documents are required. It is not required to have documents notarized or apostilled either. Furthermore, in practice, no complete file of documents of evidence on the merits of the claim is needed in order to obtain an authorization to arrest a ship. A claimant, requesting authorization, only has to make his allegation of the existence of the maritime claim reasonably certain. Given the fact that at the time of the request the claim often just arose, the Judges of Seizure do grant authorizations for claims only scarcely documented. It is advisable though – but therefore not always necessary – to have a copy of the Bill of Lading, an invoice, a (general) protest and/or an interim report of a surveyor available.

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

According to Article 2.2.6.21 of the 2019 Belgian Shipping Code, Belgian courts have principally been given jurisdiction to rule on the merits of the claim on the basis of which the vessel has been arrested in Belgium; although this is only a possibility and not exclusive.
Furthermore a distinction is made depending on whether EU Regulation 1215/2012 (Brussels I Regulation recast) is applicable or not:

- If EU Regulation 1215/2012 applies, Belgian courts are competent on the condition that:
  1° the ship was arrested in Belgium, and
  2° the applicant either has his domicile or registered office in Belgium, the maritime claim occurred in Belgium, the claim arose of a collision, the claim relates to salvage or de claim is secured by a maritime lien or mortgage on the arrested ship.
- If EU Regulation 1215/2012 does not apply, then the Belgian courts are competent in all cases where the ship was arrested in Belgium.

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

The arrest may be lifted by putting up a security (see question 18) or after obtaining order of the Judge of Seizures deciding to set aside the original order for arrest (see also question 22).

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

A cash deposit (e.g. on a blocked account) and/or a bank guarantee are accepted to obtain the release of the ship. In practice an undertaking of a first class P&I Club is also mostly accepted (although the claimant may refuse such undertaking and ask for a cash deposit or bank guarantee). In case of disagreement, the Judge of Seizures may settle any dispute related to the nature of security.

19. Does security need to cover interest and costs?

Yes, the security should cover the principal amount of the claim, costs and interest. The global amount of interest and costs is normally determined at 30 per cent of the principal amount. In case of disagreement, the Judge of Seizures may determine the amount of the security.

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

See question 18.

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

If the parties agree upon the lifting of the arrest, the court bailiff may release the ship within the hour as from the instructions by the arresting party. In case opposition proceedings are initiated to have the ship released, the release will take longer as such proceedings are often slowed down by the desire of the parties to develop their arguments in written submissions.

22. Is there a procedure to contest the arrest?

The ship owner (or a third party) may file third party opposition proceedings with the Judge of Seizures within one month of service of the order of arrest for such order to be set aside or varied; if such application fails, appeal is possible before the Court of Appeal.

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

a) The arrest is valid during three years. The arrest can be renewed for a second period of three years.
b) The arrest of a ship does not impose upon the arrestor the necessity to start legal proceedings on the merits of the case; nor does Belgian law impose Belgian Jurisdiction for the claim on the merits after an arrest in Belgium (although this is a possibility – see question 16).

Obviously, since an allegation of a maritime claim has to be shown, it is necessary to start legal proceedings on the merits before the competent court within the time bar limits related to the claim itself.

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

Although the Belgian courts acknowledge wrongful arrest, they are rather reluctant to grant such claims. An unjustified arrest is not sufficient. Proof of a fault/bad faith on behalf of the arrestor is required. A claimant will only be considered as having acted at fault by arresting the vessel if he obtained and put the arrest in a thoughtless and reckless way knowing that he would cause damages (e.g. when the arrestor consciously hid important information from the Judge of Seizures). If later on, the arrestor loses the contradictory summary proceedings or the case on the merits, this does not automatically result in the arrest being wrongful. On the other hand, if the claim on the merits initiated by the arrestor had already been dismissed before the arrest was issued, a compensation for wrongful arrest might be imposed.

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

On several occasions Belgian courts have accepted the piercing and lifting of the corporate veil within the frame of conservative arrest proceedings. If the owner is liable for the maritime claim, not only the ship in respect of which the maritime claim arose, may be arrested but also all other ships in the same ownership (see our reply to question 8). This rule can be circumvented easily by creating 'single ship companies'. In this respect Belgian Courts occasionally authorized the arrest of a ship owned by another company than the debtor of the claim. The courts thus lifted the corporate veil and treated ships owned by different companies as if they were in the same ownership as soon

as it was sufficiently evidenced that the separate corporate personality is only an artificial screen that does not correspond to reality.

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

Belgian case law accepts that a ship under arrest may be sold as soon as the claimant disposes of an enforceable title. It is disputed whether this will also be the case if the judgment is not rendered against the owner of the ship but against another person who is debtor of the claim.

***Steven D'Hoine** read law at the University of Leuven. He joined the Antwerp Bar Association in 1990. In 2004, he founded the law firm D'Hoine & Mackay. D'Hoine & Mackay is a specialised law firm based in Antwerp offering the full range of legal services in the commercial area, with a focus on maritime and transport law, other port related areas and specie and fine art insurance. D'Hoine & Mackay primarily renders services to insurance companies, P&I Clubs, carriers, freight forwarders, logistics providers and trading companies. D'Hoine & Mackay also acts as correspondent on behalf of many law firms abroad for services in Belgium, as well as for Belgian law firms searching for specific services in their specialised field. Steven D'Hoine has been appointed as a recognized mediator. He is a member of the Belgian Maritime Law Association, the Royal Belgian Association of Maritime Insurers and various transport related organisations..*

SHIP ARREST IN *BRAZIL* (QUESTIONS 1 TO 9)

*By Marcus Alexandre Matteucci Gomes**
FELSBERG ADVOGADOS
marcusgomes@felsberg.com.br
www.felsberg.com.br
Avenida Cidade Jardim, 803, 5th Floor
Sao Paulo - SP 01453-000 - Brazil
Tel: (55 11) 3141 9145
Fax: (5511) 3141-9150

(QUESTIONS 10 TO 26)

*By Leven Siano**
SIANO & MARTINS ADVOGADOS ASSOCIADOS
levensiano@sianoemartins.com.br
www.sianoemartins.com.br
Av. das Américas 3.500, Bl. 1, sala 513
Condomínio Le Monde - Ed. Londres
Barra da Tijuca - Rio de Janeiro/RJ
Tel: (55) 21 35504070

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

Under Brazilian law, the arrest of assets is a provisional or interim remedy that may be granted by a court so as to ensure satisfaction of a judgment in a present or future action of law brought to enforce the collection of a debt. It results in a preventive and provisional seizure of assets of a value deemed to be sufficient for providing security to the debt.
The circumstances in general in which such provisional remedy may be granted are listed in Articles 294, 300 and 301 of the Brazilian Code of Civil Procedure. The granting of the arrest also requires evidence of an indisputable and strongly grounded credit.
Specifically in relation to the arrest of ships, pursuant to Article 479 of Brazilian Commercial Code, the arrest may be granted with grounds upon one of the credits that are qualified as “privileged” by Brazilian law. Under the same legal provision, said “privileged” credits have in rem effects, constituting a maritime lien on the vessel.
Thus, the arrest of a ship essentially takes into account whether the claim is grounded on one of the credits that give rise to a maritime lien on the vessel.

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

Brazil is only part to the “International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages”, signed in Brussels, on April 10, 1926. Such Convention is in force in Brazil by virtue of Decree No. 351, dated October 10, 1935, and, as a matter of Brazilian law, has the same status of any other Brazilian federal laws.
Although the Brussels Convention of 1926 does not dispose about the arrest of ships, its enactment in Brazil not only confirmed but also complemented the list of credits that, under Brazilian Law, are considered to result in a maritime lien on a vessel.

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

Brazilian law provides for the arrest of ships as a provisional or interim remedy for the obtaining of security. As a general rule, there are no other ways of arresting a ship under Brazilian law.

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

Based on Article 300 of the Brazilian Code of Civil Procedure, the arrest may be ordered by court as an injunctive relief, even before Defendant is serviced of process and has the opportunity of filing its

defense. For such, there must be strong evidence of the satisfaction of the legal requirements for the arrest, as well as reasonable arguments supporting that the granting of the arrest is a matter of utmost urgency.
As a condition for granting said injunctive relief the court may, however, order the posting of counter-security. The requirement or not of said counter-security relies on court's discretion.[1]

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

The list of credits that gives rise to a maritime lien on the vessel is provided by Articles 470 and 471 of the Brazilian Commercial Code, as amended and complemented by Article 2 of the Brussels Convention of 1926.
Amongst others, the following credits are considered to have in rem effects in relation to a ship, making it possible for the arrest to be required irrespective of the debtor:

i. Taxes due to the State;
ii. Salaries or payments due for services rendered aboard ship or in the benefit of the ship;
iii. Expenses incurred with the ship's costs and maintenance;
iv. Expenses with depositaries, as well as storage costs relating to the ship's instruments;
v. Shortages on delivery of cargo and damage thereto;
vi. Debts deriving from the contracts for construction and purchase of the ship;
vii. Debts deriving from costs incurred in the repair of the ship and its installations and equipment;
viii. Salvage indemnity claims;
ix. Obligations assumed by the master while exercising the powers conferred upon him bylaw,
x. Claims for general average;
xi. Claims for marine accidents;
xii. Credits secured by marine mortgage;
xiii. State or private port operators' credits;

Even credits that do not constitute a maritime lien may give rise to the arrest of a ship, however, not irrespective of the debtor. Additionally, the arrest based on such type of credit is enforceable only at the port where the vessel has been registered and, even so, only upon the posting of a bond and after the filing of the applicable collection action.

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

Pursuant to the Article 482 of the Brazilian Commercial Code, a foreign flag vessel should not be arrested in Brazil unless it is due to: (i) a maritime lien originating in Brazil; or (ii) even if originating abroad, a maritime lien that is grounded in a title that may be considered enforceable in Brazil.
Nevertheless, it has long been a controversial matter whether such Article is still in full force, there being grounds to sustain that it was barred by the Federal Constitutions that superseded the Brazilian Commercial Code.

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

Provided that there is a valid maritime lien, the ship may be arrested irrespective of the debtor.

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

Such arrest is only admitted when the credit is opposable upon owners and not solely upon the ship. As a consequence thereof, for said purpose it is only admitted the arrest in personam (unless there are grounds for claiming the lifting of the corporate veil of the companies or individuals involved, pursuant to Article 50 of Brazilian Civil Code).

[1] Pursuant to Article 83 of the Brazilian Code of Civil Procedure, counter-security is, however, deemed to be mandatory whenever Plaintiff is a foreign company or individual with no assets in Brazil (provided that there is no international treaty or convention preventing the need of posting security).

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

As mentioned above, a ship may be arrested irrespective of the debtor. Thus, subject to the qualifications contained herein, bareboat and time-chartered vessels may be arrested.

**Partner in the area of litigation and dispute resolution of Felsberg Advogados, Marcus graduated from the University of São Paulo, School of Law (1998), and holds a Doctor's Degree from the same University (2004). Marcus has taught law for seven (7) years, having been part of the Roman Law Research Group of the Law School of the University of São Paulo (1995-2002) and of the Teaching Assistance Program of the same University (2000-2002), and a visiting researcher at the "Istituto di Diritto Romano" of the School of Law of the University of Rome I – "La Sapienza" (2003).*
Marcus has extensive experience of complex domestic and cross-border litigation and arbitration, in a number of areas of civil and commercial Law, including shipping and aviation. Has acted as co-counsel and expert witness in cross-border matters in New York, London, Houston, The Bahamas and Canada. Marcus has been listed in Chambers Latin America Guide 2017 as "having a wealth of experience representing shipping clients in litigations and alternative dispute resolutions".

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

In accordance with article 300 of the Brazilian Procedural Code it is at the judge's pure discretion for the cases where the claimant is solvent. When not solvent the law suggests that no counter security be required.

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

The Brazilian Commercial Code lists what are the maritime claims and an arrest should be allowed only for that items. In practical sense, however, if one has a possibility of a real claim and some danger that the enforcement might be not warranted in case the claim succeeds any claim be of maritime or lien nature shall be allowed.

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

Brazil is part of the Brussels Convention on Maritime Liens and Mortgages, 1926. The Commercial Code lists maritime claims which are also maritime liens. They shall attach the vessel and allows the claimant to pursue this even if a change of ownership has occurred. Theoretically actions in rem against the ship should be possible but the practicality suggests to name the new owner as defendant because the Procedural Code is not well fitted for an action in rem against a ship.

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

From one day to another is feasible if the client is quick in providing documents and POA which will have to be translated.

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

Yes, POA and plaintiff´s company register documents proving that who signs the POA has authority to do this. POA will have to be apostilled since Brazil is part of the Apostille Convention.

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

POA and papers company as declarations shall be apostilled. Main Brazilian Courts are accepting electronic proceedings.

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

In Brazil you can arrest to secure a foreign arbitration. If the claimant is not arresting to secure an arbitration, once the arrest is made in Brazil, the judge will have jurisdiction for the substantive claim which will have to be made within 30 days if not the arrest is cancelled. The arrest, however, will be possible to be made in Brazil for the hypothesis where Brazilian judges would have jurisdiction to deal with a substantive claim which are: a) when the fact or act which grounds the action occurred in Brazil, when an obligation ends in Brazil or when the defendant is domiciled in Brazil. For this last hypothesis it is accepted that a foreign company is domiciled in Brazil when they have a branch or agency here.

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

First the defendant shall verify if all the legal requirements for the arrest were complied with as for example if the Brazilian Court has jurisdiction, if the company named as defendant is the registered owner, if the registered owner is the actual debtor, if the claim is in the list of the maritime claims and if the vessel is not loaded with more than one quarter of her cargo. If one of the legal requirements is not complied with the defendant can challenge the arrest. If the arrest is legal, at

least initially, the option for the defendant is to substitute the vessel for another security, which can be cash or bank guarantee. Sometimes P&I securities are accepted mainly if the claimant is happy with that.

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

Cash deposit, real state and bank guarantees are accepted for sure. Sometimes a P&I LOU is an option whenever the claimant is happy with that.

19. Does security need to cover interest and costs?

There is no imposition from the Law in this regard but this is negotiable from case to case. Usually you may assume at least the claim plus 20 to 30% .

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

It is arguable but when the claimant is happy with that, yes.

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

One to two days.

22. Is there a procedure to contest the arrest?

Yes. The judge in the end of the day will judge the claim but also if the arrest was wrongful or not. If, for example, the claimant does not win the substantive claim this is enough to have the arrest being considered wrongful and this entitles the defendant to claim damages caused by the wrongful arrest against 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?

In accordance with the article 308 of the Brazilian Procedural Code the substantive claim must be filed within 30 days after the arrest is effected.

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

Yes and in accordance with the article 302 of the Brazilian Procedural Code it might happen if the substantive claim fails for a procedural or material reason or if the claimant does not bring the substantive claim within 30 days after the arrest has been conceded or if means are not provided to summons to be effected within 5 days.

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

Yes it can be lifted as per articles 133 to 137 of the Brazilian Procedural Code and 50 of the Brazilian Civil Code.

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

It can take easily 1 year but it is possible for assets as ships which can perish or deteriorate as per article 852 of the Brazilian Procedural Code.

***Leven Siano** - Maritime Lawyer. Founding Partner of Siano & Martins Advogados Associados. Titulary Member of CMI. Professor at the Summer Maritime Law Course of the University of Southampton.*

SHIP ARREST IN *BULGARIA*

*By Roumen Lyutskanov & Lyuben Todev**
Dobrev & Lyutskanov Law Firm
25, Khan Kroum Street
Sofia 1000 Bulgaria
lyutskanov@legaldl.com
www.legaldl.com
Tel: 00359 2 980 38 76

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

In principal, the arrest of a ship according to the Bulgarian law is a procedure that provides pre-judgment security for future claims or already brought proceedings. The arrest of a ship shall be allowed, if without it, it will be impossible or difficult for an eventual future court decision to be executed, until the necessary guarantees are provided by the shipowner. Notwithstanding the relatively formal character of the procedure according to the Bulgarian law, after the country became a party to the International Convention on Arrest of Ships, 1999, the number of applications for security of maritime claims through an arrest was increased, as well as the terms and condition for allowance of such applications were unified.

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

The Republic of Bulgaria is a State party to the International Convention on Arrest of Ships, adopted on March 12, 1999 at the United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships, held in Geneva ("The Convention"). The Republic of Bulgaria has signed the Convention on July 27, 2000 and ratified it in accordance with the constitutionally established procedure. In accordance with its Article 14 (1), the Convention went into force on September 14, 2011, six months after the Republic of Albania became the 10th State to accede it. State parties include Albania, Algeria, Benin, Bulgaria, Denmark, Ecuador, Estonia, Finland, Latvia, Liberia, Norway, Pakistan, Spain and the Syrian Arab Republic.

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

The merchant ship, which is located at a Bulgarian seaport, regardless of its flag, can be arrested only for securing a maritime claim for the purposes of Art.1, para.1 of The Convention. Besides the above procedure, the Bulgarian Merchant Shipping Code envisages a specific procedure for the arrest of ships sailing in inland waterways, as a prejudgment security for future claims or already brought proceedings. The grounds for arrest of ships sailing in inland waterways are identical to those provided in the Convention. Arrest of a ship, according to the domestic law might be allowed: By the district court at the location of the ship (the respective port) in a procedure for securing of a claim, including a future claim, by imposing of a collateral measure "arrest of a ship" under the provisions of the Bulgarian Civil Procedure Code for a claim arisen in connection with the ship.
In addition to the above, the Bulgarian Merchant Shipping Code provides for a specific procedure concerning the arrest of a ship and cargoes only for unpaid sums of customs, port and other fees, taxes and fines. The Executive Director of the Bulgarian Maritime Administration or the captain of a port may arrest Bulgarian or foreign ships for such claims, if the request is made on behalf of governmental and judicial authorities, by the State Enterprise "Port Infrastructure" or by a foreign maritime administration. The arrest shall continue until elimination of the grounds for it.

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

Such instruments are not provided and applicable according to the Bulgarian law.

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

Grounds for arrest of a ship, according to the Convention are maritime claims, as defined in Article 1 (1) of the Convention. The competent authority is the Court.

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

The Bulgarian Merchant Shipping Code does not specify exceptions to this general rule, stipulating that authorities "may arrest Bulgarian or foreign ships and cargoes". Article 8, para 1 of the International Convention on Arrest of Ships, 1999 states that the rules and regulations set by the Convention apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party. Article 8, para 2 however makes and exception, declaring that said rules and regulations do not apply to any warship, naval auxiliary or other ships owned or operated by a State and used only on government non-commercial service.

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

The general rule, according to the Bulgarian law is that a ship arrest is admissible for maritime claims against the persons who are responsible under the maritime claim. The ship-owner is the owner of the ship, entered in such capacity in the register of the ships or any other person who utilizes the ship on other legal grounds (by example on the ground of a bareboat charter agreement) at the time when the maritime claim arose and the arrest is effected. In order for the arrest of the vessel to be allowed the debtor should be responsible under the maritime claim as well as a person specified in Art. 3 of the Convention.

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

The Bulgarian Merchant Shipping Code stipulate that the sister ships and ships in associated ownership may be arrested for claims arisen from other ship, according to the Convention, under certain terms and condition. In this procedure, the arrest is admissible for any other ship or ships which when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose: (a) owner of the ship in respect of which the maritime claim arose; or (b) demise charterer, time charterer or voyage charterer of that ship.

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

9.1. Regarding the Bareboat-Chartered vessels
Arrest is permissible of any ship in respect of which a maritime claim is asserted if the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or the claim is against the demise charterer and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

9.2. Regarding the Time-Chartered vessels
The Vessels, which are used on the grounds of concluded contract for Time-Chartered, may be arrested only as a security for a maritime claim for which the owner is deemed responsible. The arrest of a ship as security marine claim against Time-Charter is permitted for ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime and who was, when the claim arose, time charterer.
The long effective provision regarding the administrative procedure for detention of a vessel, provided for in the initial version of the Merchant Shipping Code (MSC), has been replaced by the provision of Article 364a of the MSC, which is intended to eliminate conflicting case-law that has led to a conflict of laws in the interpretation and implementation of the provisions of the MSC and the International Convention on the Arrest of Ships, done at Geneva on 12 March 1999. Thus, the only legal possibility for the arrest of a merchant vessel while in a Bulgarian sea port, regardless of the flag she is flying, is solely and exclusively in order to secure a maritime claim within the meaning given by Article 1, paragraph 1 of the International Convention on the Arrest of Ships, done at Geneva on 12 March 1999 (ratified by the Republic of Bulgaria by a law promulgated in the State Gazette No. 7 of 2001).
A vessel is arrested and released from arrest by the Harbour Master of the port in which the vessel is, in furtherance of a judicial act decreed in conformity with the conditions provided for in the International Convention on the Arrest of Ships by:

1. The first-instance or the intermediate-appellate-review Bulgarian court where before the maritime claim case is pending;
2. The district court exercising jurisdiction over the location of the vessel: where a future maritime claim is secured.

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

The court may requre a counter-security – in the form of a deposit made to the court's bank account – before issuing an arrest order. The assessment of the court whether to require a guarantee will depend on the type of the claim and the evidence provided by the applicant. If the court decides a guarantee is necessary, then it will usually be in the amount of up to 10% of the claim, though in rare cases it might exceed this amount.

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

There are no specific provisions providing a difference between arrest for a maritime claim and for a maritime lien.

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

No.

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

3 days from receiving a full set of documents substantiating the claim.

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

Yes, power of attorney and evidence supporting the claim must be presented as attachments to the arrest application. Evidence shall include contracts, invoices, receipts and any other documents, proving agreements between the parties, as well as performance of obligations of the applicant.

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

For the arrest documents must be filed on paper to the court where the ship is anchored. The documents can be filed electronically, but this creates a risk of delay – depending on the case. For the arrest scanned copies of documents would suffice in most cases. In general, all official documents must be translated and legalized, including good standing certificate of the applicant – which means that apostilles are required (unless there is a bilateral contract between Bulgaria and the country of origin of the document). Ин our experience some courts would proceed even if the documents at the time of the filing of the arrest application are not apostilled. However, at a later point the original documents with full legalization will be required – usually for the filing of the claim.

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

Yes, in line with art. 7 of the International Convention on Ship Arrest from 1999.

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

The ship can be released only upon order from the court, which has arrested the ship. The court will issue such an order in three cases:
- when the claim has been found to have no merits with a final decision;
- when the claim was not filed in the term specified by the court or there are other irregularities with the claims, which were not removed in a term set by the court;
- when the debtor under the claim presents a sufficient guarantee before the court – the guarantee should be either accepted by the creditor, or determined by the court.

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

The guarantee must be satisfactory – as per the requirements of art. 4, para. 1 of International Convention on Ship Arrest from 1999. Of course, a deposit to a bank account of the court would always be accepted.

19. Does security need to cover interest and costs?

Security should cover interest included in the claim – but costs and interest after the filing of the claim are not reqiired to be covered by the security.

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

It is possible – if the creditor agrees, or the court deems the LOU sufficient. In general, such a letter would more likely not be accepted, if the creditor does not agree.

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

Usually 2 – 3 work days, if the guarantee was approved by the creditor. In some situations the creditor might delay the process, if there is a dispute over the provided security.

22. Is there a procedure to contest the arrest?

Yes – the arrest can be contested before the next instance court within 7 days from receiving notice of the arrest. The decision of the second instance court is final.

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

Up to 30 days. Usually courts provide no less than 21 days.

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

Yes – and the applicant can be held liable if the claim is not filed on time or is found to have no merits. In these cases the party harmed by the arrest can file a claim – relying on the counter-security provided by the applicant. If the damages are higher, the party harmed by the arrest can claim the actual amount of the damages suffered.

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

Only in certain cases and to a limited extent.

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

Only under agreement between the parties to the dispute. Otherwise, the ship can be sold only after conclusion of the court proceedings by a bailiff and on basis of a writ of execution under a strict enforcement procedure.

**Mr. Roumen Lyutskanov* *is a Partner at Dobrev & Lyutskanov Law Firm. Mr. Lyutskanov graduated from Sofia University, Faculty of Law (LL.M. 1984, Specialization: Maritime Law) and is a member of the Sofia Bar Association. He has extensive experience and practice in the areas of banking and finance; maritime law, transport, insurance; dispute resolution.*

**Mr. Lyuben Todev* *joined the team of DOBREV & LYUTSKANOV Law Firm in 2013. Mr Todev has graduated from Sofia University St. Kliment Ohridski (LL.M. 2012), specialization Public Administration and as an associate at the Law Firm he is working in the fields of Transport and Maritime Law, Corporate and Commercial Law, Employment and Immigration, Intellectual Property, TMT and Litigation.*

SHIP ARREST IN *CAMBODIA*

*By Dr. Darwin Hem**
BNG Legal
cambodia@bnglegal.com
www.bnglegal.com
No 65B, St 111, Sangkat
Boeung Prolit, Khan 7 Makara
Phnom Penh, Cambodia
Tel: +855 23 217 510
Fax: +855 23 212 840

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

Following Cambodia's adoption of the 1952 Brussels Convention, the Cambodian courts have occasionally dealt with ship arrests. Today, ship arrests in Cambodia are subject to either Book six on Compulsory Execution or Book seven on Preservative Disposition under the Code of Civil Procedure ("CCP"), promulgated on 6th July 2006, and effective from 6th July 2007. In addition to the seizure of the judgement debtor's ships for the enforcement of a final and binding Court Judgment or Arbitration Award1 a claimant map apply to court for an order to provisionally attach or dispose of the defendant's ship.

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

Since 1957, Cambodia has been party to the International Convention relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952).

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

The provisions of CCP remain the major source of law for the arrest of ships. Like other executions, the execution against ships requires a title of execution. The requirement of a title of execution is satisfied if there is a final and binding judgment[2]; if the claimant is enforcing real security rights against the ship[3]; and if there is provisional attachment against the ship[4].

- Final and binding Judgment: In principle, title of execution in the form of a final and binding judgment is necessary for the execution judge to issue an order for ship arrest. This means that if the judgment is not yet binding, it is not executable and thus the debtor's ship cannot be arrested in execution. However, a declaration of provisional execution may constitute title of execution for the purposes of arresting a ship, even if the judgment is not yet binding.[5]
- Enforcement of real security rights: Upon the creditor's request, the execution judge or bailiff may order for the ship to be arrested if there is a final and binding judgment or other documents having the same effect, including notarized documents certified by a notary proving the existence of real security rights.
- Provisional attachment: The execution of provisional attachment against a ship must be performed through the method of registration of provisional attachment and/or by ordering the bailiff to confiscate the Certificate of Registry of the concerned ship and submit this certificate to the Preservative Disposition Execution Court.

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

Pursuant to Article 568 of CCP, when the ship is not arrested in rem, the creditor may also demand for the execution of provisional attachment by means of ordering the confiscation of the Certificate of Registry of Vessels.

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[1] *Book six of CCP*
[2] *Article 454 to Article 486 of CCP*
[3] *Article 521 to Article 523 of CCP*
[4] *Article 568 of CCP*
[5] *Article 350 and 455-3 of CCP*

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

In order to answer this question, we must first ascertain that no matter the origin of the credit, any claim can lead to ship arrest, following court ruling.

- Under the Brussels Convention, ships may be arrested for any of the "maritime claims"[6]
- Under domestic law,[7] any credit, whether ordinary or privileged, whether arising from a maritime claim or not, is a valid ground to apply to court for the arrest of the debtor's ship.

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

Cambodian law does not, for the purposes of ship arrests, distinguish ships according to their flags. However, in practice, the nationality of a ship may be an obstacle in court proceedings in that the court needs to inform the ship's embassy, in case, the ship is subject to provisional attachment by means of Code of Civil Procedure. Besides that, there are no privileges, except governmental ships, which immunity is protected by international law.

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

Once a maritime claim has arisen, ships can be arrested, even if the person liable for the maritime claim is not the ship-owner but is, for example, the bareboat charterer, voyage or time charterer or any other third party.[8] The ship-owner shall, in order to have his ship released from the arrest, have to give security that guarantees the payment of the claim of the arresting party.[9] In other words, the ship-owner will have to pay the security amount to release the ship, even if a third party is the debtor towards the claimant.

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

Under the Brussels Convention[10], any ship belonging to the debtor may be arrested even where the claim is not directly related to the ship unless the claim pertains to the title or ownership of a particular ship or to disputes between co-owners or the mortgage or hypothecation of this ship.
A ship owned by an associated company of the debtor may be arrested only if the associated company is deemed to be jointly responsible for the claim as in the case of the responsibility of general partnership.[11]

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

Under the Brussels Convention,[12] the creditor of a maritime claim against the bareboat or time charterer of a ship is entitled to arrest the ship in question or any other ship under the same ownership of the charterer.

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

Before the court issues the ruling to provisionally attach ships, the court may request the creditor to deposit money.[13] The amount of deposit is the amount of damage that the court thinks the debtor may suffer after the court attaches the ship. Sometimes, the court may order the creditor to deposit an amount equivalent to the price of the ship. However, under Article 542 of CCP, it is the court's discretion whether it orders to deposit or not. If the creditor demonstrates good evidence, the court may not need the creditor to deposit any money. This would be evidence that permits immediate examination[14] such as a management agreement, a creditor's report showing that the debtor has a lot of loans, etc.

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[6] Article 1 of the 1952 Brussels Convention
[7] Provision of Prakas 2003 on resolution of ships registration, and provision relating to provisional attachment against ships (Article 568 of CCP), and compulsory execution against ships (Article 521 to Article 523 of CCP)
[8] Article 4(1) of international convention relating to the arrest of sea-going ships (1952)
[9] Article 5 of international convention relating to the arrest of sea- going ships (1952)
[10] Article 3(1) of international convention relating to the arrest of sea- going ships (1952)
[11] Chapter 2 "General Partnership" of law on commercial enterprises, adopted 19 June 2005
[12] Article 3(4) of international convention relating to the arrest of sea- going ships (1952)
[13] Article 542 of CCP
[14] Article 131 of CCP

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

There is no difference in the arrest procedure in relation to maritime claims and maritime liens. However, while maritime claim may be extinguished due to a change in the ownership of the ship, maritime liens remain in full force and effect until the discharge executed by the debtors[15].

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

Even though Cambodia has not acceded to any international conventions relating to maritime liens, Cambodia has adopted its own regulation relating to maritime lien since 2003.

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

We would need a couple of days after our law firm has obtained all the required documents of the claim and sufficient information (ship's movements, etc.). Once the complete application is handed to the competent court, an interim arrest decision will normally be obtained in a matter of days.

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

There is no need to provide a POA. Obviously, the claimant must provide the documents[16] evidencing the existence and the cogency of the claim. These required documents are listed in CCP. In addition, when the claim is grounded on the Brussels Convention, the documents must also show the maritime nature of the claim.

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

Notarized documents of title of execution are required in the case of the execution of a final court judgment[17] and the execution of security rights against ships.[18]
In practice, there have not been any documents filed electronically to court; all required documents[19] must be handed directly to the competent court.

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

The Cambodian courts may accept jurisdiction over any substantive claims that fall within Articles 8 and 9 of CCP (general provision of competent court). In addition, the Cambodian courts may accept jurisdiction over the substantive claims listed in Article 7 of the Brussels Convention.

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

The procedure to release a ship can be divided into two cases:
First, a ship arrested to satisfy final and binding court judgment may be released under the following procedures:

- Money Guarantee for the ship's release: The debtor-in-execution shall provide money guarantee equivalent to the total amount of the claims of the creditor-in-execution, the claims of the creditors who have made demands for distribution, and the execution costs. The court shall, upon motion and prior to the making of any offer for purchase, cancel all of the compulsory execution proceedings except for the distribution proceedings.[20] This is to ensure that if the debtor fails to fulfill his duty, the creditors-in-execution can be paid with the money guarantee following the determination of the distribution proceedings.
- Permission to sail: The court may, upon a motion by the debtor-in-execution, grant permission for the ship to sail if the court finds that business necessity or other good grounds exist, and if the consent of each creditor and the highest bidder or the purchaser has been obtained.[21]

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[15] Article 52 of Prakas 2003
[16] Article 541 of CCP
[17] Article 350 of CCP
[18] Article 521 of CCP
[19] In case of execution of final judgment against ships (Article455ofCCP); execution of security rights against ships (Article 521 of CCP); and provisional attachment against ships (Article 568 of CCP)
[20] Article 461 of CCP
[21] Article 462 of CCP

- Cancellation of compulsory sale proceedings: If the bailiff is unable to confiscate the Certificate of Registry of ships within 2 weeks of the issuance of the ruling for the commencement of compulsory sale, the execution court shall cancel the compulsory execution proceedings.[22]

Lastly, in the case of provisional attachment against ships, the debtor may file a motion of objection to the provisional attachment. If it is established by a prima facie showing that clear circumstances constituting grounds for cancelling the ruling of preservative disposition exist and that there is a risk that execution of provisional attachment would cause irreparable damage, the court may order a stay or a cancellation of the provisional attachment with the requirement of security.[23]

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

Under the CCP, security for the release does not need to be money. It can be any negotiable instruments, as deemed appropriate by the court.[24]

19. Does security need to cover interest and costs?

In the case of a ship arrest to satisfy a final and binding court judgment, the security must be equal to total amount of claims of creditors and execution cost,[25] which might also include the interest and costs depending on the parties and/or judge. However, upon issuing a court ruling on provisional attachment against ships, the court must stipulate the monetary amount the debtor is required to place as a court deposit in order to have the execution of the provisional attachment rescinded.[26] Thus, it is the court's decision whether interest and costs are covered.

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

P&I LOUs are considered as negotiable instruments under CCP's provision. Therefore, depending on the value of LOUs and on the agreement between the parties, the court might accept this security. In addition, it might also depend on the agreement between parties. If claimant agrees to accept the LOUs, he/she has to forfeit the claim; as a result, the court ruling against the ships will be cancelled.[27]

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

After depositing the security for the ship's release, it is only a matter of days before the court ruling cancelling the attachment against ships will be obtained. That court ruling only comes into effect when it becomes final and binding. However, the court may, if it finds it particularly necessary, declare the ruling to come into effect immediately.[28]

22. Is there a procedure to contest the arrest?

It is possible to contest the arrest; the debtor can file a motion of objection before the court that issued the ruling of attachment against the ship.[29] In such a case, it is important that the debtor prepares all relevant documents supporting his reason for contest, such as the non-existence of the debtor's claim or others good grounds.

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

According to Article 557 of the CCP, in the case of provisional attachment against a ship, the claimant must take legal action on the merit within a period deemed reasonable by the Court[30] after the said ship has been arrested; otherwise the arrest will automatically be held to be cancelled.

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

Cambodian judges rarely accept a claim for compensatory damages for wrongful arrest, unless bad faith or malice on the part of the arresting party is clearly established.

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[22] *Article 464 of CCP*
[23] *Article 551 of CCP*
[24] *Article 536 of CCP*
[25] *Article 461 of CCP*
[26] *Article 547(1) of CCP*
[27] *Article 461 of CCP*
[28] *Article 547(1) of CC*
[29] *Article 550 of CCP*
[30] *This period shall not be less than 2 weeks.*

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

Piercing the corporate veil is not common. Therefore it is not normally possible to arrest the property of owners associated with the debtor. The exceptions are general partnerships, since the general partners are personally liable for the debts of the company. Where limited companies are concerned, Cambodian judges might reply on the theory of "fiction" instead of the theory of "appearance" to pierce the corporate veil. The company owning the ship must be proved to be fictitious. Considerations that the court may take into account include unity of management, absence of participation to the profits and/or debts, unequal distribution of the dividends, same beneficial or associated owner, etc.

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

Yes, if arrested property is subject to rapid deterioration or is expensive to retain in custody, the Bailiff is entitled to sell such property at the request of the claimant, even if the court has not yet given a judgment. In theory, Articles 565 and 568 of the CCP may apply also to ships under arrest.
In practice, the lapse of time of the procedure of judicial sale depends on the complexity of the case.

***Dr. Darwin Hem** is the Founder of the law firm BNG Legal, one of the leading Cambodia law firms.*
Education: Joint-Law Program of the University of San Francisco (USA) and Cambodia and a CAPA from the Bar Association of Cambodia, and a MBA in Finance from Charles Sturt University (Australia). He also studied economics in Australia and law in Lyon (France) under various scholarships, and has a Diploma in Economic Law from the Royal School of Administration and a Diploma in Finance from Development Alternatives, Inc. (USA).
Career: Attorney at law in Cambodia; an international associate member of the American Bar Association, a member of APAA (Asian Patent Attorneys Association), LAWASIA (The Law Association for Asia and the Pacific); a member of the Working Party on the Ac- cession of Cambodia into the World Trade Organization; a Trademark Agent in Cambodia; an arbitrator at the Cambodian Arbitration Council. He specializes in real estate, commercial & corporate law, project finance, intellectual property and commercial litigation.

SHIP ARREST IN *CAMEROON*

*By Tiku Elvis Tenjoh**
CAMA LAW FIRM
elvistiku79@gmail.com
www.camalawfirm.com
No 1606 Ernest betotè Street,
Akwa, Douala , Cameroon
Tel: 00(237) 696 827 214
Mov: 00(237) 682 774 950

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

Ship arrest practice has been going on in my country Cameroon for decades now. Cameroon is a country found within the Gulf of guinea therefore making water to be its major boundaries. The country is made up of three (03) seaports which are the Douala, Kribi and Limbe Seaports. Arresting a ship in Cameroon commences by filing a motion ex-parte to the president of the Court of first Instance closest to the seaports where the ship is anchored. The motion should be accompanied by a list of documents to prove the claim of the creditor and to motivate the Judge to grant the motion and to give an arresting order against the ship. The Justifying documents could be any **contract, unpaid bills, bill of Lading, Maritime Survey Report** and any other document. The judge may sort the consultative opinion of the competent Maritime authority. Once the judge is convinced that the claim is justified, he grants the arresting order. The court sheriff/bailiff is charged to draft a report to affect the seizure by serving a copy of the arrest order to the Ship Captain, the Commander of the Port, the Competent Maritime authority and the Consulate of the country whose flag is being hosted on the ship or to the consignee of the ship.

The competent Maritime authority is appointed custodian of the seized vessel.

It should however be noted that the creditor must show proof that has done a formal request for payment of the outstanding debt to the debtor (ship owner) which has remained unpaid.

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

In cameroon, it is the Regional CEMAC Merchant shipping Community Code of 3rd August 2001 as amended on 22nd August 2012 that is applicable as far as arrest of ships is concerned.

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

Cameroon is a state of law, so the only legal was to arrest a ship is as its being described under law above mentioned.

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

Saisie Conservatoire is what is provided for under article 144-156 of the law mentioned above.

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

Pursuant to article 149 of the regional CEMAC code mentionned above, maritime claims that may give rise to the seizure of a vessel are those resulting from one or more of the following causes, being specified that a partial maritime claim is considered as a maritime claim:

a) loss or damage caused by the operation of the vessel;
b) death or bodily harm occurring, on land or in water, in connection with direct with the operation of the vessel;
c) rescue or assistance operations, as well as any rescue or assistance, including where applicable, for compensation special concerning rescue or assistance operations with

regard to a ship which, by itself or through its cargo, threatened to cause damage to the environment;

d) damage caused or likely to be caused by the ship in the middle, coastline or related interests; measures taken to prevent, reduce or eliminate this damage; compensation for such damage; cost of reasonable environmental remediation measures that have been actually taken or to be taken; losses suffered or likely to be suffered by third parties in connection with such damage; and damage, costs or losses of a similar nature to those indicated in the present paragraph
e) costs and expenses relating to the recovery, removal, recovery, destruction or neutralization of a sunken ship, wrecked, stranded or abandoned, including everything that is or is found on board this vessel, and conservation costs and expenses of an abandoned ship and the maintenance of its crew;
f) any contract relating to the use or rental of the vessel by charter or otherwise;
g) any contract relating to the carriage of goods or passengers by the ship, by charter or otherwise;
h) loss or damage suffered by, or in connection with, the property, including baggage, carried by the ship;
i) general average;
j) towing or piloting a vessel;
k) goods, materials, supplies, bunkers, equipment, including containers, supplies or services rendered to the ship for its operation, management, conservation or maintenance;
l) construction, reconstruction, repair, alteration or equipment of the ship ;
m) rights and charges for the port, canal, basin, anchorage and other waterways;
n) wages and other sums due to the captain, officers and others members of the ship crew, by virtue of their engagement on board the ship, including repatriation costs and insurance contributions social security payable on their behalf;
o) payments made on behalf of the ship or its owners;
p) insurance premiums, including mutual insurance contributions, in relationship with the ship, payable by the shipowner or by the charterer in devolution or on their behalf;
q) agency fees or brokerage or other commissions related to the ship, payable by the shipowner or the charterer in devolution or on their behalf;
r) any dispute as to the ownership or possession of the vessel;
s) any dispute between the co-owners of the vessel regarding the operation or rights to the products of exploitation of that vessel;
t) hypothec, “mortgage” or a right of the same nature on the vessel;
u) any dispute arising out of a contract for the sale of the vessel.

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

The law provides that a ship irrespective of her flag can be arrested so far as the ship is found within the waters under the Jurisdiction of a CEMAC member state.

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

A ship can be arrested irrespective of the debtor being it a national, an expatriate or physical or moral person.

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

Sister ships or ships in associated ownership can equally be arrested for a claim against a principal ship. The CEMAC Merchant shipping community code has made provisions for the arrest of such ships.

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

The above mentioned law covers the arrest of all vessels including time-chartered vessels, and bareboat too so far as they are linked to a claim.

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

There is no counter security requested for the arrest of ships in Cameroon. The debtor instead is required to pay a security deposit if after the arrests he has an urgent sail to do. This is provided by article 146 and 147 of the law.

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

There is no limitation provided by the law as far as Maritime Lien is concerned. The lien that arise directly from a Maritime claim under article 75 of the code, may liead to the arrest of a ship.

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

Yes, Cameroon recognises Maritime Lien. This can be seen under article 75-88 of the regional CEMAC shipping code which is an international convention of CEMAC states to which Cameroon is a party to that was signed on 24th July 2012.

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

From the moment the file arrives my firm, we may take approximately five working days to effectively arrest a ship. The arrest order itself can be granted between 24 hours by the court from the time of filing the application by the firm.

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

The law has not stated the need of a P.O.A. however article 50 (2) of the code makes it mandatory to the claimant to produce justifying documents relating to the Maritime claim in order to motivate the presiding judge of the competent court to grant the arrest order. These justifying documents could be any valid contract, bill of lading, Maritime survey report assessing the claim and a formal notice to pay that has remained unsatisfied.

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

In Cameroon, while filing the petition originals of the principal document attesting the claim need to accompany the application that is being filed to the court. In the absence of the originals, a certified true copy may be used. The law does not make mention of notarisation of any documents.
In matters of extreme emergency, the courts may grant the arrest order with mere photocopies or copies printed electronically especially when the creditor does not reside in Cameroon.

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

Yes, our courts will assume jurisdiction over the substantive claim once the vessel is being arrested within its territorial waters. This in accordance with article 7 of the Brussel's convention of 1952.

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

An arrested ship maybe released at the instance of the debtor or the creditor. The code provision that the debtor shall within one month of the arrest, file a motion on notice before the convert that ordered the arrest for the discharge of the arrest order. If successful, the release order is served on the creditor who may appeal, served to the Maritime authority in order to obtain an authorization to sail and served on the port authority.
The creditor can as well file a motion experts in court to obtain a release order if at all the creditor satisfies him by paying the outstanding debt. He (creditor) can as well simply act as the sheriff to serve a release order on the Maritime authority and port authority.
The regional CEMAC shipping code also provided a possibility for release in case of emergency at the instance of the debtor. Upon an application of the latter showing cogent and verifiable reasons

(carrying of perishable goods) the court may order a release for a specific voyage(s), upon deposit of a sufficient guarantee.

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

The law talks of sufficient guarantee to be presented as security before the release. This may refer to sufficient funds to cover the outstanding debt. However no security is needed when the debtor is filing an application to the court to obtain a release order from the court.

19. Does security need to cover interest and costs?

Yes, the security presented should be able to cover interest and costs of procedures.

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

Yes, they are accepted to lift the arrest.

21. How long does it take to release a Ship?

It takes some hours when the release order is initiated by the creditor. However it may take months or even years when debtor files an application in court for release. This time frame will also depend on appeals as the creditor will be heard and given the opportunity to show proof while the arrest order should be maintained.

22. Is a procedure to contest the arrest?

Yes. The debtor shall within one month of the arrest file an action in the competent court to contest the arrest if he has any valid points for contestation.

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

Pursuant to article 155 (1) of the code, the claimant has a statutory period of 1 month to institute legal action to obtain an executory formulae failure to do so will render the arrest null and valid.

24. Do the courts of your country recognize wrongful arrest?

Yes, the courts may order payment of damages for wrongful arrest to the ship owner upon filing an action if he suffered any losses as a result of the arrest of the ship based on a non-genuine claim.

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

Yes, the courts of Cameroon acknowledge the piercing and lifting of corporate veil. Article 54-74 of the CEMAC shipping code provides for co-ownership of a ship which makes it possible for the courts to acknowledge the above.

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

The only possibility for a ship to be sold pendente lite is under a MOU between the ship owner and the creditor, whereby the sales of the vessel is intended to clear off the debt. Apart from that, the legislation applicable in Cameroon does not have a vessel sold pendente lite.

***Tiku Elvis Tenjoh** is a managing partner and co-founder of CAMA LAW FIRM in Douala, Cameroon. The firm specializes in business and corporate law, property law, debt recovery, maritime litigation, immigration law, mining law, and intellectual property, among other fields.*

SHIP ARREST IN *CANADA*

By Marc de Man, Senior Partner & Vanessa Major, Senior Associate***
De Man Pillet
mdeman@demanpillet.com
www.demanpillet.com
2020 Robert-Bourassa Boulevard, Suite 1920
Montreal, Quebec, H3A 2A5
T: 001 (514) 985-2262

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

Ship arrest Canada is quick, procedurally simple and relatively inexpensive.
The arresting lawyer must be provided with information and documents substantiating the quantum and details of the claim at issue. Upon receipt of the essential facts of the claim, the lawyer will prepare the three documents necessary for the Court to issue the Warrant of Arrest.
The three documents are:

1. The Statement of Claim which details the relevant facts of the claim and establishes the in rem jurisdiction of the Federal Court.
2. The Affidavit to lead warrant which supports the allegations contained in the Statement of Claim. Note that the Affiant can be the claimant, or the arrest lawyer.
3. The Warrant of Arrest which will be issued by the Federal Court.

In Canada, the arrest proceedings are filed at the Federal Court, which has offices throughout the country. The arrest proceedings can be filed urgently, after regularly Court hours. In certain circumstances, from the moment the lawyer is provided the necessary documents to draft the proceedings, the arrest can be carried out within a matter of hours.
Costs of arrest are: Court costs, Sherriff or Bailiff fees and legal fees associated with the preparation of the arrest proceedings.

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

No Convention applies to arrest of ships in Canada. The grounds for arrest are found in Canadian law, specifically the Federal Courts Act and Federal Courts Rules.

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

No.

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

Mareva Injunctions, or the freezing of the Defendants' assets can be granted by Canadian Courts. In the province of Quebec, under the appropriate conditions, a saisie conservatoire (or saisie avant jugement) can be granted. Alternatively, if a judgment has already been rendered against against the Vessel Owner, then the vessel may be sold in execution of the said judgment.

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

The types of claims which give rise to a right of arrest are listed at s. 22(2) of the Federal Courts Act:

(a) any claim with respect to title, possession or ownership of a ship or with respect to the proceeds of sale of a ship;

(b) any question arising between co-owners of a ship with respect to possession, employment or earnings of a ship;

(c) any claim in respect of a mortgage or hypothecation of, or charge on, a ship therein or any charge in the nature of bottomry or respondentia for which a ship or part interest therein or cargo was made security;

(d) any claim for damage or for loss of life or personal injury caused by a ship either in collision or otherwise;

(e) any claim for damage sustained by, or for loss of, a ship including, without restricting the generality of the foregoing, damage to or loss of the cargo or equipment of, or any property in or on or being loaded on or off, a ship;

(f) any claim arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading, or in respect of which a through bill of lading is intended to be issued, for loss or damage to goods occurring at any time or place during transit;

(g) any claim for loss of life or personal injury occurring in connection with the operation of a ship

(h) any claim for loss of or damage to goods carried in or on a ship including loss of or damage to passengers' baggage or personal effects;

(i) any claim arising out of any agreement relating to the carriage of goods in or on a ship or to the use or hire of a ship whether by charter party or otherwise

(j) any claim for salvage including claims for salvage of life, cargo or equipment

(k) any claim for towage

(l) any claim for pilotage

(m) any claim in respect of goods, materials or services wherever supplied to a ship for the operation or maintenance of the ship, including claims in respect of stevedoring and lighterage;

(n) any claim arising out of a contract relating to the construction, repair or equipping of a ship;

(o) any claim by a master, officer or member of the crew of a ship for wages, money, property or other remuneration or benefits arising out of his or her employment;

(p) any claim by a master, charterer or agent of a ship or shipowner in respect of disbursements, or by a shipper in respect of advances, made on account of a ship;

(q) any claim in respect of general average contribution;

(r) any claim arising out of or in connection with a contract of marine insurance

(s) claim for dock charges, harbour dues or canal tolls

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

Yes.

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

As a general rule, unless the debt gives rise to a maritime lien, the Shipowner must be liable for the debt. However, if the Charterer incurs the debt while he is acting as the Owner's agent, then the vessel may nonetheless be validly arrested.
Canadian Courts will also recognize and enforce foreign liens, even if the claim would not give rise to a lien under Canadian law.

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

Section 43(8) of the Federal Courts Act allows for sister ships arrest however, ownership of the two vessels must be the same in order for the arrest to be valid.

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

Refer to answer of Question 7.

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

No, the Federal Court of Canada does not require counter-security in order to arrest a ship.

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

No, there is no difference in respect to arresting a ship for a maritime claim and a maritime lien. From a procedural standpoint, the arrest procedure is the same.
Nevertheless, the arresting party must bear in mind that if the maritime claim did not arise as a consequence of a maritime lien, then the vessel's ownership must have remained the same from the moment the cause of action arose to when it was arrested. In these cases, a change in ownership of the vessel could prove to be fatal to the in rem liability of the Ship.

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

Yes, Canada recognizes traditional English maritime liens. However, Canada is not a party to the International Convention on Maritime Liens and Mortgages. In accordance with the *Marine Liability Act*, Canada also recognizes maritime liens for Canadian suppliers of necessaries (bunkers, goods, materials and services) to a foreign vessel. In addition, Canadian Courts will recognize foreign claims constituting a maritime lien under foreign law, even though the claimant does not enjoy a maritime lien under Canadian law.

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

Arresting a ship can be done very expeditiously provided that the claimant has provided us with all of the documents and particulars required to evidence the debt. The Solicitor will prepare a Statement of Claim, an Affidavit to Lead Warrant and a Warrant of Arrest. If the Vessel to be arrested is at the Port of Montreal, we are able to arrest within approximately two (2) hours.

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

No, a Power of Attorney is not required. Other than those listed at Question 13, there are no documents to provide.

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

The Federal Court of Canada does not require any original or copied documents for the arrest of a vessel. However, documents will be required at a further stage in the litigation process.

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

Yes, Canadian Courts typically retain jurisdiction over the case.

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

The arrested ship under caveat will not be released. If there is no caveat binding the ship then the ship may be released in the following circumstances: 1) if the claim is satisfied because the amount claimed has been paid into Court, 2) if bail has been given in an amount fixed by the Court, 3) if the party who has initiated the arrest consents in writing to release the ship (for example upon receipt of an acceptable P&I LOU) and 4) if there is a discontinuance or dismissal of the action in respect of which the ship was arrested.

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

Parties may agree upon an LOU as security. Otherwise, the Federal Court Rules allow for the giving of bail to release arrested property. Once bail is given, property may be released. The parties may agree to the form of bail, failing which a guaranty or bond (as provided for under the Federal Court Rules) will be required. It is left to the designated officer of the Court to determine the sufficiency of bail.

19. Does security need to cover interest and costs?

As per the Federal Court Rules, the fixing of security is based upon the principle that a Plaintiff has a right to security measured by its "reasonably arguable best case" capped at the value of the vessel. The "best case" will often be the amount the Plaintiff asserts to be owing in its Statement of Claim.

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

As a matter of practice, P&I LOUs are customarily negotiated and accepted between the Parties. However, it is worth noting that P&I LOUs are not considered sufficient guarantees under the Federal Court Rules.

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

The release of the arrest vessel will occur very swiftly once the parties have negotiated a P&I LOU and once the arresting party has prepared the "Release from Arrest" proceeding.

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest. The arrest can be contested in any case where the claimant deems that the vessel was either wrongfully arrested or that the arrest was carried out in an inappropriate jurisdiction.

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

In Canada, the legal action on the merits is taken simultaneously to the arrest proceeding as a Statement of Claim must be filed along with the Warrant of Arrest and Affidavit to lead warrant.

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

Yes, Canadian Courts acknowledge wrongful arrest. If the ship owner can prove that the ship was arrested as a result of gross negligence or malice, the Courts may award damages in its favour.

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

Canadian Courts are extremely reluctant when presented with requests to pierce and lift the corporate veil, as this principle is considered sacrosanct under Canadian law. Therefore, as a general

rule, Canadian Court will respect the corporate veil unless the corporate entity has used the corporate structure for fraudulent purposes.

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

The Federal Court may consider to have the ship sold pendente lite in certain circumstances. The Court will assess the following elements to determine whether there are ground to have the ship sold pendent lite: 1) the value of the vessel compared with the amount of the claim, 2) whether there is an arguable defence, 3) whether it is reasonable to assume that there will be a sale at some point, 4) whether there could by a diminution in value or sale price by reason of delay, 5) whether the vessel will depreciate by further delay ("wasting asset") and 6) whether there is any good reason for a sale before trial.

**Marc de Man* *is a founding partner of the Montreal law firm De Man Pillet. Marc was born in Antwerp, Belgium and lived several years in Buenos Aires, Argentina as well as in Santiago, Chile.*
Marc has extensive experience in maritime and transportation law, international trade and commercial law, arbitration and mediation, with more than 40 years of practice. He acts as counsel to a varied clientele in the maritime industry comprised of P&I Clubs, cargo underwriters, shipowners, charterers, ship suppliers, as well as shippers and consignees of cargo. In commercial matters, Marc represents banking institutions, shipping and trading companies. Marc's practice has led him to represent interests from North America, Central and South America, Europe, Asia and Australia. He is fully trilingual in French, English and Spanish, which enables him to deal directly and efficiently with his international clientele.
Marc is also a guest lecturer at McGill University and a sought-after speaker at various conferences and seminars, both in Canada and throughout the world.

*** **Vanessa Major** is a senior associate at De Man, Pillet in Montreal, Quebec. She advises clients in all matters relating to maritime and transportation law as well as in civil and litigation matters. Vanessa acts as lead counsel to a wide range of clients including importers and exporters, bunker suppliers, freight forwarders and marine insurers. She has experience dealing with marine cargo claims in addition to ship arrests, marine coverage issues and charterparty disputes.*

SHIP ARREST IN *CHILE*

*By Rafael Duran**
Abogados Legal Export
rduran@legalexport.cl
www.legalexport.cl
Santiago, Chile
Tel: 56 22 6624779

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 trough 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 stablished 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 accepter 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 counter-party, 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.

SHIP ARREST IN *CHINA* (QUESTIONS 1 TO 9)

*By Henry Lee**
Sloma & Co.
Henry.Lee@sloma.com.cn
www.sloma.com.cn
29th Floor, Hongyi Plaza, 288 Jiujiang Road,
Huangpu District, Shanghai 200001, China
Main: +86 21 6329 8999 — Direct: +86 21 6333 9262
Fax: +86 21 6329 8993 — Mobile: +86 1381 7860 609

(QUESTIONS 10 TO 26)

*By Xinwei ZHAO**
HIHONOR LAW FIRM
xinwei.zhao@hihonorlaw.com
www.hihonorlaw.com
Best East Mansion,15 Qinling Road,
Laoshan District, Qingdao, 266061. P. R. China.
Tel: +86 532 8082 1133
Mobile: (+86) 137 0642 0263

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

China is one of the major maritime jurisdictions in the world. It is certainly not a ship arrest haven, but it is a convenient place to arrest a ship at reasonable costs and relatively rapid speed.
A ship can be arrested either for the enforcement of a judgment or arbitral award, or far more frequently, for obtaining security for a maritime claim. The application can be made either before an action on merits has been commenced or thereafter. A Chinese maritime court has jurisdiction to arrest a ship which is located within its jurisdiction even if the parties have agreed to refer the substantive claim to a foreign court or arbitral tribunal.
The law governing the arrest of ships is mainly the Maritime Procedure Law, 2000 ("MPL"). According to the MPL, to obtain an arrest order, the claimant shall file with the relevant maritime court a written application together with supporting documents and a prima facie maritime claim has to be made out. More importantly, counter security will usually be required. It can be in the form of cash deposit or guarantees issued by local banks or insurance companies. The amount of the counter security is at the discretion of the court and may vary from court to court: it can be 30 days hire of the ship to be arrested or a certain percentage of the claim amount, up to the full amount, or under very rare circumstances, the market value of the arrest to be arrested.
The courts will immediately release the ship when security is posted by the respondent which can likewise be in the form of cash deposit or guarantees issued by local banks or insurance companies or in other forms acceptable to the claimant.

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

China is not a party to the 1952 or 1999 Arrest Convention. However, Chinese law on the ship arrests is generally in line with the provisions of the 1999 Arrest Convention.

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

A ship may also be arrested for a non-maritime claim. Nevertheless, such an arrest will be granted only during enforcement proceeding after the claimant has obtained a final and enforceable judgment or arbitral award. Furthermore, although the application for arrest may be filed with an ordinary court, the arrest shall normally be executed through a maritime court (or its superior court in appropriate cases).

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

Arrest of a ship is a special type of property preservation measures. Other measures include the attachment of other properties (tangible or intangible) and the freezing of bank accounts etc. These measures can be applied for alternatively or in addition to the arrest of a ship if the value of the ship to be arrested is insufficient to secure the claim.

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

The MPL lists 22 types of maritime claims which are qualified for arrest of a ship. These 22 types of claims correspond almost identically to the 22 categories of maritime claims defined in Article 1.1 of the 1999 Arrest Convention as to which arrest of ship is permissible. This list has probably included almost all kinds of maritime claims that may be encountered in real life.

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

Yes. What flag a ship flies does not matter and a ship can be arrested as long as the relevant conditions for arrest are met.

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

Basically, a ship can only be arrested if her owner is the debtor of a maritime claim. There are essentially two exceptions:

The first is related to the arrest of a ship under a bareboat charter — such a ship can be arrested if the bareboat charterer of the ship is liable for the maritime claim and is the bareboat charterer of the ship when the arrest is effected.

The second exception is related to maritime liens. In respect of claims which enjoy maritime liens, e.g. claims for crew wages, port charges, salvage, loss of life or personal injury or other claims in tort (e.g. loss of or damage to property arising from a ship collision), the ship which gave rise to the maritime liens can be arrested even if she has changed hands at the time of the arrest.

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

Sister ships can be arrested. A "sister ship" means any ship (other than the particular ship giving rise to the maritime claim) which is owned by the ship-owner, bareboat charterer, time charterer or voyage charterer who is liable for the maritime claim. However, the arrest of sister ships is not available to claims with respect to ownership or possession of a ship.

The arrest of associated ships is not allowed, unless in the very extraordinary cases where the court is prepared to pierce the corporate veil and to find that the relevant companies have lost their separate corporate personalities (i.e. they are in effect one entity).

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

As to ships under bareboat charters, please see the comments under Question 7. Time chartered ships are normally not subject to arrest.

**Mr. Henry Lee* *is a partner of Sloma & Co., a specialised shipping law firm based in Shanghai and providing services before all Chinese courts. Mr. Lee specialises in bill of lading, charterparty, ship sale & purchase, shipbuilding, collision, personal injury, commodities and insurance matters. He has been working for international shipowners, P&I Clubs, ship financing banks, insurance companies (including H&M underwriters and liability insurers) and traders for 20 years. Mr. Lee is recommended as a leading shipping lawyer in China by Chambers & Partners and the Legal 500.*

Mr. Lee is an arbitrator of both China Maritime Arbitration Commission (CMAC) and Chinese International Economic and Trade Commission Committee (CITEAC).

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

In general, YES. According to Article 4 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law to the Arrest and Auction of Vessels* effective as of 1st March 2015 (hereinafter referred to as the *Supreme Court Judicial Note on the Arrest and Auction of Vessels*), where a maritime claimant applies for arrest of a vessel, the relevant maritime court shall order the maritime claimant to provide guarantee. However, where a maritime claimant applies for arrest of a ship in relation to disputes over crew labor, employment, and service contracts or disputes over compensation for personal injuries suffered at sea or in waters connecting the sea, and the facts are clear and the relationship of rights and obligations are definite, the court may NOT request the maritime claimant to provide guarantee /counter-security.
According to the *Supreme Court Judicial Note on the Arrest and Auction of Vessels*, the specific amount of guarantee/counter-security to be provided by a maritime claimant shall be equal to the various maintenance costs and expenses that may arise during the arrest of the vessel in question, the losses of sailing schedule due to the arrest, and the expenses incurred by the respondent concerned for the guarantee provided in order to release the vessel.
Since 2015, many insurance companies in mainland China launched a new type of insurance cover named “Property Preservation Liability Insurance”. Under this type of cover, the insurer has to issue a Letter of Guarantee as counter-security for the insured (claimant) in order to apply for preservation of property during proceedings or prior to proceedings, including but not limited to applying for ship arrest, attachment of bank account, etc.

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

Yes. Maritime liens shall NOT be extinguished by virtue of the transfer of the ownership of the ship, except for those liens that have NOT been enforced within 60 days from the date of a public notice on the transfer of ownership of the ship made by a court at the request of the transferee when the transfer was effected. For a maritime lien, arrest can only be enforced by arresting the particular ship that gave rise to the maritime lien. For a maritime claim, as far as the owner or bareboat charterer of a ship is the liable party, the ship can be arrested, but at the time of arrest, the ship must be owned by the owner or be under a bareboat charter.

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

Yes. Under Article 22 of *China Maritime Code*, the following five types of maritime claims give rise to a maritime lien:

(1) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew and other members on board;
(2) Claims in respect of loss of life or personal injury occurred in the operation of the ship;
(3) Payment claims for ship’s tonnage dues, pilotage dues, harbor dues and other port charges;
(4) Payment claims for salvage remuneration;
(5) Compensation claims for loss of or damage to property resulting from tortious act in the course of operation of a ship.

China is not a party to any conventions on maritime liens.

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

The time /days required to prepare an arrest application varies on a case-by-case basis.
The key elements are the Counter-Security, the original notarized and legalized POA/COI, and Certificate of Incorporation (or Good Standing) from a foreign party. It is a good practice to consider and prepare these documents well in advance to avoid delays.
The lawyer acting for foreign applicant (arresting party) should submit an original POA, certificate of incorporation and a certificate of identification of legal representative of the applicant (COI). Both documents have to be notarized by a notary public in the country where the applicant is registered,

and legalized by the Chinese embassy or consulate in that country.The Apostille Convention is applicable in the special administrative regions of Hong Kong and Macau, but not in mainland China. While lawyers can prepare the arrest documents quickly, it takes time for a court to examine the arrest application and supporting documentation, to decide on the format and amount of counter-security of the arresting party, and to prepare the arrest order. According to Article 17 of the *Special Maritime Procedure Law*, once a maritime court has accepted an application for ship arrest, it shall make an order within 48 hours. Where the order involves ship arrest as preservation measure for securing the maritime claim, it shall be executed forthwith. In practice, an arrest may be ordered and executed within 48 hours in case of urgency, even during non-working hours.

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

Yes, POA needs to be provided In addition, Certificate of Identification of Legal Representative, and Certificate of Incorporation or Certificate of Good-standing of the applicant are also requested in practice in order to prove that the applicant remains active. In addition, the following documents should be submitted to the maritime court:
(1) A written Ship Arrest Application signed and stamped by the applicant or its agent *ad litem*;
(2) Preliminary and basic evidence in support of the maritime claim;
(3) Original Counter-Security acceptable to the court.

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

In general, Application for Ship Arrest, notarized and legalized POA and Certificate of Identification of Legal Representative, and sometimes Certificate of Good Standing should be submitted in original at the time when the arrest application is submitted to court. But for urgent matters, the maritime court may consider accepting a faxed copy of the arrest application and a faxed or scanned copy of the signed/stamped POA/COI, provided that the original, notarized, and legalized POA, Certificate of Identification of Legal Representative, Certificate of Incorporation or Good Standing will be submitted to the court by authorized PRC lawyers/agent *ad litem*, within the timeframe specified by the court, usually within one-month from issuance date of the ship arrest order. An original Counter-Security must be presented by the applicant.

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

Yes. According to Article 19 of the *Special Maritime Procedure Law 1999*, after execution of ship arrest, any party may bring action over the substantive claims to the maritime court that effected the ship arrest, unless a jurisdiction agreement or arbitration agreement has been reached between the parties. According to the *Supreme Court Judicial Note on the Arrest and Auction of Vessels*, when a party brings a lawsuit to another competent court, the maritime court that arrested the vessel may continue to enforce the preservation measure/ship arrest.

"Forum Non Convenience" Doctrine

PRC maritime court could seize jurisdiction by pre-proceeding arrest of vessel, however, if all the conditions for applying the *"forum-non-convenience"* doctrine are met, and if the defendant have raised objection on jurisdiction, the maritime court can order to dismiss the case filed by plaintiff, notifying plaintiff to file the case in more convenient foreign court. These conditions are provided by **Art. 530 of the PRC Supreme Court Juridical Opinions on Application of Civil Procedure Law**, as follows:

a) The defendant requested the case should be tried by more convenient foreign court or have raised Objection on Jurisdiction;
b) There is no jurisdiction agreement between the parties;
c) This case is not subject to the exclusive jurisdiction of PR China court;
d) This case does NOT involve any interests of the state of China, any Chinese citizen, company or organization;

e) The main facts in disputes were NOT incurred within the territory of China, and Chinese law does not apply to this case; it would be of great difficulty for PRC court to find out facts and to apply governing law;

f) Foreign court has Jurisdiction to entertain this case, and is more convenient to handle this case.

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

The ship under arrest will be released for the following reasons:

1. The applicant withdraws his application for arrest;
2. The respondent provides security satisfactory to the court;
3. Where the respondent constituted the liability limitation fund for maritime claims, the court shall order without delay the release of the ship from arrest; or
4. The ship under arrest should also be released or the security provided should be returned to the respondent if the arresting party has not commenced legal proceedings or arbitration proceedings within 30 days from the arresting date.

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

Parties in disputes can negotiate the type and amount of security at any stage. The court will intervene only when the parties concerned fail to reach agreement on the type or amount of security. In addition to cash deposit, a letter of guarantee issued by a bank, an insurance company or another financial institution registered within the territory of PR China are also acceptable. A Letter of Undertaking issued by a member of the International Group of P&I Clubs may also be acceptable to the party concerned.

19. Does security need to cover interest and costs?

Yes. In general, the security amount specified in a court order corresponds to the arresting party's requested amount, which includes bank interest and costs.

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

Unless agreed by the applicant, PRC courts usually do not accept a letter of undertaking issued by a foreign P&I Club. It is however encouraging that more claimants' lawyers in China advise their clients to accept IG P&I Club's LOU, based on the claims amount, the credibility of the Club and PRC lawyers involved in the matter.

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

Following satisfactory security is provided to court or accepted by arresting party, ship under arrest is usually lifted soon within 24 hours subject to release application is submitted to court by arresting party. Release Order has to be served by court to port authority MSA (maritime safety administration) for sailing permit.

22. Is there a procedure to contest the arrest?

Yes. If the respondents are dissatisfied with a ship arrest order, they may apply for review within 5 days after receipt of the order. The court shall announce the outcome of the review within 5 days after receipt of the review application. However, the execution of the ship arrest order shall not be suspended during the period of review. Where a ship arrest is contested by an interested party, the court shall examine the objection and lift the arrest if the reasons for the objection are justified.

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

The time limit for ship arrest in preservation of a maritime claim is 30 days. Where a maritime claimant brings an action or applies for arbitration within this period, or where a maritime claimant

applies for arrest of a ship during litigation or arbitration, arrest of the ship is not subject to the 30 days' time limit.

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

Yes. However wrongful arrest is seldom established in the maritime courts' practice. There is no specific definition for wrongful arrest under Chinese law. In judicial practice, a wrongful arrest may exist where the applicant's maritime claim for ship arrest has no merit, or the owners of the ship under arrest are not liable for the maritime claim, or the amount of security demanded by the applicant is unreasonably high. If a claim fails and constitutes a wrongful arrest, the respondent can bring a claim in tort against the claimant for wrongful arrest requesting compensation for losses caused thereof, such in tort claim can be secured by the counter-security provided by the claimant for ship arrest.

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

Yes, piercing of the corporate veil is acknowledged by courts in China pursuant to Article 20(3) of *The Company Law of PRC*, which provides:
Where any shareholder of a company evades debts by abusing the independent legal person status of the company or by abusing the shareholder's limited liabilities, thereby seriously prejudicing the interests of the creditors of the company, the shareholder shall be jointly and severally liable for the debts of the company.
However, no judicial interpretation has been issued by the PRC Supreme Court on how to apply this provision in specific cases, and therefore the standard of its application may vary from court to court. In judicial practice, the Chinese courts are very cautious when applying this provision. The burden of proof lies with the claimant who has to show that the standard for the application of Article 20 has been met.

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

Yes. It takes at least a couple of months for the maritime court to have a ship sold *pendente lite*, counting from the date of ship arrest. If the respondent fails to provide security within the arrest time limit of 30 days, and if it is not appropriate to keep the ship under arrest, the claimant, after having brought an action or having applied for arbitration, may file an application to the maritime court that ordered the ship arrest, for judicial sale of the ship by auction (sale of a ship *pendente lite*). The maritime court shall, after the receipt of a written application for sale of a ship, examine the application and make an order to allow or disallow the sale.
A maritime court that orders auction of a ship shall issue an announcement (public notice) in newspapers or other news media. The announcement for ship auction shall be made for a period of not less than 30 days. Where a ship needs to be auctioned off again due to the failure to reach any deal/lower than reserve price in the first auction, a re-auction announcement shall be published seven days prior to the date of auction. After two auctions have been aborted, a ship may be sold at a price of no less than 50% of its valuation.

***Ms. Zhao** is the Managing Partner of HiHonor law firm, having over 27 years' experience in shipping law. She obtained her LL.B from Shanghai (ECUPL) and her LL.M from Univ. of Southampton. She had one year working experience in FD&D department with leading P&I Club in London; she had three months' working experience with prominent shipping firm in Cape Town of South Africa; and practiced with other two leading P&I clubs and top international shipping firm in London in 1998. Her major practice covers all aspects of shipping law including both dry and wet, international trade law and investment. She was selected by All China Lawyers' Association as one of "The Elite PRC Lawyers of International Practice" and attended overseas training course in Spain and Brussels in 2014 and in USA in 2016, received comprehensive training on cross-boarder transaction/investment. Ms. Zhao is an arbitrator of China Maritime Arbitration Commission (CMAC), a Supporting Member of London Maritime Arbitrators' Association (LMAA); and an Arbitrator of Korean Commercial Arbitration Board.*

SHIP ARREST IN *COLOMBIA*

*By Ricardo Castellar Nájera**
Castellar & Asociados
castellan.asesores@gmail.com
www.castellarlaw.com
Cartagena, Colombia
Tel: +57 320 5654004
(USA) +1 352 3461693

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

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

In Colombia, national and international maritime laws on the arrest of vessels apply. The international embargo agreement and Decision 487 of 2000 of the Andean Community of Nations.

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

It is only required that it be in Colombian territorial waters and that a maritime credit be alleged.

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

There is preventive arrest of ship and ordinary arrest of ship.

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

For all the credits that the boat may generate or because of it; Credits can be privileged or ordinary.

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

In Colombia, all ships can be seized except warships or those protected in maritime law.

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

Article 41 of the Decision 478 of 2000 establishes that the arrest of any vessel that has an outstanding maritime credit will proceed if:

- The person who is the owner of the vessel at the moment of birth of the credit is obliged to pay it and is also the current owner at the moment that the arrest is executed.
- If the bareboat charterer at the moment of birth of the credit is obliged to pay it and is also the current bareboat charterer at the moment that the arrest is executed.
- If the credit is based on a mortgage or lien of the same nature over the ship.
- If the credit relates to the ownership or possession of the vessel.
- If the credit is against the owner, the bareboat charterer, the manager or the shipowner of the vessel and is guaranteed by a maritime privilege granted by Article 22 of this Decision.

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

They can also be seized.

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

They can be seized while the maritime credit default is alleged and the ship is in Colombian waters.

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

Judges require insurance policies, but in some cases judges may waive this requirement if the applicant can show that he or she has no means of obtaining such a policy; In Colombia, a deposit must be made in favor of the insurance for the insured value, unless the amount of the seizure is very low and the creditor has sufficient funds in Colombia.

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

The claim for maritime lien is faster and is processed as a maritime embargo, the other credits are initially processed through a preventative lien.

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

Yes, maritime liens are recognized under the rules of the Decision 478 of 2000 of the Andean Community of Nations.
The recent IMO convention shielded shipowners, but in Colombia a ship that has debts must be very careful because the arrest is quick to process and the release is not so fast.

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 several factors; that the information is translated and complete, an agreement has been signed and a power of attorney is obtained with the formalities required by the law of Colombia (before a Colombian notary or consul). Delivered the case, we estimate that the demand is presented in 3 days maximum and the seizure could take between 10 and 20 days, depending on the complexity of the case, experience of the judge, urgency request, etc.

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

Yes, answered in question 13.

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

1. POA
2. Evidence of the applicant company
3. Proof of the breached agreement

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

Absolutely.

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

Get a good maritime lawyer and make a deposit for double the default. Achieve a fair payment agreement or fight in the process to lift the embargo, which can significantly harm the ship and its interests.

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

An insurance policy that guarantees twice the amount claimed. It is not easy to get because the interested party must pay the cost of insurance and make a deposit for twice the value claimed and even having it, the plaintiff can attack the policy.

19. Does security need to cover interest and costs?

It is for twice as much as is alleged. It is something that cannot be taken lightly because they could also ask for a policy from whoever requests the embargo.

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

P&I are not accepted to lift an embargo because their nature is civil liability.

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

It can take months. It all depends on the skills of the lawyer, the knowledge of the judge, the availability of a hearing on the judge's agenda and other factors.

22. Is there a procedure to contest the arrest?

Yes there is a procedure, the problem is that the plaintiff can delay a process and delay the removal of a vessel. Sometimes the judge may notice a total disproportion and lift the measure if the debtor has another way to pay the credit that is alleged as defaulted.

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

Three days after being notified

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

Of course, and therein lies the skill of an expert lawyer in the field.

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

It is not something that is aired in an embargo, unless the credit has the character of labor and the claimant wants to extend the actions to the partners of the debtor company.

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

The process is immediate and the risk is borne by the buyer. Usually this figure occurs when the buyer has reached an agreement with the debtor.
The maritime litigation in Colombia is balanced, however there is a third actor and it is the DIAN or customs agency of the Colombian state, which could stay with a ship that exceeds a very long time in national territory, regardless of who is right.
Our firm has an extensive 30 years of experience in seizure and auction of vessels, as well as the judicial defense of ships.

**Lawyer specialized in international maritime law with a master's degree in business and maritime law, president of the Colombian Association of Maritime Lawyers, former university professor and member of the Ibero-American Institute of Maritime Law*

SHIP ARREST IN *COSTA RICA*

*By Abraham Stern Feterman**
astern@hulbertvolio.com
Centro Corporativo Jorge Volio J. Av. Central, Calle 1,
San Ana,, 10901, Costa Rica
Tel: +506 2205 5000

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

Arresting a ship in Costa Rica represents a valuable tool to enforce maritime claims against ship owners and other related operators due to a length process, which in turn, obligates actual Maritime Debtors to react quickly in order to release a detained vessel.
The whole process is regulated and governed under the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) and is executed as a preventive or precautionary attachment. This preventive attachment, which also constitutes a physical arrest of the ship, operates in the absence of a valid title claim with plaintiff's right of execution (Referred in our laws as "Título Ejecutivo"). Under the precautionary attachment process, the creditor holding in his favour a legitimate maritime claim is compelled by law to post a cash bond equal to 25% of the total value of the claim or 50% for none monetary pledges (Such as a Letter of Credit or Bank Warranties). The holder of a "Título Ejecutivo", together with a formal ruling form a Court of Law, exonerates the Creditor to post any type of bonds or warranties.
It is imperative to take into consideration that the creditor filing a preventive attachment shall file the merits of the claim within a month following the precautionary arrest, providing that its non-compliance would result in losing the posted bond in benefit of the alleged debtor.

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

The International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952).

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

Yes, with a valid Maritime Lien as provided by the Maritime Commercial Code of 1853. However take into account that this Code is integrated by many out-dated laws and regulations.

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

Not as a legal institution per se. However, the precautionary attachment as regulated by our Procedural Civil Code has the same effects and consequences as a "saisie conservatoire", freezing order and a Mareva Injunction, but not as extensive as the United States Federal Rule B Attachment.

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

(a) Damage caused by any ship either in collision or otherwise;
(b) Loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
(c) Salvage;
(d) Agreement relating to the use or hire of any ship whether by charter party or otherwise;
(e) Agreement relating to the carriage of goods in any ship whether by charter party or otherwise;
(f) Loss of or damage to goods including baggage carried in any ship;
(g) General average;
(h) Bottomry;
(i) Towage;
(j) Pilotage;
(k) Goods or materials wherever supplied to a ship for her operation or maintenance;

(l) Construction, repair or equipment of any ship or dock charges and dues;
(m) Wages of Masters, Officers, or crew;
(n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
(o) Disputes as to the title to or ownership of any ship;
(p) Disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
(q) The mortgage or hypothecation of any ship.

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?

Not in all cases. There has to be a legal and economic link between the claim and the debtor. Proof of ownership or use rights (for chartered vessels) shall be presented to the Court within a month following the precautionary arrest.

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 as long as there is a legal and economic link between the claim and sister ship and associated ship debtor. Proof of ownership or use rights (for chartered vessels) shall be presented to the Court within a month following the precautionary arrest.

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

Any owner, bareboat charterer, operator and/or time charterer can be subject to the arrest of their vessel if there is a link between the claim and the debt. Proof of ownership or use rights (for chartered vessels) shall be presented to the Court within a month following the precautionary arrest.

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

Yes. A creditor can only file a preventive or precautionary arrest by posting a cash bond equal to 25% of the total value of the claim or 50% for none monetary pledge (Such as a Letter of Credit or Bank Warranties).

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

No. From a procedural point of view, there is no difference. However, no counter-security is required if the arrest is made based on a legitimate maritime lien.

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

Yes. Costa Rica recognizes maritime liens. The Maritime Commercial Code of 1853 provides list of the privileged maritime liens. Costa Rica has not ratified any international convention on maritime liens.

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

It may take up to 7 working days after taking into consideration the preparatory steps, e.g. drafting the claim, translating supporting documents, if any, filing the arrest claim with the Court, notifying the Harbour Master and placing the vessel under arrest.

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?

Since Costa Rica follows a preventive or precautionary attachment, in which posting a bond or counter-security is mandatory, the initial filing only requires sufficient evidence to create a presumption of the alleged maritime claim. However, within a month following the precautionary arrest, the creditor must file the merits of its claim and all the evidence, proof and documentations has then to be presented with all the formalities of the Law e.g. notarized, apostilled and translated into Spanish.

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

Not necessarily. Costa Rica ratified the International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) with an expressed reserve over article 7 and as such the competent Court to address the substantive claim is the court in which the plaintiff is domiciled or the court of the vessel´s flag. The reserve does not include disputes as to the title to or ownership of any ship; disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship and the mortgage or hypothecation of any ship.

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

The parties involved in the precautionary arrest have to file a joint motion to release the vessel. Otherwise, the ship-owner or its agent will have to post a counter security deposit. In either case, the physical release of the vessel should not take more than 24 hours.

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

A cash bond or non-monetary pledges such as a Letters of Credit or Bank Warranties.

19. Does security need to cover interest and costs?

Usually it has to cover the total amount of the claim plus 50% for interests, costs and fees. However the Judge has full discretion to establish the final counter security amount.

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

Generally yes and as long as the parties involved in the precautionary arrest file a joint motion to release the vessel. A self-filing of an LOU is not sufficient; the acceptance of the claimant is mandatory.

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

No more than 24 working hours, excluding weekends and holidays.

22. Is there a procedure to contest the arrest?

Yes. The ship-owner or its agent can file a claim for a wrongful arrest if the claimant does not file the merits of the claim within a month after requesting the precautionary arrest.

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

One month.

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

Yes. Plaintiff bears the risk of arresting the ship. If he loses the preventive attachment or the case on the merits, his arrest may be considered wrongful and he could have to indemnify all costs and damages caused to the ship, as a result of such wrongful arrest.

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

Yes, but it is a rare practice. 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?

If a ship has been arrested and the arrest is not lifted in injunction proceedings or by way of alternative security, the arrest will be maintained until the creditor has obtained a title (judgment or arbitration award). Once such title is obtained, the conservatory arrest will automatically be transformed into an executory arrest. This may be followed by a judicial/public sale of the vessel before the court, if so requested, in which case the court will determine the pre-conditions for such auction.

***Abraham Stern Feterman** is the founding partner at LAWGICAL, a full-service firm which in addition to its important experience in the field of shipping and transportation law, presently advises its clients in a wide range of legal, commercial, financial, insurance and taxation matters. The firm is headquartered in San José, Costa Rica with correspondents in every single country of the LATAM region. Mr. Stern has a Master of Law in Admiralty from Tulane University. He has specialized in Maritime and International Law since 1995 and was admitted to practice law in the State of Louisiana in 1997. Prior to founding LAWGICAL, he worked at Pacheco Coto, EY Law and Chaffe McCall in New Orleans, Louisiana, where he focused his practice on maritime law, aviation accident law and international corporate transactions.*

SHIP ARREST IN *CROATIA* (QUESTIONS 1-9)

*By Toni Stifanic & Anita Krizmanic**
MACEŠIC & PARTNERS LLC
stifanic@macesic.hr
krizmanic@macesic.hr
www.macesic.hr
Pod kastelom 4, 51000 Rijeka, Croatia
Tel: +385 51 215 010
Fax: +385 51 215 030

(QUESTIONS 10-26)

*Tihomir Duplic**
Duplic Strukic Saric Law Firm
Froudeova ulica 1, 10000 Zagreb, Croatia
e-mail: t.duplic@dss-law.hr
mobile: +385(0) 91 2224 646

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

According to Croatian law the arrest of ships is one of the "interim measures of security of a claim" that ensures future collection of the outstanding debt that is in dispute. Apart from the arrest of ships other interim measures of security of a claim on ships are possible, but in practice are very rare. The objective of the arrest of a ship is to make available to the creditor assets of the debtor for future enforcement. Therefore, arrested ships may be released if another security is given as replacement. The other security may be a monetary deposit, bank guarantee, P & I Club or other corporate letter of undertaking or other values that are available for enforcement if accepted by the creditor. If the creditor does not accept the offered security, the acceptability of the offered security will be decided by the court. Monetary deposits and bank guarantees are always accepted, while P&I Clubs/corporate letters of undertaking and other values on a cases to case basis.
Because of various issues with international elements, and in particular the applicability of foreign laws, that are involved in the arrest of ships there are sometimes inconsistencies in the interpretation of the rules of law and in-court practice. However, such cases are exemptions, and it is possible to obtain the arrest of a ship or obtain the release of an arrested ship in accordance with accepted international standards.
In order to justify and maintain granted arrest the creditor is due to initiate litigation or arbitration proceeding in merits of the matter within 15 days from the date of arrest order. Arrest lasts according to the arrest arrest order, usually till the terms for enforcement of the judgment or arbitration award are met.
The opposing party may prevent the arrest before ship's arrival in the domestic jurisdiction by placing in advance the motion for acceptance of the replacement security, if accepted by the court (see point 18).

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

Croatia has adopted the continental legal system. It is a member-state of the Arrest Convention 1952. The Enforcement Act applies as a subsidiary source of rules of law to the Maritime Code that regulates arrest of ship proceedings. There is significant court practice and number of books and articles that deal with various relevant issues with regard to the arrest of ships. Maritime Code applies if there is no direct applicability of the Convention. Maritime Code Amendments in few provisions slightly differ from the Convention.

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

No, there is no other way to arrest a ship with the purpose of security of the claim. According to the Paris Memorandum the Harbour Master Office Inspectors, exercising Port State Control authorities, can order the detention of a ship. The Custom authorities and the Criminal Court can hold the ship in

temporary seizure for customs clearance or criminal proceedings purposes, but in practice very rarely and under very restricted terms.

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

Not in the sense of these alternatives and as these alternatives are known internationally. However, the Maritime Code provides that every interim measure that would achieve the objective of security of a particular claim may be granted. In other words, subject to the nature of the claim, 67 various injunctions with regard to the ship are possible.

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

A ship can be arrested for:

- maritime claims as provided by Art. 1 of the Convention; apart from bottomry and ownership claims that are not provided in the Maritime Code when Convention is not applicable,
- maritime liens as maritime privileges (separately provided in the Maritime Code),
- claims secured with mortgage, pledge or other similar registered encumbrances on the ship according to the laws of flag (separately provided in the Maritime Code).

For all other claims notwithstanding to the nature, if there is no reciprocity between Croatia and the state of flag.

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

Yes, there are no limitations for the arrest of ships with regard to the flag of the ship. The Flag of ship affects to the applicability of the Convention or the Maritime Code, the existence of maritime privileges (liens) and registered encumbrances. It also possibly affects some other underlining issues subject to particular matters.

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

For maritime privileges (liens) and registered encumbrances, yes.
In the case of direct applicability of the Convention, the answer is yes, as it is provided in the Convention. For maritime claims depends on the applicable law for merits of the matter.
The main principal of Maritime Code as regard to the debtor and the arrested ship is that the arrested ship as an asset is the property of the debtor. In Croatia there is no "in rem" proceedings, but only "ad personam".
If the foreign law that applies to the merits of the matter provides "in rem" liability, and the debt is born with regard to the ship, the answer is yes. In this case the opposing party in the application for arrest should be the debtor who is not the owner of the ship.

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

Sister ship and ship in associated ownerships may be arrested although in these cases the Maritime Code also slightly varies to the Convention.

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

According to the Maritime Code ships in Bareboat or Time Charter may be arrested if there is direct applicability of the Convention, or if applicable foreign law for merits of the matter provides "in rem" claim, or if the principal debtor is the owner of the ship in Bareboat or Time-Charter (see answer under point 7).

***Toni Štifanić** is an Attorney at Law with Macesic & Partners LLC. He advises and represents mainly international clients in the areas of maritime and transport law, insurance, dispute resolution, commercial and corporate matters, bankruptcy, and restructuring. Toni is a P&I Club correspondent and as such has acted in H&M and cargo damage as well as personal injury matters. He is P&IQ certified. Toni is a member of the Croatian Bar Association, International Bar Association, Croatian Transport Law Association and Croatian Maritime Association.*
Toni is the co-author of articles in the field of international law (Ambiguity of the "Peaceful Purposes" Principle in Outer Space Law, Proceedings of the Faculty of Law of the University of Rijeka and Students, PFRI, 2014), as well as labor law and insurance and reinsurance in the international publications published by The Legal 500, Mondaq, and ICLG.

***Anita Krizmanic** Krizmanic is Partner at Macesic & Partners LLC. She advises and represents international clients in maritime and transport law, dispute resolution, insurance, restructuring and bankruptcy proceedings. Also advises in commercial and corporate matters. As a Protection and Indemnity (P&I) Clubs correspondent handles H&M and cargo damages and PI matters. She is member of Croatian Bar Association, International Bar Association, Croatian Transport Law Association and Croatian Maritime Association.*
Anita is the author and co-author of articles in the areas of dispute resolution, insurance and bankruptcy in the leading international publications: International Financial Law Review (Restructuring and Insolvency), The International Comparative Legal Guide (Litigation & Dispute Resolution), International Financial Law Review (Insolvency & Corporate Reorganization).

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

Counter-security is not required by the Courts in order to arrest the ship.
However, under Croatian law there is an existing possibility for the opposing party (i.e. the owners of the vessel under arrest) to apply to the Court with request to order the claimants to provide a counter security after the arrest is granted. The Court may order counter security only following request of the opposing party. In such a case the Court may order the Claimants to put up a counter security for costs and damages sustainable by the owners for detention of the vessel arising out of the arrest, if subsequently a Court finds the arrest was not justified. Nevertheless, as a general view, the Courts of Croatia are not inclined to accept the request of the opposing party for counter-security.

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

From the procedural point of view, there is no difference in respect to arresting a ship for a maritime claim and a maritime lien. Nevertheless, pursuant to article 954, section 1, of the Croatian Maritime Code it is provided that as a security for the maritime claims (save maritime liens claims) any vessel may be arrested that is owned by a "personal debtor" at time of submission of the petition for arrest. The expression "personal debtor" relates to the registered owner of the vessel liable for respective claim.

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

Yes, Croatian Maritime Code provide a list of maritime liens. Under Croatian law the claims secured by maritime liens are taking priority over a ship mortgage.
As per the provisions of the Croatian Maritime Code, the claims secured by maritime liens are as follows:

1. Claims for salaries and other allowances owed to the master, officers and other crew members regarding their employment on board, including repatriation costs and social security contributions to be paid in their name;
   Claims for death or personal injury occurred on land or at sea and are directly connected to ship employment;

3. Claims arising from remuneration for salvage at sea;
4. Claims for port fees and costs incurred in nautical ports and other special-purpose ports, expenses pertaining to navigation in channels and other sea lanes, including fees for safety of navigation, fees for use of navigation safety facilities, and pilotage costs;
5. Claims arising from non-contractual liabilities for material losses or damages caused by ship, with the exception of loss or damage to cargo, containers and passenger objects transported by this ship.

Maritime liens on a ship for the principal shall also apply on interest.
List of maritime liens provided by the Croatian Maritime Code corresponds to the International Convention on Maritime Liens and Mortgages, Geneva 1993. Croatia has not ratified International convention relating to maritime liens. As per provisions of Croatian Maritime Code (the conflict of law rules), the law of the ship's flag applies to maritime liens.

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

The time required to arrest the ship since the moment the file arrives to our law firm depends of the scope of documents to be perused (and translated in Croatian language). Generally, it takes a few hours to prepare the application for arrest. The arrest proceeding is commenced by the petition for the arrest, submitted to the Court having jurisdiction over the Port where the ship is located and supported with copies of the respective evidence. All documents and evidence submitted should be supported with the translation into Croatian language by a sworn court interpreter. Once the application for arrest is submitted to the Court, the Court will decide within a day or two, depending when the application has been received by the Court. The ship is arrested when the Arrest Order is served to the Master, and ship documents sized by the competent Harbour Master's Office.

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

Yes, in order to apply for the arrest of the ship a PoA duly signed and sealed by the client/claimant is required.
In order to obtain the arrest of the ship, the claimant must demonstrate existence of an arguable claim against registered owner of the ship and to elaborate that on the facts of the case there is a reasonable possibility (danger) that an amount as established by a judgement or by award will not be recovered. If the registered owner of the ship is a foreign (non-Croatian) entity, existence of danger is assumed by law. No special form of legalization of PoA is required. A PoA, in a copy, by e-mail in advance, would be sufficient, and the original to be provided to the Court subsequently). The application for arrest should also be supported with an evidence regarding the registration of the ship with full identity of the registered owner (e.g. transcript of registry or Lloyds Intelligence/ Equasis).

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

Save for the application for the arrest, no original documents are required. All documents can be filed electronically. No documents require notarisation or apostille (for the purpose of arrest of the ship).

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

As a general principle under Croatian law, jurisdiction of the Court of Croatia can be founded on the arrest of the vessel (over the substantive claim), provided the exclusive jurisdiction of foreign court/ arbitration has not been agreed by the contract.
In a case that the arrest of the vessel is granted, the Court will give the claimant 15 days period to commence the legal action on merits before the competent court and/or arbitration and to provide the Court with the evidence that such legal action has been commenced. If the claimant failed to

commence legal action on merits before the competent court and/or arbitration, the arrest will be lifted.

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

The ship can be released from the arrest if: a) the claimant submits a written motion and withdrew the application for arrest; b) if the respondent places the appropriate security (accepted by the court or the claimant); c) if the Order for arrest is set aside following appeal of the respondent; d) if the claimant fails to initiate the procedure on merits before the competent court/arbitration within the time granted (usually 15 days). In all cases the Court will issue a Decree and release the ship from the arrest within one or two hours.

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

According to the judicial practice of the Courts of Croatia, in order to release the ship from the arrest a cash deposit and/or bank guarantee are considered acceptable security without need for approval from a claimant. Accordingly, if a cash deposit is paid with the Court or bank guarantee is provided by a respondent as a security, the Court will release the ship from the arrest regardless to objection of the claimant. However, if other form of security is provided (e.g. P&I LOU or other form of guarantee of the insurer), the security will be submitted for consideration to a claimant prior the decision be made by the Court, which decision is subject to appeal.

19. Does security need to cover interest and costs?

The security needed to cover the interest and costs as awarded by the Order for Arrest. The security amount is usually set in the amount of 120-130% of the principal claim.

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

Club LOUs will be submitted for consideration of a claimant prior the decision be made by the Court. Generally, IG P&I Club LoUs are considered sufficient security to lift the arrest. However, as the one LoU provided by the IG P&I Club has not been honoured, in certain cases the LoU has not been accepted by the Court as sufficient security.

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

The release procedure is also considered as an urgent procedure. The Court will issue the Order and lift the arrest within an hour.

22. Is there a procedure to contest the arrest?

Yes. The respondent has a right to contest the arrest by filing the appeal against the Arrest Order. Once the appeal against the Arrest Order is filed, the first instance Court may consider the appeal of the respondent and set aside the Arrest Order if found the appellation reasons grounded. However, the first instance Courts are not inclined to decide on appeal of the respondent, but forward the matter to the Court of Appeal for their consideration and decision.

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 that the arrest of the ship is granted, the Court in Croatia will give the claimant 8-15 days period to commence the legal action on merits before the competent court and/or arbitration and to provide the Court with the evidence that such legal action has been commenced. If the claimant fails to commence legal action on merits before the competent court and/or arbitration, the arrest will be lifted following request of the respondent.

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

The Courts of Croatia acknowledge wrongful arrest. If the arrest is wrongful, the claimant would be liable for all costs, losses and damages sustained by the respondent, due to such wrongful arrest. The claim for compensation of damages arising out of and/or in connection with wrongful arrest should be submitted in the same procedure, if still pending. Otherwise, the claim can be submitted in a separate litigation procedure for compensation of damages.

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

The piercing and lifting of corporate veil is known to Croatian law. Nevertheless, as a general practice, under the Croatian law it is very difficult to pierce the corporate veil. In this respect, the Courts of Croatia will recognize only the registered owner as the owner of the ship and will not pierce the corporate veil between related companies.

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

The Croatian Maritime Code (2004 as amended) does not provide for sale of the ship pendent lite.

*__Tihomir Duplic__ *(1980) is the partner at Duplić Strukić Šarić Law Firm and holds a law degree from the University of Zagreb. Tihomir attended various specialised training courses held by reputable universities and societies such as Tulane Admiralty Law Institute and Lloyds Maritime Academy.*
Law Firm Duplić Strukić Šarić is specialised in shipping and maritime affairs, aviation, finance and international commerce to and from Croatia, which aims to provide the clients with full advise, as well as all the necessary assistance, on all issues connected with such activities. However, shipping has been a core practice since the firm was founded.
The long standing relationship created over the years through our practise dealing with all aspects of shipping and maritime affairs allows us to offer expertise and deep understanding of legal and business related aspects of maritime activities.
The Firm is proud of productive relationship we have developed with shipowners, insurers, yards, banks and other financial institutions.
Tihomir advised in large number of cases related to Shipping; Ship Arrests; Ship Finance; Ship Registration; Ship Sales and Mortgages; Shipbuilding and Ship-repairs; Marine Insurance; P&I defence; Yachting, Marine Accidents and Pollution; Carriage of Goods by Sea; Personal Injuries of Seafarers; Insurance; Aviation; Commercial Litigation; Arbitration; and Professional Liability.
He is a member of Croatian Bar Association, the Croatian Maritime Law Association, and a guest lecturer with University College Aspira of Split, Croatia – covering legal aspects of nautical tourism.

SHIP ARREST IN *CURAÇAO*

*By Jan A.M. Burgers**
BURGERS ADVOCATEN
jan.burgers@burgersadvocaten.com
www.burgersadvocaten.com
Bramendiweg 2 (Kintjan) Willemstad, Curacao
Tel: + 599 9 46 51 605
Fax: + 599 9 46 51 604

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

In Curacao, as in the other (is)lands of the Netherlands Caribbean and in the Netherlands, the procedure for arresting a vessel is straightforward and quick. When petitioning for an arrest a claimant can suffice with only a brief substantiation of its claim. Normally the Curacao Court will allow the arrest for the principal increased by 30% for interest and costs. The attachment is made on board the ship by the bailiff. Ships under arrest in the actual Port of Curacao will not be able to sail without the cooperation of local authorities (pilot service, towage etc.), which cooperation will not be given without confirmation from the arrestor that the arrest has been lifted.
A conservatory arrest is to be lifted against sufficient guarantee. In summary proceedings the arrestee may demand lifting of the arrest. In case of wrongful arrest the arrestor will be liable for damages. A conservatory arrest will establish local jurisdiction in case elsewhere a judgment executable in Curacao cannot be obtained.

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

Curacao is party to the 1952 Brussels Arrest Convention. The Convention is not incorporated in Curacao Law, and applies in accordance with article 8 of the Convention. It is thought that the provisions of the Convention do not apply as to conservatory arrest of ships flying the flag of a Non-Contracting State, at least in so far as they increase the protection of the owner of such vessel[1].

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

Executory arrests are allowed with regards to judgments rendered within the Kingdom of the Netherlands or other judgments executable in Curacao.

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

No.

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

Conservatory arrest of ships flying the flag of a Contracting State, is only allowed for maritime claims as defined in the Convention. Ships flying the flag of a Non-Contracting State may be arrested for any type of claim.

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

Except for Russian State Owned vessels; yes.

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

In principle, according to Curacao Law, if according to applicable law a claim is recoverable on the ship, then an arrest is allowed. In certain cases recovery on a ship is possible for claims against others than the owner, for instance the bare boat or time charterer, or for claims that attach to the ship irrespective of the identity of the owners.

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

According to Curacao law in principle any asset of a debtor may be arrested in order to obtain security for a claim, and thus, according to Curacao law, a sister ship may be arrested. If a ship is owned by more than one owner, the ship can still be arrested for a claim against one of the associated owners.

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

See answer to question 7.

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

The Curacao Court may require counter-security, in practice this rarely happens.

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

The common law concept of "maritime lien" is unknown in Curacao law. However, if a maritime lien means that according to the applicable law a certain claim attached to a vessel irrespective of the question in whose hands (under whose control) that ship may be, arrest for such claim is possible.

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

Curacao is not party to any convention on maritime liens. Claims having the legal status of being attached to the ship, may qualify for an arrest.

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

In straightforward matters it may take no more than one or two hours to have a ship arrested.

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

To petition for conservatory arrest, claims are only to be demonstrated summarily. POA is not required. In ensuing injunction proceedings further substantiation might be required.

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

In principle original or notarized documents are not required.

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

The arrest establishes local jurisdiction for the Curacao Court as forum arresti, which serves as a residual jurisdiction in case elsewhere a judgment that is executable in Curacao cannot be obtained.

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

The arrestor orders the bailiff to lift the arrest, the bailiff subsequently notifies the vessel as well as the harbour authorities.

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

Curacao procedural law only prescribes that the ship is to be released against "sufficient guarantee"

19. Does security need to cover interest and costs?

The security is to cover the amount estimated by the Judge who allowed the arrest. His estimate normally includes 30% of the principal amount for interest and costs.

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

Depending on circumstances.

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

1-2 hours during working hours.

22. Is there a procedure to contest the arrest?

Arrest can be contested in summary proceedings. A Judge in such summary proceedings will order the release of the vessel if nullifying forms have not been observed, if the arrestee summarily demonstrates that there is no merit what so ever to arrestors claim, or if sufficient guarantee is or has been provided.

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

Standard period is 4 weeks after the conservatory arrest is made, but normally longer or prolonged periods can be obtained without much difficulty.

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?

In very limited circumstances; yes

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

After in a procedure on the merits or in summary proceedings an executory title has been obtained, by operation of law a conservatory arrest will transform into an executory arrest, also pending continuation of the proceedings in for instance appeal. An executory arrest may lead to the ship being sold through public auction. Such sale normally takes several months to complete.

***Jan A.M. Burgers** worked as a mate in the Netherlands Merchant Navy and in the North Sea offshore industry. Served as a pilot in the- Netherlands royal navy. Joined the bar in 1999. Acquired extensive experience in the fields of construction and maritime law and in local and international (arbitration) proceedings. Is part-time lecturer maritime law at the University of Curacao.*

SHIP ARREST IN *CYPRUS*

*By George Zambartas & Vasiliki Malta**
G. ZAMBARTAS LLC TRADING AS HILL DICKINSON CYPRUS
george.zambartas@hilldickinson.com.cy
vasiliki.malta@hilldickinson.com.cy
www.hilldickinson.com
Euro House, 1st Floor, 82 Spyrou Kyprianou Street,
Limassol, 4042 Cyprus
T: +357 25373734
F:+357 25725502

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

The Cyprus Admiralty jurisdiction is exercised by the Supreme Court, which by virtue of rule 50 of the Admiralty Jurisdiction Order gives an absolute right for arrest of the vessel or property. However, by virtue of an amendment to the Courts of Justice Law (Law 136 of 1991), any admiralty case, irrespective of the amount of the claim, can be tried by the District Courts.
The person/entity who wishes to arrest a vessel in Cyprus must file an action in rem against the vessel herself and simultaneously an application requesting her arrest. It is necessary for the Admiralty Court to be satisfied that there is a serious matter of trial and that on the facts presented there is a probability that the claimant is entitled to relief. In the event that the application for the arrest of a vessel is successful, the Admiralty Court will require the following from the claimant:

a) Lodgment of a deposit for the expenses which may be incurred by the Admiralty Marshal in connection with the custody and supervision of the vessel whilst under arrest;
b) Lodgment of any other amount of money required by the Registrar for the expenses of the arrest; and
c) Posting a security bond by way of a Cyprus Bank Guarantee. Upon the issuance of the arrest order and the compliance of the above requirements the arrest order must be served on the vessel.

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

Cyprus is not a party to the 1952 Arrest Convention nor the Brussels Liens and Mortgage Conventions. The United Kingdom signed the said Arrest Convention in 1952 and the Administration of Justice Act Part 1 was subsequently passed in order to enable the United Kingdom to ratify the Arrest Convention. The said Act is applicable in Cyprus by virtue of its Constitution and Articles 19 and 20 of the Courts of Justice Law of 1960 (Law No. 14/1960).

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

No, there is no other way to arrest the vessel. In cases where the claimant cannot proceed with the arrest of a vessel, he may seek a “freezing” Mareva injunction, which is normally granted when the defendants have no further assets in Cyprus and there is risk of alienation/ dissipation of assets. The application for a Mareva injunction is made ex parte.

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

A “freezing injunction” is an option.

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

The Admiralty Court has jurisdiction to hear the following claims:

a) claim to possession or ownership of a vessel or to ownership of any share therein (arrest is not possible for claims other than ownership and possession claims arising from the sale and purchase of vessels);

b) question arising between the co-owners of a vessel as to possession, employment, or earnings of that vessel;
c) claim in respect of a mortgage of or charge on a vessel or any share thereof;
d) claim for damage done by a vessel;
e) claim for damage received by a vessel;
f) claim for loss of life or personal injury sustained in consequence of defect in a vessel or in her apparel/ equipment, or of a wrongful act, neglect, or default of owners, charterers, or persons in possession or control of a vessel or of master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults owners, charterers, or persons in possession or control of a vessel are responsible, being an act, neglect or default in navigation or management of the vessel, in loading, carriage, or discharge of goods or in embarkation, carriage, or disembarkation of person;
g) claim for loss or damage to goods carried in a vessel;
h) claim arising out of any agreement relating to carriage of goods in a vessel or to use/charter;
i) claim in nature of salvage;
j) claim in nature of towage in respect of a vessel;
k) claim in nature of pilotage in respect of a vessel;
l) in respect of goods or materials supplied to a vessel for her operation or maintenance;
m) claim in respect of construction, repair, equipment of a vessel, dock charges/ dues;
n) claim by a master or crew for wages and claim by or in respect of a master or crew for any money or property, which under any provisions of the Merchant Shipping Acts 1894-1954 is recoverable as wages at Court or in the manner in which wages may be recovered;
o) claim by a master, shipper, charterer, or agent in respect of disbursements made a vessel's account;
p) claim arising out of a general average act;
q) claim arising out of bottomry; and
r) claim for the forfeiture or condemnation of a vessel or of goods.

Although bunker suppliers do not have maritime liens under Cyprus Law, a claim for bunkers falls within the Admiralty Jurisdiction of the Court and an arrest of a vessel is possible for such a claim if the bunker supplier shows that there is a contractual relationship between the bunker supplier and the owner of the vessel. However, if the physical supplier cannot show any contractual relationship with the owner of the vessel, then it would not be possible to successfully apply for an arrest of the vessel.

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

You can arrest a ship in Cyprus irrespective of her flag, provided that she is in the territorial waters of Cyprus.

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

You can arrest a ship in Cyprus irrespective of the debtor unless the debtor is in a position to claim sovereign immunity.

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

The Administration of Justice Act 1956 is applicable in Cyprus. Although section 3(3) of the said Act enables a claimant to arrest a vessel to which a maritime lien attaches, no provisions are contained therein in respect of the arrest of a "sister vessel". This situation is compensated by section 3(4) of the Act which provides that the admiralty jurisdiction of the High Court may be invoked (whether the claim gives rise to a maritime lien over the vessel or not) by an action in rem against "… (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid". It should be distinguished that a person who possesses a maritime lien in respect of that "other ship" has no higher right or priority than that enjoyed, under circumstances by a statutory lien.

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

Bareboat Owners and Time Charterers are viewed as 'disponent owners' of vessels. In the case the claims mentioned in (d) to (r) above, where a person who would be liable on claim in an action in personam was, when the cause arose, owner or charterer of, in possession or in control of, the vessel, the Admiralty jurisdiction of the Supreme Court may be invoked by an action in rem against:

a) the vessel, if at the time when the action is brought, she is beneficially owned in respect of all the shares therein by that person; or
b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

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

It is standard practice that the claimant is required to put up a counter security for damages that the owner of the vessel may sustain as a result of a wrongful arrest. The claimant is required to post a security bond by way of a Cyprus Bank Guarantee in respect of damages that the defendant vessel might suffer if the arrest proves to be wrongful. The amount of the security to be provided is at the discretion of the Court, which will take into account all circumstances of the case. Usually, 10% to 30% of the claimed amount will need to be put up although in a few exceptional cases we have seen the court order as much as 50% of the claimed amount.

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

There is no difference in the procedure between a maritime lien and a maritime claim. However it should be noted that under Cyprus Law maritime liens enjoy certain advantages over all other permitted actions in rem (statutory liens) at the time of creation of the lien, in priority and in the enforceability of the security. In addition, statutory liens have no priority over mortgages.

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

Under the English Administration of Justice Act 1956, the following maritime liens are recognised under Cyprus Law: a) Bottomry; b) Salvage; c) Wages; d) Master's Wages; e) Disbursements and liabilities; and f) Damage done by a ship.

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

It will normally take between 2-4 business days to arrest the vessel from the moment we receive supporting documents and instructions.

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

No POA is required to bring the claim and present the Arrest Application to the relevant Court.

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

All admiralty actions whether *in rem* or *in personam* are instituted with the issue of a writ of summons. Name, place of residence, occupation of every claimant and defendant and a concise statement of the claim made or relief/remedy sought, should be included in the structure of the writ. The issue of the writ gives the claimant a right against the vessel, which originates from the cause of action in rem and crystallizes upon the arrest of the vessel. The claimant should file with the Court an affidavit appertaining to the nature of the claim and stating that the aid of the Court is required.

1 Berlingierri on Arrest of Ships, ed. 4 (2006), no 52.850

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

In order to arrest a vessel in Cyprus, you are required to file an action in rem against her. After the issuance of the arrest order, the substantive claim can be prosecuted.

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

Any party can apply to the Court for the release of a vessel and the Court will grant such an order if the terms as to security or payment of any costs have been provided. An application can be made by any party without any notice to be given to the other party (if there is no caveat). The procedural rules provide the following four options in which a release can happen:

a) Upon proof of payment into Court of the amount claimed or of the appraised value of the property arrested, or, where cargo is arrested for freight only, of the amount of the freight verified by affidavits;
b) On the application of the party at whose instance the property has been arrested;
c) On the consent in writing being filed signed by the party at whose instance the property has been arrested;

On discontinuance or dismissal of the action in which the property has been arrested.

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

The type of security is usually in the form of a Cyprus Bank Guarantee or cash.

19. Does security need to cover interest and costs?

When evaluating the amount requested for security, it is usually the case that the security cannot be more than what the ship is worth. A claimant will also ask for interest and costs, however the initial arrest expenses are paid by the arresting party to the Admiralty Marshal who is responsible for the maintenance of the vessel, while it is under arrest.

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

P&I LOUs are not recognised by Courts; Courts require the Bank Guarantee in order to lift the arrest, usually given by a local bank.

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

It depends on the circumstances of each case. If security is paid, and the Court orders for such release, usually within a day the vessel can be released.

22. Is there a procedure to contest the arrest?

Yes, wrongful arrests are recognized under Cyprus Law and test for wrongful arrest is primarily “bad faith”.

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

Under Cyprus Law, in an action *in rem*, the writ of summons must be served at least 21 days, and in an action *in personam*, at least 10 days, before the date named in the writ of summons for the appearance of the parties before the Admiralty Court.

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

Cyprus Courts acknowledge concept of wrongful arrest, hence the requirement for the claimant to post security.

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

Cyprus Courts will only pierce and lift the corporate veil in very exceptional circumstance (basically fraud).

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

It is possible to have a ship sold pendente lite. Typical grounds for an application are that a vessel is costing a disproportionate amount in daily expenses or is deteriorating owing to being under arrest for a long time or that a cargo is perishable. Therefore, the continuing and mounting expenses of arrest and the fact that goods are deteriorating are good reasons for which a Court may consider in ordering the property to be sold pendente lite. It is very difficult to advise on the precise timescale involved as this will largely be determined on a case-by-case basis and any objection by the Respondent to the Application will greatly prolong the process.

***Mr. George Zambartas** holds a BA (Hons) in Law and Politics from the University of London's Queen Mary College. He has extensive experience in Commercial Law and Cypriot Corporate Law as well as shipping, ship financing, maritime claims, ship management and purchase/sales of ships, including new builds.*
He has undertaken ship registration, re-flagging, re-naming and parallel registration in all major registries around the world. After heading up the Commercial Litigation Department of a Law Firm in the UK, he moved to Cyprus in 1999 to take up the position as in house Legal Advisor of a leading global Shipping Company.
In August 2008 he left the niche corporate law/shipping law practice of Economides Dionysiou & Co to form Zambartas Law Offices which later became L.G. Zambartas LLC with George as the head of the Shipping and Corporate Law Department.

***Vasiliki Malta** studied law at the University of Essex, she obtained her LLB with honours in 2016. After obtaining her LLB, she acquired an LLM in Maritime Law from the University of Southampton. She has also attended various seminars and international workshops within the area of Maritime Law.*
Vasiliki has undertaken work experience with a well-known law firm in London specialising in Shipping law. After returning back to Cyprus, Vasiliki has successfully completed her training period and has been admitted to Cyprus Bar Association.
Her area of expertise inter alia, include shipping law (including ship management, ship registration, and ship security issues), ship finance (including drafting and negotiating of ship mortgages and deed of covenants, registration of the mortgages with the Shipping Deputy Ministry etc.), corporate and commercial law as well as contract law. Vasiliki has also experience in various litigation areas including civil litigation. Moreover, Vasiliki is currently involved in a number of proceedings at Admiralty Court. She can draft, negotiate and conclude a wide range of agreements, including but not limited to commercial contracts (i.e. share purchase agreements) and other legal documents. Additionally, Vasiliki has managed to effectively settle cases out of the Court in favour of her clients. Vasiliki joined L.G Zambartas LLC in November 2018.

SHIP ARREST IN *DENMARK* (QUESTIONS 1 TO 9)

*By Henrik Kleis**
DLA Piper
henrik.kleis@dlapiper.com
www.dlapiper.com
Hack Kampmanns Plads 2
DK-8000 Aarhus C, Denmark
Tel: +45 33 34 00 00
Fax: +45 33 34 00 01

(QUESTIONS 10 TO 26)

*By Anders Amstrup Fournais & Harald Søndergaard**
HAFNIA LAW FIRM
aaf@hafnialaw.com & hso@hafnialaw.com
www.hafnialaw.com
Nyhavn 69, DK-1051 Copenhagen K, Denmark
Tel: +45 20 62 38 62
+45 51 94 40 50

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

Arrest of vessels in Denmark can be made very fast and on an informal basis, i.e. without POA, original invoices and notarized and authenticated documents. The rules are quite flexible and the Danish court system works efficiently. The costs of an arrest in Denmark are low.

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

Denmark is party to the 1952 Arrest Convention and the provisions of this convention have been implemented in Chapter 4 of the Danish Merchant Shipping Act. The Danish law on arrest of vessels thus to a high extent reflects the provisions of the Arrest Convention.

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

Yes. An arrest according to the Danish Administration of Justice Act prevents the owner from transferring title to the vessel or issuing new mortgages when the arrest is registered in a Ship Register but the vessel is not detained in a port or otherwise prevented from operating. Therefore, an arrest of a vessel according to the Administration of Justice Act is often of no interest; however, it may be applied when there is no maritime claim or when an arrest is made in cargo, freight, or bunkers etc.

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

No. The only alternative is an arrest according to the Danish Administration of Justice Act, which the courts only grant in rare circumstances.

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

Maritime claims are the basis for arrests according to the Merchant Shipping Act and are defined in accordance with the Arrest Convention. For a list of the individual maritime claims reference is made to Arrest Convention art. 1.

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

Yes.

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

Contrary to the Arrest Convention and the laws of some other countries, arrest in Denmark requires that execution of the claim can be levied against the owner of the vessel, meaning that the registered owner of the vessel must be liable for the claim/the debtor of the claim, unless the claim is secured by a maritime lien. Consequently, claims for which a charterer of the vessel is liable do not form basis for arrest of the vessel as the owner of the vessel is not liable and no execution of the claim against the owner is possible. However, assets owned by the charterer, e.g. bunkers, may be arrested in accordance with the Administration of Justice Act.

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

Sister ship arrest is possible, i.e. vessels that are owned by the same legal entity. Arrest of vessels in associated ownership is not possible as the vessel is not owned by the same legal entities.

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

Arrest of a vessel under a bareboat or time charter party is not possible as the registered owner is not liable for the claim/the debtor of claim. Only in case the owner is found to be the debtor of the claim an arrest is possible.

***Henrik Kleis** is head of the Shipping & Transport group with DLA Piper Denmark which consists of 5 partners and various lawyers and junior associates. The group deals with shipping and maritime law as well as other transport matters; hence acting for ship owners, shipping lines, freight forwarders, ship brokers/agents and road carriers. The group is also highly specialized in aviation law acting for various air carriers in dispute resolution and contract works. Furthermore, Henrik Kleis acts for the majority of Danish ports and handles a long line of cases of various nature for the ports. Moreover, Henrik Kleis is Honorary British Consul.*

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

The courts have a discretionary right to demand counter security. Pursuant to the Danish Merchant Shipping Act such security should not exceed the equivalent of 5 days charter hire for the vessel in question. The courts invariably demand counter security equivalent to 5 days charter hire. In order to determine the relevant daily hire a shipbroker should be requested to provide an estimate. In this regard it is sufficient to provide an exchange of emails with a shipbroker containing such estimate. Under law, the courts can only accept cash or a bank guarantee but the lawyer submitting the arrest petition will sometimes be allowed to put up a personal guarantee equal to 5 days of charter hire provided that guarantee is quickly (within a few days) replaced with a cash guarantee. If vessels are arrested for a longer period of time, the courts generally condone setting higher counter-security than 5 days, which is within the court's discretion.

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

The formal requirements are the same but as mentioned above arrest for a maritime lien can be made irrespective of the ownership to the vessel.

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

Danish law recognises maritime liens. The rules regulating maritime liens are found in the MSA and are based on the 1967 Brussels Lien Convention. In order to determine whether a claim creates maritime lien it may not be sufficient to resort to Danish law. The maritime liens may be determined according to the law of the flag of the relevant vessel. Scandinavian case law supports that the law of the flag is relevant in this regard although the issue is untested under Danish law.

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

An arrest can typically be obtained within a day. Certain local courts may need further time and may not be available for an arrest during the weekend or nights. Some courts are more experienced in ship arrest than others, e.g. the City Court of Hjørring which covers Skaw where arrests are most frequently carried out.

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

No POA is required. In order to establish the claim only copies of the pertinent documentation is required.

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

No original documents are required nor apostille. Documents can be emailed to the courts.

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

The courts will accept jurisdiction over the merits. However, if the underlying agreement supporting the claim is subject to arbitration or litigation in a foreign forum the courts will not assume jurisdiction. In such case validation proceedings must nonetheless be commenced as a formal requirement but they will immediately be stayed pending the outcome of the arbitration or foreign litigation. In case of maritime liens, the substantive proceedings can be commenced against the ship owner or the Master of the vessel.

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

There is no formalized procedure and a petition to release the ship can simply be sent to the court by email.

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

The only requirement is that the security must be adequate to cover the debt including expected interests and the cost of the arrest, the cost validation proceedings and the cost of the proceedings on the merits.

19. Does security need to cover interest and costs?

Yes.

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

Yes.

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

Generally speaking, the release can be done within one workday.

22. Is there a procedure to contest the arrest?

The arrest can be contested during the validation proceedings, see also question 16 above.

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

Validation proceedings and substantive proceedings on the claim must be commenced within one week from the date on which the arrest has been granted provided there is jurisdiction for the substantive claim in Denmark. The deadline for commencement of proceedings on the claim is two weeks if the jurisdiction for the claim is not Danish. In practice, this will apply of the appropriate forum for the claim is a foreign court or an arbitral tribunal seated in a foreign jurisdiction. Once initiated, proceedings must be pursued without unreasonable delay.

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

Yes. The arrestor will be liable for wrongful arrest on a strict liability basis for any loss caused by the arrest provided the claim for which the arrest was made is dismissed. There is limited case law on wrongful arrest liability but it cannot be ruled out that the owner's right to compensation is influenced by the fact that the owner can always avoid the effects of an arrest by providing a guarantee for the amount in dispute. If the arrest falls away or is held to be unlawful for other reasons than the claim being dismissed, the arrestor can be held liable only if fault (culpa) is proven on the part of the arrestor.

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

The notion of piercing the corporate veil exists under Danish law but is limited to very special circumstances where there has been e.g. a mix of funds between the companies or where business has been otherwise conducted as if two companies were one. By no means should piercing the corporate veil be regarded as an active tool in ship arrest in Denmark and there are no notions under Danish law similar to associated arrest as it is practised in e.g. South Africa.

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

If the claim is not paid and no security is lodged for the claim the arrestor may ultimately sell the vessel by way of forced sales proceedings. It is a prerequisite for an auction that the arrestor has obtained an attachment against the vessel. Such attachment can only be obtained once the validation proceedings (whether litigation or arbitration) have been completed. Arrest based on a mortgage does not require validation proceedings and an attachment can be obtained immediately. Depending on the case load of the relevant local court it may take from 3 months up to 1 year until forced sales proceedings have been carried out. Certain notification requirements exist in respect of auction of foreign vessels (notification to the flag state and advertisement in the flag state).

***Anders Fournais and Harald Søndergaard** are partners with HAFNIA LAW FIRM. Anders and Harald graduated from Aarhus University in 2011 and 2012 and begun a maritime law practice in 2012. Anders and Harald have a broad but dedicated practice within the field of ship arrest and have been involved in more than 350 ship arrests in more than 60 jurisdictions within the last ten years. The firm acts for banks, underwriters, owners, bunker suppliers, ship chandlers and trading houses in respect of strategic pursuit of claims against vessels as well as defense services to owners and banks. Anders and Harald frequently lecture in international fora on the topics of ship arrest and counter-party risks related to bunkering.*

SHIP ARREST IN *DOMINICAN REPUBLIC*

Dr. Angel Ramos Brusiloff
Maritime and Environmental Legal Services Inc. (Ramos Brusiloff Advisors)
info@ramosbrusiloff.com
www.ramosbrusiloff.com
Santo Domingo, Dominican Republic
Tel: +1 809 567 8061

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

Found below herein.

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

None. However, the new law 5-23 of maritime commerce of the Dominican Republic adopted and adapted to our internal regulations the International Convention on the Arrest of Ships of 1999 and the International Convention on Maritime Privileges and Ship Mortgages of 1993 of the UNCTAD.

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

A lien may be placed on the vessel by judicial authorization, an enforcement lien by means of a judgment with the authority of res judicata, by means of an authentic document or by means of a Maritime Mortgage contract.

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

Another alternative is the detention of the vessel by the public authority for services owed to the shipyard when the vessel is under repair at its facilities. The shipyard, crew members and agents of the vessel may oppose the departure of the vessel for labor debts and services rendered to them.

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

A vessel may only be seized exclusively for maritime claims. In order of priority, the following shall have privilege over the maritime vessel, in the first place, even if it changes its registration or flag owner, and over the freights and passages originated in the voyage in which they are produced:

a) For rewards for salvage of the maritime vessel, excluding expenses to the salvor to avoid a threat of damage to the environment;
b) For the wages and other rights that the labor contracts and applicable regulations recognize to the crew;
c) For death or injury to health, produced both on land and on water, provided that they derive directly from the navigation or operation of the maritime vessel;
d) For port fees and services, customs duties, deposits, warehouses, use of canals and other navigable waterways and pilotage;
e) The legal costs incurred and other legal debts, made to affect the public sale of the maritime vessel and the distribution of the price; and
f) For non-contractual fault by reason of loss or damage to property caused by the operation of the seagoing vessel, excluding that which may be caused to the cargo, containers and effects of passengers carried on board the seagoing vessel.

In second place and with a rank after those previously listed, the following credits will have privilege over maritime vessels:

a) For supplies and equipment of products or materials for the operation, provisioning or conservation of the maritime vessel;
b) For construction or repair of the maritime vessel;
c) For damage or missing cargo or unaccompanied baggage;
d) As a result of contracts of lease or charter of the maritime vessel; and
e) For the balance of the purchase price of the vessel and the interest accrued thereon in the last year.

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

Yes, a seizure, detention or opposition to sailing may be made for the causes set forth in Article 120 of Law 5 -23: a) The right of retention. b) The preventive or conservatory seizure of maritime vessels. c) Opposition to sailing by the Navy of the Dominican Republic in its role as National Maritime Authority.

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

The vessel may be seized for any maritime credit or privilege it has incurred in any of its voyages, regardless of who the debtor is. It is an in-rem action.

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

Maritime custom and according to international conventions and comparative law, any vessel owned by the debtor may be pursued. Dominican civil law allows the pursuit of the debtor's assets, which could be assimilated to the seizure of a sister ship or sistership. The vessels according to the national legislation allow the condominium regime, therefore, any debt emanating from any of the co - owners may affect the undivided part of the vessel.

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

If the vessel is unmanned and without just cause, the national legislation declares it abandoned. Law 5-23 establishes that abandonment may be express or voluntary and tacit abandonment. Abandonment is express or voluntary when the shipowner or owner presents a notarial act or proof of abandonment before the Navy of the Dominican Republic in which he establishes the place where the vessel is located and that the causes of such abandonment have been to save human lives. Tacit abandonment is considered to exist in the following cases:

1.When all maritime vessels in jurisdictional waters lacking a minimum manning without justified cause, or do not have the minimum provisions for their operations and in cases where they are not operating within the parameters authorized by the National Maritime Authority;

2. When the vessel or naval artifact that is in jurisdictional waters of the Dominican State; and is not performing any operation, nor is receiving repairs, duly authorized by the authorities and is not requested to sail within a period of thirty days, counted from the date of arrival of the vessel or on the date on which the vessel has been anchored in any place of the jurisdictional waters; except in fortuitous case or force majeure duly proven; or in the event that such situation has its origin in a legal process; against the maritime vessel;

3. When a period of thirty days has elapsed, as from the date on which the loss, accident, shipwreck or finding of the shipwrecked maritime vessel or naval artifact occurs, without the shipowner or owner, his representative or the insurer having notified the Navy of the Dominican Republic of his interest in the maritime vessel or naval artifact. In this case, the shipowner or owner may request an extension for thirty days, through the person who has the legal capacity, being responsible for the consequences of any damage caused;
4. Those that have been the object of theft, when the shipowner or the owner or the flag State of the maritime vessel has been notified upon recovery and the latter has not proceeded to reclaim it within thirty days after notification;

5. When the maritime vessel or naval artifact constitutes an obstacle, risk or imminent danger to navigation, and its owner or owner has been notified within thirty days and has not taken any action. In the case of maritime vessels flying a foreign flag, the shipowner or owner shall be notified at the nearest consulate; and

6. In other cases not provided for in this law, when it can be clearly demonstrated the intention of the owner of the vessel or naval artifact to abandon his right over the same, as in the cases indicated in numerals 1), 2), 3), 4) and 5) of this article.

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

Yes. The sole paragraph of article 121 of Law 5 -2023 on maritime commerce establishes that if any preventive or conservatory measure is authorized with respect to maritime vessels, the court must require from the creditor, prior justification of sufficient solvency or that of a bank deposit certificate or a bond issued by an insurance company or any of those established in common law; in both cases, to guarantee the reparation of damages that may be caused by the execution of the authorized measure, including port charges, the cost of stay in port and the maintenance of the vessel, if applicable.

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

There is no difference, the legislation establishes which are the maritime credits and an order of priority depending on the maritime credit, privilege and mortgage. This order of priority can be distinguished in article 101 and following of Law 5 -2023 on maritime commerce.

12. Does your country recognise maritime liens?

Under which International Convention, if any? The new law 5-23 of maritime commerce of the Dominican Republic recognizes maritime liens, which adopts and adapts to our internal regulations the International Convention on the Arrest of Ships of 1999 and the International Convention on Maritime Liens and Ship Mortgages of 1993 of the UNCTAD.

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

A preventive or conservatory seizure of vessels requires an authorization from the judge of the competent jurisdiction where the vessel is located. It requires a prior default. The requirement is administrative. The attribution for such authorization is of the civil and commercial judges. The time to issue a conservatory or preventive order is not foreseeable. It may take several days. In most cases it is not authorized. A different thing is the executive seizure that can be made by means of a payment order followed by a verbal executive process within 10 days of such notification.

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

Attorneys do not need to exhibit the power of attorney granted to them before the ordinary courts, unless the party they claim to represent expressly and formally refuses to do so. It is recommended to have a power of attorney when dealing with a foreign entity. In the case of an executory measure against a vessel, it will be required the deposit of the titles that prove the ownership of an executory title, such as: • Certified copies of the sentences sentenced to pay sums of money for maritime credit that have become enforceable; • The first certified copy of the notarial act containing the obligation to pay amounts of money for a maritime credit, periodically or at a fixed time, and the second or subsequent copy, issued in accordance with the law, in substitution of the first; • Creditor registration certificates (creditor duplicates) issued by the Registry of Admission and Registration of Ship Mortgages; • Orders approving expenses, costs and fees in favor of attorneys, on the occasion of a maritime proceeding not subject to suspensive appeal; • The ordinances of the competent courts in favor of the Dominican State, its decentralized institutions and the municipalities, upon diligence by competent officials, for the collection of taxes, duties, fees, rates, excise taxes, leases and debts; • Arbitral awards with the character of irrevocable res judicata, when they contain obligations to pay sums of money payable by one of the parties, arising from a maritime credit; and • Decisions and agreements to which the law attributes the effects of an enforceable judgment relating to a maritime claim.

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

The original titles of the executory measures and unproductive acts of the claims or lawsuits are required. At present, the evidentiary documentation for legal proceedings cannot be used electronically, unless it is issued with a certificate of registration of electronic documentation from a duly accredited entity. Foreign public documents must be duly legalized and apostilled in their country of origin to be valid. All documents drafted in a language other than Spanish must be accompanied by a translation by an authorized interpreter or through the Dominican consul in the country where the document was issued.

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

If the contract stipulated by the parties' grants jurisdiction to hear the merits of the lawsuit or claim or a special merit proceeding to another country, the Dominican court may decline to hear the merits proceeding before the country indicated in the contract if one of the parties proposes it, as well as if it contains a jurisdiction or arbitration clause.

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

For the lifting of preventive measures that generate the detention of a vessel because of a maritime credit, Law 5-23 on Maritime Commerce establishes the following procedures to release a vessel from detention: Article 123.- Lifting of the preventive or conservatory measure. As of the notification of the seizure or opposition, the debtor may have the measure lifted by filing a lawsuit before the judge of the referrals in commercial attributions, of the place where the maritime vessel is located, by means of consignment in the secretary's office of the court or whoever the judge may designate, of the necessary sums to guarantee the causes of the seizure, its accessories and costs. Article 124.- Lifting of the preventive measure or opposition. The constitution of an irrevocable bank guarantee or bond issued by an insurance company or letter of guarantee issued by a mutual or protection and indemnity club, which is equivalent to the amount that served as cause for the restraining measure, plus fifty percent of the same, entails the lifting of the same, without the need for contentious intervention of the jurisdiction. Paragraph I.- In case of difficulty, the judge of first instance of the

place where the maritime vessel is located, acting with commercial attributions and in accordance with the funny procedure, may order on minutes and by order with immediate enforceable force; notwithstanding any appeal, at the request of the interested party, the lifting of the measures seized, having had in view the documentation that proves the seizure or opposition to be lifted, as well as the provision of the bank guarantee, bond or sufficient certification, as established in the main part of this article. Paragraph II.- The decision on the request referred to in paragraph I, of this article, shall be adopted within a term not to exceed twenty -four (24) hours counted as of the receipt of the request at the secretary's office of the court, and shall indicate in said decision, the date on which the maritime vessel shall return to the Dominican port. Paragraph III.- The guarantee and the amounts deposited for the lifting of the attachment or opposition shall be assigned to the payment of the claim of the following period, with privilege over the other creditors, and as such shall be executed when the disputed claim has been the object of a judicial decision that has acquired the authority of irrevocable res judicata. Paragraph IV.- In the event that the competent jurisdiction has authorized the departure of the vessel, in accordance with the provisions of this article and the preventive or conservatory seizure has become enforceable and the vessel has not returned to Dominican territory, there shall be no sale of the maritime vessel, but only the execution of the guarantee granted within the terms granted by the court. In the case of the lien that covers the builder or repairer of maritime vessels, as security for the collection of its debt, because of a service performed and not paid to the maritime vessel to facilitate its use in navigation; this is extinguished when the maritime vessel ceases to be in the possession of the builder or repairer thereof. As for the lifting of such lien, they refer to the procedure described for the measures established for the preventive or conservatory seizure.

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

Regarding the lifting of the preventive or conservatory measure, by means of consignment at the court's secretary's office or of whom the judge may designate, of the sums necessary to guarantee the causes of the seizure, its accessories and costs. Regarding the lifting of the preventive measure or opposition, the constitution of an irrevocable bank guarantee or bond issued by an insurance company or letter of guarantee issued by a mutual or protection and indemnity club, which is equivalent to the amount that served as cause for the measure, plus fifty percent of the same, entails the lifting of the same, without the need for contentious intervention of the jurisdiction.

19. Does security need to cover interest and costs?

In the case of a preventive or conservatory measure, the sums deposited as security must guarantee its accessories and costs.

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

Yes.

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

In the abbreviated procedure (referral matter), two or three weeks may elapse between the holding of the hearings and the file being in a state of judgment, depending on the judge's evaluation of the speed and urgency. The judge may take two or three weeks to issue a judgment in the best of cases. There are very few cases of decisions in this matter that have been ruled in less than 3 weeks.

22. Is there a procedure to contest the arrest?

In addition to the procedures for the lifting of the seizures described above (lawsuit in referral in commercial attributions), in the hypothetical case of initiating a seizure procedure for the purpose of sale at public auction of the same, incidental lawsuits may be formulated to make replies, means of

nullity, of form and substance, means of inadmissibility, opposition to payment, against the seizure procedure that arises on the effect.

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

For the preventive or conservatory seizure, the conservatory measures taken without executory title shall be followed by a claim in payment of the credit that has served as cause and a claim in validity of the measures taken, which shall be filed jointly, within eight (8) days of the measure, unless the judge has set a different term at the time of authorizing it, which in no case shall be longer than thirty (30) days. Without prejudice to the effects of the claim in payment of the credit, the violation of the eight (8) day term or of the term fixed in the order by which a conservatory measure has been authorized, renders the measure without effect, which shall be lifted by the judge of the referrals. In the case of executive seizure, the creditor who after a preventive or conservatory measure, made in accordance with the provisions of this law, obtains an enforceable and irrevocable judgment that validates his credit and the seized measure, shall notify the debtor a payment order of the amount owed, with a term of not less than twenty-four (24) hours, under the warning that, in the absence of payment, the seized or unavailable goods will be sold by the validated measure. Upon expiration of the twenty-four (24) hour period provided for in Article 128, without the debtor having complied with the payment order and within forty-eight (48) hours after the order, the officer shall proceed to check the vessel or the seized or unavailable goods and shall record the missing or damaged goods. As from the inspection report, the provisions relating to the enforcement seizure of vessels are applicable to the preventive or conservatory measures.

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

Not as a specific term, however, it explicitly recognizes counter-guarantees to compensate for damages that could be caused by the filing of an unjustified preventive or conservatory measure.

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

Yes, the courts may declare the partners liable for the debts of the company up to the limit of their shareholding, unless corruption or fraud is proven. The lifting of the corporate veil is also recognized in cases of criminal offenses.

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

It is not possible to sell a vessel pending a lis pendens that affects the auction of the vessel (in the cases established by law). A case on the merits for the issues of conservatory or preventive seizure can last from two to three years in litigation. It is different when there is a mortgagee registration or an authentic act or an irrevocable judgment, in these cases the procedure is expeditious and fast (about 3 months).

SHIP ARREST IN *EGYPT* (QUESTIONS 1 TO 9)

By Omar N. Omar & Hany Maamoon***
AL TAMIMI AND COMPANY
Cairo, Egypt
o.omar@tamimi.com
h.maamoon@tamimi.com
Tel: +202 2 3368 1000
www.tamimi.com

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

In this regard, we have to differentiate between two types of arrest. The 'conservatory arrest' and the 'executive arrest'. Both types of arrest are regulated by virtue of The Commercial Maritime Law No. 8 for the year 1990 ("**Maritime Law**").
The executive arrest is usually applied in enforcement of a final enforceable executable deed/ judgment recognized by the Egyptian courts. Whereas, the conservatory arrest is considered to be a pre-judgment/ precautionary measure aimed to protect the creditor's claim with respect to maritime debts.
The third kind of arrest is that practiced by some of the governmental bodies, such as the port authorities which we can term the 'Administrative Arrest'. This type of arrest comes in multiple forms, sometimes by way of a letter addressed to the ship agents notifying them that the vessel is detained or even by verbal instruction.
However, the conservatory arrest is the most common in practice, and in this respect, please note that under the Maritime Law, a creditor is entitled to apply before the Court to obtain an order to arrest a vessel for security, if such claim is considered to be a maritime claim.
The application should contain a brief explanation of the "claim" and reasons he is applying for security and proof that the liabilities giving rise to the claim would come within the "maritime claims" as defined in the 1952 Brussels Convention.
The applicant must support his application with sufficient (original) documents to justify his claim and the application for security. The application is heard "in camera", i.e. none of the parties would be allowed to attend, and a decision is given on a documents-only basis. Although the presiding judge has the right to carry out brief investigations on the grounds upon which the application is made, in practice this rarely happens. No counter-security is necessary and the principle is not recognised. The judge, at his own discretion, is entitled to allow the order or reject the application without giving any reasons in any case. Normally it would not be possible to arrest a vessel during her transiting the Suez Canal or while anchoring OPL, as she must call inside a port in order to obtain/execute a court order to arrest her. It should be noted that the probability of granting conservatory arrest orders against vessels in general is 50/50.

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

Egypt has ratified and implements the International Convention on the Arrest of Seagoing Ships of 1952 "**Brussels Convention**". However, it has not ratified the International Convention on the Arrest of Ships of 1999.

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

As aforementioned, the Maritime Law recognizes only two types of arrest (Executive and Conservatory). However, in practice the Port Authorities, the Suez Canal Authority, the Egyptian Environmental Affairs Agency and a few other Sovereign entities do enjoy the power to detain a vessel without the need for obtaining any sort of judicial order. In our opinion, this kind of arrest is the most difficult when it comes to challenging it, as the laws do not specify the counter measures to lift such an arrest or detention and usually the ship's owners/operators are forced to reach an out of

court settlement with such a governmental authority in order to have their vessel released. It then falls to the owner to choose whether to initiate a recovery action or not.
In criminal investigations into a vessel or her crew, vessels can be temporarily detained by virtue of orders issued by the District Attorney.

4. Are these alternatives e.g. saisie conservator or freezing order?

Aside from the detention orders mentioned in our answers above, no.

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

As aforementioned, under Article 60 of the Maritime Law, a creditor is entitled to apply for arresting a vessel for security, if such claim is considered to be a Maritime Claim as defined in the Maritime Law which were copied from the Brussels Convention; as set out below:

(a) Port and water courses duties.
(b) Expenses outlaid for removal, pick up, or lifting the wrecks and merchandise.
(c) Damages caused by the ship by cause of collision, pollution or other similar marine incidents.
(d) Casualties of lives or bodily injuries caused by the ship, as a result of using and exploiting it.
(e) Contracts and deeds for using or chartering the ship.
(f) Insurance on the ship.
(g) Contracts for transport of goods by virtue of a rental contract or bill of lading.
(h) Destruction of goods and luggage which transported by the ship, or their damages.
(i) Salvage and rescue works.
(j) Joint losses.
(k) Tugging the ship.
(l) Piloting works.
(m) Supplies of materials or tools necessary for operating the ship or its maintenance, whatever the source of supplies being obtained.
(n) Ship-building, repairing or furnishing the ship, and expenses incurred for the ship in dry-docks and dockyards.
(o) Incurred salaries and wages for captain, ship-officers and the crew members by the shipping agencies.
(p) Incurred money by the captains, Ship-forwarders, Ship-Charterers, or shipping agencies for the account of ship or ship-owners.
(q) Disputes about the ownership of ship.
(r) Disputes about the common ownership of ship, or about holding or exploiting and operating it, or the rights of ship-owners in common to the amounts resulting from using and exploiting the ship.
(s) Marine mortgage.

This enumeration, as mentioned in the law is made on exclusive basis, and its clearly appears that the Egyptian legislator followed the same course as the one followed by the Brussels Convention.

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

Yes. Any ship anchored within the territorial waters of Egypt can be arrested irrespective of the flag she is flying.

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

In general, a ship can be arrested irrespective of the debtor. However, the creditor must establish the relation with the debtor which gave rise to the maritime debt.

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

Article 61 of the Maritime Law provides that "Any person who adheres to one of the debts mentioned in the previous article may arrest the ship to which the debt relates or any other ship owned by the debtor, provided that it is owned by the debtor at the time the debt originated". In other words, yes, sister-ship arrest is permissible.
Associated ship arrest is not permissible, however.

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

The claims arising from chartering the vessel are considered Maritime claims according to Article 60 of the Maritime Law.
Article 62 of the same law states that in cases where the ship's charterer was the party managing the vessel and is solely responsible for a maritime debt related to it, the creditor may enforce the arrest upon this ship directly related to the debt or on any other vessel owned by the charterer, and it is not permissible to arrest any other ship of the owner under that maritime debt. These provisions shall apply in all cases where a person other than the owner of the ship is liable for a marine debt.

**Omar* *joined Al Tamimi & Company in 2008. He is a Partner, Head of the Transport & Logistics sector group and Head of the Insurance practice in the UAE. Omar is also a core member of the Projects sector group.*
Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. With a multinational team covering all the GCC countries, Egypt, Iraq and Jordan, his team advise many governmental bodies on the establishment and development of maritime and land transport laws, regulations and policies. In addition, Omar has distinctive experience in laws related to logistics and customs in the GCC.
Omar regularly advises on cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sales and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He has also drafted and advised on various types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover.
Omar is ranked in Band 1 by Chambers & Partners and ranked as a Leading Individual by Legal 500 EMEA for Shipping UAE. He is also an author of the UAE Vessel Registration and Mortgage Section in the internationally renowned Kluwer International Maritime Law Handbook.
Omar headed the team establishing and drafting the Emirates Maritime Arbitration Centre (EMAC).
He graduated from the University of Aberdeen in 1996, LLM International Law, and was admitted to the Jordan Bar Association in 1998. Omar is fluent in Arabic and English.
***Hany is a qualified lawyer with over 19 years of extensive legal experience. He is based in Port Said Office and he maintains excellent relationship with governmental bodies in Port Said and Alexandria.*
He is specialized in maritime law, and he deals with a wide range of high profile casualties, including collisions, oil pollution and groundings cases. He also deals with total loss, damage to ports' properties claims, stowaways and cargo claims. Hany handles international disputes for P&I Clubs and for a wide variety of clients worldwide in the shipping, insurance and international trade fields.
He is specialized in marine cases, shipping, arbitration and commercial litigation. His primary area of expertise and experience is wet and dry shipping.

(QUESTIONS 10 TO 26)

*By Nabil Farag**
NABIL FARAG LAW FIRM
www.nbllaw.com
Port Said Office contact:
nbllaw@interlink.com.eg - nbllawf@gmail.com
Tel: +20 66 320 8888 / +20 66 3208963
Fax: +20 66 3208806 / +20 66 3208255
Cairo Office contact:
nbllawfirm@gmail.com – nabilfaraglaw@gmail.com
Tel: +20 224194407 Fax: +20 224194408
Mobile: +20 0127 332 2500

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

A counter security is not required under the new Egyptian Maritime and Trade Law No 8/1990.

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

There is no difference between the maritime claim and the maritime lien in respect to arresting a ship, which is subject to the same procedures.

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

The maritime liens are recognized by the Egyptian Maritime and Trade Law No 8/1990, also, the 1952 Brussels' Convention of the ship arrest is applied to ship arrest in Egypt.

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

The required time to arrest a ship starting from the moment of the referred documents arrival to our law firm is 24 hours.

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

A legalized power of attorney must be granted by the client (the claimant) who fills the arrest application. This power of attorney must be signed by the client and certified by the Apostille or the local authentication office then legalized by the Ministry of Foreign Affairs and by the Egyptian consulate in the client's country. This power of attorney must be translated into Arabic by the Ministry of Justice in Egypt, which takes from three to five days to be finished.

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

The required documents relating these debts as indicated above in clause no (1) must be attached with the arrest application in addition to a certified translation into Arabic for all documents (Our law firm usually advises clients to send the documents by e-mail first to start the translation process urgently in order to save time for preparing the arrest application in proper time), e.g. in case the arrest application relating to outstanding invoices for insurance installments issued by a marine insurance policy. We have to present all outstanding invoices, Insurance Policy, and other documents such as mutual correspondents, Faxes, E-mails and other agreements which prove this debt).

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

The Egyptian courts accept jurisdiction over the substantive claim once the vessel has been arrested. Also all claims against the arrested vessel will be accepted in respect to the jurisdiction.

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

According to the Egyptian Maritime Trade Law No 8/1990, Article No 63, in order to release a ship from arrest, an application of release must be submitted by the defendant to the chief of judge or his representative in his jurisdiction, attached with a bail or guarantee letter to be sufficient for settlement of debt.

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

In spite of the article No 63, of The Egyptian Maritime Trade Law No 8/1990, didn't explain definitively the required type of security of bail or guarantee letter; however, the practice is indicated that a bank guarantee letter must be submitted by a known bank to be acceptable. Also, a deposit of cash money equivalent to the total debt will be acceptable too.

19. Does security need to cover interest and costs?

The security must cover the interest and 10% for the costs in case of the judge was included to the capital debt in the arrest warrant.

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

As referred above, the actual practice indicates that P&I LOUs are not acceptable at all.

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

It's usually takes from one to two days to release a ship from arrest starting from the date of submitting the application of release of the ship from arrest to the chief of judge.

22. Is there a procedure to contest the arrest?

The defendant has a right to contest against the arrest warrant before the summary execution court whether the arrest was executed or not yet. The defendant also has a right to consent against the plenary trade court through 10 days starting from the date of commencement of execution of the arrest. So, the judge can cancel the arrest warrant or amend it, Article No 197, of the Egyptian procedural law.

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

The Egyptian Maritime and Trade law No 8/90 gives the claimant 8 days exactly to take legal action on the merits starting from the day of arrest, or otherwise the arrest will be cancelled by law. The Egyptian courts usually take time approximately one year to issue her award in the legal action of merits.

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

The claims for wrongful arrest are allowed and organized by the Egyptian Civil Law No 131/1948, article No 163, which indicated as follows:

"Every fault which caused damages to others shall require indemnity"

So, the wrongful arrest is protected by the Egyptian Civil Law, and if someone arrests a vessel by wrong or by false documents. The claimant will be claimed by the ship-owners, Charters or operators to pay them all damages incurred as a result of the wrongful arrest. These damages will be determined by the court which has all rights and free to assume the value of damages including fines, incurred port dues and all other incurred expenses caused by this wrongful arrest.

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

As a basic rule, the shareholders of a company with limited liability are not personally liable for the obligations of the company, but, the Egyptian maritime and trade law is organizing this point on the basis that rules of Egyptian trade law, which is dependent on the type of company, so that if the ship-owner's company was established as a "Joint stock company", then the shareholders will not be personally responsible for any obligations at all. However, if the ship-owner's company was established as a "corporate company", then the shareholders will be personally responsible for the obligations, and then the piercing and lifting of the corporate veil will be applied.

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

When a vessel has been arrested, the ship-owners can't sell it without the court's permission unless the arrest is removed. If the ship-owners were to sell the vessel while it is arrested, this sale contract is considered null and void.

**Our legal services and consultancies are presented to Ship-Owners, Charters, P&I Clubs, Marine Insurance & Reinsurance Companies, Ship Agents, Repairs, Suppliers, Building, Oil & Gas Companies, etc. Our legal services are included, Marine insurance and reinsurance claims, Charter parties liabilities, Bills of leading, Ship sale/ Purchase contracts, Collision/Salvage and General damage liabilities, Oil pollution/ Casualties, Stowaways and Refuges, Cargo liabilities (Shortage/Loose/Damage and Delay of cargo, Ship's Arrest/Release, in all Egyptian ports, Crew detention, Costs and Fines, Disputes settlements, Legal defense, disputes before the all Egyptian courts, Disputes under voyage/time charters, Financial collapse, Bankruptcy, Collisions of ships, Salvage claims and marine casualties, Marine mortgages, Crew wages claims, Personal injury and death claims, Ship registration, Ship deletion, Ship delays, Custom's fines and demurrage, Customs clearance facilities, Assisting in import & export procedures, All aspects of shipping, marine and trade disputes, International Arbitration, Execution of international judicial and arbitration awards in Egypt.*

SHIP ARREST IN *ENGLAND & WALES* (QUESTIONS 1 TO 9)

By Rosie Goncare & Colin Lavelle
Hill Dickinson LLP
Rosie.Goncare@hilldickinson.com
Colin.Lavelle@hilldickinson.com
www.hilldickinson.com
The Broadgate Tower, 20 Primrose Street
London EC2A 2EW
Tel: +44(0) 207 280 9110

(QUESTIONS 10 TO 26)

*By Russell Kelly**
LA MARINE, LESTER ALDRIDGE LLP
Russell.Kelly@LA-law.com
www.la-marine.co.uk
Alleyn House, Carlton Crescent,
SO15 2EU Southampton, United Kingdom
Tel: +44 (0) 2380 827415
Fax: +44 (0) 2380 827452

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

An application on paper is made to the Admiralty Marshal. Evidence must be filed showing that the claim comes within the Court's Admiralty Jurisdiction. There is a sliding scale of fees; the fee on issuing proceedings for amounts up to £200,000 is 5% (i.e. a maximum of £10,000 court fee) plus a further £275 for issuing the arrest warrant. In addition the applicant must give an undertaking to pay the Admiralty Marshal's costs which usually should be recovered as they are a first charge on the proceeds of the vessel ranking before maritime liens.

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

The UK is a party to the Brussels Convention Relating to the Arrest of Seagoing Ships, 1952. The relevant provisions are contained in the Senior Courts Act 1981. Section 20 sets out the types of claims for which the ship may be arrested.

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

No.

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

It might be possible to obtain a freezing injunction but this is more difficult and more expensive than an arrest.

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

Section 20(2) of the Senior Court Act 1981 lists 19 types of maritime claim within the admiralty jurisdiction of the High court in respect of which a vessel may be arrested.
These include claims relating to the possession or ownership of, or mortgage on, a ship, claims for damage done by or to a ship, claims for loss of life or personal injury due to a defect in a ship, claims for loss of or damage to goods carried on a ship, other claims relating to the carriage of goods on a ship, claims relating to the use or hire of a ship, claims for salvage, towage and pilotage, claims for goods and materials supplied to a ship, claims in respect of the construction or repair of s ship, claims by the master or crew for wages, claims arising out of a general average act, and claims arising out of bottomry and collisions. Notable exceptions to this list, i.e. where arrest is not possible include claims for insurance premiums and claims for legal costs. English law treats both English

and foreign flag vessels equally and it does not distinguish between "Convention" and "non-convention" vessels either.

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

Yes.

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

Yes.

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

It is possible to arrest sister ships but not ships in associated ownership. Sister ships are vessels that are owned at the time when action is brought by the person who was the owner of the ship in connection with which the claim arose.

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

A bareboat-chartered ship may be arrested for a claim for which the bareboat charterer is contractually liable. Time chartered vessels cannot be arrested for claims of this nature, but where a time charterer owns a vessel, any vessel owned by the time charterer may be arrested for a claim under the charterparty.

***Lewis Moore** qualified as a solicitor in 1976. Lewis Moore joined Hill Dickinson in 2017.*
Lewis Moore acts for clients in relation to contentious and non-contentious work, joint venture disputes, commodity sale and purchase, ship sale and purchase and charterparties and is a CEDR Accredited Mediator.
He acted for the successful charterers in The Achilleas [2007] 1 Lloyd's Rep 19 a House of Lords decision regarding damages for late redelivery and for the successful appellants in Star Reefers Pool Inc. v. JFC Group [2011] EWCA, a Court of Appeal decision on anti-suit injunctions.

10. Is counter-security required in order to arrest a ship?

No. All that is required is an undertaking by the solicitor instructed to make the arrest to pay the Admiralty Marshal's reasonable costs in serving the arrest warrant. However, it may be necessary to pay expenses incurred as result of the ship being detained, including for example berthing charges throughout the period of arrest. These can be added to the claim and be recovered out of the proceeds of sale if the matter proceeds to that stage.

11. Is there any difference between an arrest for a maritime claim and an arrest for a maritime lien?

Maritime claims are dependant upon the ownership of the ship. The ship can only be arrested provided that the party who was the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to issue a claim and to arrest the ship despite a change of ownership. The procedure for arrest is the same however.

12. Does your county recognise maritime liens?

Yes, but only in respect of claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia - which are claims in which the ship is pledged as security in return for monetary advances and usually during times of distress and are uncommon today as a result of modern mortgage agreements.

13. What period of time is required in order to arrest a ship following receipt of instructions by your law firm?

Subject to the receipt of all documentation relevant to the claim, the application to the court can take place within a matter of hours. The actual arrest will be dependent on the availability of local court marshals and bailiffs in the area that the ship is located but should be effected within 24 hours of the warrant being issued.

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

A Power of Attorney is not required in order to arrest a ship. Documents in support of the claim should be filed with the claim form, together with details of the ship's location and port of registration. Prior to the arrest, the arrestor should determine whether there is a caution against arrest in force against the ship in question.

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

All court documents (the warrant of arrest and a claim form) must be filed with the court before the arrest. The warrant of arrest must be accompanied by an admiralty claim form detailing the particulars of the claim, together with a signed declaration to confirm the ownership of the ship, the level of security sought and confirmation that the claim has not been satisfied. A signed undertaking from the solicitor must also be submitted to cover the Admiralty Marshal's expenses in serving the arrest and claim form. All documents can be filed electronically but originals must be made available for inspection if required by another party to the proceedings or the court. Certification or apostille by a Notary is not required although if supporting documents need translating then the translations should be certified by a Notary.

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

This will depend on the circumstances. If the claim arises out of a contract which contains an exclusive foreign jurisdiction clause, it may be the case that the proceedings are stayed in favour of the relevant foreign court. However, for most other claims the Court will usually accept jurisdiction.

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

Once security has been agreed all that is required in order to release a ship from arrest is the filing of a request for release with the Admiralty Marshal together with a further undertaking to be responsible for any costs he may incur in effecting the release. The Admiralty Marshal will then arrange for one of his officers to remove the arrest papers from the ship.

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

It is up to the parties to agree appropriate security.

19. Does security need to cover interest and costs?

No, but it would be wise to ensure that it does.

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

Usually but it may depend upon the circumstances.

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

Once security has been provided the request for release can be lodged with the Admiralty Marshal immediately but it will depend upon the availability of local officers of the court where the ship is located. Outside of normal office hours it may therefore take a little longer.

22. Is there a procedure to contest the arrest?

Not as such. A ship owner could include a counterclaim for damages in respect of losses suffered as a result of the arrest being brought on an improper basis as part of the defence to the substantive action but provided security is given in timely fashion such losses should be minimal and be limited to the costs, if any, of providing the security. If adequate security is offered but an arresting party refuses to accept that security, thereby extending the period of arrest, a claim for damages for detaining the vessel without just cause may have more chance of success.

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

The claim form must be issued at the same time as the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced. The defendant has 14 days to acknowledge service and a further 14 days to file a defence if settlement is not concluded immediately.

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

Yes, but damages will only be recoverable if the defendant can show that the arrest was made in bad faith or with gross negligence.

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

The courts will be prepared to accept the piercing and lifting of the corporate veil in very limited circumstances. Usually there must be an element of improper conduct with intent to defraud. The use of the corporate structure must have been established to evade liabilities imposed by the law.

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

Yes, but the court will only make an order for sale if there is good reason to do so. The fact that the costs of maintaining the arrest may exceed the value of the claim and therefore diminish or extinguish the value of the claimant's security may be deemed to be sufficient grounds for a sale pendente lite.

***Russell Kelly** qualified as a solicitor in 1986 and worked for 12 years with a well known shipping law firm in London before moving to Southampton and establishing LA Marine, the shipping and marine law team at Lester Aldridge. Russell's practice encompasses both the commercial shipping and the leisure marine and yachting markets, advising in particular on vessel sale, purchase and finance and on new building and repair disputes as well as dealing with crew and passenger personal injury claims, vessel arrests and criminal prosecutions. He also conducts on board investigations following incidents on vessels, collecting evidence and advising owners and crew members in relation to investigations by the MAIB and MCA. Russell is a supporting member of the London Maritime Arbitrators Association (LMAA) and a regular speaker at various industry conferences and seminars.*

SHIP ARREST IN *ESTONIA*
(QUESTIONS 1 TO 9)

*By Martin Männik**
POHLA & HALLMÄGI
phlaw@phlaw.ee
www.phlaw.ee
Kentmanni 4, 10116 Tallinn, Estonia
Tel: +372 6009 920
Fax: +372 6009 921

(QUESTIONS 10 TO 17)

*By Indrek Nuut**
MALSCO LAW OFFICE
indrek@malsco.ee
www.malsco.ee
Tartu road 7, 10145 Tallinn, Estonia
Tel: +372 6115 007
Fax: + 372 6115 193

(QUESTIONS 18 TO 26)

*By Indra Kaunis**
LAW OFFICE CONSOLATO DEL MARE
kaunis@shippinglawyers.eu
www.shippinglawyers.eu
Sadama 4, Tallinn 10111, Estonia
Tel.:+3726409504 or 505

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

Ship arrest in Estonia is normally handled speedily and by a judge who specializes in maritime matters. Normally a ship will be arrested in Estonia within 1-2 working days as of submitting an application to arrest the ship, provided that the application is well grounded and the necessary fees have been paid.
In case of urgency, it may be possible to arrest the ship even on the same day when the application was submitted. Pohla & Hallmägi has successfully arrested a ship in the morning and managed to release the ship from the arrest in the evening after the outstanding payment had been made.

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

Estonia is a party to the following conventions, which regulate the arrest of ships and their possible sale:

a. International Convention on the Arrest of Ships (1999) that specifies maritime claims;
b. International Convention on Maritime Liens and Mortgages (1993) that specifies maritime liens;
c. International Convention on Civil Liability for Oil Pollution Damage (1969) and amendments;
d. Convention on Limitation of Liability for Maritime Claims (1976).

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

If the ship owner is an Estonian company, the court may arrest the ship under Estonian Code of Civil Procedure.

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

No.

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

Maritime claims in Estonia can arise from the following:

1) loss of or damage to property caused by the operation of the ship;
2) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
3) salvage operations or any salvage agreement, including, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

4) damage or threat of damage caused by the ship to the environment, coastline or related interests, also:
   - costs of measures taken to prevent, minimise, or remove such damage;
   - compensation for such damage;
   - costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken;
   - loss incurred or likely to be incurred by third parties in connection with such damage;
   - and other damage, costs, or loss of a similar nature to those identified in this clause;
5) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
6) any agreement relating to the use or hire of the ship, whether contained in the corresponding agreement or otherwise;
7) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
8) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
9) general average;
10) towage, pilotage;
11) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
12) construction, reconstruction, repair, converting or equipping of the ship;
13) port, canal, dock and other waterway dues and charges;
14) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
15) disbursements incurred on behalf of the ship or its owners;
16) insurance premiums (including mutual insurance claims) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
17) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
18) any dispute as to ownership or possession of the ship;
19) any dispute between co-owners of the ship as to the use of the ship;
20) restricted real rights established on the ship;
21) any dispute arising out of a contract for the sale of the ship.

The following claims in Estonia are secured by a maritime lien:

1) claims for wages and other sums due to the master, officers and other members of the crew in respect of their employment on the ship, including costs of repatriation and social security contributions payable on their behalf;
2) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
3) claims for reward for the salvage of the ship;
4) claims for port, canal, and other waterway dues and pilotage dues;
5) claims which arise out of direct damage caused by the operation of the ship other than damage to cargo, containers and passengers' effects carried on the ship.

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

Yes.

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

Yes.

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

Arrest is also permissible of any other ship or ships which is or are owned by the person who is owner of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

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

Arrest is also permissible of bareboat charterer, time charterer or voyage charterer of the ship in respect of which the maritime claim arose, except if the claim arises from a dispute concerning the right of ownership or possession of a ship.

***Martin Männik** *a Partner of Law Firm Pohla & Hallmägi. He has graduated the Faculty of Law of Tartu University in 2003 and Lund University (LL.M) in 2006.*
Law Firm Pohla & Hallmägi has a long history of ship arrests, being one of the first law firms engaged in ship arrests in Estonia. Martin Männik is responsible for all questions relating to maritime matters. He consults Estonian credit institutions on a daily basis involving arrest and enforcement proceedings of mortgaged vessels in Estonia and elsewhere in the world.
He represents clients in litigations concerning ship arrest in Estonia and has represented both creditors, owners of arrested vessels, mortgagees and ports as interested parties in the ship arrest procedure and in civil cases concerning collision of vessels and maritime insurance. He also assists various shipbuilders on a daily basis and is responsible for vessel transactions.

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

Yes. Usually Estonian Court appoints shiparrest counter-security in the amount of 15% of the claim or higher. In case of small claims counter-security is often appointed higher than 15% at the discretion of the judge. Payment of counter-security can be scheduled.
It is possible to apply that court will not appoint counter-security, but only claims of crew have so far been accepted without counter-security.

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

Yes. Concept of proceedings “in rem“ is not accepted in Estonian law, but nevertheless for a maritime lien one can arrest a ship irrespective of her owner during the validity lien period, which is one year. To arrest a ship for maritime claim, 1999 Convention Article 3 (2-1) shall apply.
Due to mistakes in incorporating provisions of Article 3 (2) into the domestic law, aspects of arrest under Aricle 3(2) (sistership arrest) are sometimes intepreted wider than allowed by article 3 (2-1), but this should be avoided since 1999 Convention is applicable also directly.

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

Estonia is party to 1993 Geneva Convention on Maritime Liens and Mortgages and recognises list of maritime liens set forth therein.

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

Provided we receive the file in early morning hours, arrest is possible by afternoon or evening of the next working day. In case we receive a file in the afternoon, arrest may not be possible during the next working day, but only on the day after.

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

It is necessary to provide to the Court documents, which convince the Court that there is a valid maritime claim. POA is required, but this does not need to be notarised and apostilled.

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

Upon applying for arrest all documents may be submitted electronically and no originals are required. Originals as well as notarisations and apostilles may be required in later stages of proceedings.

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

In case of clear agreement between the parties on jurisdiction of foreign court or arbitrage, Estonian Court will not accept jurisdiction. In case of absence of agreement on foreign court jurisdiction or when parties demonstrate that they do not object to the jurisdiction of Estonian Court, it will accept jurisdiction over the substantive claim.

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

Court has to order a release, after which bailiff will take vessel documents back on board, or captain or lawyer can collect them from bailiff's office. Bailiff's fees need to be paid before documents are released from bailiff's office. After this there are no restrictions for a vessel to sail. Should any problems with different authorities occur, court order of release can be used.

**Advising all aspects of maritime, corporate and commercial law since 1999 Indrek mainly specialises in sale-purchase, registration and arrest of ships. He became managing partner of MALSCO (maritime law and shipping consultations) in 2006.*

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

Estonian courts expect to get cash deposit on Estonian bank account (of Ministry of Finance) indicated in court decree or bank guarantee usually expected from a bank located in a member state of European Union. The deposit is the fastest for the release.

19. Does security need to cover interest and costs?

The security amount will be determined by the court on basis of arrest application and this can cover interests and reasonable costs.

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

P&I LOUs have been accepted as an alternative security by court, however this has not been stipulated in the laws and this gives options to the arresting party to object the LOU.

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

The aim is to release the ship urgently once sufficient alternative security is provided and court makes respective decree within the same day. Thereafter the arrest can be lifted by enforcement officer who arrested the ship and obtained the originals of ship's documents when imposing the arrest. This may cause some delay in release, because the same enforcement officer (or her/his official substitute) should be available for release and redeliver ships documents. The release takes usually 1-2 days unless the arresting party have disputed the court's release decree.

22. Is there a procedure to contest the arrest?

It is possible to contest the arrest, however this does not abolish ship arrest unless there are obvious facts of wrongful arrest proved. It is very difficult to succeed in contesting the arrest, because arrest procedure is quick and preliminary procedures to obtain security to the claim. The claim on merits of the case will be passed later in main proceedings, where all aspects of the arrest and the claim can be discussed.

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

Maximum 1 month can be granted for legal action on merits, but it can be shorter period depending on how complicated judge sees the case and the jurisdiction where claim on its merits is filed. If arresting party stipulates in arrest application to the court that this dispute belongs for resolving by foreign court or arbitration, then in such case 1 month time for filing main claim is usually granted.

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

Wrongful arrest cases can be possible, however there is little practice. There is 1 judgement against arresting party, which did not defend the case when claim for wrongful arrest was brought before the court.

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

There have been cases of piercing and lifting of the corporate veil in first and second court instances, however this is still uneven and developing sphere of law and practice. There is no good profound precedence in this respect yet.

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

Yes, it is possible, but according to present practices it takes more than 1 year.

***Indra Kaunis** has gained a vast experience in shipping cases and practical knowledge of industry at working in Estonian Shipping Co.(ESCO) and in Tschudi Shipping Co.(TSC) in 1993-2006. He was chief lawyer and a member of the board of directors of ESCO since 1997 and later in TSC. Indra established law firm Consolato del Mare(CdM) in 2006, when he left TSC. CdM specializes in maritime and transport law and is advising regarding full range of shipping cases, shipbuilding, ship finance and other shipping related matters under leadership of Indra. Indra was member of Estonian delegation in Geneva in 1999, when was discussed and adopted International Convention on the Arrest of Ships under auspices of IMO. He has participated as an expert at adoption of other international maritime conventions (MLC). Indra is head of expert group established for revision of Estonian maritime laws. Languages spoken: Estonian, Russian and English.*

SHIP ARREST IN *FAROES*

*By Annfinn V. Hansen**
LAW FIRM HANSEN | THOMASSEN | VINTHER
advokat@advokat.fo
www.advokat.fo
Undir Bryggjubakka 21, P.O. Box 106,
FO-110 Torshavn
Tel: +298 359595
Fax: +298 359596

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

Arresting a ship can be done fast and very effectively under the law of the Faroe Islands. Often the arrest can be done within few hours from launching the application to the Court. The rules are quite flexible and the Court does not demand notarised and authenticated documents. The most time-consuming element is the obtaining of the acquired counter-guarantee through the banks.

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

The Faroes Islands, as a part of the Kingdom of Denmark, is a party to the 1952 Arrest Convention and also the 1967 Brussels Lien Convention, and the provisions of these Conventions have been implemented in the Faroese Merchants Shipping Act. However, there are no specific provisions for arrest of ships, and arrest follows the ordinary provisions for arrest of properties, covered by the Law of Court Procedure.

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

A vessel can be arrested without being detained in a port, where the arrest instead will be registered as an encumbrance in the Ship Registry. This is a normal procedure against vessels under the Faroese flag and prevents a sale of the vessel.

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

No.

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

A ship may be arrested for any claim against the registered owner of the vessel and claims, which are secured by maritime liens.

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

Yes.

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

No. The debtor has to be the owner of the vessel that is being arrested, unless the claim is secured by a maritime lien.

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

It is possible to arrest sister ships if the vessels are owned by the same legal entity.

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

It is not possible, except for maritime lien, to arrest a vessel under Bareboat or Time-chartered party, if the registered owner is not the debtor of the claim. However, there can be made an arrest in assets owned by the charterer e.g. the bunkers onboard the vessel.

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

Yes. Counter-security by way of a bank guarantee issued by a bank in the Kingdom of Denmark will be needed.

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

No, except as mentioned above, that an arrest for a maritime lien can be made irrespective of the owner of the vessel.

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

Yes. The 1967 International Convention of Maritime Liens and Ship Mortgages.

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

An arrest can typically be obtained within a day. However, sometimes the Court will not be available for an arrest during the weekends or nights.

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

No POA is required - only copy of relevant documentation for the claim.

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

Only the application itself should be in original. Documents can be faxed or e-mailed to the Court.

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

Yes. However, if the underlying agreement supporting the claim is subjected to arbitration or litigation in a foreign forum, the Court will not assume jurisdiction.

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

In order to release the vessel, there must be placed a security at the court.

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

The security must be placed in the form of a bank guarantee.

19. Does security need to cover interest and costs?

The size of the security must be exactly the same as the amount set up in the arrest. Usually, the amount set up in the arrest covers costs and interests as well.

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

No.

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

Usually the same day as the court receives the security.

22. Is there a procedure to contest the arrest?

Yes. The party, which demands the arrest, must issue a summons regarding the legitimacy of the arrest, and in this connection it is possible to contest the arrest.

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

Legal action on the merits must be commenced within one week of the arrest date.

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

Yes. The arrestor is liable for wrongful arrest and is liable for any loss caused by the arrest. The counter-guarantee provided by the applicant claimants is supposed to cover such damages.

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

No.

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

If the ship-owner does not pay or put up a counter-guarantee for the claim in order to release the ship, the claimants will have to pursue the case in the merits in order to obtain a judgement. Based on this judgement the vessel can be sold on a forced auction. The forced auction procedure normally takes between 3 or 6 months.

***Mr. Annfinn V. Hansen** is partner with Hansen I Thomassen I Vinther Law Firm. He is born in 1963 and obtained his degree as Master of Law from the University of Copenhagen in 1989. Except for a short period as a judge in the Danish Eastern High Court, he has been working as an advocate with focus on business.*
Annfinn V. Hansen has represented a large number of shipping companies, brokers and assurance companies as well as banks. Annfinn V. Hansen has for many years been the chairman of the Faroese Merchant Vessels Association and holds positions in a number of boards. Furthermore he is Honorary Consul for Germany.

SHIP ARREST IN *FINLAND*

*By Ulla von Weissenberg**
Procopé & Hornborg Attorneys Ltd
ulla.weissenberg@procope.fi
www.procope.fi
Eteläesplanadi 18, FI-00101 Helsinki, Finland
Tel: +358 10 3090 300
Fax: +358 10 3090 333

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

The arrest of foreign vessels is possible in Finland if the underlying claim is a maritime claim as defined in the Arrest Convention of 1952, incorporated in the Finnish Maritime Code of 1994 (Chapter 4). However, Chapter 4 of the Maritime Code is not applicable if the applicant is domiciled in Finland and the vessel in question is registered in the Finnish Transport Register or the Ship Register of the State Department of Åland or if the claim is of a public nature.
The existence of a maritime claim in itself is not a sufficient ground for an arrest. It is only possible to arrest a vessel in Finland if the material claim as such can be enforced against the vessel in Finland. Therefore, the defendant must own the vessel or the claim should be secured by a maritime lien on the vessel. When arresting a vessel in Finland the applicant must provide security to cover the costs of an unjustified arrest.
An arrest is constituted in two independent and separate phases. Firstly, the applicant must obtain a court order for the arrest and thereafter apply for the actual enforcement of the order from the executive authorities. To maintain an enforced arrest in force, the applicant must commence legal proceedings against the defendant to obtain an enforceable judgment within one month from the date when the arrest was granted.

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

Finland has on 21 December 1995 ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships of 1952 ("the Arrest Convention"). Finland has also on 31 August 2000 signed the International Convention on the Arrest of Ships of 1999 but the Convention has not yet been ratified.

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

If the provisions of the Maritime Code concerning arrest do not apply for reasons explained in question 1, the general rules on precautionary measures incorporated in the Finnish Judicial Procedural Code, Chapter 7 apply.

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

When enforcing an arrest order the vessel is in principle taken in to the custody of a Bailiff but due to the nature of the arrested property, this is not possible in practice. Instead, the Bailiff takes possession of all the vessel's necessary documents, e.g. nationality certificate, in order to prevent the vessel from leaving port. The vessel can also be chained to the pier or prevented from refueling. The Bailiff can also give notice of arrest and request executive assistance from e.g. the Coast Guard, the pilots, the Customs or the port authority to ensure that the vessel remains under arrest.

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

Generally, it is possible to arrest seagoing ships only to secure the enforcement of maritime claims as defined in the Arrest Convention. However, in certain cases the provisions set forth in the Convention do not apply. See question 1. Under Chapter 7 of the Judicial Procedural Code, the granting of an arrest order is subject to:

(i) prima facie evidence of the applicant's claim which the defendant can be ordered to pay by a judgement or an arbitral award enforceable in Finland; and

(ii) the existence of a threat that the defendant will hide, destroy or dispose of his property or otherwise endanger the applicant's claim.

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

Finland has extended the scope of the application of the Arrest Convention to all vessels registered in the Finnish Register of Ships or in corresponding foreign ship register, regardless of the nationality or the trading areas of the vessel.

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

When ratifying the Arrest Convention Finland limited the possibility to arrest vessels owned by someone who is not liable for the claim of the applicant. Only when a claim is secured by a maritime lien on a vessel such vessel can be arrested irrespective of who the debtor is.

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

A fundamental principle under Finnish law is that in order to secure a claim it is only possible to arrest property owned by the defendant. Therefore, a sister ship can be arrested if both vessels were owned by the same defendant at the time when the maritime claim arose. The same does not apply to ships in associated ownership.
However, arrest of a sister ship is not possible if the underlying maritime claim is based on a dispute of ownership of a vessel or a dispute of ownership, possession or operation of or earnings from the vessels between co-owners of a vessel.

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

It will not be possible to arrest bare-boat or time-chartered vessels if the charterer is solely liable for the claim.

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

Yes, the applicant must provide security for any damage or loss which may be caused to the defendant if the arrest of the vessel proves to be unjustified. The law contains no guidelines for how to determine the amount of security. The Bailiff enforcing the arrest order will at his own discretion decide what security will be considered sufficient to cover the liability of the applicant and in practice a varying amount of securities have been required. Generally, only security given by a Finnish bank is accepted.
The Maritime Court may release the applicant from the obligation to provide security if the applicant cannot provide security and the applicant's claim is considered justified and well founded. However, it is highly unusual that such release is granted.

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

There are some differences in this respect. The main principle is that a ship can only be arrested if the claim is a maritime claim and the vessel owned by the debtor. If a claim is secured by a maritime lien on a vessel, such vessel can be arrested regardless of the debtor and it is not necessary to show any threat that the defendant will hide, destroy or dispose of his property.

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

Finland recognises maritime liens. The claims secured by a maritime lien are listed in the Maritime Code, Chapter 3, which corresponds to the list in the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967. However, Finland has signed the Convention but it has not been ratified. A maritime lien is valid even if the debtor is a non-operating vessel owner, a charterer or other person who takes use of the vessel.

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

Generally, the application for an arrest must be served on the defendant and the defendant is given an opportunity to file a defense before the arrest order is finally given. As this procedure often endangers the purpose of the arrest, it is possible to obtain an interlocutory order, which is immediately enforceable without any service of documents on the defendant. In cases of extreme urgency an arrest order may even be obtained on the same day it is filed and enforced provided that the required security is available.

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

If the court so orders, a lawyer shall produce a POA personally signed by his/her client unless orally retained by the party in court. In general, courts do not require POAs from attorneys at law (i.e. members of the Finnish Bar Association). There are no specific requirements regarding the particulars of the arrest application but it should at least contain details of the applicant and the defendant, particulars of the vessel to be arrested, particulars of the amount of the claim with supporting documentation, a brief account of the grounds of the claim and an explanation why the arrest is considered to be necessary by the applicant.

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

A written application with supporting documents must be filed with the Maritime Court in order to obtain an arrest. If the applicant wants to invoke the benefit of a maritime lien, he must produce evidence of the existence of such lien.
Normally an extract from the relevant register or a corresponding document as evidence of the ownership of the vessel is required. Also particulars of the parties and the vessel to be arrested as well as particulars of the amount of the claim can be attached. The attached documents are not required to be original. Neither notarisation nor apostille of a document are normally required. Parties are in principle allowed to deliver documents electronically to the authorities. If the document is required to be signed, the requirements of an electronic signature as stated in the relevant act must be met. However, if the document includes information about the sender and there is no uncertainty about the originality or integrity of the document, the electronic document can be delivered unsigned to the authorities.

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

A court competent to try an action in civil litigation is the Maritime Court within whose jurisdiction the defendant is domiciled, has his principle place of business or where the vessel to be arrested is present.
If security has been lodged with an authority for release from arrest, an action can be brought before the Maritime Court where the security was lodged. The same applies even if the security has lapsed.

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

In order to release a ship from arrest the defendant can provide the Bailiff with a security for the applicant's claim. In some cases the arrest can only be lifted if the defendant provides a security that is approved by the applicant or in the Bailiff's view corresponds to the applicant's need for legal protection in an appropriate and sufficient manner. An arrest can also be lifted at the request of the defendant unless the applicant demonstrates that legal proceedings against the defendant were commenced on time. The applicant must commence legal proceedings against the defendant within one month from the day when the final arrest order was granted. An arrest shall also be lifted if the principal claim has been rejected or dismissed by a court or if the claim has been paid.

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

The security may take the form of a monetary security or a guarantee. The Bailiff may require a bank guarantee from a Finnish bank.

19. Does security need to cover interest and costs?

The security shall cover the amount that the court has ordered the ship to be arrested for. The security shall generally also cover interest and legal costs.

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

Sometimes P&I club letters may be used as an accepted form of guarantee to lift the arrest.

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

If the grounds for the arrest have lapsed, the Bailiff shall carry out the reversal measures. The law does not specify the duration of this procedure.

22. Is there a procedure to contest the arrest?

When the arrest is granted and enforced by a separate arrest order or during the proceedings of the principal claim, the defendant can appeal such an order in the court of higher instance. However, in cases of an interlocutory order, the order cannot be appealed but the applicant must commence legal proceedings against the defendant within one month from the final arrest order.

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

The applicant must commence legal proceedings against the defendant within one month from the day when the final arrest order is granted.

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

The applicant's liability for an unjustified arrest is strict. Therefore, the applicant is liable for any loss the defendant may suffer as a result of an unjustified arrest even if the applicant has not been negligent or acted in bad faith when enforcing the arrest.

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

Piercing the corporate veil is not common. Therefore, it is not normally possible to arrest the property of owners associated with the debtor. However, in 2015, the Supreme Court pierced the corporate veil in an IP-related case (KKO 2015:17) and considered the parent company liable for the debts of its subsidiary. Later in case KKO 2017:94, the Supreme Court deemed company A liable for some public debts of company B. A and B were managed and fully owned by the same person. The reasoning of the Supreme Court was that a part of the operations of company A had been transferred to company B without any sound business reason only in order to avoid some payments of public nature. However, in these particular cases, there was a relatively clear effort on part of the parent company/company A to circumvent their obligations under law. Some Finnish legal scholars have therefore argued that a Finnish veil-piercing doctrine has been confirmed to exist in situations where group structure or corporate form in general has been used in an artificial and reproachable manner to the end of creditors' rights being compromised or the evasion of a statutory obligation. The discourse is however not unanimous, and the and it is yet too early to assess definitive the impact of the se cases mentioned above remains to be seen.
In addition, property formally owned by a third party can be attached to secure a claim on condition that the ownership is based on formal arrangements which do not correspond to the actual nature of the transaction and aim at avoiding enforcement. A further condition is that the applicant's claim cannot be otherwise recovered from the debtor within a reasonable time.

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

The main principle under Finnish law is that it is not possible to sell the ship pendente lite. According to the Finnish Judicial Enforcement Act, if property which is subject to rapid deterioration or which is expensive to retain in custody has been arrested but the court has not yet given a judgment, the Bailiff is entitled to sell such property at the request of the claimant. In theory these principles may apply also to vessels under arrest.

***Ulla von Weissenberg** advises on all aspects of international maritime and transport law and related insurance issues. She is also experienced in issues relating to shipbuilding and ship purchase. Ms von Weissenberg litigates frequently before courts and arbitral tribunals.*
Ms von Weissenberg heads the Shipping, Transport and Insurance practise of Procopé & Hornborg Attorneys Ltd. Prior to joining Procopé & Hornborg, Ms von Weissenberg was a partner at Borenius and Aminoff & Weissenberg, Attorneys Ltd. She has worked in the shipping industry with legal matters since 1994.

SHIP ARREST IN *FRANCE*

*By Henri R. NAJJAR, Partner**
RICHEMONT DELVISO
henri.najjar@richemont-delviso.com
www.richemont-delviso.com
1 bis avenue de Lowendal 75007 PARIS
Tel: +33 (0)1 84 16 46 40 - Fax: +33 (0)1 84 16 46 44
3 quai de la Joliette 13002 MARSEILLE
Tel: +33 (0)4 91 90 36 10 - Fax: +33 (0)4 91 90 36 11

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

During the years following the adoption of the 1952 Brussels Convention, France was held to be a ship arrest haven. Indeed, as a response to the abusive expansion of single ship companies, French judges resorted to an extensive interpretation of article 3.2 of the Brussels Convention, granting orders of arrest against any ship apparently owned by "the same beneficial or associated owner", such concept including a company which shares are owned by an entity holding also shares in the capital of the debtor. This movement, which led to various conflicting judgments, subsided in the mid nineties. The French courts back-pedaled to a more conservative view, whereby the piercing of the corporate veil must reveal the fictitious character of the company owning the ship (see para. 25 below). France remains however an interesting forum for arrest insofar as the domestic legislation allows, under certain conditions, the arrest of a ship for any claim against the owner, were it not maritime, and as the procedure is relatively not costly and can be implemented rapidly.

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

France ratified the Brussels Convention on the Arrest of Sea-Going Ships of 10 May 1952 and incorporated it through the Decree no.58-14 of 4 January 1958.

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

Yes. Under the domestic regime framed by the Code of Transports (art. L.5114-20 to L.5114-29 and art. R5114-15 to R5114-47) and the Code of Civil Procedures of Execution (art. L.111-1 et seq. and art. R.112-1 et seq.).

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

As a matter of principle, a freezing injunction may be issued under the provisions of the Code of Civil Procedure, in case of urgency whenever the claim is not seriously disputable, otherwise when it aims at preventing an imminent damage or at stopping a disturbance obviously unlawful. In practice, it is rarely ordered against a ship.

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

Under the Brussels Convention, ships may be arrested for any of the "maritime claims" identified in article 1 of the Convention. Under the domestic legislation, ships can be arrested for any prima facie claim that the petitioner may have against the owner of the ship.

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

Yes. All ships calling at a French port may be arrested – save warships and state-owned ships employed in a public non-commercial service or ships proven to be necessary for the personal exercise of a professional activity (e.g. fishing boats).

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

Subject to the maritime claims identified in the Brussels Convention, in the event secured by a maritime lien, and to the circumstances described below, French judges have regularly dismissed any petition for the arrest of a ship not owned by the debtor.

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

Under French law, any ship belonging to the debtor may be arrested even where the claim is not related directly to the ship. The Brussels Convention permits such arrest provided the claim is not in connection with the title to or ownership of a particular ship or with disputes between co-owners or the mortgage or hypothecation of this ship. A ship owned by an associated company of the debtor may be arrested only if the company is proven to be fictitious (see para. 25 below), otherwise whenever the associated company is deemed to be jointly responsible for the claim.

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

Under the Brussels Convention, the holder of a maritime claim against the bareboat or time charterer of a ship is entitled to arrest the said ship or any other ship in the ownership of the charterer. The French domestic regime allows such arrest only if the claimant has a maritime lien on the ship or has reasonable grounds to believe that the underlying obligation was concluded on behalf of the actual owner of the ship.

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

It is not common practice that French courts require counter-security as a prerequisite for the arrest of a ship. However, judges have the free discretion to decide otherwise.

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

There is no difference in the procedure of arrest. However, a maritime lien would allow the arrest of the ship irrespective of the identity of its owner ("into whatever hands it may pass" – art 8 of the 1926 Brussels Convention on Maritime Liens and Mortgages; art. L.5114-18 of the Code of Transports).

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

Yes. France ratified the Brussels Convention on Maritime Liens and Mortgages dated 10 April 1926, incorporated into French domestic law (art. L.5114-7 et seq. of the Code of Transports), it being highlighted that an additional maritime lien is provided under article L.5114-8 of the Code of Transports ("the shipping agent's claim for disbursements paid outside the port registry of the vessel").

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

If all the necessary documents are provided in due time, the arrest can be made within the same day in case of urgency.

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

There is no need to provide a POA. Obviously, the petition must be substantiated with any document evidencing the existence and the cogency of the claim. When the petition is grounded on the Brussels Convention, the documents must also show the maritime nature of the claim.

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

In practice, no original or notarized documents are required. The documents supporting the petition must be handed to the ruling judge.

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

Save when the Brussels Convention applies (art.7), French judges may not rule on the merits of the claim, on the sole ground that the ship was arrested within their area of jurisdiction (Forum Arresti). The criteria and conditions set under the international rules of conflict, as per the applicable International Conventions and EU Regulations, must be met.

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

A ship may be released from arrest either by providing the appropriate guarantee or deposit as per the order of arrest or by serving upon the arrestor a writ of summons with a view to challenging the arrest (see para. 22 below).

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

As a matter of principle, any security that would be equivalent to the guarantee offered by the arrest of the ship for the recovery of the claim is acceptable. In practice, French judges accept bank guarantees, cash deposits and P&I letters of undertaking.

19. Does security need to cover interest and costs?

Security would need to cover the exact sum for which the arrest of the ship has been ordered. This sum often includes a provision for interests and costs.

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

P&I letters of undertaking are usually deemed sufficient when provided by P&I Clubs members of the International Group. For other P&I Clubs, it would depend on the identity, reputation and credit worthiness of the Club, as freely appreciated by the ruling judge.

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

In usual cases of urgency, the ruling judge would issue an order to lift or confirm the arrest of the ship the same day of the hearing at which the arrestor would have been summoned to appear. Once obtained, the order to lift the arrest can be notified forthwith, through bailiff, to the harbour master for an immediate release.

22. Is there a procedure to contest the arrest?

The arrest of a ship is challenged by writ of summons served upon the arrestor, which is deemed to have elected domicile at the offices of its lawyers and/or bailiffs. The writ, which does not need to be translated, summons the arrestor to appear before the judge who ordered the arrest at a hearing that could be scheduled at the first convenience of the judge or his/her substitute, including the same day of the arrest.

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

The claimant must institute legal proceedings on the merits within one (1) month after the arrest is performed, otherwise the arrest will automatically be held cancelled.

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

French judges are reluctant to accept a claim for compensatory damages for wrongful arrest, unless the bad faith or malice of the arrestor is clearly established.

25. Do the Courts of your country acknowledge the pierce and lift of the corporate veil?

Yes. In this respect, French judges have been relying on the concept of "Fiction" instead of the theory of "Appearance", i.e. one must establish that the company owning the ship is fictitious. To this end, various elements must be gathered: e.g. same beneficial or associated owner, want of employees, concurrency of assets and/or debts, unity of management, lack of participation to the profits and/or debts of the company, unequal distribution of the dividends, existence of a subordination bond between the existing entities, etc.

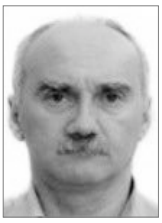
26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes. The judicial sale of the arrested ship is possible when the petitioner holds an enforceable deed or judgement. In practice, the procedure of judicial sale lasts around three to six months.

**Henri Najjar* holds a Master Degree in Business Law (Paris II, Assas) and a LLM in Maritime Law (Southampton, UK).
Member of the Paris Bar, partner of the law firm RICHEMONT DELVISO, with offices in Paris, Marseille, Ajaccio and Douala, Henri advises and handles litigation of all kind in connection with the maritime practice, including casualties at sea, oil pollution and charterparty disputes. He represents P&I clubs, shipowners and various French, Spanish and US road carriers and freight forwarders, and has developed an expertise in the set-up of agencies and joint ventures worldwide. Henri is author of the fascicule on Oil Pollution and the outline on the Events of the Sea: Collision, Salvage, Towage, General Average of the JurisClasseur Transports (Lexis Nexis) and of various articles published in Lloyd's List, Bulletin des Transports and The Maritime Advocate.
He is member of the Association Française de Droit Maritime and the Instituto IberoAmericano de Derecho Maritimo, speaker at the International Maritime Committee, International Bar Association, Shiparrested.com and Containerisation International conferences.

SHIP ARREST IN *GEORGIA*

*By Capt. Valerian Imnaishvili**
MARINE LEGAL ADVISER CO. LTD
info@marinelegal.biz
www.marinelegal.biz
57 Rustaveli Av., 3-rd ent., apart 25,
Batumi, 6000, Georgia
Tel: +995 577408238



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

Georgia is not a signatory part of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships (Brussels 1952) and UN International Convention on Arrest of Ships (1999), but has implemented provisions of the Conventions into maritime legislation.

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

The source of law during a ships arrest procedure implementation is the following:

1. International legal instruments the 1982 UN Convention on Law of the Sea.
2. Domestic legal instruments:
   - Maritime Code of Georgia (15.05.1997r. N 715 - IIC).
   - The Law of Georgia «On maritime areas» (Nº1756 ot 24.12.1998).
   - The Law of Georgia «On international private law» (29.04.1998r. 1362- IIC)
   - The Law of Georgia «On State Boundary» 17.07.1998 Nº1536-PC
   - Georgia Code of Civil Procedure (14.11.1997r. Nº1106- 1C)
3. The judicial system is formed in the form of general courts of three instances, administering justice through civil, administrative and criminal jurisprudence.

In accordance **with Article 831 of Maritime Code of Georgia,** a ship arrest/detention is implemented only for maritime claim security. Maritime claims comes from the ship's ownership and from other property relations that arise in the construction, management, maintenance, commercial use, and mortgage or as a result of activities related to the salvage of the ship. In accordance with the general provision of **Article 831 of Maritime Code of Georgia and Civil Procedure Code (CPC)** the only competent authority, which is authorized to consider the issue of arrest and release of a vessel in Georgia is the general court. And the procedure of arrest and release of a vessel is carried out in accordance with the CPC of Georgia. Taking into consideration the structure and provisions of the CPC the arrest of the ship can be realized only as a form of security for the claim, which logically should be a maritime claim. In Georgia, as well as in Romano-Germanic legal systems, there is a standard regulation when a court considers a case involving a foreign element. In particular the court shall:

- Determine a jurisdiction of the court to the claim (suit, petition) being considered
- Determine the qualification and the nature of the claim being considered.

In such cases, as a rule, general competence is substantiated by the main legal instrument of the international maritime law - the UN Convention on Law of the Sea.

Domestic regulations of competence of the courts in this part are stipulated for by the Law of Georgia «On maritime areas».

In particular: a foreign vessel which left internal sea waters of Georgia and crossing its territorial sea, or is in the territorial sea of Georgia may be subject to judicial measures provided for in Art. 26, in order to secure a civil claim. The important regulations substantiating the competency are provided by the Law of Georgia «**On international private law**», which is – unlike Maritime Code or the Law on Maritime Areas one of the most common and used laws by the courts.

According to the generalized provisions of this law in relation to the Georgian courts competence, the following can be concluded:

- General courts of Georgia have special international competency in the applications regarding legal enforcement if their implementation or claim for implementation or realization is carried out in Georgia.

- For claim security Georgian court is competent if interim measures are enforceable in the courts of Georgia or courts of Georgia have international jurisdiction.

Use of **CPC of Georgia** as procedural and legal substantiation of consideration and implementation of ship's arrest, is imperatively provided by **Article 831 of Maritime Code of Georgia**. Carrying out the arrest of a vessel as an interim measure Georgian law provides protection of the shipowner's interests. In accordance with the **Law of Georgia «On international private law»** foreign citizens and legal entities, participating in the civil process under Georgia jurisdiction, enjoy the same legal safeguard as legal entities and physical persons – residents of Georgia.

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

In accordance with the laws as listed above three types of detention and arrest are applicable:
a) detention by Harbour Master for 72 hrs.
b) ship's arrest via the competent court decision.
c) ship's arrest against legal decision of a foreign arbitrage or a court.

Each type has its own character and procedure

a) detention by Harbour Master – the limit of such detention is 72 hrs., days off and public holidays are not included in this period. The detention is implemented on the base of an application of any physical person or legal entity, which has got grounds for claim for commercial damage compensation or claim regarding the cargo etc. In order to implement this, a physical person or legal entity should apply to the Harbour Master providing the copies of all the documents proving the fact of damage or claim. The application should be in the Georgian language. Such detention is applied for a short period in order the Parties could solve the issue peacefully or a competent court could make a decision regarding detention of the vessel for a certain period of time. In order to make such detention the preliminary 2 days notice is required.

b) ship's arrest via the competent court decision – as a rule, preliminary court arrest is carried out for the period of 10 days for claiming on the merits to the appropriate authority (arbitrage or court), which has competency for consideration of the claim on the merits.

c) ship's arrest against legal decision of a foreign arbitrage or a court – Georgia is a part of the New York Convention on Enforcement of Arbitral Awards and therefore foreign arbitrage decision after the procedure of recognition and implementation by the Supreme Court of Georgia, is implemented as domestic judicial act. Recognition and implementation procedure takes 10 days from the date of acceptance of the appropriate petition into processing.

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

Such alternatives are possible. Saisie conservatoire can be applied to any movable and immovable property, providing the court is given documents proving the defendant's ownership of the subject regarded as a matter of security.

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

Base for detention and the appropriate legal actions are the main three reasons:

- The first reason is connected with Georgian law and regulations infringement.

- The second reason is connected with providing of safety of navigation

- The third reason is application of any physical person or legal entity having base for claiming for commercial damage compensation, claim for cargo etc.

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

There are not any privileges, rather than if it is a governmental vessel, whose immunity is provided by international law.

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

Detention can be carried out only in relation to the shipowner and in rare cases - in relation to the bareboat charter owner.

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

Maritime claim can be applied to any vessel, if its ownership is documentarily proved.

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

Detention can be carried out only in relation to the shipowner and in rare cases - in relation to the bareboat charter owner providing Bareboat ownership documented.

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

In the event of ship arrest, an adequate form of security for the release of the ship may be the depositing the amount of claim to the court's account by the defendant. Or some other forms of coercive measures can be applied, such as a bank security, P&I security or some other, including those not provided by the legislation of Georgia. In any case the court's decision completely depends on the Party demanded the vessel's arrest.

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

It does not matter if a third reason arises – application of any physical person or legal entity having base for claiming for commercial damage compensation, claim for cargo etc.

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

Georgia law and courts recognize maritime liens for the debtor's property irrespective of damage claim base – breach of obligations (law or contract) or delict. The provisions of the International Convention on Maritime Liens and Mortgages Geneva, 6 May 1993 are incorporated into Art. 350 – 355 of Maritime Code of Georgia.

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

For the preparation of documents and the implementation of such detention, prior notification and submission of documents 3 days in advance are required.

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

The following documents are necessary: original apostilled Power of Attorney to the lawyer (in Georgian and English, as a rule) Statement of claim, copies of all documents regarding this case.

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

Georgian courts require originals or notarized copies of all important documents (contracts, bills of lading, charter-parties, correspondence between the parties) of the plaintiff as stated in the application. Translation of all the documents into Georgian is carried out by a certified translator.

Documents translation takes time, and the client should bear this time factor in mind. Other documents can be presented as copies, certified by a seal and signature of the plaintiff. The documents (apart from the LOA) can be presented in electronic copies.

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

Georgian court can accept a claim on the merit for consideration if its competency is in accordance with the Law of Georgia "On international private law", irrespective where the vessel is, or if the Parties have agreed in written form for proceeding the case in Georgia, are presented by lawyers and have been familiarized with their right of objection in regards of the court's competency.

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

A vessel can be released by the order of the Court, which made the decision to arrest her, or by the order of the Court of Appeal, if any appeal had been submitted.

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

The Civil Code of Georgia provides that instead of arresting a vessel, financial security in the form of a guarantee from a local bank or a deposit made to the court's deposit account can be used as security for a claim. However, this provision is rarely applied in practice.

19. Does security need to cover interest and costs?

No interest is imposed on the penalty amount. When applying to the court the court fee is fixed: about USD 90. Court of Appeal fee is approximately the same.

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

Maritime Code of Georgia provides that P&I Club or first-rate bank guarantee can be submitted. In private law disputes, the application of this provision in private law is dependent on the goodwill of the Party applying for the seizure of the vessel on property claims. But in cases of administrative delinquencies, this provision does not apply - the fine must be paid.

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

A vessel's release depends on the grounds of the arrest. If the arrest was implied as a security for a property claim, the time of release can be until the conclusion of the dispute on the merits. In the cases of administrative delinquencies, the vessel is released from the arrest in 1-2 days upon payment of the penalty.

22. Is there a procedure to contest the arrest?

Procedure of appeal exists and is widely applied.

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

In the event that a court decides to apply interim measures before a claim on the merits arises, the court generally grants a 10-day period for filing an application with the competent court, and this period is not subject to extension in accordance with the CPC.
After the expiration of this period, interim measures are canceled by the court, and the Party concerned cannot apply to the court with the same claim on the same grounds. If a claim is filed on the merits, interim measures remain in force until the final decision on the merits of the claim.

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

In the case or wrongful arrest, a court can take a decision on release of the vessel providing:

(a) The interim measures were declared unreasonable due to the refusal to satisfy the plaintiff's (concerned party's) claim and the entry into force of the decision.
(b) The plaintiff has not applied to the competent court for considering the claim on the merits, that's why the court withdraws the interim measures. If the arrest is recognized as wrongful, the defendant may file a claim against the initiator of the arrest for compensation for the losses incurred.

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

Georgian corporate law recognizes property accountability of a subject only based on organizational structure of the defendant if this company is registered in Georgia. As for a company not registered in Georgia this issue is decided by the court on the basis of the common provision as provided by the Law of Georgia "On international private law"

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

With the purpose of court and arbitration decisions enforcement on the basis of a writ of execution issued by the competent court of Georgia, enforcement is carried out by the Executive Bureau of the Ministry of Justice of Georgia. The procedure is as follows: the debtor is given a written notice of the voluntary implementation of the court decision, after that the vessel is auctioned by posting statements on the appropriate websites. After two failed auctions the property is transferred to the creditor and the appropriate act of the Executive Bureau is issued.

***Valerian Imnaishvili** born November 1954, Higher maritime education, Master Mariner, Professor, LLM, BSM, Member of IFSMA, SNAME, NI, 1991-1993, Senior Marine Superintendant of AGS Co. (London), Author of Georgian maritime legislation (till 2011), 1994 November 2010 Maritime Administration of Georgia Head of Legal and Foreign Affairs, Flag State Implementation, Ships Registry, National Competent Person on Maritime Security, from 2011 Partner of legal company "Marine Legal Adviser Co. Ltd".*

SHIP ARREST IN *GERMANY*

*By Dr. Jan Albers**
SEGELKEN & SUCHOPAR
albers@sesu.de
www.sesu.de
Stubbenhuk 7,
20459 Hamburg, Germany
Tel: 0049 40 376805-0
Fax: 0049 40 362071

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

Germany has not only well-known international seaports at the North- and the Baltic-Sea but also a long history in maritime law. Although it is said that German law is generally rather restrictive in allowing conservatory and provisional measures, no doubt an arrest can be achieved within a day and with reasonable costs involved; in particular after the revision of the German Maritime Trade Law ("Das deutsche Seehandelsrecht"), which entered into force on April 25th, 2013. The much-disputed requirement of "the good reason" for an arrest ("Arrestgrund") has been deleted. Therefore the merits of an arrest now depend on a thoroughly prepared application by the arresting party only. The competent court is the local court ("Amtsgericht") for the port in which the ship is berthing or any inland court having jurisdiction to hear the case on the merits.
Mostly the courts decide the application without a hearing. If the presiding judge believes the application may be without merits, he usually will inform the creditor's lawyer before dismissing it and allow him to complete his arguments or to withdraw the application.
Counter-Security may be ordered, but there are arguments to oppose to such a request. As to the service of an arrest order it has been clarified that such order may be served on the master onboard the vessel.
In order to have an arrest lifted the ship-owners may put up security in an amount ordered by the court ("Lösungssumme"); such security may given by a bank-guarantee, however, as practice shows, P&I Club letters of first-class P&I Clubs ("International Group") are widely accepted.
Simultaneously the ship-owners will file an appeal ("Widerspruch") against the arrest-order and an immediate hearing on the merits of the arrest-order will follow.

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

Germany is since April 1973 member of the Brussels Arrest-Convention of 1952.

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

No.

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

No.

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

Generally speaking an arrest may be applied for if the creditor's claim is for payment or may become a claim for payment, which is generally broader than the claims admitted under the Brussels Arrest Convention 1952, however, that does not lead to major differences because – as practice shows – those claims cover the vast majority of claims against ship-owners. However, it should be noted that although the requirement of the "Good reason" for an Arrest ("Arrestgrund") has been deleted this deletion is limited to an arrest of the seagoing and inland-waterway vessel only, and not for the arrest of the debtor's other assets (i.e. for an arrest into bunkers): Therefore an arrest-application for "other" assets of the debtor should clearly be separated from an arrest of a vessel, as for such

application the creditor still has to demonstrate that without such an arrest the enforcement of a (later) judgement would be rendered impossible or substantially more difficult.

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

An arrest may be applied for irrespective of the flag.

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

As already said an arrest will only be granted if the shipowner is the debtor of the claim.

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

An arrest into a sister-ship is possible, provided that sister-ship is owned by the person/company against the claim is made.

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

A vessel may be arrested if the claim against the bareboat or demise charterer is covered by a maritime lien. It is also well arguable that for any other claim against the bareboat and demise charterer the vessel can be arrested. This, by contrast, does not apply to time charterers. If other property of charterers is concerned – i.e. bunkers – that property may of course also be arrested.

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

Although it was the clear intention of the government when reforming the German Maritime Trade Code to make arrests into ships easier and less risky it is still uncertain whether the court may ask for counter-security. Some commentators, pointing to the government's intention, favour such an abolishment, however, the law of civil procedure ("Zivilprozessordnung") remains unchanged and due to § 921 it is still in the discretion of the judge to order counter-security. It is therefore wise to argue within the application that such discretion no longer exists and that no counter-security may be requested any longer, but of course, as time is of the essence, the applicant should be ready to present security, if so ordered. The reason that an order for counter-security may still be made is that German law is rather strict on compensation for wrongful arrests. The counter-security should safeguard the shipowners' claim for compensation and therefore the amount of such guarantee is not related to the creditor's claim but to the damage the ship-owners may suffer due to his ship being arrested for a while. The actual amount is in the discretion of the judge, but as a general rule the ship's charter-rate for the off-hire period may be a reasonable guideline. A counter-security of the creditor will be ordered in cash or – if so requested in the application - may be given by a bank guarantee of a 1st class European bank. Therefore the creditors' bankers should be involved in due course before the application.

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

No, there are no differences.

12. Does your country recognize maritime lien? Under which International Convention, if any?

The applicant may have to consider maritime liens and mortgages. Germany is neither a member to the International Convention on Maritime Liens and Mortgages 1967 nor 1993, but has transformed the 1967 Convention into the Commercial Code (Handelsgesetzbuch); however, cargo claims arising out of charter-parties or other contracts have been deleted. Liens are accepted for crew wages, port- and pilots-charges, claims for personal injury and death or damage to property, GA-contributions and salvage-remuneration and claims of the social-security-authorities. Maritime liens prevail over all other liens on the ship, also over the ships' mortgages but they all can destroy the value of the ship for any creditor not being so secured.

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

That very much depends on how fast the creditor may arrange for a possible counter-security. When all documents are at hand in the morning, an arrest may be done in a day. The time limits are then as follows: The arrest order may only be executed within one month from its delivery to the applicant. The execution will be done by the court's bailiff ("Gerichtsvollzieher") on a special order of the applicant, not by the court. The applicant also has to make sure that service of the arrest order to the ship's owners is effected or at least applied for within one week after the ship has been arrested and within the one-month time limit mentioned before. If one of these time limits has not been observed the arrest will be lifted if the ship-owners so applies to the court. The execution may only be done as long as the ship has not started her voyage and is still within a German port.

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

The arrest procedure is simple and starts with an application filed by a lawyer, although this is not compulsory. No POA is required but advisable to avoid delay if so requested. The application must be in the German language and supported by prima facie evidence ("Glaubhaftmachung") as to the claim. This is usually been done by a sworn affidavit of a competent manager of the creditor confirming that the facts stated in the application are true. However, no legalisation is required. As said it is also wise to argue that no counter-security may be requested any longer, but if so ordered by the court, the creditor may be apply to provide for security by a 1st class European bank. Very rarely the attached documents have to be translated into German; in the main seaports of Germany such as Hamburg and Bremen the courts are well familiar with the English language.

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

No special documents are required and thus no originals are needed. In Germany very few courts accept an electronically filed motion, but only by fax. No notarisation, no Apostille.

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

As German Courts generally accept jurisdiction clauses, only for claims under the 1952 Arrest Convention the arrest may lead to jurisdiction.

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

There are in general two possibilities: The shipowners may either file a motion/appeal against the arrest order (§ 924 German Procedural Code) or – as every arrest order has to include the amount of security against the arrest may be lifted – pay such amount into the court's cashier.

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

In general security has to be provided in cash or by providing an unconditional bank guarantee issued by a first class bank located in the EU. Of course, if the parties to an arrest so agree, a vessel may be released against a P&I Club Letter, preferably from a P&I Club of the International Group. However, a German court will not accept a P&I Club Letter, if the arresting party does not agree.

19. Does security need to cover interest and costs?

The court may consider interest and costs, but in the end the shipowners have to provide such amount as determined by the court in the arrest order. If the parties agree on a P+I-Club-Letter interest and cost will of course be an issue.

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

As stated, that depends on an agreement of the parties; a court will not accept a P+I-Club-Letter as sufficient security.

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

As stated in No.17 there are two possibilities:

(i) Contest the arrest by an appeal; or

(ii) Pay what is ordered as security.

It is obvious that (ii) is fast and efficient as a prompt release only depends on providing security and therefore it is advisable to have your preparations ready to pay cash or provide for a guarantee and then appeal. If cash or security may not be provided for whatever reason and the appeal is the only option it depends on the counter-arguments the shipowners may present. The court will in any case set a date for a hearing immediately after the counter-arguments have been lodged. German Courts will in general decide at the end of that hearing. So generally speaking – depending on the merits of the counter-arguments – the arrest order may be lifted within a couple of days.

22. Is there a procedure to contest the arrest?

Look at No.17!

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

As to the legal action there is no automatism, however, on an application of shipowners the court will file an order giving the applicants reasonably time, which is in the discretion of the court, mostly about a month. If the applicants fail to comply with this order the arrest will be lifted.

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

German law is rather strict on compensation for wrongful arrests. § 945 ZPO stipulates a strict liability, which arises irrespective of illegality or fault on the part of the applicant for arrest but is only due to the decision of the judge that the arrest was unjustified from the very beginning.
However, as all parties under German law also the shipowner has an obligation to mitigate damage and should provide for a guarantee i.e. a P+I-Club without delay.

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

Under German law it is rather rare that the corporate veil may be lifted; only in cases of clear misconduct of the managers or the shareholders there might be a direct claim against them.

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

During pending arrest proceedings the owners are not entitled to sell their vessel.
Note as to the revised German Maritime Trade Code (“Deutsches Seehandelsrecht”) On April 25th 2013 the revision of the German Maritime Trade Code entered into force; the main changes are:

1. The excuses for error in navigation and fire are deleted; the carrier may (re-)include this excuse by implementing a specific Standard Business (bill of lading-) term, however, he is not entitled to rely on such term if he acted with intend or recklessly with the knowledge that damage would probably occur.
2. Arrest proceedings are much easier as a special requirement of the German Civil Code; the good reason for an arrest (“Arrestgrund”) has been deleted.
3. The liability of and direct claims against the “actual carrier” have been established; cargo interests may therefore sue the actual carrier and the contracting carrier.

4. The new maritime code is mandatory and the parties may not deviate from it by standard business (bill of lading) terms but only by individual agreement, except for the limits of the liability and the excuses for error in navigation and fire.
5. The liability of the carrier for death or injuries to passengers has been formed in line with The Athens Convention of 2002.
6. Germany remains a Hague-State having the Hague-Visby-Rules implemented into the national Commercial, therefore the limits of liability for cargo claims (2 SDR/kg or 666,67 SDR/unit).

***Dr Jan Albers** studied law in Hamburg and obtained his Master of Laws from the University of Hamburg. He received a PhD scholarship from the International Max Planck Research School for Maritime Affairs and wrote his dissertation on the topic of ‚Responsibility and Liability in the Context of Transboundary Movements of Hazardous Wastes by Sea: Existing Rules and the 1999 Liability Protocol to the Basel Convention'. 2009/2010 he was an employees of the United Nations International Tribunal for the Law of the Sea (Management IFLOS Summer Academy). He has been admitted to practise law since 2014.*
Dr. Albers is co-editor of the journal „Recht der Transportwirtschaft (RdTW)" and comments on the law on bills of lading (§§ 513-515 HGB) in the BeckOGK HGB (beck-online.GROSSKOMMENTAR HGB).

SHIP ARREST IN *GHANA*

By Mr. Lawrence Fubara Anga
*ÁELEX**
lfanga@aelex.com
www.aelex.com
Vanguard House 2nd Floor, No. 21 Independence Avenue
Ridge-Accra PMB CT 72, Accra
Tel: 233 (302) 224828
Fax: 233 (302) 2248

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

Jurisdiction in respect of admiralty matters is vested in the High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court. Order 2 of the High Court (Civil Procedure) Rules 2004 (C.I. 47) provides that all civil proceedings must be commenced by Writ of Summons and must be filed along with a Statement of Claim. Every Writ of Summons must contain concise statement of the nature of the claim or relief, remedy sought in the action. Order 62 of C.I. 47 generally makes provision for maritime actions. At the time of issuing a Writ of Summons, the Plaintiff files an Ex parte application for an order for a warrant of the arrest of the ship. No warrant of arrest shall be issued until an affidavit by the party or his agent has been filed and the following provisions complied with:

(a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim and the name and nature of the property to be arrested;
(b) In an action for wages or possession, the affidavit shall state the national character of the ship proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in Ghana, and a copy of the notice shall be annexed to the affidavit;
(c) In an action for bottomry, the bottomry bond, and if in a foreign language also a certified translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the transaction thereof, certified to be correct, shall be annexed to the affidavit;
(d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same;
(e) The lodging of an undertaking in writing by the solicitor who applies for the issuance of the warrant to pay the fees and expenses of the Marshal.

The application for an order for warrant of arrest not being on notice can be filed, heard and granted within 24 hours. After the grant of the order a bailiff of the High Court is assigned to serve the Order on the Captain of the vessel. A copy of the Order is also served on the Harbour Master, the Port Authorities and Customs Excise and Prevention Service at the port where the vessel is berthed.
A defendant who is served with an Order of arrest may apply to the High Court of Justice which granted the Order to have the order set aside or provide adequate security for the satisfaction of the Plaintiff's claim. If the defendant is able to provide adequate security to the satisfaction of the Court, the Court may vacate the order on terms and conditions as in the opinion of the Court is just and appropriate. Upon service of the order vacating the warrant of arrest, the Harbour Master and the Port Authorities will grant the Captain of the vessel unconditional leave to sail from the port of call.

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

Ghana has not acceded to the Arrest Conventions.

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

There is no other way to arrest a ship, other than as stated in (1) above.

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

No. Arrests can only be effected pursuant to an action in rem brought against a ship or a sister ship.

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

There is no law or rule of procedure that specifically defines what maritime claims are. The position is that where the C.I. 47 does not make specific provision for the rule of procedure in a matter, resort can be had to the practice and procedure applicable in any common law jurisdiction. Without prejudice to the above, Section 446 of the Ghana Shipping Act, 2003 (Act 645) provides a definition of maritime actions in rem. It states that in any case in which an action may be brought against a ship other than actions arising from claims to the possession or ownership of a share in it, or a claim in respect of a mortgage or charge on a ship or a share, where the person who would be liable on the claim in an action in personam, when the cause of action arose, was the owner or charterer of, or in possession or in control of the ship, the admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against:

(a) that ship, if at the time when the action is brought, the ship is beneficially owned in respect of the shares by that person; or
(b) any other ship which, at the time when the action is brought, is beneficially owned as under paragraph (a); but in determining whether a person would be liable on a claim in an action in personam, it shall be assumed that the habitual residence or a place of business of that person is within Ghana.

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

Yes, a vessel can be arrested within Ghana irrespective of the flag she is sailing under.

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

No. The claim must be enforceable in personam against the owner of the ship or the demise charterer.

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

It is possible to arrest sister ships, but not associated ships.

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

An action in rem can be brought against a bareboat vessel, but not against a time-chartered vessel.

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

Counter-security is not required for an arrest. All that is required is an undertaking by the applicant or its Solicitor to pay the Admiralty Marshal's costs in serving the arrest warrant. However, if the applicant is a foreign entity without assets in the jurisdiction, security for costs of the litigation is often ordered, upon the application of the Defendant.

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

No, the procedure is the same.

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

Ghana recognises maritime liens under Section 66 of Act 645, but she is not a party to any Convention with respect to them. According to Section 66 of Act 645, any of the following claims against an owner, demise charterer, manager or operator of a vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and any other sums due to the master, officers and the other members of the vessel's complement in respect of their employment on the vessel including costs of repatriation and social insurance contributions payable on their behalf;
(b) claims in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the vessel;
(c) claims for reward for salvage of the vessel;
(d) claims for ports, canal and other waterway dues and pilotage dues;
(e) claims based on tort arising out of physical loss or damage caused by the operations of the vessels other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

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

An arrest order can be obtained within 24 hours of filing the requisite processes.

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

There is no requirement of a POA, however copies of all relevant documents supporting the claim will have to be provided to the Court.

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 and hard copies of all the documents are required, but they do not have to be notarized. Documents cannot be filed electronically.

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

Yes. Ghanaian courts will accept jurisdiction over the substantive claim once a ship has been arrested within Ghanaian territorial waters.

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

Where owners have placed acceptable security for the release of a ship, the court may order release of the ship upon request made by the owners for release of the ship.
In some cases, the arrestor could request for release of the ship, where owners have placed acceptable security for the release. In some cases, the court may order release of a ship under arrest, if owners successfully challenge an order of arrest.

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

Security such as bank guarantees, P and I Club LOUs and insurance bonds are acceptable to be placed for the release of ships.

19. Does security need to cover interest and costs?

Yes, security must cover the claim, interest and costs.

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

Yes, P&I LOUs are accepted as sufficient to lift the arrest.

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

A ship can be released within 24hours of filing an acceptable security.

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest.

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

The Plaintiff (arresting party) must file a statement of claim at the time of filing the ex parte motion for a warrant of arrest. As a result, the claim documents are usually served along with the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced.

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

Yes. Costs, damages, demurrage and expenses will be recoverable if the defendant can show that the arrest was made unreasonably and in bad faith.

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

Ghanaian courts may be prepared to pierce and lift the corporate veil under certain limited circumstances, for example in the instances of fraud.

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

Order 62 rule 16 of C.I. 47 makes it possible for a ship to be sold pendent lite. The process of sale can take about two months, after the applicant has obtained the sale order and the appraisement of the ship by the Admiralty Marshal.

***ÁELEX** is a leading Ghanaian firm with expertise and institutional depth in Transportation. Our Maritime practice has evolved with developments in the sector, gaining us invaluable experience and capabilities. We offer various shipping services from ship finance to corporate, regulatory compliance and litigation.*
Members of our Maritime team are located in Lagos and Port Harcourt in Nigeria and Accra, Ghana with an aggregate of over 30 years experience in maritime law. We act as counsel to ship-owners, P&I clubs, charterers, operators of ships and other offshore assets, insurance companies, financial institutions, oil and gas companies, port owners and operators.
ÁELEX advises on ship and mortgage registration, asset financing for off shore oil and gas operations, ship registration, ship finance and lease transactions. Our expertise also extends to claims arising from charter parties, collision, cargo and demurrage, both at arbitration and in the courts of law in Nigeria and Ghana. We are regularly instructed to undertake subrogated claims on behalf of insurers, arrest and release of vessels as well as negotiating the settlement of claims.

SHIP ARREST IN *GIBRALTAR*

*By Christian C. Hernandez**
ISOLAS
christian.hernandez@isolas.gi
www.gibraltarlawyers.com
Portland House, Glacis Road PO Box 204 Gibraltar
Tel: +350 20078363
Fax: +350 20078990

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

Arresting a ship in Gibraltar is a relatively simple and straightforward process. In the first instance a Claim Form should be prepared with either brief particulars (which is just a brief summary) or Particulars of Claim together with a request for service of the Claim Form in rem, a declaration in support of the claim and a solicitor's undertaking to pay the Admiralty Marshal's costs and expenses.

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

The Supreme Court of Gibraltar has jurisdiction to try admiralty matters by virtue of the Colonial Courts of Admiralty Act 1890 and the Admiralty Jurisdiction (Gibraltar) Order 1997. The same provide the Supreme Court of Gibraltar which is a Colonial Court of Admiralty, shall have the like admiralty jurisdiction as that of the high court of England as defined by section 20 of the Supreme Court Act 1981. Give effect to the convention relating to the arrest of sea going ships, Brussels 1952.

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

No.

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

It is possible to obtain a Freezing order over a defendant's assets where the Gibraltar Court has in personam jurisdiction. In such cases if the Defendant has a vessel within Gibraltar territorial waters, the freezing order can be enforced against the vessel thus preventing her departure from the jurisdiction.

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

In Gibraltar ships can only be arrested pursuant to a claim which gives rise to a right of action in rem. These are:

(a) any claim to the possession or ownership of a ship or the ownership of any share therein.
(b) any question arising between the co-owners of a ship as to the possession, employment or earning of that ship.
(c) any claim in respect of a mortgage of or charge on a ship or any share therein.
(e) any claim for damage done by a ship. (maritime lien)
(f) any claim for loss of life or personal injury in respect of a defect in a ship, neglect or default in navigation, management of the ship, loading, carriage or discharge of goods, embarkation, carriage or disembarkation of passengers,
(g) any claim for loss or for damage to goods carried in a ship.
(h) any claim arising out of an agreement relating to the carriage of goods in a ship or the use or hire of a ship.
(i) any claim in the nature of salvage (including aircraft). (maritime lien)
(j) any claim in the nature of towage in respect of a ship or an aircraft.
(k) any claim in the nature of pilotage in respect of a ship or an aircraft.
(l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance.

(m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues.
(n) any claim by the master or a member of the crew of a ship for wages. (maritime lien)
(o) any claim by a master, shipper, or charterer or agent in respect of disbursements made on account of a ship.
(p) any claim arising out of an act which is or is claimed to be a general average act.
(q) any claim arising out of bottomry. (maritime lien)
(r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure or for droits of admiralty."

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

Yes.

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

Save for claims which give rise to a maritime lien where the ship can be arrested irrespective of the debtor all other actions in all other actions that give rise to an in rem a ship can only be arrested if when the cause of action arose the person who would be liable on a claim in an action in personam was other the owner or the Charterer or in possession or in control of the ship.

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

True sister ships can be arrested in Gibraltar. For vessels to be deemed to be sister ships they must be owned by the same entity be it a company or a physical person. With the increasing use of one ship owning companies it is increasingly rare to encounter sister ships. It is not possible to arrest associated ships in Gibraltar.

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

Bareboat chartered vessels can be arrested. Time-charted vessels cannot be arrested.

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

No counter-security is needed in order to arrest a vessel in Gibraltar. However a deposit of between £10,000 and £20,000 must be placed with the Admiralty Marshal at the time of the arrest in order to cover the expenses of the arrest together with a solicitor's undertaking in respect of the cost of the arrest. If the arrest is successful all costs are normally recovered from the owners of the vessel or in default from the process of sale of the vessel.

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

An arrest for a maritime lien can be effected irrespective of who the owner of the vessel is and in circumstances whether the vessel may have been sold after the claim arose. An arrest for a maritime claim not being in the nature of a lien can only be carried out in the circumstances set out at 7 above.

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

Gibraltar recognises maritime liens in respect of claim for crew wages, salvage, master's wages and disbursements, damage done by a vessel and bottomry and respondentia.

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

Provided full instructions with the supporting documents are received enabling us to prepare a general endorsement of the claim form together with the declaration in support, an arrest may be carried within hours of receiving instructions. The Admiralty marshal is on call 24 hours a day 365 days a year and therefore in urgent cases a ship may be arrested at almost any time.

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

No Powers of Attorney are needed in Gibraltar in order to arrest a vessel. As regards documentation in support of the claim, in order to enable the solicitor to prepare the claim form and declaration in support of the arrest, documentation should be provided setting out the nature of the claim, the name of the ship to be arrested and its port of registry.

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

For the purposes of the arrest no original documents need be sent. Provided we receive pdf copies of all documents we can prepare the original claim form and original declaration to be filed in Court. However original documents or certified copies of the same should follow as soon as reasonably practical.

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

Once the vessel has been arrested pursuant to an in rem claim, the courts will accept jurisdiction to hear the merits of that in rem claim. However it might be possible for a party to seek to stay the proceedings in Gibraltar and the hearing of the merits of the case if there is a foreign jurisdiction clause that the parties have previously agreed.

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

In order to have ship released from an arrest one must either put up security or satisfy the claim in respect of which the arrest has been made.

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

The type of security which needs to be put in place for the release is either, a cash deposit, a letter from a P&I Club or a guarantee from a first class bank.

19. Does security need to cover interest and costs?

Yes.

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

Typically they are.

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

Once security is put up or the owner of the ship as satisfied the claim, a ship can be released almost immediately.

22. Is there a procedure to contest the arrest?

If a ship owner would like to contest an arrest, then he must file an acknowledgement of service of the claim within 14 days of the claim form being served on them and file a defence to the claim within 28 days of the date of service of the particulars of claim.

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

As discussed previously a claim form setting out the details of the claim has to be filed at the time the arrest documentation is lodged. Once the claim form is lodged the Defendant will have 14 days in which to acknowledge service and a maximum of 28 days in which to file the defence.

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

Although it is possible to claim wrongful arrest in Gibraltar it is extremely rare for this to happen given that the parties would have to prove that the arrested party has acted in bad faith or has been grossly negligent in carrying out the arrest.

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

Gibraltar law as English law recognises the principal of separate legal entities. As such, instances of piercing the corporate veil are extremely rare and, and in practice, will only happen in cases where there are allegations of fraud.

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

In Gibraltar ships may be sold and then pendente lite. Although in theory this can be done at any point after the arrest, given the fact that the Court will only grant such an application for very good reason and in instances where there is a real risk that the vessel will seriously diminish in value during the arrest, such applications will only be made in instances where it is clear that the Defendant does not intend to post security and the cost of arrest are significant.

*__Christian__ *is a Partner at ISOLAS, the oldest and one of the largest law firms in Gibraltar. He is acknowledged as a leading lawyer in Gibraltar in admiralty and shipping law. Christian is involved in the majority of shipping cases in Gibraltar and has been named as a leading individual by Chambers and Partners, the European Legal 500 and Global Counsel 3000 amongst others. His clients include the ITF, P&I Clubs, banks and shipowners. What they say about Christian: "He is noted for expertise in non-contentious and disputes work in the admiralty area." CHAMBERS & PARTNERS 2007 "Hernandez is well known for his expertise in ship arrest and has a strong track record for his handling of shipping cases." THE LEGAL 500, 2007 "Isolas remains a leading player in the shipping sector under the leadership of Christian Hernandez." THE LEGAL 500, 2008 "Christian Hernandez, head of the firm's admiralty and shipping team, is 'undoubtedly one of the heavyweights in the sector THE LEGAL 500, 2009.*

SHIP ARREST IN *GREECE*

*By Christos Th. Vardikos**
VARDIKOS & VARDIKOS
info@vardikos.com
www.vardikos.com
3 Mavromichali Street,
GR 106 79 Athens, Greece
Tel: + 30 210 3611505
Fax: + 30 210 3617848

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

The Greek legal system provides basically for two types of seizure of the assets of a debtor, serving two different purposes, i.e. the provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire) and the executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

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

As regards vessels, Greece has ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships (10.05.1952), which was implemented in Greece by Legislative Decree 4570/1966(the "Convention"). One-member district courts enjoy general subject matter competence for provisional remedies. An arrest may be ordered by Court judgment only, issued following summary proceedings initiated by the filing of the Claimants' Petition. In circumstances of urgency, ex parte proceedings may be conducted should the requested measures seek to secure a substantive right and the in debt ness of the debtor is ostensible.
The sole oral hearing is based on a flexible procedural framework. This refers to both the authority of the judge for relying on facts not submitted by the parties and the free admissibility of any available means of proof. Evidence must be brought during this hearing. The decision to issue a provisional remedy, or to reject an application, is a judicial decision and may not be attacked by any methods of review.
According to Article 692/4 of the Code of Civil Procedure, provisional remedies must not lead to the full satisfaction of the substantive right that they seek to secure or preserve. An arrest judgment may be given provided that Petitioners would be able to show to the satisfaction of the Court, a prima facie founded and valid claim against the vessels' owners and the occurrence of a situation of urgency or of imminent danger justifying the necessity for granting the requested arrest.

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

A. Under the Private Maritime Law Code
   I. The transfer of ownership in lieu of security (fiduciary transfer of ownership).
   II. Hypothecation of the ship.
B. The Ship Mortgage (preferred Mortgage under Legal Decree 3899/1958
C. The Preferred Mortgage under the Legal Decree 2687/1953.

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

a. Provisional seizure, aiming to secure/safeguard a claim (saisie-conservatoire), by any party alleging to have a claim against the owners of a specific vessel may apply for her arrest as Petitioner. Interim Restraining Order: It is a standard practice that the Petition also contains a request for an Interim Order for the temporary prohibition of the vessel's sailing If the ship under arrest is flying the Greek flag the Interim Order not only prohibits the vessel's sailing but also prohibits any change to her legal status. The Interim Restraining Order is valid until the hearing date and subject to extension, on Petitioner's request, until the issuance of the judgment on the arrest Petition An Interim Order or an arrest Judgment become effective as from their notification, by way of service of an official copy thereof upon Respondents as well as upon the competent Port Authorities for entry into the appropriate Books kept by them. The main effect of the enforcement is the prevention of the

vessel's sailing. Furthermore and to the extent Greek law would apply, any disposal of the arrested vessel is forbidden and if effected in breach of such prohibition, will be null and void towards the arrestor and for the amount for which the arrest was ordered; disposal is likewise null and void towards third parties as well, if effected after the entry of the arrest Order or Judgment into the Arrest Book of the Port of the ship's Registry. An arrest effected as aforestated is provisionally valid i.e. until a final judgment on the merits is issued against the arrestor or a like judgment, issued in the arrestor's favour, has been enforced.
b. Executory seizure, being one of the initial stages of the procedure for the enforcement of a title, leading to the public sale of the seized assets (saisie-execution).

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

Arrest can be sought for claims of any type and nature, be it conditional or subject to time terms, but where the Convention applies, an arrest cannot be ordered for claims other than maritime as defined in Art. 1.1 of the Convention.

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

Arrest of ships is subject to the regime of the Convention where the latter is applicable i.e. to vessels flying the flag of another contracting State calling at a Greek port and for maritime claims only as the latter are defined by the Convention, otherwise, the general provisions of domestic law shall apply.- In both cases the procedure to follow is identical.
As regards Greek flag vessels their arrest can be sought and ordered even if they are not physically present within the jurisdiction of the Court with which the Petition is filed. The respective arrest judgment, being served as aforementioned, will cause the legal prohibition of any disposal of the vessel; the vessel's physical arrest may be then effected at any time within the jurisdiction of any Greek Court by virtue of the same judgment. Furthermore and insofar as Greek law is applicable, in case the ownership of the vessel has been transferred by the original debtor, arrest of the same vessel may be sought and possibly ordered against her new owner.

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

Actions in rem against the vessel only are not provided for by Greek law. Therefore, the Petition should be filed anyway against her registered owners, even in case the main liability for the claim lies on third parties such as the vessel's operators and possibly other parties having control over the vessel.

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

Under Greek law two ships are regarded as sister-ships if owned by the same person (or body corporate) and sister-ship arrests may be effected in Greece in limited circumstances.

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

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

The Court has the power to order Petitioners to provide counter security by way of Bank guarantee; however in practice such counter security is rarely ordered, although frequently demanded by Respondents.

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

Greece did not ratify the 1926 Convention. The Greek Code of Private Maritime Law however (Arts. 205-209) has been influenced up to a point by that convention. Further, the administrative acts by which ships are capitals as foreign registered (those ships form the bulk of the Greek merchant fleet)stated that the maritime liens, included in Art.205 para. 1 of the Code of Private Maritime Law takes priority over a preferred maritime mortgage. The Supreme Court of Greece (Areios Pagos)in its

decisions (913/1975,229/1983 (plenary) and 1055/1983)held that Art.2 of the 1926 Convention cited by the acts above was to be dealt with as a fact. Thus, the party€ to the proceedings asserting such a maritime lien had also to prove the existence and the content of the maritime liens which took priority over a preferred mortgage.

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

Upon receipt of instructions we may act all over Greece (through our network of associated offices) within the same day. Court and related costs are in the region of Euro 250-300 including Bailiff's charges for the required notifications. The respective lawyer's charges depend much on the urgency factor, the complexity of the issues involved, the work done and the time spent in initiating and conducting the arrest proceedings.

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

Attorneys are presumed to have the authority to act therefore the presentation of a Power of Attorney is not needed, unless this authority is challenged by the adverse party.

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

Submissions along with supporting documents, translated into Greek and comments on the witnesses' depositions are filed within 3 working days from the hearing. Supporting documentation needs to be notarized and apostilled, although simple copies may be used during the interim restraining order.

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

Jurisdiction of a Greek Court to decide on the subject merits is not created by the arrest itself. However and unless otherwise provided for by international conventions ratified by Greece, the presence of a vessel within the jurisdiction of a Greek Court, not competent in principle to decide on the merits, would create jurisdiction of this Court to so decide (forum rei sitae), for as long as the vessel is still within its jurisdiction. The jurisdiction so founded may, however, be affected by certain jurisdiction clauses or arbitration agreements. Article 905 of the Code of Civil Procedure provides for the enforcement of foreign judgments in Greece. Under Article 905, a civil judgment issued by a foreign court may be enforced in Greece if it has previously been declared executable by a decision of a proper Greek court. Article 906 of the Code of Civil Procedure provides that foreign arbitration awards may be enforced in Greece if provisions of Article 903 of the Code are met.

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

Counter arrest or filing of a separate new petition.

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

The court orders the placement of security in the form of a bank guarantee issued by an approved financial institution in Greece. P&I Letters are accepted on the premises that the other party accepts them.

19. Does security need to cover interest and costs?

In general, the petition to arrest a vessel is made for an amount covering the costs and the interests. Therefore the security necessarily covers them also.

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

P&I Letters are accepted on the premises that the other party accepts them.

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

The procedure is rather quick from the moment the bank guarantee is filed with Court that ordered the arrest.

22. Is there a procedure to contest the arrest?

The arrest can be contested with the filling of a counter petition based on various grounds (such as unlawful act, misrepresentation etc.).

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

Unless an action on the merits of the claim has been already brought, the arresting party should bring such action in the competent Court within such time as ordered by the Court, otherwise within 30 days from the service of the arrest judgment on Respondents, failing which the arrest is lifted ipso jure.

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

Following substantive proceedings against an arresting party, the latter may be held liable for damages resulting from an arrest or a guarantee lodged, only if Claimants would be able to prove to the satisfaction of the Court that the arresting party knew, or by gross negligence ignored, that its claim secured as above, did not exist. Furthermore such liability is conditional to a final and irrevocable judgment whereby the action of the arresting party on the merits of its claim is dismissed for it being unfounded.- In view of such requirements it is not an easy task for Claimants to succeed in his action for damages caused by a wrongful arrest.

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

It has been held by the Greek courts that the corporate veil may be pierced to reveal the beneficial ownership only where there exists an in concreto reason for doing so. In lifting the corporate veil, the Greek courts have traditionally considered two criteria.

A. The criterion of “the effective control” (of the company)

B. The criterion of the “use of intermediary persons” in respect of shareholding or management.

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

Under Greek law, the vessel remains in the custody of the ship-owner or the person who, at the time of the arrest, may be in possession of the ship. It is possible however, upon application to the Court for the arrestor to become the custodian of the ship in which case this party would have to bear the respective costs which are quite substantial. The disposal of the arrested ship may only be effected after an irrevocable judgment has been issued in the main action (which may run in parallel with or follow the arrest proceedings) on the merits of the case. Such disposal may only take place in a public auction conducted by a Notary.

The “Forced Auction Procedure”. This procedure is governed by specific provisions contained in the Civil Procedure Code. A Notary who is specifically appointed by virtue of a Court order executes the forced sale. The sale has the form of an open public auction whereby the interested parties may submit their bids on the basis of a schedule prepared by a Court bailiff. No judicial sale can take place within the context of a ship arrest procedure, as the latter may only serve as a means of preservation, not a means of satisfaction, of a claim.

There are cases however when, in the context of arrest proceedings, the property arrested may be subject to deterioration and at the same time the cost for preserving it, is disproportionately high having regard to the level of claim. In such instances the Court, may, after a summary hearing, order its disposal. The auction proceeds shall consequently substitute the arrested property and shall be deposited with the Loans & Deposits Fund, pending the issue of an irrevocable judgment on the merits of the claim. In shipping disputes, such a procedure may be encountered in cases where

perishable cargoes have been arrested and the cost of preserving same until the issue of an irrevocable judgment is excessive. However it should be noted that such sale orders are granted in these very limited circumstances.

***Christos Vardikos** is an Athens based Attorney at law and the Honorary Consul for the Commonwealth of Dominica in the Hellenic Republic, acting also a Special Advisor / Maritime Affairs to the Honorable Prime Minister of the Commonwealth of Dominica.*
Prior appointment to his current position was the Honorary Consul for the Republic of the Marshall Islands in Greece.
He is a Member of the Athens Bar Association (Attorney at Law - Accredited to the Supreme Court) and has published extensively articles on various aspects of Greek Law:
· Immigration & Naturalization / Greek Chapter, Kluwer.
· Iow Tax transactions / Greek Chapter, Kluwer.
· Immigration Issues / Nomiki Vivliothiki - Invest in Greece Review.
· Ship Arrest Issues / Nomiki Vivliothiki - Invest in Greece Review.
· Activities for Utilizing Low Tax Jurisdictions/ Nomiki Vivliothiki - Invest in Greece Review.
He has presented papers in more than twenty international conferences for topics related of Immigration, Maritime Law and Intellectual Property. He manages the boutique law firm Vardikos & Vardikos with associated offices in Cyprus and Dominica (authorized government agent for the Citizenship by Investment Program). Inter alia the law firm specializes in Shipping, Intellectual Property, Immigration Law, Debts Collections and Corporate Services in all major jurisdictions.

SHIP ARREST IN *HONG KONG*

*By Chris Potts**
CRUMP & CO INT'L MARITIME &
COMMERCIAL LAWYERS
chris.potts@crumpslaw.com
www.crump-co.com.hk
2009 Tower 1, Lippo Centre, Admiralty,
Hong Kong, China
Tel: +2537 7000
Fax: +2804 6615

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

Hong Kong is a Special Administration Region (SAR) of the People's Republic of China (PRC). As such it has a separate and distinct legal system from that of the PRC. Hong Kong has a common law system of justice which developed during the years when it was a British colony.
A ship - or one of its sister ships - may be arrested where:

- a claimant's cause of action carries with it a right of arrest;
- an in rem writ has been issued;
- the ship is available in Hong Kong; and
- no caveat against arrest has been entered.

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

The Brussels Convention 1952, as enacted in Hong Kong legislation.

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

No.

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

It is possible to get an injunction. This is more difficult and expensive than arresting the ship. Civil Justice Reforms were implemented in April 2009. Innovations in the regime have put interim relief, similar to saisie, into effect. The reforms have opened up Hong Kong to claims where injunctions are available to provide support and security for foreign proceedings.

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

The High Court Ordinance lists the types of maritime claim for which a vessel may be arrested. They include claims for:

- possession or ownership of, or mortgage on, a ship;
- loss of life or personal injury because of a defect in a ship;
- damage done by or to a ship;
- loss or damage to goods carried by ship and other claims relating to carriage of goods by ship;
- use or hire of a ship;
- salvage, towage and pilotage;
- goods and materials supplied to a ship;
- construction or repair of a ship;
- wages owed to a ship's master or crew;
- acts of general average;
- bottomry; or
- collisions.

Arrest is impossible in some cases (e.g. in relation to claims for insurance premiums). The purpose of an arrest is to obtain security in respect of a court judgment in that action. The court should not allow the arrest of ships for other purposes. In the 2014 case the "KOMBOS" [2014] HKCU 1698, the

court upheld the arrest of a vessel even though the Plaintiff had already obtained an arbitration award. The effect of this judgment is significant as it means that vessels can still be arrested under the in rem jurisdiction of the court so long as the judgment or arbitration award in personam remains outstanding. The court's jurisdiction can be invoked to secure claims in arbitration where the law of the place governing the arbitration permits this.
An arrest intended to force the party affected to agree to a foreign jurisdiction is outside the purpose of an action in rem. Where a plaintiff has already commenced an action in a foreign jurisdiction, a duplicate action in rem commenced in Hong Kong will be considered vexatious and is liable to be set aside.

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

Usually, vessels under any flag may be arrested. However, if the vessel belongs to a port of a state having a consulate in Hong Kong and the arrest is for possession of the ship or in respect of outstanding crew wages, a notice of action must be sent to the consul and a copy of the notice annexed to the affidavit to lead warrant.
Hong Kong is a Special Administrative Region of the PRC and this status has given rise to questions of whether legal claims can be brought in the Hong Kong courts against entities which form a part of the PRC Government and whether foreign states are entitled to claim immunity from legal claims brought in Hong Kong courts.
In Intraline Resources Snd Bhd v The Owners of the Ship or Vessel "Hua Tian Long", it was held that the Guangdong Salvage Bureau (GSB), which is an entity of the PRC, could rely on "Crown immunity" after their derrick barge, "Hua Tian Long", was arrested for an alleged failure to perform a charterparty. The doctrine of Crown Immunity developed whilst Hong Kong was a British colony and meant that the Crown was immune from the processes of its courts. In 1997, the PRC became the sovereign such that the organs of the PRC can now claim immunity in response to claims against them in Hong Kong.
In FG Hemisphere v Democratic Republic of Congo two arbitral awards were obtained against the Democratic Republic of Congo ("the DRC") because it defaulted on its obligations in relation to a contract to build a hydroelectric facility.The DRC claimed state immunity and the Hong Kong Court of Final Appeal sought a ruling by the National People's Congress (NPC) of the PRC under provisions of the Basic Law. The NPC Standing Committee unanimously confirmed that the doctrine of absolute state immunity applies in Hong Kong, as it does in Mainland China. The principle of restrictive immunity no longer applies.

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

Yes, subject to Sovereign and Crown immunity.

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

A plaintiff may proceed in rem against any ships under the same beneficial ownership. The writ should be issued against all of the ships. It must subsequently be amended by striking out all names except that of the ship on which the writ has been served or against which a warrant of arrest has been issued.

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

Bareboat-chartered vessels can be arrested, but not time-chartered vessels.

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

No. In limited circumstances including where the plaintiff is foreign, the defendant can apply to the court for an order to compel the plaintiff to give security for the defendant's litigation costs, subject to the court's discretion.

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

Maritime claims depend on the ownership of the ship. A ship can only be arrested if the owner at the time of the cause of action is still the owner at the time of arrest. Maritime liens can be enforced regardless of ownership. An identical arrest procedure applies in both cases.

12. Does the Hong Kong SAR recognise maritime liens? Under which International Convention, if any?

Hong Kong recognizes maritime liens arising in connection with a number of specified claims such as claims for:

- damage done by a ship;
- salvage rendered to a ship;
- wages owed to a master or seaman;
- masters' disbursements; and
- bottomry.

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

Arrest documents can be issued within 48 hours of receiving the file. Although there are certain difficulties, documents can be issued and executed on emergency application to a duty judge out of normal office hours. This can be achieved by solicitors undertaking to issue a writ and swear an affidavit in support of the warrant at the first available opportunity when the court re-opens.

14. Do you need to provide a Power of Attorney, or any other documents in respect of the claim to the Court?

No but solicitors' firms in Hong Kong require a formal written retainer before advising or acting on instructions on behalf of a client.
Apart from the documents to be exhibited in the affidavit to establish a prima facie right to arrest, no other documents are required.
According to Order 75/5/14 of the Rules of the High Court, there is no prescribed or practice form for the affidavit. Instead, an outline of the form is provided. The affidavit must state certain specified details, such as the nature of the claim, the parties' details and the name of the ship.

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

The claimant's solicitor will apply to issue a warrant of arrest, supported by an affidavit. The caveat book must be searched for caveats against arrest. A written application must be made to the registrar for leave to search; this can be done by letter. The warrant, once issued, is filed with the bailiff, together with a request to execute the warrant and an undertaking to pay the costs of arrest. The affidavit consists of a written statement of facts and belief, with the sources and grounds thereof, and is made under oath. It constitutes the only evidential requirement for arrest. An undertaking to pay the Bailiff's expenses must also be submitted.
Documents cannot be filed electronically. Notarisation and/or apostille certification is not required but if any documents need to be translated then these must be certified by a notary.

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

The court will usually accept jurisdiction. However, if grounds exist for a forum non conveniens application, or if the claim arises out of a contract containing an exclusive foreign jurisdiction clause, the proceedings may be stayed in favour of the relevant foreign jurisdiction.
The court will not insist on hearing an entire action commenced by the issuance of a writ followed by an arrest. The parties can agree an alternative jurisdiction. For example, this frequently happens in cases involving collisions in international waters.

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

This is done by filing a Praecipe demanding the court to issue a Warrant of Release. An undertaking issued by a solicitors' firm to pay all charges and expenses incurred by the Chief Bailiff is required to be filed at the same time. The agreement of the arresting party and all caveators must be obtained. This is normally done by the parties signing their names on the Warrant of Release expressing their consent to release the ship from arrest.

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

The party seeking release of the ship should obtain the consent of the arresting party (and the caveators, if any) to the issue of a release by giving bail to his/their satisfaction. The arresting party may agree to accept a P&I Club Letter of Undertaking or a guarantee issued by a bank or insurance company on wording acceptable to him. The court does not have power to intervene in negotiations over private security arrangements but it is always open to the party seeking release of the ship to provide bail or make payment into court to secure the release of the ship under arrest.

19. Does security need to cover interest and costs?

The arresting party is entitled to sufficient security to cover the amount of his claim with interest and costs.

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

No, not without the consent of the arresting party.

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

Within a few hours.

22. Is there a procedure to contest the arrest?

The party seeking release of the vessel may make an application to court on the basis that the court does not have jurisdiction to issue the Warrant of Arrest. Such application is usually made on grounds that the party seeking arrest had acted in bad faith or in a grossly negligent manner or that he had failed to disclose material facts known to him at the time the affidavit leading to the issue of a warrant of arrest was sworn.

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

Although a writ may be issued earlier than an application for a warrant of arrest, service of the writ can only take place when the vessel is in Hong Kong jurisdiction. The vessel is then arrested. The defendant has 14 days to acknowledge service and another 14 days to file a defence.

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

Whether or not a caveat has been entered, the court's test for ordering an inquiry into damages for wrongful arrest is whether the action was so unwarrantedly brought as to imply malice or gross negligence on the part of the plaintiff. The defendant must establish malice or gross negligence before the plaintiff can be held liable for damages. Damages can also be recovered where an arrest has been unduly continued.

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

The principle of separate corporate personality is a cornerstone of Hong Kong company law. However, the court will lift the corporate veil where the protection given by incorporation under the law is being abused. The grounds for lifting the corporate veil are where the separate corporate personality is used to evade an existing legal obligation, or practise fraud or deception.

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

The court will not order the appraisal and sale of a ship while the litigation is pending except for good reason, regardless of whether the action is defended. Where the action is defended and the defendants oppose the making of such an order, the court examines more critically the question of whether there is good reason to make the order.

The question of whether an order for the appraisal and sale of a ship under arrest in an action in rem should be made while litigation is pending normally arises only where there is a default of acknowledgment of service or defence, in which case such an order is commonly made on the plaintiff's application on the grounds that the security for the plaintiff's claim would otherwise be diminished by the continuing costs of maintaining the arrest, to the disadvantage of all interested parties (including the defendant, if it has a residual interest).

Where the defendant to an action in rem against a ship appears with the intention of defending the action, it almost invariably obtains the ship's release by providing bail or other security for the claim that is satisfactory to the plaintiffs.

The Hong Kong Court will more readily order sales of vessels pendente lite, especially in Crew and/or Mortgagee actions for which Hong Kong is a recognized centre in Asia.

**Christopher Andrew Potts* *is a partner at Crump & Co since 1981, having worked formerly at Norton Rose Botterell & Roche and Crossman Block & Keith. He holds a Hong Kong practicing certificate and is on the Roll of Solicitors of England and Wales.*

His practice focuses on Aviation; Shipping; Transport; Insurance; Claims and Recoveries; Carriage of Passengers and Goods; Casualty Investigation; Personal Injury; Pleasure Craft; Risk Management; Litigation; Dispute Resolution. Chris has been devising strategies to resolve complex, often high profile cases on behalf of clients and has special interests in hands-on involvement in case handling and practice management.

He has published numerous works and articles.

SHIP ARREST IN *ICELAND*

*By Einar Baldvin Axelsson**
LOGOS LEGAL SERVICES
einarbaldvin@logos.is
www.logos.is
Efstaleiti 5, 103 Reykjavík, Iceland
Tel: +354 5400300
Fax: +354 5400301

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 carge, 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 is 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 Reykjavík 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.*

SHIP ARREST IN *INDIA*

*V. K. Ramabhadran, Senior Advocate**
ramabhadranvk@gmail.com
902, Dalamal Tower, Free Press Journal Marg,
Nariman Point, Mumbai-400 02, India
Tel: +91 22 2282 6575
(D): +91 40026575

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

(i) The High Courts of Bombay, Calcutta, Hyderabad, Karnataka, Kerala, Madras, Orissa and Telangana exercise Admiralty jurisdiction under The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016. The statute has codified the heads of maritime claims for which a ship could be arrested.

(ii) Application for arrest of a ship is made ex-parte, unless Caveat is filed against a arrest. If the Court is prima facie satisfied, ship would be ordered to be arrested and generally the quantum of security would be based on the best arguable case of the Claimant.

(iii) The ship would be released from arrest provided security in the form of a Bank Guarantee or cash deposit is made with the Registry. Ship could also be released from arrest if on an application made on behalf of the ship; the Court holds that the arrest is not maintainable.

(iv) If security is not furnished, the High Court is empowered to auction the vessel within 45 days from the date of the arrest. If the sale proceeds are insufficient to satisfy claim of the all Claimants, the Court would decide the priority as laid down in The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016.

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

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016 codifies maritime claim and maritime lien under which ships could be arrested.

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

Claimant could seek arrest of a ship in execution of decree passed by any Superior Court of any reciprocating territory of a foreign country against the Owner of the ship; subject however the original claim was a maritime claim.

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

There is no separate freezing order other than arrest of a ship.

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

A ship could be arrested for the following claims:

a. Dispute regarding the possession or ownership of a vessel or the ownership of any share therein;.
b. Dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
c. Mortgage or a charge of the same nature on a vessel;
d. Loss or damage caused by the operation of a vessel;
e. Loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of vessel;
f. Loss or damage to or in connection with any goods;
g. Agreement relating to the carriage of goods or passengers on board a vessel; whether contained in a charter party or otherwise;.

h. Agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;.
i. Salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
j. Towage;
k. Pilotage;
l. Goods, materials, perishable or non-perishable provisions, bunker, fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;
m) Construction, reconstruction, repair, converting or equipping of the vessel;
n) Dues in connection with any port, harbor, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;
o) Claim by a Master of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew management relating to a vessel, notwithstanding anything contained in the provisions of section 150 and 151 of the Merchant Shipping Act, 1958;
p) Disbursements incurred on behalf of the vessel or its owners;.
q) Particular average or general average;
r) Dispute arising out of a contract for the sale of the vessel;.
s) Insurance premium (including mutual insurance calls) in respect of the vessel payable by or on behalf of the vessel owners or demise charterer;.
t) Commission, brokerage or agency fees payable in respect of the vessel by or in behalf of the vessel owner or demise charterer;
u) Damage or threat of damage caused by the vessel to the environment, coastline or related interests, measures taken to prevent, minimize or remove such damage, compensation for such damage, costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken, loss incurred or likely to be incurred by third parties in connection with such damage, or any other damage, costs, or loss of a similar nature to those identified in this clause;
v) Costs or expenses relating to raising, removal. Recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew;
(w) Maritime lien.

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

Yes.

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

As long as the maritime claim arises from commercial dealings between the parties, the ship could be arrested even if it belongs to the Government or a Foreign State.

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

A sister ship, that is any ship of the same owner, could be arrested. Ships in associated ownership cannot be arrested.

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

Bareboat chartered vessel could be arrested if the Court has reason to believe that the bareboat charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or the owner of the vessel when the arrest is effected. Similarly if the Claimant asserts maritime claim against registered owner or the demise charterer, the vessel could be arrested even if it is on time charter.

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

The High Court may, as a condition of the arrest of a ship or for permitting an arrest already effected to be maintained, impose upon the Claimant an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the defendant as a result of arrest.

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

Yes. Maritime lien continues to exist on the vessel notwithstanding any change of ownership or of registration or of flag.

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

Yes. It is codified under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016. Maritime lien means a maritime claim against the Owner, Demise charterer, Manager or Operator of the vessel in respect of any of the following claims:

a. Claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.
b. Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel.
c. Claims for reward for salvage services including special compensation relating thereto.
d. Claims for port, canal and other waterway dues and pilotage dues and any other statutory dues related to the vessel.
e. Claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

Maritime lien shall extinguish after expiry of a period of one year unless prior to expiry, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. However, in regard to claim for wages including costs of repatriation and social insurance contribution, the period shall be two years from the date on which wage or sum, cost of repatriation or social insurance contribution fell due or became payable.

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

Upon receipt of all documents (which includes the agreement/contract, all correspondence, invoices, etc.), the draft of the proposed Plaint to be filed would be sent by e-mail within 24 hours. The Plaint has to be signed and verified by the person who is personally acquainted with the facts of the case which needs to be attested before the Indian Consulate or Embassy.

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

POA, Plaint, all documents in support of the claim, affidavit in support of the arrest and affidavit of undertaking to pay damages, have to be filed in the Court.

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

POA in original, Plaint and all original documents in support of the claim or photocopies (if originals are not in the possession of the clients) would have to be filed in the Court. Along with the Plaint a list of all documents and photocopies of all documents irrespective of whether the same is in support of or adverse to the Claimants case would also have to be filed.

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

Once the Court orders the arrest of a ship, it retains jurisdiction to adjudicate the substantive claim unless the order of arrest itself is vacated upon the Court being satisfied on an application made on behalf of the owner of the ship that the arrest is not maintainable. The Court would stay the suit if there exists a valid arbitration agreement between the parties in which event the security may or may not be retained.

17. What is the procedure to release a ship from arrest?

Security in the form of Bank Guarantee or cash deposit needs to be made and the order for release from the Court needs to be obtained thereafter. The original order of the Court releasing the ship needs to be served upon the Port and Customs authorities.

18. What type of security needs to be placed for the release?

Bank Guarantee or Pay Order issued by a nationalized bank in favour of the Registry or cash deposit.

19. Does security need to cover interest and costs?

Yes, if the order so directs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are not accepted unless consented by the Claimants.

21. How long does it take to release the ship?

Once security is furnished, an order for release of the ship could be obtained during Court working hours.

22. Is there a procedure to contest the arrest?

An order of arrest could be contested by filing a written application supported by an affidavit stating the grounds for such contest.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

It could take anywhere between two to four years to adjudicate a dispute on its merits.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. If arrest is held to be wrongful or it is found Claimant has obtained excessive security and the same has been provided, in such an event, Claimant would be held liable for damages.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. In order to pierce corporate veil, one needs to establish that the shipowner has created multiple entities for the sole purpose of avoiding legal liabilities.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

If the Owner or a Bareboat charterer abandons the vessel after its arrest the High Court is empowered to auction the vessel within the period of 45 days from the date of arrest or abandonment. The High Court however, for reasons to be recorded in writing extend the period of auction of the vessel for a further period of 30 days. However, the period could take longer if either the order of the arrest or the order of sale is contested before the same Court or the Appellate Court.

***V. K. Ramabhadran** is a designated Senior Advocate (equivalent of K.C. in UK) by the High Court of Bombay. He has been practicing in Maritime and Commercial law since 1983. He has successfully handled noteworthy Admiralty and Commercial cases and many of which have been reported in the well known Law Reports. His paper on "Law of Arbitration in India" was published in the International Trade Law Quarterly. As a legal consultant appointed by the International Maritime Organization (IMO), he submitted a comprehensive report to IMO suggesting legal frame work to implement the Convention on Ballast Water in India. He has presented papers on Arbitration and Maritime matters in the Seminars conducted by Shiparrested.com.*

SHIP ARREST IN *INDONESIA*

Iqbal Hadromi
HADROMI & PARTNERS LAW FIRM
hadromi@centrin.net.id · info@hadromi.com
www.hadromi.com
Setiabudi Atrium, 4th Floor, Suite 404-405
Jl. H.R. Rasuna Said Kav. 62, Jakarta 12920, Indonesia
Tel: (62-61) 520 7040
Fax: (6261) 520 7046

1. Please give an overview of ship arrest practice in your country.

Ship arrest in Indonesia is regulated in Articles 222 and 223 of Law No. 17 Year 2008 regarding Shipping **("Shipping Law")**, with the following provisions:

Article 222:

(1) harbor master can only arrest the ship in the harbor upon the written orders of the court.

(2) The arrest of ship based on the written order of the court as referred to in paragraph (1) can be based on reasons:

a. The ship in question related to the criminal case; or

b. The ship in question related to a civil case.

Article 223:

(1) The order of ship arrest by a court in a civil case in the form of maritime claim is done without going through the process of a lawsuit.

(2) Further provisions on procedures for the containment vessel at the port referred to in paragraph (1) is regulated by the Minister.

Notes:

Article 223 of Shipping Law states that ship arrest procedures shall be regulated under a Minister Regulation, however until now the said Minister Regulation has not been issued. In practise, this legal vacuum is often used as the reason for the Court to reject the requests of ship arrest under Article 222 and 223 of Shipping Law. According to our search in several District Courts in Jakarta and also based on our practice in several Courts in Indonesia, the Courts very rarely conduct the arrest of ship based on Article 222 and 223 of Shipping Law.

2. Which International Convention applies to arrest of ships in your country?

Currently Indonesia is in the process to ratify the 1999 International Convention on Arrest of Ships, but to date the Convention has not yet been officially ratified. On the other hand, Indonesia has ratified the 1993 International Convention on Maritime Lien and Mortgages under President Regulation No. 44 in the year 2005.

3. Is there any other way to arrest a ship in your jurisdiction?

There is another way to arrest a ship by conducting seizures towards the ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The Indonesian Civil Law acknowledge 2 (two) types of seizures, namely:

a) Security seizure (*conservatoir beslag)* as based on Article 227 of Indonesian Civil Prosedural Regulation (Herziene Inlands Reglement / "HIR")
This seizure is requested to the Court by the Plaintiff along with a civil claim and the Judges who examine the case will declare the seizure is valid and valuable in the Court Decision if the civil claim is granted.

b) Execution seizure (*eksekutorial beslag)* as based on Article 197 of HIR
This seizure is requested by the winning party (execution petitioner) to the Head of the District Court after the issuance of a final and binding Decision, in which the execution

petitioner request for seizure towards the assets of the losing party (one of which is the ship) in order to fulfill the obligations under the Decision.

As we have previously explained that since the Minister Regulation concerning the arrest of a ship has not been issued, Courts rarely conduct the arrest of a ship under Article 222 and 223 of Shipping Law. Alternatively, the Courts may conduct security seizure which shall be submitted under a civil claim and/or execution seizure which shall be submitted upon a final and binding Decision. The purpose of this seizure is to have the ship sold in auction after the issuance of a final and binding Decision and the proceeds of sale will be given to the winning party (execution petitioner).

5. For which types of claims can you arrest a ship?

According to Article 223 paragraph (1) of Shipping Law and its Elucidation (explanation), the maritime claims which can be the basis of ship arrest arise due to:

a. Loss or damage caused by the operation of the ship;
b. loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
c. damage to the environment, ship or cargo on board as a result of salvage operation or salvage agreement;
d. damage or threat of damage by the ship to the environment, coastline or related interests; measures taken to prevent damages to the environment, ship and cargo on board; as well as costs of reasonable measures of reinstatement of the environment;
e. costs or expenses relating to the raising, removal or repair of a ship including cost for ship salvage and crew rescue;
f. cost with regard to the usage and operation or charter of a vessel based on a charter party etc.
g. costs with regard to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise
h. loss of or damage to or in connection with goods (including luggage) carried on board the ship;
i. general average;
j. costs of towage;
k. costs of pilotage;
l. costs with regard to the materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
m. costs with regard to the construction, reconstruction, repair, converting or equipping of the ship;
n. costs with regard to the port, canal, dock, harbor and other waterway dues and charges;
o. wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
p. disbursements incurred for the interest the ship on behalf of the owners;
q. insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the ship owner or demise charterer;
r. any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the ship owner or demise charterer;
s. costs of any dispute as to ownership or possession of the ship;
t. costs with regard to any dispute between co-owners of the ship as to the employment or earnings of the ship;
u. costs with regard to a mortgage or a "hypothèque" or a charge of the same nature on the ship;
v. costs with regard to any dispute arising out of a contract for the sale of the ship.

6. Can you arrest a ship irrespective of her flag?

Yes, as long as the ship is in Indonesian waters, since there is no specific restriction to arrest a foreign ship.

7. Can you arrest a ship irrespective of the debtor?

Yes, since there is no specific restriction to arrest a ship from any certain parties.

8. What is the position as regards sister ships and ships in associated ownership?

Sister ships or ship in associated ownership cannot be arrested. According to Article 222 paragraph (2) of Shipping Law, the arrest of a ship shall be against the ship in question.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat and time-charted vessels can be arrested as long as the vessels are related to the maritime claim.

10. Do your Courts require counter-security in order to arrest a ship?

According to the Shipping Law, there is no provision concerning the counter security in order to arrest a ship.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Indonesia Shipping Law regulates the maritime lien (prioritized maritime-receivables) under Article 65 and 66 as follows:

Article 65:

(1) If there is a claim against the receivable secured by a ship, the owner, charterer or operator of a vessel must prioritize the payments of maritime-receivables as shown in the following.

(2) Maritime-receivables referred to in paragraph (1) are as follows:

a. for the payment of wages and other payments to the master, ship's crew, and other complementary crew of the ship in respect of their employment on the ship, including costs of repatriation and social insurance contributions that should be financed;

b. to pay money over the death or pay medical expenses for bodily injuries, both on land and at sea that are directly related to the operation of the ship;

c. for payment for the salvage of the vessel;

d. for port fees and other shipping lanes, and pilotage dues; and

e. to pay for losses caused by physical loss or damage caused by the operation of the ship other than loss or damage to cargo, containers, luggage and passengers carried on board.

(3) Prioritized maritime-receivables cannot be imposed on board for securing the claims referred to in paragraph (2) letters b and e if such action arising as a result of:

a. damages arising from the transport of oil or hazardous substances and other toxic by sea; and

b. radioactive material or a combination of radioactive material with toxic materials, explosive or other hazardous properties of nuclear fuel, product, or radioactive waste.

Article 66:

(1) Payment of prioritized maritime-receivables referred to in Article 65 shall have priority over payment of pledge, mortgage, and listed receivables.

(2) The owner, charterer, manager, or operator of a vessel must prioritize the payment of the costs incurred in addition to the payment of prioritized maritime-receivables referred to in Article 65.

(3) The costs referred to in paragraph (2) are as follows:

a. costs arising from the removal of sunken or stranded ship taken by the Government to ensure the safety of shipping or maritime environmental protection; and

b. ship repair costs that belong to the shipyard or dock (retention rights) if at the time of the forced sale of the vessel is in dry dock or docks located in the jurisdiction of Indonesia

(4) Maritime-receivables as defined in Article 65 has a priority level in accordance with the order, unless the claim for the salvage vessel has been incurred prior precede other claims, the costs of salvage becomes priority over the other prioritized maritime-receivables.

There is no specific regulation concerning the arrest of ships under maritime liens, therefore the basis for arrest of ships under maritime liens shall be the same as the maritime claims as mentioned in Article 223 of Shipping Law and its Elucidation (explanation).

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Indonesia has ratified the 1993 International Convention on Maritime Liens under the President Regulation of the Republic of Indonesia No. 44 in the year 2005. Furthermore, Article 65 and 66 of Indonesian Shipping Law also accommodated the maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Several weeks to a few months, depending on the court having jurisdiction over the matter.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, we need to provide and submit a POA, petition letter for the ship arrest, together with supporting evidences proving the maritime claim to the Court.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

We are required to submit the original POA and original petition letter to the Court when we submit the petition of ship arrest. If the POA is signed out of Indonesian territory, the POA will require notarisation and legalization by the Indonesian Embassy in the relevant country.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. A party may file for a civil claim and request for a seizure towards the arrested ship.

17. What is the procedure to release a ship from arrest?

Currently there is no regulation which specifically regulates the procedure to release a ship from arrest, but basically ship release will be based on the disputing parties reaching a settlement and or the shipowner proving to the court that the arrest is not justified.

18. What type of security needs to be placed for the release?

Currently there is no regulation which specifically regulates the security for release of ship arrest and based on our practices, the Court does not require any security for the release of ship arrest.

19. Does security need to cover interest and costs?

There is no specific regulation on this matter and the Courts do not impose this security.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The Court normally requires settlement of the dispute in order to lift the arrest.

21. How long does it take to release the ship?

Once the parties confirm settlement of the dispute then it might take a few days to process release of the vessel.

22. Is there a procedure to contest the arrest?

There is no regulation which specifically regulates the procedure to contest the arrest.
However, for the execution seizure of ship, the contesting party may file an Objection Claim to the District Court against the execution seizure in order to lift the seizure.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no period of time granted by the Courts, but in practice it will take around 6 to 12 months for the District Court (first level court) proceeding.

24. Do the Courts of your country acknowledge wrongful arrest?

There is no specific regulation on wrongful arrest of ship.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, Indonesian Law acknowledge the piercing of corporate veil under the Company Law (Law No. 40 Year 2007).

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Under Indonesian Law, a ship can be sold in auction after the issuance of a final and binding Decision on the civil claim. A civil claim in Indonesian Law shall be adjudicated by a District Court (first level court). The Decision of District Court can be filed for appeal to High Court, further cassation to the Supreme Court and then Case Review to the Supreme Court before it becomes final and binding. Therefore it may takes more than 2 years until a Decision is final and binding.

***Iqbal Hadromi** is the founding partner of Hadromi & Partners Law Firm and has over 2 decades of experience in the legal business. Asia Pacific Legal 500 has named him as one of the leading lawyers in Indonesia in the fields of banking & finance, corporate & M&A, dispute resolution, IP, projects & energy, restructurings & insolvency, real estate, and shipping. He has also been listed by Lawyer Monthly of UK as one of the Asia Pacific's 100 leading lawyers. His expertise in corporate and M&A has in the past been highly recommended by Chambers & Partners. He is also actively involved in litigation and dispute resolution work for domestic and multinational clients as well as written in various articles and spoken in various seminars on Indonesian law. Iqbal speaks Indonesian and English.*

SHIP ARREST IN *IRAN*

*By Omar N. Omar & Adam Gray**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
a.gray@tamimi.com
www.tamimi.com
Flat 22, Building 106, District 213, Kindi Street,
Al Harithiya , PO Box 6051, Baghdad
Tel: +96415420558
Fax: +96415420598

1. Please give an overview of ship arrest practice in your country.

There are not any provisions in respect of ship arrest in the Iranian Maritime Code or Civil Procedure Act neither is Iran a party to the International Conventions in respect of ship arrests. However, it is generally possible to arrest a ship in Iranian waters as an asset of the shipowner debtor. A claimant can request a provisional order or attachment order to arrest a vessel. These orders are usually requested and granted when the Iranian courts have jurisdiction to consider the case on the merits. If the arrest order is granted and a ship is arrested, the claimant should file a petition on the merits of the case, within 10 to 20 days from the date of order depending on the procedural route pursued, to the competent court. Failing this, the arrest order can be cancelled by the court upon request of the defendant.

2. Which International Convention applies to arrest of ships in your country?

Iran is not party to the 1952 and 1999 Arrest Conventions, therefore, these International Conventions are not applicable in Iran.

3. Is there any other way to arrest a ship in your jurisdiction?

There are two legal methods of ship arrest in Iran.

i. Under Article 108 of Iranian Civil Procedure Act, a claimant can petition the court for an attachment order over the debtor's assets. After payment of a counter-security into the court account, in a sum determined by the judge in his discretion, the attachment order can be obtained. For the enforcement of the attachment, the claimant can introduce a ship as an asset of the defendant to which execution can apply. Upon such request, the court will send a letter to the port guard authorities to arrest the named ship, if it belongs to the particular defendant. If the claimant does not submit his petition on the merits of the case within 10 days after issuance of the order, the court will cancel the attachment order upon the request of the defendant.

ii. Under Article 310 of Iranian Civil Procedure Act, as a matter of urgency, the court will hear an application, *ex parte*, and where satisfied, will issue a provisional order upon request of the claimant. As per Article 316 of the Act, provisional orders may involve the confiscation of property or the compulsion to perform or refrain from doing an act. For obtaining a provisional order for arrest of a ship, a claimant has to provide the court with a convincing argument that if a ship leaves an Iranian port, there would not be any possibility of obtaining any other asset over which security could be held for purposes of enforcing any final judgment against it. For issuance of the provisional order, the court will require a suitable counter-security for the estimated/probable losses of the defendant in the event the claimant's case is not proved. After service of the arrest order and arrest of the ship, the claimant should provide the court with a certificate evidencing submission of the petition on the merits, within 20 days from the date of the arrest order, otherwise the order will be cancelled upon request of the defendant. In such an eventuality, the arrest would be lifted and the vessel would be granted port clearance.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The above mentioned orders are mainly to preserve/secure the defendant's assets until judgment can be enforced.

5. For which types of claims can you arrest a ship?

Under the Iranian Civil Procedure Act, arrest of a ship is possible for any types of claims whether they are marine or non-marine in nature. However, there is a minimum claim amount of IR 200,000 (approximately USD 65,000) required before a provisional attachment will be granted.

6. Can you arrest a ship irrespective of her flag?

Yes, regardless of flag.

7. Can you arrest a ship irrespective of the debtor?

As it was explained above, the vessel should be the registered property of the debtor. It is extremely difficult to convince the courts to arrest the assets/vessels of subsidiary companies.

8. What is the position as regards sister ships and ships in associated ownership?

If the sister-ship shares registered ownership with the debtor then it can be arrested.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat and Time-Chartered vessels, chartered by the charterer defendant, cannot be arrested for the debt of the charterer arising from his use of the vessel because the claim is against the charterer and not the vessel or its owner.

10. Do your Courts require counter-security in order to arrest a ship?

Yes. The amount of the counter-security is at the discretion of the judge but will be at least 10% of the claim amount.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Iran is a party to the International Convention for the Unification of Certain Rules of Law Relating To Maritime Lien and Mortgages signed in Brussels 1926, however in practice there is not a special procedure for enforcing maritime liens and the enforcement aspect of maritime liens is as per the local Iranian law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

If the required documents are provided, a ship arrest usually takes a few days. In theory a ship could be arrested in one day, but in practice the formalities of submitting the application, referring it to a branch of public court, verifying the documents by the clerk of the court, determining the amount of security by the judge, depositing the amount into the court bank account, issuing the order by the judge, enforcing the order by the enforcement department of the court, and notifying the port guard authorities will usually take more than one day.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A legalised POA and the claim documents in the Persian language are required.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

A legalised original POA and certified copies of documents proving the nature of the claim are required. According to the law, all the documents should be original in form and officially translated into the Persian language, within Iran. However in practice the courts may accept copies by emails or fax.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Generally the answer to this question is 'yes'. However in the absence of any Iranian jurisdiction clause, there has to be a real connection between the claim and the Iranian territory in order for the courts to accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

If there is an agreement between the parties, or, the defendant provides the court with the acceptable guarantee, the ship will be released immediately. The court will send a letter to the port guard authorities informing them of lifting arrest of the vessel.

18. What type of security needs to be placed for the release?

Cash deposit or bank guarantee.

19. Does security need to cover interest and costs?

At least the security should be equal to the claim amount inserted in the claimant petition.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No. The Iranian courts do not recognize a Club's LOUs as security. Club LOU's are not recognised as a good form of security by the Iranian courts however there is nothing that prohibits the parties from agreeing to provision of a Club LOU and for the Claimant to request the lifting of the arrest.

21. How long does it take to release the ship?

The ship can be released on the same day of provision of security so long as the request is made within working hours of the court. The port authorities may accept a court letter of release outside of usual working hours and grant port clearance.

22. Is there a procedure to contest the arrest?

If the ship is arrested by an attachment order, as per Article 116 of Iranian Civil Procedure Act, the defendant can protest against the order within 10 days from the date of notification. The courts should consider the protest in the first court hearing, but the courts do not usually decide on the protest at that time. Any decision on the protest will be made together with the decision of the court on the merits of the case. If the claim is rejected and the defendant wins, the court shall condemn the claimant to pay the defendant's losses arising from the arrest and will be paid through the counter-security deposited with the court.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

10 or 20 days respectively, depending on whether the claimant requested an attachment order under Article 108 or a provisional order under Article 316 (both outlined above).

24. Do the Courts of your country acknowledge wrongful arrest?

In the case of wrongful arrest, the claimant will be condemned to pay the defendant's losses. Wrongful arrest can be established by the rejection of the claim by the court. This may happen when the substantive claim cannot be proved by the claimant.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

In principle, it is not possible unless we succeed in proving to the Court that the ship is under the risk of a quick deterioration and in a situation that endangers third parties.
The ship can only be sold after a final judgment is issued in favour of the claimant by the enforcement department of the court. Sale by auction may take a few months since the ship's value should be evaluated by an official court expert and subsequent notice of the auction details must be given to the litigant parties and the public to attend the auction.

*In 2008 **Omar** joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries. Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.*
Omar is an author of the UAE Vessel Registration and Mortgage Section in the Kluwer International Maritime Law Handbook. He is currently heading the EMAC team to establish the first Maritime Arbitration Centre in the UAE and the region.
***Adam Gray** - LLB Law, University of Surrey 2010, LPC, College of Law 2011, England & Wales Roll of Solicitors 2013. Adam is a UK qualified Solicitor having trained at an International Group P&I Club in London. He now practices as an Associate Legal Consultant in Dubai. Adam has a particular interest in maritime dispute resolution and insurance matters. He has assisted clients in litigating, defending, negotiating and settling complex contentious cases on a wide spectrum of matters, including ship arrests, charterparty and cargo disputes and P&I claims.*

SHIP ARREST IN *IRAQ*

*By Omar N. Omar**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
www.tamimi.com
Flat 22, Building 106, District 213, Kindi Street,
Al Harithiya , PO Box 6051, Baghdad
Tel: +96415420558
Fax: +96415420598

1. Please give an overview of ship arrest practice in your country.

The Iraqi Shipping Law does not specifically regulate the arrest of ships. Furthermore, there is no independent maritime law specializing in the provisions of ship arrest, and therefore the general legal principles of precautionary attachment stipulated in the Iraqi Civil Procedure Law apply to ship arrest in Iraq. According to this law, the creditor has the right to seize the debtor's assets if he succeeds in proving that he has a reliable claim against the defendant and has a legitimate indication that the defendant may dissipate his assets. An arrest warrant is usually submitted to the court of first instance. The Court will consider the application on its face and the arrest warrant will be issued in chambers on the basis of an ex parte application.

2. Which International Convention applies to arrest of ships in your country?

Iraq is not a party to the International Convention on Maritime Liens of 1952 or the International Convention on Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

As previously mentioned, the arrest is subject to the general legal rules that permit the seizure of the debtor's assets as security for a debt. It is worth noting that, under Iraqi law, the arrest is divided into several types: precautionary/conservatory arrest under the Civil Procedure Law, which can be exercised before the right to the debt is established or during the litigation; enforcement arrest, which is imposed by the Enforcement Department based on a final court ruling against the shipowner or charterer; and administrative arrest, which is imposed by port authorities. This type of arrest is defined in the context of administrative procedures authorized to port authorities or within the scope of addressing crimes or incidents, i.e., within the port's authority to maintain state sovereignty**.**Article 30 of the Ships Registration Law No. 19 of 1942 granted port authorities the right to detain violating ships without prejudice to the right to litigation. See the above question 1).

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No precautionary arrest will be applied to ships in Iraq.

5. For which types of claims can you arrest a ship?

In general, a ship may be arrested for any claim that the claimant has against the shipowner or the ship, provided that it is proven that the claim is prima facie serious and justified.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship docked within Iraqi territorial waters can be stopped regardless of the flag it flies.

7. Can you arrest a ship irrespective of the debtor?

In general, a ship may be arrested for any claim that the claimant has against its current owner, provided that it is proven that the claim is, on the face of it, serious and justified. However, in certain

circumstances, particularly when the claim is secured by a maritime lien, it can be argued in court that the creditor has the right to recourse against the vessel regardless of the identity of the owner.

8. What is the position as regards sister ships and ships in associated ownership?

According to Iraqi laws, the seizure must be directed against the party responsible for the debt. There is no legal text granting the creditor the right to seize the ship unless its owner is liable for the debt. A sister ship may be arrested provided that both ships are owned by the same party indebted to the arresting party. Vessels associated with it cannot be detained in Iraq.

9. What is the position as regards Bareboat and Time-Chartered vessels?

No seizure of a ship shall be permitted for a debt incurred by the charterer of the ship.

10. Do your Courts require counter-security in order to arrest a ship?

Yes. The court must provide counter-security before issuing an arrest warrant.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between arresting a ship due to a maritime claim and arresting a ship due to a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Iraqi maritime law does not specifically recognize maritime liens. In addition, Iraq has not joined any of the international conventions on maritime privileges. Accordingly, and in accordance with the general legal principles applicable in Iraq, the following debts grant the creditor a maritime privilege on the vessel:

a. Court costs and other costs incurred in the sale of the vessel and the distribution of the proceeds of sale.
b. Taxes and fees due to the Treasury.
c. Costs of maintaining the ship, its machinery and other equipment.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that all submitted documents have been translated into Arabic by a sworn translator in Iraq, the vessel can be detained within 48 to 72 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A duly certified and notarized power of attorney must be submitted to the Iraqi Embassy to the competent court of first instance with the arrest warrant. In addition, we must attach to the arrest application all documents supporting the claim against the vessel. In this context, it must be noted that the official language in Iraq is Arabic, which means that all documents in a foreign language must be translated into Arabic by a sworn translator in Iraq before submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The original documents are the debt instrument or contract, the power of attorney, and a certified judicial guarantee from within Iraq (usually real estate or banking). The arrest warrant must also be submitted manually to the competent Court of First Instance, as electronic filing is not available. Supporting documents for the claim must be attached to the application, and if these documents are in a foreign language, they must be translated into Arabic. Official documents must be attested only

up to the Iraqi embassy in the place of issue and then attested by the Ministry of Foreign Affairs in Iraq.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The jurisdiction of Iraqi courts is determined based on what was specified in Articles 14 and 15 of the Civil Code, namely that one of the litigants is Iraqi or a foreigner residing in Iraq, or that the subject of the lawsuit (the ship) is located in Iraq, or that the contract was concluded in Iraq. Therefore, since the ship will be in Iraqi territorial waters, the jurisdiction will be with the Iraqi court in accordance with Article 15.

17. What is the procedure to release a ship from arrest?

The ship is released by the applicant by means of a simple memorandum submitted to the Court in this regard. If the defendant wishes to request the release of the ship, he must deposit the guarantee specified by the judge and request him to issue an order for the release of the ship. Both of these must be submitted to the vessel and the port captain or coast guard, and the attachment can also be lifted by its owners or the captain if a claim based on the original right is not filed within 8 days.

18. What type of security needs to be placed for the release?

A conditional bail in the amount of 10% of the claim amount, which shall be either certified by a notary public or deposited in the court fund.

19. Does security need to cover interest and costs?

The guarantee will be only 10% of the debt value as stated above.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are unacceptable by Iraqi Courts.

21. How long does it take to release the ship?

The ship's release time depends on routine procedures, during which the court's notice of release can arrive, as Iraq relies on regular mail for notices and communications. In our case, it is possible that be in two or three days.

22. Is there a procedure to contest the arrest?

The defendant or a third party may file an appeal to the judge who issued the arrest warrant. Within 3 days, and the court's decision on the appeal is subject to cassation by the losing party within 7 days, and thus the Court of Cassation's decision will be final and conclusive.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must, within eight days from the date of the arrest warrant, file a substantive claim before the competent court to uphold the arrest warrant, otherwise the arrest warrant shall be null and void ab initio.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for compensation for unlawful seizure may succeed if the claimant can prove the bad faith of the party who carried out the seizure and the losses resulting from the seizure.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This concept is not recognised in Iraq.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

If the ship has actually been seized by precautionary seizure or enforcement seizure, the sale shall be carried out through the Enforcement Department in accordance with the Enforcement Law, by opening a file to claim the original debt and demanding the debtor to pay the debt within 7 days, otherwise the Enforcement Department will take possession of the ship and sell it after its value is estimated by specialized experts, then sell it and deliver the price to the creditor.

In 2008, **Omar joined the Transport & Insurance Department at Al Tamimi & Company and currently holds the position of Department Head, covering 9 countries. Ranked by both Legal 500 and Chambers, Omar's experience as a lawyer and maritime advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs in relation to claims. He has represented many clients in maritime disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.*
Omar is the author of the Ship Registration and Mortgage Section in the UAE in the Lloyd's International Maritime Law Handbook. He currently chairs the Emirates Maritime Arbitration Center team to establish the first Maritime Arbitration Centre in the UAE and the region.

SHIP ARREST IN *IRELAND*

*By Hugh Kennedy, Partner**
KENNEDYS
Hugh.Kennedy@kennedyslaw.com
www.kennedyslaw.com
Bloodstone Building, Sir John Rogerson's Quay,
Dublin Docklands, Dublin D02 KF24
Tel: +353 1 878 0055
Emergency Response #: +353 877 502 196

1. Please give an overview of ship arrest practice in your country.

Arrest procedure in Ireland is straightforward, quick and requires no security from the arresting party. Similar to most maritime jurisdictions, there are only certain types of claims where a Claimant can bring an action in rem, giving a right to arrest a vessel. However, the lack of any consolidating legislation has resulted in Admiralty jurisdiction which is rather disjointed. Therefore, it is important in Ireland to consider the jurisdictional basis of each claim to ensure there is a right of arrest and to avoid any potential liability for wrongful arrest.

2. Which International Convention applies to arrest of ships in your country?

The 1952 Convention applies in Ireland.

3. Is there any other way to arrest a ship in your jurisdiction?

A ship can only be arrested by an application to Court. The two principal jurisdictional sources which provide a right to arrest a vessel in Ireland are:

(a) The Court of Admiralty (Ireland) Act 1867; and
(b) The Jurisdiction of the Courts (Maritime Convention) Act 1989

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No.

5. For which types of claims can you arrest a ship?

(a) Damage caused by any ship either in collision or otherwise;
(b) Loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
(c) Salvage;
(d) Agreement relating to the use or hire of any ship whether by charterparty or otherwise;
(e) Agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
(f) Loss of or damage to goods including baggage carried in any ship;
(g) General average;
(h) Bottomry;
(i) Towage;
(j) Pilotage;
(k) Goods or materials wherever supplied to a shop for her operation or maintenance;
(l) Construction, repair or equipment or any ship or dock charges and dues;
(m) Wages of masters, officers or crew;
(n) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
(o) Disputes as to the title to or ownership of any ship; This shall be construed as including disputes as to possession of a ship;
(p) Disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
(q) The mortgage or hypothecation of any ship. This shall be construed as including the mortgage or hypothecation of any share in the ship.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Providing the claim is a "maritime claim" there is a right to arrest the vessel. However, it is now considered that a ship can only be arrested if the debtor is the owner of the vessel. Recent Irish decisions have determined that, for example, bunkers supplied to the vessel on the orders of the time charter, would not give rise to arrest. Also, to preserve the claim against a vessel, in rem proceedings must be issued before there is a change of ownership or, if the vessel has been demised chartered, before that demise charter has terminated.

8. What is the position as regards sister ships and ships in associated ownership?

Perhaps the most significant effect of the Arrest Convention is the possibility to arrest a sister ship. Article 3(1) of the Arrest Convention expressly permits the arrest of sister ships. It is possible to arrest a sister ship providing that:

(a) The claim is a "maritime claim".
(b) The ship flies the flag of a contracting country to the arrest convention.
(c) That the claim arose in respect of another ship which, at the time that when the maritime claim arose, was also owned by the same person.

9. What is the position as regards Bareboat and Time-Chartered vessels?

A vessel can be arrested for maritime claims arising during the demise charter. Issuing in rem proceedings creates the right to arrest the "res" being the ship. If prior to the proceedings being issued, ownership of the vessel has changed (or a demise charter has been terminated) then the new owner of the vessel is not liable and there is no right to arrest the vessel. Time charterers are distinct from Demise Charterers as the latter are regarded as the temporary owners of the Ship. However, importantly, it is now considered that a debt accrued by a time charterer would not give rise to arrest.

10. Do your Courts require counter-security in order to arrest a ship?

No, counter-security is not required in Ireland.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. Issuing in rem proceedings creates the right to arrest. Certain maritime clams do not survive a change of ownership and, if proceedings are not issued before the change of ownership, the right to arrest the vessel terminates upon that change of ownership. Certain claims, however, for example unpaid crew wages, establish maritime liens which are not dependent on proceedings having been issued. However, for all other claims, the arresting party's right to arrest vessel only arises upon the proceedings being instituted.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. Ireland recognises maritime liens. Ireland has not enacted any International Convention on maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Arrest procedure in Ireland is straight forward and quick. We can normally arrest within a few hours of being instructed.

14. Do you need to provide a POA or any other documents of the claim to the Court?

No Power of Attorney is required, however, copies of supporting documentation will need to be provided at the arrest application in Court, for example, Bills of Lading, Charterparties, commercial Invoices etc. Copies by fax or email are sufficient for the initial arrest application.

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 documentation is not required for the initial arrest application but originals may need to be filed with the Court if the arrest is contested by the ship owners. Documentation does not need to be notarised or apostilled.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes arresting the vessel establishes jurisdiction for the substantive claim but Irish Jurisdiction could be contested if the substantive claim is subject to a valid jurisdiction clause in favour of another country.

17. What is the procedure to release a ship from arrest?

An application is made before the Admiralty Judge. The application is normally made on consent, immediately following the provision of security. The Admiralty Marshal immediately releases the vessel.

18. What type of security needs to be placed for the release?

The type of security is normally agreed between the parties. If there is no agreement as to the type of security proffered, then the ship-owners must pay money into court and apply for a release.

19. Does security need to cover interest and costs?

Yes, security should cover interest and costs. The arresting party is entitled to an amount of security to cover their “best arguable case”.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

In practice a P&I LOU is often acceptable, subject to the arresting party being satisfied as to the particular entity proffering the undertaking. However, there is no decided case in Ireland compelling an arresting party to accept a P&I LOU as security.

21. How long does it take to release the ship?

A ship is released very swiftly on receipt of security, normally within 2 hours.

22. Is there a procedure to contest the arrest?

Yes. An application is brought by the ship interests to contest the arrest.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no specified time but the Courts will require the Claimant to progress the proceedings on the merits within a reasonable period.

24. Do the Courts of your country acknowledge wrongful arrest?

The arresting party can be liable for all costs and expenses and damages for the detention of the vessel unless the arresting party can show that:

(a) He could not, without such arrest have obtained bail or other security.

(b) That he had otherwise good and sufficient reason for having issued the proceedings and arresting the vessel.

There is very little law in Ireland demonstrating an arresting party's liability for a wrongful arrest. The Court is required only to decide whether the arresting party has established "fair stateable case and that there are sufficient grounds for the arrest of the vessel".

Each case will be determined on the particular facts and an arresting party should act reasonably and in good faith. Providing the arresting party can establish both a "fair and stateable case" and that there was "good and sufficient reason" for arresting the vessel there would be no liability for a wrongful arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

It is considered difficult to pierce and lift the corporate veil in Ireland.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is possible to have the vessel sold pendent lite. Given the draconian nature of a judicial sale, which would deprive the ship owner of his vessel, the Court would need to be satisfied that the sale should be ordered. Each matter would be taken on its particular circumstances and in certain situations a sale could be ordered quite swiftly.

*__Hugh Kennedy__ *is a shipping lawyer who specialises in ship arrest in Ireland. Hugh is instructed by ship owners, prominent insurance companies, P&I Clubs, cargo and hull underwriters, and by leading International law rms who specialise in shipping, transport and insurance law.*

Hugh regularly advises and lectures on all aspects of Admiralty law, including ship arrest, collisions, salvage, and casualty investigations. Hugh's clients include ship-owners, P&I Clubs, charterers, cargo underwriters, shippers and receivers for all types of cargo.

SHIP ARREST IN *ISRAEL*

By Yoav Harris & Domiana Abboud***
HARRIS & Co, Maritime Law Office
yoavh@maritimelaw.co.il
www.lawships.com
Facebook: http://bit.ly/2MdV5wb
Linkedin : http://bit.ly/2KvKVDE
Haifa, Tel-Aviv, Israel
Tel: 972-(0)4-845-4040
Cell: 972-54-4-202951
Fax: 972-(0)4-874-4040

1. Please give an overview of ship arrest practice in your country.

1.1 Sources of the Admiralty Court's Jurisdiction

The Israeli Maritime Court was established during the British Mandate over Palestine-Israel which took place formally between 1922-1948, and in-fact from the year 1917 and until 1948. By a King's-Order-in-Council dated 2 February 1937 the Supreme Court of Jerusalem was constituted as a Maritime Court under the Colonial Court Admiralty Act, 1890. On the date when the Colonial Court Admiralty Act was enacted, the relevant acts of Admiralty which were in force were the Admiralty Acts of 1840 and 1861 and also the Naval Prize Act of 1864. These continue to apply to the Israeli Haifa Maritime Court's jurisdiction up to this present date.

In addition, the Israeli legislator, when enacting the Israeli Shipping Law (Sea-going Vessels), 1960, in relation to maritime lien, has chosen to follow International Convention for The Unification of Certain rules of Law Relating to Maritime Liens And Mortgages, Brussels 1926.

Accordingly, there are two set of rules governing the Israeli Maritime Court: The English Admiralty Acts of 1840 and 1861 and the Israeli Shipping Law (Sea-going Vessels), 1960, which follows the 1926 Brussels Convention. Section 41 of this law determines the Maritime Liens and their priorities as follows:

(1) The official expenses of selling a vessel pursuant to a judicial sale,
(2) Port and port related charges and expenses,
(3) The costs of preserving a vessel pending Judicial sale,
(4) Payments due to the master and crew including damages for personal injury,
(5) Salvage expenses relating to the vessel, its cargo and equipment on board and expenses incurred in saving the lives of the crew and passengers.
(6) Damages for personal injuries to passengers
(7) Damages resulting from collisions or damage caused by the vessel to port installations and buildings, dry docks, and loss or damage to cargo and to passengers personal effects,
(8) Mortgages - no distinction is drawn between a local or foreign registered Mortgage,
(9) Necessaries.

The question of the existence of a Maritime Lien or a Statutory Claim in Rem is determined by the "Lex Causa" and the priorities, being procedural by the "Lex Fori". If a party wants to prove the Lex Causa this is done by providing the Court with an expert opinion. If no such opinion is provided in accordance with the identity of laws principle, Israel law will be applicable.

Latest Significant Judgments have been handed down by the Haifa Maritime Court:

I) In the matter of *Moraz Shipping* (2022), The Haifa Maritime Court denied Owner's application for establishing a limitation fund in relation to an oil leakage which leaked from the vessel while being bunkered near Haifa port. One of the Court's reasoning was that the incident was caused due to the actual fault or privity of the Owners- through the local operators of the vessel which did not instruct the vessel's crew and did not

supervise the qualifications of the crew members. In this regard, the Haifa Maritime Court referred to matters of claims in rem and arrests of vessel as an authority that in rem proceedings can be taken against a vessel regardless to owner's liability, because, for enforcing these, it is enough that those who were authorized to obligate the vessel were the ones who caused the damage. As in general, the Haifa Maritime Court's approach is that a maritime lien requires Owner's liability, this judgment sets a path to extend matters under which owners may be regarded as liable for the purpose of Court's recognition and enforcement of maritime liens.

II) In the matter of *M/V HUA YANG MEU GUI* (2023), a successful arrest for unpaid bunkers ordered by the charterer and supplied while the vessel was chartered, was obtained. Using the American law principle cited in World Fuel Services vs. M/V HEBEI SHIJUAH that charterers and their agents have the authority to bind the vessel by ordering necessaries unless there is an explicit notice from the owners stating otherwise, we were able to convince the court to issue an arrest order after a dull discloser of the events and documents in the arrest application. The matter itself was settled with no judgment on the merits, but the case implies that the Haifa Maritime Court might accept arguments as to a supplier's entitlement for the necessaries lien even for bunkering a chartered vessel following charterers' order and failure to pay.
However, if the bunker supplier had no connection with the Owner's what so ever and for example, corresponded only with the charterer who ordered the bunkers, it seems that a lien for necessaries will not be granted as such lien is a contractual lien and it requires that the contract will be made with the Owners or any one acting on owner's behalf and/or authorization. A matter on these merits is currently pending (MV Maina). In the matter of MV Emmanuel Tomasus (2012) it was held that only the contractual supplier was entitled to a maritime lien and the actual- physical supplier's claim was denied as this supplier did not enter int an agreement with the owners. In the matter of Captain Hurry 2016, by acknowledging a German declaratory order (I favor of the owners) the Haifa maritime court accepted that the (supplier's) contractual relations took place with the charterers and not the owners, and denied the claim.

III) In the matter of *M/V Tiber River* (2024), an arrest order was obtained under a claim for executing a judicial bailment order issued by the Piraeus court transferring the legal and physical possession of the vessel to the claimant nominated as the judicial bailee, for the purpose of keeping the vessel as a security for its claim related to management services and payments made on behalf and favor of the vessel. Although the matter was settled after the arrest with no judgment on the merits, the matter implies on Haifa Maritime Court's willingness to enforce a foreign order ordering a detention of the vessel.

IV) In the matter of M/V *Ruby T* (2021) an Israeli receivers' claim for expenses resulting from costs substitute cargo he purchased instead of the original cargo he denied due to alleged damages, was denied. The claim was based on the maritime lien for "damages sone to the goods" and the Haifa Maritime Court accepted our arguments that as the claimant rejected the cargo and the B/L(s) he has no title to sue, especially not under the maritime lien which is in favor of "claim filed by the owner, or consignee, or assignee of any bill of lading" (Article 6 of the Admiralty Act 1861). Following the receiver's appeal, the matter is pending before the Supreme Court.

V) In the matter of *M/V "HURIYE ANA"* (2017) the Haifa Maritime Court held that a sister-ship arrest is not recognized under the Israeli Law as no such possibility/authority appears in neither of the Admiralty Court Acts of 1840 and 1861 which constituted the

Maritime Court (as a Colonial Maritime Court) and as Israel is not a signatory party to the Brussels Convention 1952 or any other convention which allows a sister-ship arrest.. In the Matter *of M/V OSOGOVO* (2021), while denying a suppliers' arrest application for necessaries supplied to a sister-ship vessels of the subject vessel, the Haifa Maritime Court mentioned that it does not deny the possibility of extending, under "judicial legislation" the causes for arrest and including a "sister-ship arrest", leaving the path for applying for such an arrest by using the legal principles of lifting the corporate veil.

VI) In the matter of *M/V "Thor Horizon"* the Haifa Maritime Court ordered on the stay of proceedings in a claim in rem filed on the grounds of damage done to the goods due to a law and jurisdiction clause. Claimants appealed to the Supreme Courts arguing that if the claim will be referred to the foreign jurisdiction it might be dismissed due to the 12 months- time bar of the Hague- Visby Rules (Article III (6)). Owners refused to undertake that when the claim will be filed before the foreign jurisdiction, they will not argue that claim is barred. Under these circumstances, the Supreme Court held, that, as the claim might be dismissed if referred to the foreign jurisdiction, the law and jurisdiction clause will not be enforced by the Court, and cancelled the stay of proceedings.

VII) In the Matter of the M/V "Captain Harry" the Haifa Maritime court recognized in a German Judgement handed by the District Court of Hamburg ordering that the Owners are not under an obligation to pay the Claimant for the bunkers is supplied to the sub-charterer of the vessel. As a result (of the recognition) the Haifa Maritime Court dismissed the claim in rem filed before.

VIII) In the matter of *M/V Nissos Rodos*, the Haifa Maritime Court denied a claim in rem filed by a local port agent who paid Haifa Port the ports due for 17 calls of the vessel at Haifa Port, reasoning that there was no contractual relations between the agent and the Owner (as the commercial relations were between the agent and a third party who operated the vessel) and that therefore there was no personal liability on behalf of the Owner to pay the claimed amount (However, the findings of the Maritime Court were used for establishing the agent's civil claim against the operator of the vessel, resulting with substantial recovery for the agent).

IX) In the matter of M/V BADR (2022) the Haifa Maritime Court held, that a vessel registered in the Libyan registration can not be registered under the Israeli registration too, and ordered on the cancellation of the Israeli registration of the vessel which was done ex-parte without the consent of the owners of the vessel and by making use of a deed of ownership issued in Bulgaria after the ex-parte arrest of the vessel and its' alleged auction selling to its alleged creditor. The arrest was was filed on the basis of a mortgage deed which was found to be fake and later cancelled and so was the deed of ownership. The Defendants withdraw the appeal they gave filed before the Supreme Court and were ordered to pay costs.

X) In the matter of *Vapi Kredi Banaksi Vs. M/V Hurriye Ana* (2020), The Haifa Maritime Court denied a Bank's claim to enforce a Mortgage a as the validity of the loan agreement was not proven and that no information was provided in relation to the payment schedule agreed with the debtor (which was not the owners) and what was the exact amount of debt remained. The court held that the fact that a mortgage is written in the vessel's registration is not enough in order to have it enforced.

XI) In the matters of M/V Stellar Pacific and M/V Astrid L (2022), two matters in which Ukrainian seafarers lost their lives while serving on the vessel (in one matter as a result of a head and in the other the seafarer was send to work with a grinder on the deck while ballast water covered him and got electrocuted), the Haifa Maritime Court ordered compensations to the heirs in amounts exceeding the amounts stated in the employment collective agreements as compensation which will be paid in a matter of death. Implying, that under Israeli law owners can't limit their tortious and other liabilities in relation to casualties of seafarers as such limitation is not within the public's policy.

XII) Two matters of oil pollution damages were handled up until recently before the Haifa Maritime Court. In claims filed by port operators. One (relating to the M/V Moraz) for the costs of cleaning the port's berths and facilities from the pollution and the other (relating to the M/V Sao Paolo) for economic losses -loss of income during the period in which an operating berth had to be shut down as the cleaning operations took place. The claimants asked the Haifa Maritime Court to exercise its jurisdiction on "any claim for damage done by a ship" according to Article 7 of the Admiralty Courts Act 1861, applying the principle "the polluter pays" on the modern interpretation of the Admiralty Court Acts. During the year 2025, both claims were settled.

XIII) Following the matters the *M/V Estelle* (2014), *M/V Marianne* (2016*), M/V Zaytouna Olivia* (2019) of *M/V FREEDOM* and *M/V KAARSTIEN* (2021) where the Haifa Maritime Court o established his authority to act as a Prize Court according to the Naval Prize Act 1864 Currently a claim for the confiscation of the 50 vessels of the "Summud Flotilla" captured by the Israeli Navy while attempting to break the Naval Blockade Imposed off-shores of Gaza Strip since January 2009 after more than 5,000 rockets and missiles were fired between Gaza Strip to Israel between 2005 and January 2009, and continued with Hamas's massacre of 7th October 2023 killing 1,200 civilians and kidnapping 252 more which started the war between Israel and Hamas. The total amount of humanitarian aid carried in all of the flotilla's vessels accumulated to 5 tons, less than a third of the aid carried in one truck, hundreds of which entered the Gaza strip every day at that time (currently more), Another confiscation matter pending before the Haifa Maritime Court is that of the vessel "Handala" captured by the Israeli navy on 26th July 2025. On behalf of the vessel it is argued that as carrying medical-humanitarian aid it should have been let to arrive at Gaza shore and is immune from detention and confiscation.

1.2 The Application for Arrest

The Application for Arrest must be filed with the Claim in Rem.
In practice, we support the Application by an Affidavit. A scanned Affidavit confirmed in front of the foreign lawyer or by an Israeli lawyer (by e-mail) will be sufficient. Additionally, the Affidavit can be given by the arresting attorney. Copies of all the relevant documents in support of the arrest are attached to the Affidavit.
A Power of Attorney is not perquisite but in practice will file a signed POA, a copy scan is sufficient.
The Court has a discretion to order the arresting party to furnish security. in the matter of *M/V Tara Kaptanoglu* it was held that the Court will order so on rare occasions such as when there is a serious doubt as to the validity of the documents constituting the application for arrest. In the matter of M/V Captain Hury (2014) the Court ordered that the applicant which was a bunker supplier claiming US$ 315,763 for unpaid bunkers, will deposit an amount of US$ 14,285 in order to secure owner's costs. Eventually, the claim itself was denied. In the matter of M/V Mania the claimant was ordered to deposit a security for damages and costs amounting to NIS 150,000.00 for maintaining the arrest after an application for cancelation of the arrest granted ex-parte was filed and a hearing took place.

In relation to arrest for a supply of necessaries, being a contractual lien the Haifa Admiralty Court will order an arrest if the Claimant is the contractual party to the agreement under which the necessaries were supplied, even if the party is not the actual supplier itself. On the other hand a Claimant which did not enter with the Owners in an agreement for the supply will not be entitled to a maritime lien, even if it is the actual supplier. Entering such an agreement can be done by the Owner itself, the Master or any entity authorized by the Owner to enter in such agreements (such as the managers).
The arrest procedure is relatively swift and the arrest can be effected within 24 hours of receiving instructions. If the application is made on a Saturday or public holiday, this period may be extended as a result. Most of the arrest applications do not require an appearance before the Court or the Judge. The claim in rem and the arrest applications are filed by electronic communication followed by a message sent from the Court's Clerk to the presiding Judge to draw his attention that an arrest application is filed.
The Order of Arrest will be normally discharged by the provision of a P&I Club or other acceptable guarantee normally a local (Israeli) bank guarantee.
The Vessel can apply to set aside the Arrest by contesting the merits of the claim or, on the grounds that the claim does not constitute a maritime lien or a statutory right in Rem under the Lex Causa or that the Admiralty Court does not have jurisdiction. In order to avoid delay to the vessel, security can be furnished without prejudice and subject to the vessel's rights to contest the Arrest and to have the security provided cancelled.
Upon serving the Order of Arrest on the vessel's Command, the Port Authority and Border Police, the Arrest becomes effective. The arrest order is drafted in a manner it will contain orders according to which a scanned copy of the Arrest Order forwarded by e-mail or fax will be sufficient for the authorities for arresting the vessel and complying with the order. In practice an original true copy of the order is served after it has been sent by fax or e-mail.

1.3 Court Fees and Legal Costs

The Court fees payable are 2.5% of the amount claimed in the Claim in Rem of which half (1.25%) is payable at the time of filing the claim. No additional Court fee is payable for the Application of Arrest. The legal fees for attending to the Arrest excluding VAT (at present 18%) and disbursements, are between US$4,000.- and US$6,500.-, depending on the complexity and urgency of the matter.

2. Which International Convention applies to arrest of ships in your country?

Although no international convention related to ship arrest has been formally adopted by the Israeli legislature the Israeli Shipping Act of 1960 follows the Brussels 1926 Convention and the Admiralty Court can use the convention as a persuasive source of law. Israel is not a party neither to International Convention Relating to Arrest At Sea 1952 (Brussels) nor to the International Convention On The Arrest Of Ships 1999 (Geneva) and In the matter of *M/V Huriye Ana* (2017) the Haifa Maritime Court held that he has no authority to order a "sister-ship arrest".

3. Is there any other way to arrest a ship in your jurisdiction?

Ships or any other property of the debtor can be provisionally attached in a normal civil claim. This requires that the cause of action is within the Court's normal civil jurisdiction and the provision of a guarantee.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Under normal civil procedure Rules and Practice the Court can also grant a "Mareva Injunction", restraining order and attachments on goods, property and entitlements.

5. For which types of claims can you arrest a ship?

Those claims in respect of which the Admiralty Court has jurisdiction in terms of the enactments stated in **Clause 1** above.

6. Can you arrest a ship irrespective of her flag?

A ship can be arrested irrespective of its flag.

7. Can you arrest a ship irrespective of the debtor?

According to the Haifa Maritime Court's line of recent judgements only the debtor is entitled to a maritime lien- for example the contractual supplier as opposed to the actual supplier. Such right(s) can be assigned by the debtor and in such a case the assignee will receive the debtor's rights and as a result will be entitled to a maritime lien.

8. What is the position as regards sister ships and ships in associated ownership?

As Israel is not a signatory party to any of the Conventions allowing a sister ship arrest and as no such an arrest is applicable under the Admiralty Court Acts of 1840 and 1861 which constitute the Maritime Court. As presented in clause 1.1. (iii) above, under the judgment held in the matters of the M/V HURIYE ANA" (2017) and *M/V OSOGOVO* (2021), The Haifa Admiralty Court held that no such an arrest is recognized under the Israeli law, however it might be possible to extend under "judicial legislation" the causes for arrest and to allow a sister-ship arrest where circumstances will allow lifting the corporate veil.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Israeli Shipping Act 1960 follows the Brussels convention of 1926. Accordingly, clause 53 of this Act states that the orders relating to maritime liens will apply also to "*vessels operated by a charterer or any other person who is not its owner*". It is also worth mentioning, that, the Israeli legislator's reasoning when enacting the Israeli Shipping Act 1960, were, that, between the two distinguished maritime liens regimes: the English and the Continental it prefers the latest according to Brussels Convention 1926. However, the Maritime Court is recently consistent with the ruling (reasoned by the Court following the English maritime-law), that, a maritime lien requires personal liability of the Owners.
In the matter of MV Captain Hurry the Haifa Maritime Court mentioned that the maritime liens differed from each other, some secure voluntary liabilities and other secure liabilities imposed by law. For example, it is obvious that owners will be liable for salvage even if it was not responsible to the circumstances leading the vessel into distress. Owners can also be liable towards third parties for the vessel's acts under the maritime lien of "indemnities for collisions or other accidents by law". In our opinion, the above-mentioned clause 53 of the Acts operates (at least) as imposing the non-voluntary liens (even) when the vessel is chartered and/or not operated by the Owners.

10. Do your Courts require counter-security in order to arrest a ship?

As mentioned in **clause 1.2** above - not normally, only on rare occasions such as when there is a serious doubt as to the validity of the documents constituting the application for arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

For Arrest purposes the Courts make no distinction between the historical maritime liens which are embodied in the 1840 and 1861 Admiralty Acts and the additional maritime liens (which are in effect statutory claims in rem) constituted by the Section 40 of the Shipping Law 1960. See Clause 1 above.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, as in Clause 1.1 above. None of the International Arrest Conventions apply in Israel as a matter of ratification or accession. However as the Israeli Shipping Law mentioned in clause 1 above follows, in clause 41, part of the International Convention for the Unification of Certain Rules of Law Relating to Maritimes Liens and Mortgages 1926 and as the Court itself was established by and according to English Law and the Admiralty Court in fact follows both, it may well be arguable to ask the Court to follow a relevant Convention on a specific matter, as a matter of customary law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

As explained in clause 1.2 above, the arrest can be effected within 24 hours of receiving instructions.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA is not obligatory. We support the arrest application with an Affidavit which should clearly set out the cause of action and the documents in support thereof should be attached to the Affidavit.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

For the Arrest Application and Order no original documents are required, but the originals would have to be produced if the claim proceeds to trial.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Once the claim in rem is recognized under the laws mentioned in **clause 1** above, the Haifa Maritime Court will accept jurisdiction (provided that the arrested vessel is either with-in or on its way to Israeli territorial waters).
However, if the relevant documents contain law and jurisdiction/arbitration clauses, the Court will order on the arrest and after will refer the substantive claim to the relevant forum. In this manner the arrest will provide a security for the claim or arbitration proceedings which will be handled in the foreign jurisdiction.

17. What is the procedure to release a ship from arrest?

The ship can be released from arrest by successfully contesting the alleged grounds of arrest or the Courts jurisdiction or by providing an acceptable guarantee.

18. What type of security needs to be placed for the release?

The usual securities acceptable to the Court are a deposit within the Court, a P&I LOU issued by one of the International Group of P&I Clubs, or a bank guarantee issued by an Israeli bank.

19. Does security need to cover interest and costs?

Under the Arrest order, the Court states the amount that should be deposited or secured for the release of the Vessel. Usually the interests and costs are included in the claim and the arrest order as being part of the maritime lien.

20. Are P& I LOUs accepted as sufficient to lift the arrest?

Yes. See clause 18 above.

21. How long does it take to release the ship?

If security is provided as above, a matter of one working day. If the arrest is countered in an application for the cancelation of the arrest, a hearing will be scheduled by the court within few days or sooner taking into consideration the vessel's schedule for port operations and intended date of its departure.

22. Is there a procedure to contest the arrest?

Yes, as described in clause 17 above.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

An Arrest application must be followed with a claim in rem which is served together with a writ of summons ordering the vessel or who is interested to file a notice of appearance within 7 days. If a notice of appearance if filed the court give its orders as to filing details of defense and the claim enters the schedule of handling a claim before the Haifa Maritime Court.

24. Do the Courts of your country acknowledge wrongful arrest?

There is no leading authority relating to the matter of wrongful arrest. Under the general civil law a party seeking a temporary relief (such as a lien or restraining order) might be liable in tort or in a commitment emerging out of the Court's order to compensate the other party for its damages if the temporary relief is cancelled and if the seeking party acted unreasonably or in malice (Civil Appeal 732/80 Arens Vs. Bait-El). It seems that when deciding on an application or claim for damages for wrongful arrest the Haifa Maritime Court will follow the *Evangelismos Tests* of 1858 as interpreted By the Court of Appeal of Singapore in the matter of *M/V Vasiliy Golovnin* 2008.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Corporate veil can be lifted in circumstances of fraud, deceit or maliciousness.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

A ship can be sold pendente lite if it can be shown that the continuation of the arrest will substantially affect the value of the ship. In this case the net sale proceeds are regarded as having substituted the ship for all purposes, including the eventual determination of the validity of the claims in rem and the priorities.

Adv. John Harris *(1940-2023) was the founding partner of Harris & Co.and one of the leading maritime lawyers in Israel. John Harris was one of the first members of Shiparrested.com, and contributed both lectures at annual conferences and the Israeli chapter of this publication.*

****Yoav Harris*** *graduated in 1999 summa cum laude from the law faculty of Haifa University. He specializes in Maritime Law and Commercial Litigation. He contributes articles to the Israeli monthly magazine "The Cargo"; and has become the author of the Israeli chapters of the annual Ship Arrest In Practice guide of Shiparrested.com and for the Shipping Global Practice Guide for Chambers & Partners, Legal 500, ICLG, Lexology-The Shipping Law review. The firm regularly receives instructions from the foremost shipping and maritime law departments of international law firms and keeps abreast of English and other jurisdictions' maritime law judgments and publications. The firm is ranked top tier at 'Chambers and Partners" ("has significant litigious capabilities"), Legal 500, Duns 100, and BDI.*

***Adv. Domiana Abboud is an associate attorney at Harris & Co. She graduated from the University of Haifa Faculty of Law in 2019. Prior to joining Harris & Co., Domiana gained valuable experience as a law clerk to a judge at the Haifa District Court and as an associate attorney at one of Israel's leading law firms. Since 2021, she has been part of Harris & Co, where she specializes in maritime law and commercial litigation. Domiana is currently an LL.M. candidate in International Corporate and Commercial Law at King's College London.*

SHIP ARREST IN *ITALY* (QUESTIONS 1 TO 9)

*By Alberto Batini**
BATINI TRAVERSO GRASSO & ASSOCIATI
a.batini@btglegal.it
www.btglegal.it
Via Assarotti 11/9
16122 Genova, Italy
Tel.: +39 348 7902191
Mobile: +44 750 1961608
Fax: +39 010 8375896

(QUESTIONS 10 TO 26)

*By Alberto Serino**
Studio Legali Consociati
alberto.serino@slconsociati.com
www.slconsociati.com
Naples, Milan, Ravenna, Genoa
Tel: +39 081.4288242
Fax: + 39 081.5518341

1. Please give an overview of ship arrest practice in your country.

Italy is a party to the 1952 Arrest Convention, ratified in 1979. Moreover the Italian Code of Navigation provides a set of domestic rules applicable when the Convention does not apply in whole or in part. Arrest is possible in Italian Ports also where there is no jurisdiction on the merits. The procedure is fairly quick and informal. No counter security is required. Appeal is possible and usually heard and decided in few weeks. P&I Clubs Letters of Guarantee are widely accepted if issued by one of the IG Pool. Alternatively bank guarantees or cash deposit are available to release the vessel.

2. Which International Convention applies to arrest of ships in your country?

The 1952 Brussels Convention on Arrest of Sea Going Ships has been ratified on 9.11.1979 in Italy and applies to all vessels flying the flag of one Contracting State. It will also apply, pursuant to article 8, to those vessels flying the flag of a non-Contracting State in respect of any claim for which the law of the Contracting State seized with the case permits arrest. In addition our Code of Navigation provides subsidiary rules applicable when the Convention cannot be applied in whole or in part or to arrest issues not ruled by the Convention (articles 643-686).

3. Is there any other way to arrest a ship in your jurisdiction?

A Vessel may be detained pursuant to an arrest order issued within a criminal proceeding by a Prosecuting Judge (i.e. when the Vessel can be considered as corpus delicti) or pursuant to an administrative detention order of a Public Authority (i.e. the Harbour master Office in case of damage to public properties like a berth, a quay, a light buoyancy).

4. Are there alternatives e.g. saisie conservatoire or freezing order?

In respect of the same claim usually arrest orders are alternatives and not cumulative. It is anyway possible that under special circumstances, where different interests are involved, a single event generates more detention orders (i.e. in a pollution case arising out of collision the interest of the State and those of cargo owners, the colliding vessel, the salvors, the victims). From a strict procedural profile an arrest order under the 1952 Arrest Convention for a particular maritime claim is always alternative to any likewise detention order to secure the same claim.

5. For which types of claims can you arrest a ship?

A Vessel can be arrested in Italy for any maritime claim among those listed under art. 1(1) of the 1952 Arrest Convention. For Vessels flying the flag of a non-Contracting State an arrest is possible

also in respect of any other claim for which the law of the court seized with case permits arrest. This in Italy includes any debt of a contractual or non contractual nature but in this case the arrest can only be obtained if the Vessel is owned by the debtor.

6. Can you arrest a ship irrespective of her flag?

A ship can be arrested irrespective of her flag.

7. Can you arrest a ship irrespective of the debtor?

A ship can be arrest irrespective of the debtor but, if the debtor is a State or other Public body, then the ship might be regarded as immune from arrest. Whether and to what extent immunity may be invoked is left to the law of the forum arresti. Immunity is related to the ownership or operation of the ship, not to the nature of employment. For example the fact that a privately owned ship is employed on a liner service which is of public interest should not justify immunity from arrest.

8. What is the position as regards sister ships and ships in associated ownership?

Sister-ships, meaning ships owned by the same Company owning the particular ship in respect of which the maritime claim arose, can be arrested under art. 3 (1) of the Arrest Convention. A similar principle is provided at Italian domestic law (art. 2740 Italian Civil Code). Ships in associated ownership (or management) cannot be arrested unless the Claimant can pierce the corporate veil. This is not impossible in Italy but is certainly a difficult exercise, which implies a rigorous burden of proof on identity of shareholders and management of the two companies.

9. What is the position as regards Bareboat and Time-Chartered vessels?

In cases where the bareboat charterer is liable in respect of a maritime claim and not the registered owner, the situation is different if the Arrest Convention applies or not. If the Convention applies, art. 3 (4) enable arrest of such ship or any other ship in the ownership of the bareboat charterer, but no other ship in the ownership of the registered owner. The last sentence of Article 3, para. 4 seems to extend the rule to any case in which a person other than the registered owner of the ship is liable (i.e. the time charterer, the ship manager, etc.). This is anyway in conflict both with the literal meaning of the provision and with the travaux preparatoires of the Convention. When Italian domestic law applies arrest of a ship under bareboat charter to secure a claim against the bareboat charterer, the time charterer or the ship manager is not possible unless the Claimant has a maritime lien assisting his claim. The main reason for this is that a creditor cannot arrest a ship to secure a claim if he can never be authorised to enforce the final judgment on the merit against the registered owner and auction the vessel. This is the worldwide unsolved problem of the Arrest Convention and Italy is no exception. Only maritime liens give right to enforce a claim against the vessel, even if she is property of someone different than the liable party. Not all maritime claims under the Arrest Convention are maritime liens under the different national domestic law systems. Not the 1926 Liens and Mortgages Convention enjoyed a wide acceptance around the world. The Lisbon Draft attempted to clear things as well as the 1999 Arrest Convention, not yet in force.

***Alberto Batini** is Senior Partner. He joined the rm in 1990. He graduatd from the University of Pisa Law School and admitted to the Bar in 1993 and to the Supreme Court. He specializes in Ship Arrest, Admiralty Law and Marine Insurance Law and Litigation.*
Former assistant solicitor with Sinclair Roche & Temperley, London – 1991/1992. Former assistant claims handler at Standard Steamship Ow- ners P&I Club, Charles Taylor & Co., London – 1992. University of Southampton – Faculty of Law – Institute of Shipping Law – 18th Maritime Law Degree, 1992/1993. Post graduate Doctorate (PHD) in Shipping and Transport Law – University of Trieste and Genoa from 1995. Vice-President of the Ibero-American Institute of Maritime Law (IIDM) – Italian Section since 1998. Editorial Articles in Shipping and Transport Law. Permanent Member of the Steering Committee of the Italian Association of Maritime Law (IAMA) and active member of the Italian Working Group for Maritime Liens and Mortgages and Arrest of Ships at CMI Conferences.

10. Do your Courts require counter-security in order to arrest a ship?

There is no need for the applicant to provide security in order to have the *ex-parte* arrest application examined by the court.
However, the judge dealing with the matter may make the arrest conditional upon the applicant providing counter-security to cover any potential loss suffered by the respondent.
If the applicant fails to provide such security within the time limit set by the judge (usually a few days), the ship arrest then ceases to have effect pursuant to Article 669-novies, paragraph 3, of the Italian Code of Civil Procedure.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The difference is substantial and arises when for instance the arresting vessel has in the meantime changed her ownership with the result that the action can be addressed against a party other than the applicant's debtor. By implication of law the maritime lien attaches to the vessel from the moment a cause of action arises and it is extinguished only with the fulfilment of the underlying claim or as a result of the statutory time bar.
Besides, according to the majority of domestic case law and scholars, only the existence of a maritime lien consents the application of article 3(4) of the international convention relating to the arrest of sea-going ships (Brussels 1952) in respect of claims vs. charterers basically on the grounds that article 9 of said convention does not create maritime liens.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Pursuant to Article 552 of the Italian Code of Navigation, Italy recognizes maritime liens. The categories of claims benefiting from a maritime lien substantially correspond to those contemplated by the international Convention for the Unification of Certain Rules relating to Mortgages and Liens (Brussels 1926), to which Italy is a party, and include in particular:

- judicial costs incurred by the State or expenses made in the interest of all creditors for arresting or preserving the vessel; anchorage, lighthouse and harbour dues; pilotage fees; costs for preserving the ship in the last port of call;
- crew's and master's wages;
- amounts advanced by the State for the victualling and repatriating the crew as well as credits for compulsory social security contributions;
- salvage rewards and sums due by the vessel as a contribution to a general average;
- sums due in respect of collisions, hits and other casualties occurring in the course of navigation; damage caused to ports, yards and navigable waterways; indemnities due to passengers and crew for death or personal injuries; loss or damage to cargo and baggage;
- claims resulting from contracts entered into by the master within the scope of his authority for preserving the vessel or continuing the voyage.

Pursuant to article 575 of the Italian Code of Navigation maritime liens always rank in priority over ship mortgages. However, the law of the flag of the vessel governs the determination of the existence of a maritime lien and the criteria for the ranking of competing claims.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

A notice of 24 hours is generally sufficient to prepare the arrest application and to file it electronically together with relevant exhibits with the competent Court for the judge's immediate review (Italy has now adopted and implemented an online civil trial system: see § 15 below).
This is in an ideal environment.
Supporting documentation is often drafted in a foreign language and must therefore be translated into Italian. However, this activity can be arranged promptly by our law firm's staff. Another factor that may delay the filing of the application with the Court is the need to obtain the Power of Attorney from the foreign arresting party (see § 14 below).
It should also be noted that the Italian Courts are only open on weekdays. Accordingly, an application filed on Friday afternoon will be examined by a judge only on following Monday morning.

14. Do you need to provide a POA or any other documents of the claim to the Court?

The response is affirmative.

No Italian lawyer can appear and act before a Court without a written Power of Attorney (PoA) duly executed by the client.
Where the PoA is issued abroad, it must be notarised and legalised by apostille as per the Convention abolishing the Requirement of Legalisation for Foreign Public Documents (Hague 1961) unless the document in question is issued in certain EU Member States (i.e., Belgium, Denmark, Estonia, France, Ireland, and Latvia) where the apostille requirement has been fully abolished on the basis of the 1987 Brussels Convention. The same exception applies to documents issued in Germany pursuant to the bilateral convention signed in Rome on 7 June 1969, and to documents issued in Austria pursuant to the agreement supplementing the 1954 Hague Convention relating to the law on civil procedure and signed in Vienna on 30 June 1975.
In urgent matters, when there is not enough time to get a duly authenticated PoA (in original or at least in digital form) from abroad, an expedient is often the appointment of a domestic agent who may, in turn, appoint the Italian lawyer pursuant to article 77 of Italian Code of Civil Procedure. Since the appointment is made by an an entity (whether a corporation or an individual) domiciled in Italy, the legalisation of the agent's signature can be arranged by the retained lawyer.
The arrest application must be accompanied by supporting documentation that establishes *prima facie* evidence of the claim for which the security (ship arrest) is sought. As indicated in § 13 above, translations of documents drafted in a foreign language should be enclosed with the application for the judge's benefit.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

In 2003, the IT Department of the Italian Ministry of Justice launched a project to implement the online civil trial system, which today enables electronic seamless interaction between lawyers and judges through the court registries. The reform introduced mandatory electronic transmissions of all communications (digitally signed to ensure authenticity, non-repudiation and integrity) between lawyers and judges in first-instance and appellate proceedings as well as in proceedings before the Supreme Court as from February 2016.
At present, Italian lawyers have full online access to up-to-date information managed within the Court Management System as well as to legal acts and documents stored in the electronic file system. Therefore, they are able to file all the documents electronically with the undoubted advantage that original documents (with the exception of domestic powers of attorney issued and authenticated in Italy) no longer need to be physically in lawyer's hands when the case is filed in Court. Only in the event of specific objections as to authenticity, the judge may order the arresting party to disclose the original of any document whose copy has been challenged.
Apostille formalities apply only to powers of attorney issued abroad in states that are parties to the Hague 1961 (see § 14 above).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The mere presence of the vessel in Italian territorial waters confers competence on the Court within whose district the relevant port of call is located. It is not necessary for that Court (or any other domestic Court) to have jurisdiction over the merit of the dispute. However, substantive proceedings on the merits must be commenced before the competent state court or arbitral tribunal within a maximum period of 60 days (see § 23 below).
The adjudicatory jurisdiction on the merit of the case is determined in accordance with the applicable rules of private international law governing dispute resolution and, where applicable, article 7 of the 1952 Brussels Convention on the Arrest of Sea-Going Ships.

17. What is the procedure to release a ship from arrest?

The party against whom the ship arrest has been granted may challenge the relevant order before the court by appointing a lawyer. The lawyer may file defensive submissions setting out the legal grounds on which the arrest is alleged to be inadmissible, unlawful or excessive (*e.g.*, where the amount of security indicated in the order should be reduced).
The judge will schedule a hearing for oral argument and/or grant certain number of days for the exchange of written submissions. Then, with the final ruling, the judge will either uphold the *ex-parte* order (setting the time limit by which the arresting party must commence the substantive proceedings on the merits) or revoke it, ruling also on legal fees and costs to be reimbursed by the arresting party (article 669*sexies*, paragraph 2, of the Italian Code of Civil Procedure). Alternatively, the court may amend its previous ruling, for example by adjusting the amount up to which the arrest is granted or by ordering the provisions of bail to secure potential damages for wrongful arrest.

18. What type of security needs to be placed for the release?

The arrested party always has the right to request the substitution of the ship with an alternative security in the form of a bank deposit, which shall remain frozen until the court has ruled on the lawfulness of the arrest (in the meantime the vessel is permitted to leave Italian territorial waters).
This right is recognised both under Italian civil procedure (article 684 of the Italian Code of Civil Procedure) and under the 1952 Brussels convention (article 3(3)).
The parties may alternatively agree on a bank guarantee or a P&I letter of undertaking ("LOU"), However, in such cases, the ship arrest proceedings are discontinued, and the file is closed. By contrast, the provision of a cash security, though potentially more time-consuming, enables the arrested party to continue challenging the opponent's application and to recover the security in the event of a successful challenge.

19. Does security need to cover interest and costs?

As with the arrest order (which is commonly granted for the principal amount plus an additional 15-20% to cover default interests and legal costs), the cash security provided to obtain the release of the vessel likewise takes into account interests and legal costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, provided that the arresting party is consenting.
Only the provision of cash security dispenses the need for such consent.

21. How long does it take to release the ship?

It is a matter of a few hours.
Where the ship arrest order includes a provision authorising the arrestor's counsel to notify the Harbour Master directly of the waiver of the ship arrest (for instance, following the conclusion of an agreement with the arrested party and its lawyer), the procedure of release is significantly expedited.

22. Is there a procedure to contest the arrest?

The arrested party has the right to challenge the ex-parte arrest order in order to prevent its subsequent confirmation and even after, once it has been confirmed, by filing an appeal before the court in full sittings within 15 calendar days (article 669terdecies of the Italian Code of Civil Procedure).

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 arrest order has been definitively granted, substantive action on the merits must be instituted in Court or, where applicable, in arbitration within a maximum period of 60 calendar days

from the date on which the order was issued (article 669octies of the Italian Code of Civil Procedure). Failing this, the order may be revoked upon a specific motion from the arrested party.
It should also be noted that the arrested party may seek the release of the vessel where the substantive proceedings are subsequently discontinued for any reason, or where the claim in respect of which security was initially obtained is ultimately not upheld notwithstanding that the proceedings weretimely instituted (article 669novies of the Italian Code of Civil Procedure).

24. Do the Courts of your country acknowledge wrongful arrest?

If the claim, in respect of which a vessel has been arrested, is subsequently dismissed by the court or arbitrator hearing the case on the merits, the arresting party may be held liable for the damages suffered by the opponent as a result of the arrest. However, the mere dismissal of the claim does not suffice as the party seeking damages must prove that the arresting party acted with gross negligence or bad faith (article 96 of the Italian Code of Civil Procedure).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The exercise in question is particularly complex, as Italian Courts are generally reluctant to pierce the corporate veil unless the party seeking such a finding is able to adduce conclusive and unequivocal evidence of impropriety, consisting in the use of the corporate structure to evade or conceal a liability
Accordingly, the corporate veil in Italy is pierced only in exceptional circumstances due to the stringent burden of proof and the multiplicity of requirements that must be satisfied.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Only in very few cases Italian courts have authorised the judicial sale of an arrested vessel pendente lite.
In those precedents, the vessel was in very poor condition and there was a serious risk of her sinking.
In any event, the judicial sale of the ship by public auction is, in practise, a regrettably time-consuming process.

*__Alberto Serino__ *is involved in international marine litigation including charterparty and bill of lading disputes, arrest of ships, P&I and FD&D matters. His litigation practice encompasses a broad variety of disputes with a particular focus on insurance and commodity claims as well as issues relating to freight forwarding, carriage of goods by road, ship agency and pilotage. He has acted for foreign clients in proceedings for the recognition and enforcement in Italy of foreign arbitral awards and Court judgments. Over the course of his professional career, he has also appeared as expert witness on Italian law and jurisdiction before foreign Courts, including Canada, Germany and France.*

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-judgement 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 thelien. 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 torecover 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.*

SHIP ARREST IN *JORDAN*

*By Omar N. Omar**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
www.tamimi.com
6th Circle, Emaar Towers, 11th floor,
Tower A, PO Box 18055, Zip 11195, Amman
Tel: +96265777415
Fax: +96265777425

1. Please give an overview of ship arrest practice in your country.

The Jordanian Maritime Code does not regulate the conservatory arrest of ships. Therefore, the arrest of ships in Jordan will be subject to the Civil Procedures Law which gives any creditor the right to apply to the Court of First Instance (Summary Judge dealing with urgent matters) for a conservatory attachment of his debtor's assets to obtain security for his claim. The Court normally considers the arrest application of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter).

2. Which International Convention applies to arrest of ships in your country?

Jordan is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

Yes. Ships may be arrested through either (i) precautionary (conservatory) arrest proceedings or (ii) enforcement (execution) proceedings, as follows:

· Precautionary (conservatory) arrest proceedings:

The applicant is not required to hold an execution deed against the vessel. However, the applicant must deposit counter-security in the form of cash, a bank guarantee issued by a local bank, or an acceptable judicial guarantee proportionate to the claimed amount. The debt must be prima facie established, due and payable, determined as to amount, and not subject to a suspensive condition. Furthermore, substantive proceedings must either already be pending or be commenced within eight (8) days from the date of issuance of the precautionary arrest order, failing which the arrest may be lifted.

· Enforcement (execution) proceedings:

A vessel may also be arrested within the framework of execution proceedings following the issuance of a final and enforceable judgment or the availability of an executable instrument. In such case, the creditor must file the execution deed before the competent Execution Department, which may proceed with the attachment and judicial sale of the vessel in accordance with the Enforcement Law.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The precautionary seizure procedure above-mentioned (question No. 3) is an alternative to the saisie conservatoire procedure.

5. For which types of claims can you arrest a ship?

A ship may be arrested in the Jordanian territorial waters for any debt against the owner of the ship or the ship, provided that the debt is proved, on the face of things, to be serious and grounded.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Jordanian territorial waters can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

The ship can be arrested in the Jordanian territorial waters for any claim which the claimant has against the owner of the ship or the ship if he proves, on the face of things, that his claim is serious and grounded.

8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Jordan is possible since the creditor is given the right to arrest any of the assets of his debtor to secure the claim provided that he proves, on the face of things, that his claim is serious and grounded. As for the arrest of associated ships, this recourse is not available to creditors in Jordan.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Jordanian Maritime Code does not give expressly the creditor of the charterer the right to arrest the ship for a debt resulting from the charterer's actions. Therefore, the position of the time charterer and bareboat charterer needs to be examined on a case by case basis while taking into consideration whether the charterer has a lien on the ship.

10. Do your Courts require counter-security in order to arrest a ship?

Yes a counter-security is required in Jordan.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a ship for any maritime claim and the arrest of ship for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Jordan did not accede to any of the International Conventions relating to Maritime Liens. The Jordanian Maritime Code recognizes maritime liens and article 50 of the said code has listed them as follows:

a) Judicial costs and expenses incurred in order to preserve the value for the benefit of the creditors generally (tonnage dues and lighthouse and port fees and other dues or fees of a similar nature) pilotage fees and guarding and maintenance costs from the time of the ship's entry to the port.
b) Debts arising from the contract of employment of the master, crewmembers and other employees of the vessel.
c) Charges due for assistance and salvage operations and for the contribution of the ship to general average losses.
d) Indemnity for collision or arising from other perils of the sea and from damages caused to ports, docks and navigational routes, and compensation for injuries to passengers and crew and for loss or damage to cargo and baggage.
e) Debts arising from contracts concluded, or operations carried out carried out by the master outside the ship's port of registration with his legal powers, and which are actually required for the preservation of the ship or for completing the voyage, whether or not the master is the owner of the ship, and whether or not the debt is owed to him, or the ship chandlers, repairmen, creditors or other contracting parties.
f) Damages due to the charterers of the ship.

g) The total of premiums due on insurance taken on the ship's hull, tackle and equipment for the last voyage insured, or for the last period of insurance on a term policy, provided that in both cases this total does not exceed one year's premiums.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Jordan, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Jordanian Embassy must be submitted to the President of the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Jordan is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Jordan prior to submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The original documentation supporting the claim must be attached to the application and electronic filing is not available. As mentioned under question 14 above, if these documents are in foreign language they must be translated into the Arabic language. Only official documents must be legalised up to the Jordanian Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Jordan.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

If foreign courts are given jurisdiction over the conflict, Jordanian courts will not accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship must take the form of either a bank guarantee issued by a local bank or cash deposited in the Court.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No they are not.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file an appeal against the arrest order before the Court of Appeal. Upon hearing the appeal, the Court may issue an order lifting the arrest order and such judgment shall be enforceable through the normal channels. The appeal shall be submitted within 10 days from the date of issue of the arrest order. The judgment issued by the Court of Appeal may be appealed through normal channels.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must commence substantive proceedings within eight days starting from the date of issue of the arrest order.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

In principle, the concept of piercing and lifting the corporate veil is not recognised in Jordan.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Such sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

**In 2008 Omar joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries.*
Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.

SHIP ARREST IN *KENYA*

*Benjamin Musau**
B M Musau & Co., Advocates
Benjamin.Musau@bmmusau.co.ke
www.bmmusau.com
Reinsurance Plaza, 10th Floor
P.O. Box 16393 – 00100, Nairobi, Kenya
T: +254 20 224 2860 /
+254 724 096098

1. Please give an overview of ship arrest practice in your country.

Ship arrest practice is governed by the Judicature Act (Cap 8) Laws of Kenya and the jurisdiction is exercised by the Admiralty High Court of Kenya.
The Admiralty High Court of Kenya follows the law and procedure of the High Court in England. Kenya has never enacted domestic legislation to govern the procedure of arrest of ships in the country and hence the Admiralty High Court of Kenya has strictly followed the law in England.
The Admiralty High Court in Kenya is situated in Mombasa.
The substantive law is provided by Section 20 of the Senior Courts Act, 1981 of England while the procedural law is provided by Part 61 of the English Civil Procedure Rules. These are the provisions of law to be applied by a party seeking to arrest any vessel within the territorial waters of Kenya.

2. Which International Convention applies to arrest of ships in your country?

Kenya ratified the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships made in Brussels on 10th May, 1952. The International Convention on Arrest of Ships, 1999 is also applicable.
The Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, 1968 is also relevant.

3. Is there any other way to arrest a ship in your jurisdiction?

The Senior Courts Act, 1981 provides only for in rem arrest of a ship through in rem proceedings in respect of maritime claims.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

There is no alternative ways for arresting a ship such as saisie conservatoire or freezing order.

5. For which types of claims can you arrest a ship?

These are exclusively claims that are within the admiralty jurisdiction of the High Court as defined by Section 20(1), 20(2), 20(3), 21(3) and 21(4) of the Senior Courts Act, 1981.
They include:

a) Claims to the possession or ownership of a ship or to the ownership of any share;
b) Questions arising between the co-owners of a ship as to possession, employment or earnings of that ship;
c) Claims in respect of a mortgage of or charge on a ship or any share therein;
d) Claim for damage received by a ship;
e) Claim for damage done by a ship;
f) Claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of –
   (i) The owners, charterers or persons in possession or control of a ship; or
   (ii) The master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible. being an act, neglect or default in the navigation or management of the ship, in

the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship:

g) Claim for loss of or damage to goods carried in a ship.

h) Claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.

i) Any claim –

(i) under the Salvage Convention 1989;

(ii) under any contract for or in relation to salvage services; or

(iii) in the nature of salvage not falling within (i) or (ii) above; or any corresponding claim in connection with an aircraft.

j) Any claim in the nature of towage in respect of a ship or aircraft.

k) Any claim in the nature of pilotage in respect of a ship or an aircraft.

l) Any claim in respect of goods or materials supplied to a ship for her operation or maintenance.

m) Any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues.

n) Any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages).

o) Any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship.

p) Any claim arising out of an act which is or is claimed to be a general average act.

q) Any claim arising out of bottomry.

r) Any claim for the forfeiture or condemnation of ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty

s) Any action to enforce a claim for damage, loss of life or personal injury arising out of

(i) a collision between ships; or

(ii) the carrying or omission to carry out a manoeuvre in the case of one or more of two or more ships; or

(iii) non - compliance on the part of one or more of two ships, with the collision regulations.

t) Maritime claims giving rise to maritime liens brought in rem irrespective of ownership of the ship therefore allowing arrest of the ship :-

(i) Any claim for possession or ownership of a ship or to the ownership of any share

(ii) Any question arising between the co-owners of a ship as to possession, employment or earnings of that ship

(iii) Any claim in respect of a mortgage or a charge on a ship or any share therein

(iv) Any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure or for droits of Admiralty.

(v) Any claim which gives rise to a maritime lien for instance claims for damage done by a ship, claims for salvage, claims for master's wages and disbursements, claims for seamen's wages, claims for bottomry and respondentia.

All other maritime claims without a maritime lien are limited by consideration of ownership and can only be brought in rem and thus against a particular ship if the following conditions are satisfied:-

(i) must be a claim in connection with a ship;

(ii) the person who would be liable on the claim if sued personally was the owner or the charterer or in possession or control of the ship when the cause of action arose; and

(iii) at the time when the action is brought, the person who would be liable on the claim if sued personally was the beneficial owner of all the shares in the ship or was the demise charterer of it. A claim form can only be issued and a ship arrested in these circumstances if between the date of the cause of action i.e. the matter or breach of contract complained of, and the date the claim form is issued:

the ownership remains unchanged; or 2. the demise charterer is unchanged.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

No, a debtor can only arrest a ship as set out Sections 20(2) and 21(4) of the Senior Courts Act, 1981.

8. What is the position as regards sister ships and ships in associated ownership?

A sister ship can be arrested provided that:-
i) the claim arises in connection with a ship; and
ii) the person who would be liable on the claim if sued personally was the owner or the (demise) charterer or in possession of the ship at the time the cause of action arose; and
iii) at the time when the claim form is issued the person who would be liable on the claim if sued personally, is the beneficial owner of all the shares in the sister ship to be arrested.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Generally, a bareboat charter entitles the charterer to take over full control of the vessel by engaging its own master and crew and by fitting a vessel with all necessary equipment to make it seaworthy. Such a charter is otherwise referred to as a charter by demise. A claim form therefore, can only be issued and the ship arrested if the ownership remains unchanged and the demise charterer is unchanged between the date of the cause of action and the date the claim form is issued, unless the claim gives rise to a maritime lien.
However, if the ship is on time charter then in these circumstances a ship can only be arrested in respect of a claim which gives rise to a maritime lien.
A maritime claim without a maritime lien cannot be claimed by arresting the ship if the claim is against the time charterer only and not against the owner of the ship irrespective of whether or not the ship has changed ownership from the date the cause of action arose at the time of her arrest.

10. Do your Courts require counter-security in order to arrest a ship?

No security is required to arrest a ship. However, an undertaking must be given by the advocate to pay the Admiralty Marshal's fees and any expenses incurred by him in respect of the arrest of the ship, the care and custody of it while under arrest and the release or endeavors to release it.
The undertaking is given by the advocates acting for the arresting party.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. This is provided for under Section 21(3) of the Senior Courts Act, 1981 which is applicable in Kenya.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

In one day, the law firm is able to draft and file the pleadings seeking orders of warrant of arrest of a ship as well as carry out the search to establish ownership and that no caution has been recorded at the registry against arrest of the ship.

14. Do you need to provide a POA or any other documents of the claim to the Court?

No.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The advocate acting for the arresting party or the arresting party is required to file an application for arrest and a declaration in support of application for warrant of arrest. This declaration contains the specific details of the nature of the claim that has not been satisfied, the name of the ship, her port of registry, the total amount sought, details of the parties and ownership of the ship. The Undertaking to the Admiralty Marshal is also attached to the application.
These documents may be filed electronically and they do not require notarization or apostille.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes because the ship is within the limits of the port at the anchor or alongside

17. What is the procedure to release a ship from arrest?

Once an application for release of the ship is filed together with the consent of the arresting party and reasonable security is tendered a ship may be release. The party against whom the claim is filed is also required to pay any costs incurred in releasing the ship as well as the Admiralty Marshal's expenses, if any.
The court will order release of the ship once the consent of the arresting party is given.
Where there is another person, who has a right in rem against an already arrested ship, that party may file a caution against the release at the Admiralty Registry to prevent it from being released without its consent.
There remains a right to re-arrest if the security is insufficient. The security cannot exceed the value of the ship at the time the ship was initially arrested.

18. What type of security needs to be placed for the release?

Reasonable security must be provided for a ship to be released. It is an amount sufficient to cover the arresting officer's claim, together with interest and costs. However, the security cannot exceed the value of the ship arrested.
The security is in form of a bank guarantee issued by the bank, a letter of undertaking given by the bank, a payment into the court's account, or a bond paid to court.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes.

21. How long does it take to release the ship?

A ship is released immediately the arresting party consents to its release.

22. Is there a procedure to contest the arrest?

Yes.
The procedure of contesting an arrest is provided by Part II of the English Civil Procedure Rules where the party contests the jurisdiction of the court to try the claim or where a party argues that the court should not exercise jurisdiction.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Full trial takes 2 to 3 years.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. They acknowledge wrongful arrest and award damages where the action was brought with malice or gross negligence.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes it is possible where there is lack of security and there is a risk that the ships condition and value will continue to deteriorate over time.
The sale is conducted after being advertised and sealed bids received through the court. The ship is sold to the highest bidder.
The proceeds of the sale are retained in an escrow account opened in the name of the Admiralty Marshal until the case is heard and determined and the proceeds are then paid out in the order of priorities.

**Benjamin Musau* *is the Managing Partner of B M Musau & Co., Advocates, a position he has held since 1999. His work encompasses tax legal, regulatory reforms, county government law and reform, reduction of administrative burdens, the structure of business entities, joint ventures, acquisitions, banking, foreign investment, corporate and commercial law, complex litigation and alternative dispute resolution (mediation, negotiations and arbitration.*

SHIP ARREST IN *KUWAIT*

*By Omar N. Omar**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
www.tamimi.com
Khaled Bin Al Waleed Street, Sharq , Al Dhow Tower,
16th Floor , PO Box 29551, Safat 13156 , Kuwait City
Tel: +96522966420
Fax: +96522966424

1. Please give an overview of ship arrest practice in your country.

The Kuwaiti Maritime Code regulates the conservatory arrest of ships. The arrest application is submitted to the Court of First Instance (Summary Judge dealing with urgent matters). The Court normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is proven based on the face of things. The arrest order may be challenged but this procedure is usually complex and lengthy.

2. Which International Convention applies to arrest of ships in your country?

Kuwait is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

Ships could be arrested in Kuwait in the context of either a precautionary seizure procedure or an enforcement procedure commenced against her. The main difference between both procedures is that the applicant is not required to have an execution deed against the ship in order to commence precautionary arrest proceedings against the ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

There are no alternatives for the arrest of ships in Kuwait as the Maritime Code that regulates the arrest of ships prevents the applicant from relying on other laws in Kuwait.

5. For which types of claims can you arrest a ship?

In order to arrest a vessel in the Kuwaiti territorial waters the creditor must have a maritime debt against the ship. Article 73 of the Kuwaiti Maritime Code defines “maritime debts” as a debt arising from the following:

a. Damage caused by the vessel by reason of a collision or otherwise.
b. Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.
c. Assistance and salvage.
d. Contracts relating to the use or exploitation of the vessel under a charterparty or otherwise.
e. Contracts relating to the carriage of goods under a charterparty, bill of lading, or other documents.
f. Loss of or damage to goods or chattels being carried on board the vessel.
g. General average.
h. Towage or pilotage of the vessel.
i. Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.
j. Construction, repair or fitting out of the vessel, and costs of it being in dock.
k. Wages of the master, officers and crew.
l. Sums spent by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.

m. A dispute as to the ownership of the vessel.
n. A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.
o. Maritime mortgages.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Kuwaiti territorial waters can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

The ship can be arrested in the Kuwaiti territorial waters if the claimant successfully proves that he has a maritime debt against the vessel.

8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Kuwait is possible for any of the maritime debts listed under question 5 above with the exception of debts arising out of a dispute as to the ownership or co-ownership or possession of the vessel or mortgage on the vessel (See question 5(m), (n) and (o) above).
Arresting ships in associated ownership is also possible if the debt is related to the ship. Regarding the arrest of associated ships, there is a great degree of uncertainty as, for the arrest to be successful, we need to prove to the judge the close link between the entity owning the ship that incurred the debt and the entity owning the associated ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Kuwait Maritime Code gives the creditor of the charterer who has control over the nautical navigation of the ship the right to arrest the ship for a debt resulting from the charterer's actions. In addition, the creditor has the right to arrest any other ship owned by the charterer.

10. Do your Courts require counter-security in order to arrest a ship?

No counter-security is needed to arrest a ship in Kuwait.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a vessel for a maritime claim and the arrest of vessel for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Kuwait did not ratify any of the international conventions related to maritime liens. The Kuwaiti Maritime Code recognizes maritime liens. In fact, the Kuwaiti Maritime Trade law has listed the maritime liens in Article 47 as follows:

a. Judicial expenses that were spent to maintain the Vessel, sell it, distribute its price, cargo and port charges as well as other charges, public taxes of the same kind, and charges of pilotage and compensations for the damage that caused to the installations of the ports, docks and navigation routes, and expenses for removing navigation obstacles caused by the Vessel as well as expenses of sentry duty and maintenance since the entry of the Vessel to the last port.
b. Debts resulting from the employment contract of the captain, sailors and others relating to the Vessel with an employment contract.
c. Monies due for assistance and salvage, and the share of the Vessel in general marine average.
d. Compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions.
e. Debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the Vessel within the scope of his lawful powers for an actual

requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the Vessel, or whether the debt is due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Kuwait, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Kuwaiti Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Kuwait is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Kuwait prior to submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The documentation supporting the claim must be attached to the application and electronic filing is not available. As mentioned under question 14 above, if these documents are in foreign language they must be translated into Arabic language. Only official documents must be legalised up to the Kuwait Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Kuwait.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

There is uncertainty in this area of law especially where the jurisdiction is given to a foreign court and not arbitral tribunal. Therefore, and if jurisdiction is given to an arbitral tribunal, we recommend our clients to commence arbitration within the two weeks period (as highlighted under question 23 below) and request from the court the stay of the proceedings until an arbitral award is issued. However, if jurisdiction is given to a foreign court, we may argue in court that Kuwaiti courts have jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship must take the form of a bank guarantee issued by a local first class bank covering the value against which the vessel is arrested.

19. Does security need to cover interest and costs?

The security should cover the claimed amount in the arrest application.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No they are not.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file a grievance before the Court of First Instance who issued the arrest order. Upon hearing the grievance, the Court may make an order revoking, confirming or modifying the arrest order and such judgment shall be enforceable through the normal channels. The judgment issued shall be appealable through normal channels.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

According the Kuwaiti Procedures law the applicant must, within eight day at the most from the date of the service of the arrest order, bring a claim before the court for the confirmation of his right and validity of the arrest, failing which the arrest shall be declared null and void.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. The claim of wrongful arrest will succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Potentially yes depending on the type of company.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Such sale could be authorized.

In 2008 **Omar joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries.*
Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.
Omar is an author of the UAE Vessel Registration and Mortgage Section in the Kluwer International Maritime Law Handbook. He is currently heading the EMAC team to establish the first Maritime Arbitration Centre in the UAE and the region.

SHIP ARREST IN *LATVIA*

*By Edward Kuznetsov**
MARINE LEGAL BUREAU
ek@mlb.lv / office@mlb.lv
www.mlb.lv
8 Hospitalu street, office 50
Riga, Latvia, LV-1013
Tel: +371-67-399985
Fax: +371-29-271166

1. Please give an overview of ship arrest practice in your country.

In Latvia, a claimant is entitled to arrest the vessel to secure his claim before claim on merits is brought.. Latvian Maritime Code (hereinafter – LMC) gives definition of arrest as "any detention of a ship or prohibition of its relocation in accordance with a court adjudication in order to secure maritime claim. Arrest does not mean attachment of a ship in order to implement a court judgment or use of other compulsory means, including the detention of a ship in accordance with administrative procedures, upon implementation of state control of ports and supervision of the navigation regime of Latvian waters".
Petitions to arrest the vessel are heard by the regional courts of common jurisdiction. Law does not determine minimum amount of claim enabling ship arrest. Court tax for debtor's asset arrest before bringing claim on merits is 0.5% from the claimed amount. Language of hearing is Latvian and all documentation must be presented to the court in Latvian. Ruling to arrest the vessel is issued by a sole judge on ex partie basis. If the claim is secured by arrest of the vessel, the court gives out a copy of corresponding decision to the claimant with an inscription that the copy is given out for detention of the vessel in the port. Appeal to the ruling cannot suspend the enforcement of the ruling. When making the decision on the question of arrest of the vessel the court takes into account prima facie formal legal basis.

2. Which International Convention applies to arrest of ships in your country?

Latvia is a party of the Ship Arrest Convention 1999. Definitions of maritime claims are listed in the LMC in conformity with Article 1 of the Ship Arrest Convention 1999. But the Ship Arrest Convention 1952 is also in force. These days in Latvia it is possible to apply to provisions of both Ship Arrest Conventions depending on the circumstances.

3. Is there any other way to arrest a ship in your jurisdiction?

As per LMC and local Civil Process Code provisions arrest of any ship is allowed if a maritime claim exists in relation to this ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No, Latvian legal system does not recognize saisie conservatoire or freezing order.

5. For which types of claims can you arrest a ship?

A ship can be arrested to secure a maritime claim. Types of maritime claims are listed in the LMC in conformity with Article 1 of the Ship Arrest Convention 1999.

6. Can you arrest a ship irrespective of her flag?

Provisions of the LMC apply to all ships located in waters under Latvian jurisdiction with no irrespective to the flag the vessel is flying. Thus, a ship flying any flag can be arrested in Latvia.

7. Can you arrest a ship irrespective of the debtor?

The arrest of any ship is allowed if in relation to the ship one of the following conditions is in effect:

- the person who owned the ship at the time when the maritime claim arose is liable for the claim and is the ship owner at the time of arrest of the ship;
- the person who was the bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or ship owner at the time of arrest of the ship;
- the claim arises from a mortgage or other similar type of encumbrance on a ship;
- the claim relates to the ownership or possession rights of the ship; or
- the claim is directed against the ship owner, bareboat charterer or ship's operator and this claim is secured by maritime lien. Any other ship or ships that at the time of arrest are owned by such persons may also be arrested as are liable regarding a maritime claim and who at the time the claim arose were:
- The owner of the ship in relation to which the maritime claim arose; or
- The bareboat, time or voyage charterer of such ship.

8. What is the position as regards sister ships and ships in associate ownership?

LMC states that any other ship or ships can also be arrested if at the time of arrest they are owned by such persons who were liable for a maritime claim and at the time the claim arose were:

1) the owner of the ship in relation to which the maritime claim arose; or
2) the bare boat, time or voyage charterer of such ship.

This provision of LMC does not relate to claims arising from ownership or possession rights of the ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

A ship can be arrested if the person who was the bareboat charterer of the ship at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or ship owner at the time of arrest of the ship.

10. Do your Courts require counter – security in order to arrest a ship?

As per Latvian law the court could require the arresting party to put up security for a wrongful arrest, but in practice it is required very rarely.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is a difference - if there is a maritime lien, a court action may be taken directly against the vessel.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Latvia recognizes maritime liens although is not a member of any appropriate Conventions. Claims secured by maritime liens are listed in the LMC in full accordance with Article 4 of the Geneva Convention 1993.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to you law firm?

As it was mentioned above the language of the court hearings in Latvia is Latvian. Thus, translation of supporting documents is required. To save time on initial stage we usually ask our principals to provide us with all appropriate documents as soon as possible to start translation by sworn translators. It usually takes 2-3 days to translate depending on the quantity of documents. The court's resolution may be issued maximum within seven days after petition of the plaintiff and all supporting documents are delivered to the court.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Besides the petition and supporting documents, a relevant original Power of Attorney (POA) (notarized and legalized) to local lawyers is required. Copies of attached documents are sufficient at stage of arrest.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

At the stage of arrest in order to secure a possible claim on merits court may accept copies of documents. Translation of the documents must be prepared. Latvian courts accept electronically filed documents if opposite party does not object against them. POA should be certified by a public notary and covered by Apostle in accordance with terms of the Hague Convention of 5th November 1961.

16. Will your Court accept jurisdiction over the substantive claim once a vessel has been arrested?

LMC states that if a vessel is arrested in Latvia in order to secure a possible claim on merits, Latvian courts hear the case if only the parties have not agreed about another country court's jurisdiction or arbitration court.

17. What is the procedure to release a ship from arrest?

Lifting arrest is a long procedure taking into account that the order to release the vessel must be issued by the judge in the court trial, with participation of both plaintiff and defendant. In accordance with the law, trial to lift arrest must be held within 30 days after claimant delivers petition that he is satisfied with the defendant and asks to lift arrest. Practically such trial can be held during 3-5 days after petition to release the vessel is delivered to the court.

18. What type of security needs to be placed for the release?

Security to release the vessel from arrest is known to Latvian legislation and is accepted by judges. Different types of security can be accepted: P&I Club's letter of undertaking, deposit to the court bailiff's account, bank guarantee etc.

19. Does security need to cover interest and costs?

In general yes, security needs to cover interest and costs if they are reasonable.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

It is to the discretion of the court, but in principle LOUs are accepted.

21. How long does it take to release the ship?

Sea answer to question 17 above.

22. Is there a procedure to contest the arrest?

Legality and validity of arrest may be contested by a participant in the matter. On the basis of an application court may replace arrest with other means of security or revoke it.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

If arrest ruling is obtained the court obliges the claimant to bring suit on merits during certain period of time, usually – one month. But claimant may ask the court about other time to bring suit on merits (two or three months). The court can accept such request taking into account concrete circumstances of the case.

24. Do the Courts of your country acknowledge wrongful arrest?

Defendant has a right to claim the plaintiff for damages having arisen in connection with the claim security if the claim, which has been sued against him, was rejected by court. Claim for a wrongful arrest must be brought in the court in a common way.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The piercing and lifting of the corporate veil is not acknowledged in Latvian legal system.

26. Is it possible to have a ship sold pendent lite; if so how long does it take?

There is no practice in Latvia regarding use of pendent lite. But in theory it is possible.

**Edward* *is CEO of law firm Marine Legal Bureau (MLB). Before MLB he spent several years as managing partner of another law firm in Riga, manager of Legal Dept. of Lloyd's agency of local correspondent for P&I Clubs in Latvia, before as manager of private Russian ship owning company.*
In May 2008 Edward was key person who hosted the 5th Shiparrested.com members meeting in Riga.
He is active arbitrator of Maritime Arbitration Commission (MAC) of the ICC of Russia (Moscow), Full Member-arbitrator of the GMAA (Hamburg), arbitrator in the EMAC (Dubai) and Supporting Member of the LMAA.
As a lawyer Edward has experience in resolution of a wide range of both dry and wet shipping matters in courts and in arbitrations in Latvia, Russia, Germany and UK.
Several years Edward has been selected as being among the world's pre-eminent shipping and maritime lawyers (Who's Who Legal) and was listed in the publication «Legal 500 Europe, Middle East and Africa (EMEA)».
In May 2013 during 10th Shiparrested.com Conference in Marrakech (Morocco) Edward was called as the Best Member of Shiparrested.com of the decade 2003-2013.

SHIP ARREST IN *LEBANON*

*By Jean Baroudi (Managing Partner)**
BAROUDI & ASSOCIATES
jean.baroudi@baroudilegal.com
www.baroudilegal.com
Achrafieh 5585 Building, P. Gemayel Avenue, Beirut
Tel: + 961 1 428777/8
Fax: + 961 1 423582

1. Please give an overview of ship arrest practice in your country.

Domestic legislation does not regulate the conservatory arrest of ships in specific. Ship arrest in Lebanese waters is regulated by the Code of Civil Procedure which grants any creditor the right to apply to the Judge of Execution Bureau for a conservatory seizure of his debtor's assets to obtain security for his claim (Article 866 of the Code of Civil Procedure). The Judge normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is proven based on the face of things. The arrest order may be challenged within no later than five days from date of its service. The procedure of challenging the arrest order is usually complex and lengthy. Therefore, the quickest way to arrange for the lifting of a ship arrest is to put up a bank guarantee for the value of the arrest. The guarantee should be issued by a local bank. A Club Letter of Undertaking is not considered satisfactory security for the Judge to lift a vessel's arrest.

2. Which International Convention applies to arrest of ships in your country?

Lebanon is not a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

The ship could be arrested in the context of a procedure for enforcement commenced against her owner in accordance with the provisions of articles 73 and what follows of the Lebanese Merchant Shipping Law. The party applying for enforcement against the ship should hold a deed ascertaining his claim against the ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The saisie-conservatoire is the procedure described under question 1 above while the procedure of enforcement against a ship is described under 3 above. In certain matters of urgent character, the Judge of Urgent Matters may order the seizure of the vessel but usually for a specific period of time.

5. For which types of claims can you arrest a ship?

The law stipulates that, in general, a ship can be arrested for any claim which the claimant has against the owner of the ship or the ship, provided the claim is proven, on the face of things, to be serious and grounded. The Judge dealing with conservative attachments normally considers the application for arrest of a vessel on a prima facie basis only and the arrest order will be rendered ex-parte.

6. Can you arrest a ship irrespective of her flag?

Lebanese Law does not differentiate between vessels flying Lebanese and foreign flags. Therefore, a ship may be arrested by an unpaid creditor irrespective of the ship's flag.

7. Can you arrest a ship irrespective of the debtor?

In general, a ship can be arrested for any claim which the claimant has against her current owner provided the claim is proven, on the face of things, to be serious and grounded. However, where the

claim is secured by a maritime lien (See question no. 12) a recourse against the ship is accepted regardless of her owner's identity.

8. What is the position as regards sister ships and ships in associated ownership?

Under Lebanese Law, the application of arrest should be directed against the person or party responsible for the debt. With the exception of cases where the claimant has a maritime lien over the ship, it is not possible to apply for the arrest of the ship unless her owner is responsible for the claimed debt.
The arrest of a sister ship is generally possible providing that they are both owned by the same party who is a debtor of the arresting party. The arrest of associated ships may succeed (although chances of success are generally minimal) only if it is possible to prove the close links between the two entities while noting that (if the arrest succeeds) it is not certain that the Judge will maintain it in case of a challenge by the actual registered owner of the arrested vessel. Hence, there is a great degree of uncertainty when applying for the arrest of an associated vessel.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant the creditor a maritime lien as described in the Merchant Shipping Law (see response to question no. 12).

10. Do your Courts require counter-security in order to arrest a ship?

The Judge has by law discretion in making the issuance of the arrest order conditional upon the provision of a counter-security by the claimant. However, this discretion is rarely put in effect.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No. The arrest procedure is the same.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. The Merchant Shipping Act defines and regulates maritime liens (Articles 48-61). Article 48 of the above-mentioned Act defines maritime liens as being a claim for:

a. Legal costs and expenses incurred in the common interest of the creditors; port duties and taxes due on the ship;
b. Claims arising out of the contract of engagement of the master, crew and other persons hired on board;
c. Remuneration for assistance and salvage and the vessel's contribution to general average;
d. Indemnities for collision or other accident of navigation; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;
e. Claims resulting from contracts entered into or acts done by the master outside the port of registry by virtue of his legal powers for the actual maintenance of the vessel or the continuance of the voyage;
f. Damages due to charterers; and
g. Insurance premiums for policies covering the hull, fittings and gear of a vessel due for the last voyage or the last insured period and up to a maximum period of one year.

Lebanon is party to the International Convention For the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages of 1926 and claims a, b, c, d and e are identical to those listed in Article 2 of the Convention.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

2 days if all documentation is in order and documents issued in foreign language are translated.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA must be provided on submission of the application. The POA must be notarized and legalized by the Lebanese consulate at the place of issuance. The judge may in his discretion accept a POA that does not meet these requirements. The documents supporting the claim must be filed with the arrest application. If the documentation is in a foreign language, it is advisable to submit an Arabic translation thereof.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The law requires submission of the supporting documents in original copies. The judge however has discretion in waiving this requirement. The documents need not be notarized or apostilled (save the POA as highlighted above).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No. The substantive action should be brought before a Court/Arbitration Panel that is competent to deal with the merits of the claim. Such action must be commenced within no later than five days from the date of the arrest order.

17. What is the procedure to release a ship from arrest?

The procedure entails submission of an application for the lifting of the arrest along with suitable security. The security is deposited with the judge who issued the arrest order (and not with the claimant).

18. What type of security needs to be placed for the release?

Article 873 CCP provides that the Head of the Execution Bureau decides the type and amount of such security. But usually, such security is under the form of a bank guarantee issued by a local bank or cash deposit

19. Does security need to cover interest and costs?

Security should be for an amount equal to the arrest amount. This amount usually covers the principal amount of the claim plus 10% for costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are not regarded sufficient by the judge dealing with the arrest.

21. How long does it take to release the ship?

Depending on the time it gets to arrange issuance of the security (normally, local banks need 2-3 days from the date of receipt of the instructions to issue the bank guarantee). The judge would usually issue the order lifting the arrest on the day of submission of the security or the next day.

22. Is there a procedure to contest the arrest?

Yes, the arrest may be contested within no later than 5 days from date of service of the arrest order. The success of the challenge is conditional upon a number of legal requirements.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claimants must, within no later than five days from the date of the arrest order, take legal action on the merits. Failure to file such action will result in the cancellation of the arrest order.

24. Do the Courts of your country acknowledge wrongful arrest?

There are no legal precedents on the liability for the wrongful arrest of a ship. However, under the general principles of civil law, a claim for wrongful arrest would succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest. The damages that could be awarded for a wrongful arrest would cover all direct losses sustained by the shipowner as a result of the arrest (e.g. port dues and associated costs, crew wages, etc…) and possible indirect losses (including profit loss).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Lebanese Judges tend not to allow the piercing of the corporate veil. Lebanese Courts have allowed this only in very rare instances where proof of the fictitious character of the company is provided by the arresting party.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Such a sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

***Jean Baroudi** graduated from St. Joseph University Faculty of Law in 1992 and obtained a Master's Degree from Southampton University in 1994. He is currently the Managing Partner of Baroudi & Associates, one of the oldest and most prominent law practices in Lebanon founded in 1912. The firm is constantly recommended by international legal directories such as Chambers, Legal500 and IFLR1000 and specializes in various areas of law. The firm acts as Lebanon correspondent for most P&I Clubs.*

SHIP ARREST IN *LIBYA*

Taher Shtewi
Shtewi Legal & PandI Services
207 Amhamed El Magrif Street
Tripoli, Libya
Mobile: + 218 91 2141080
Tel: + 218 21 3341588
Fax: + 218 21 3341589

1. Please give an overview of ship arrest practice in your country.

Arresting ships in Libya is done in accordance with the Libyan Procedures Law and Libyan Marine Law articles which provide that anybody owed a debt by the ship or her owners may lodge an application to the court. In this application, the creditor should indicate the merits of the case with all supported documents attached and translated into Arabic.
A legalized power of attorney by the Libyan Embassy must be prepared by the party who is applying for an arrest court order.

2. Which International Convention applies to arrest of ships in your country?

Libya did not ratify any International Convention, and only local laws will apply to the arresting of ships.

3. Is there any other way to arrest a ship in your jurisdiction?

The Libyan government has the authority to arrest, by an administrative order, any ship that did not settle her debts and prevent the ship from sailing until the debts have been paid.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No, the option will just assist these government authorities to collect what is owed without involving the courts, which may take a prolonged amount of time.

5. For which types of claims can you arrest a ship?

The ship can be arrested against any marine debt incurred for the same ship or for another ship under the same ownership.

6. Can you arrest a ship irrespective of her flag?

The arrest procedures are applicable irrespective of the flag of the ship.

7. Can you arrest a ship irrespective of the debtor?

The arrest procedures are applicable irrespective of the Debtor's residency or nationality. However, article (3) of Libyan Procedures law which provides the following:
Libyan courts will have jurisdiction in cases against foreign citizens in the following circumstances:

1. If he is resident in Libya, or has acquired an agent who is authorized to represent him in front of the courts, or he accepts the Libyan jurisdiction.
2. If the case is concerning assets in Libya, the inheritance of a Libyan citizen, a legacy commenced in Libya, a liquidation announced in Libya, or the case arises from a contract performed on Libya or executed in Libya or stipulated to be executed in Libya or due to action happened in Libya.
3. If the case is for security procedures to be executed in Libya, or has a connection with a current case pending in Libyan courts or with things concerning the Libyan jurisdiction.
4. All cases where foreign courts have jurisdiction in cases taken against Libyan citizens, using the doctrine of the same treatment.

Due to above provision, we have found that it will be very difficult to persuade a Libyan judge to issue an arrest order for a debit arisen outside Libyan between two foreigners. Should the judge agree to issue an arrest order, he will then set a hearing to determine whether the arrest was proper and to prove the debt. The hearing would be held in accordance with Libyan law.

8. What is the position as regards sister ships and ships in associated ownership?

The legal procedures mentioned above will apply also the sister-ship and a ship associated with the same ship-owners.

9. What is the position as regards Bareboat and Time-Chartered vessels?

These arrest procedures are only apply to the owners of the vessel as per article No. 516 of Libyan procedures law (providing that the creditor arrange the security arrest on the debtor's assets).

10. Do your Courts require counter-security in order to arrest a ship?

No counter security required.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference between the maritime claim and the maritime lien in respect to arresting a ship. Both are subject to the same procedures.

12. Does your country recognize maritime liens?

Libya recognizes maritime liens, as per articles 196 & 197 of the Libyan Marine Law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

The required time to arrest a ship starting from the moment of the referred documents arrival to our law firm is two days to prepare the application and the supporting documents. The judge may issue the arrest order in two days, but this can take up to seven days.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A legalized power of attorney by Libyan Embassy is very essential to the acceptance of the application by the court.

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

The required documents will be the power of the attorney; the claim's supporting documents translated into Arabic Language and if the supporting documents were issued outside Libya then these documents should be legalized by Libyan Embassy.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Libyan courts accept jurisdiction over the substantive claim once the vessel has been arrested.

17. What is the procedure to release a ship from arrest?

The release of a ship from arrest may be done by any of the following:

- An application of release of a ship from arrest, submitted by the defendant to the Head of the Court, where an amicable settlement has been reached.
- A cash deposit to the court cashier, submitted by the owners of the arrested ship.
- A bank guarantee, submitted to the Claimants or the Judge of the head court.
- A repudiation of the arrest order by court judgement.

18. What type of security needs to be placed for the release?

- Cash payment to court cashier in the claim amount estimated by the judge in the arrest order.
- Bank guarantee or club letter of undertaking.

19. Does security need to cover interest and costs?

The security must cover the estimated debit stated by the judge when he issued the arrest order.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are not acceptable at all, unless claimants will accept them in writing in front of the court.

21. How long does it take to release the ship?

It usually takes about one to two days to release a ship from arrest, starting from the date of submitting the application of release to the judge who issued the arrest order.

22. Is there a procedure to contest the arrest?

The owners of the arrest ship can appeal the arrest order within three days from the date of notification. The judgment of the Appeal court will be final and cannot be appealable to the High Court.

23. What period of time will be granted by the Courts for the claimants in order to take legal action on the merits?

The Libyan law gives the claimant 8 days to notify the arrest order and send a writ of summons to the owners of arrested ship indicating the date of the court hearing.

24. Do the Courts of your country acknowledge wrongful arrest?

The claim for wrongful arrest is allowed as a counter claim in the same case of the arrest or to commence a separate claim.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Courts will look to the company's constitution to see whether the shareholders will be responsible personally or whether the claimant is limited to the company's capital.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Owners are not able to sell the ship while it is still under arrest unless the court gives permission or the claimants reach an agreement with owners, with approval from the court.

SHIP ARREST IN *LITHUANIA* (QUESTIONS 1 TO 9)

*Regina Derkintytė-Kaupienė**
AVERUS
regina.derkintyte@averus.lt
www.averus.lt
Bokštų g. 12, LT-92125 Klaipėda
Tel: +370 46 246630
Fax: +370 46 246545

(QUESTIONS 10 TO 26)

*Vytas Ramanauskas, Partner**
RAMANAUSKAS IR PARTNERIAI Law Firm
v.ramanauskas@rplaw.lt
www.rplaw.lt
S. Daukanto 9, LT-92235 Klaipeda, Lithuania
Tel: +370 46 303430
Fax: +370 46 312393

1. Please give an overview of ship arrest practice in your country.

The claimant is entitled to arrest the ship to secure his claim before claim on merits is brought. Also, the ship which is at Klaipeda state port (the only one seaport in Lithuania) can be arrested in order to enforce already adopted court judgment, if the debt or any other amounts are already adjudged from the ship owner. Applications to arrest the ship are heard by Klaipeda regional or Klaipeda district court (depends on the amount of the claim), if the case on its merits will be heard at these courts and by Vilnius district court, if the claim on its merits will be heard in a court of arbitration or in a foreign State court. The law does not determine minimum amount of claim enabling ship arrest, the court is deciding according to his own evaluation. Language of hearing is Lithuanian and all documentation must be presented to the court in Lithuanian.
There are no specialized maritime courts in Lithuania, applications are heard by the courts of common jurisdiction, however ship arrest in Lithuania is normally handled speedily - within 1-2 working days as of submitting an application to arrest the ship. Deciding whether to arrest the vessel the judge takes into account prima facie formal legal basis. As soon as the Ruling is adopted the court sends the copy of the Ruling to the Port Master directly (by fax) ensuring urgency in case the ship is ready to leave or leaving the port. Appeal procedures does not suspend enforcement of the Ruling.

2. Which International Convention applies to arrest of ships in your country?

— The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, Brussels, 1952 (1952 Arrest Convention);
— The International Convention on Maritime Liens and Mortgages, Geneva 1993.

3. Is there any other way to arrest a ship in your jurisdiction?

A ship that is not flying the flag of the State member to the 1952 Arrest Convention may be arrested for any type of claim in accordance with the Code of Civil Proceedings.
A ship may be arrested by the court bailiff in the execution process as well (decisions adopted by foreign courts or arbitration institutions shall be acknowledged by the Court of Appeal of Lithuania beforehand).
Port authorities are also entitled to detain the ship in case of unpaid port charges, fines, damages made to port infrastructure, other related claims.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No.

5. For which types of claims can you arrest a ship?

A ship flying the State flag of the Member State can be arrested to secure a maritime claim as specified in the 1952 Arrest Convention (Article 1(1)).

6. Can you arrest a ship irrespective of her flag?

Yes. A ship flying the State flag of the Member State of the 1952 Convention can be arrested only for the maritime claims enumerated in the Article 1 of the Convention. Other ships can be arrested for any type of claims under provisions of the Code of Civil Proceedings.

7. Can you arrest a ship irrespective of the debtor?

Yes, subject to Art. 3 of the 1952 Arrest Convention.

8. What is the position as regards sister ships and ships in associated ownership?

Arrest of a sister ship is permitted, except in respect of the claims mentioned in Article 1(1), o-q of the 1952 Arrest Convention. Ships in associated ownership can be arrested as well, if the claimant succeeds to prove that they are beneficially owned by the same person.

9. What is the position as regards Bareboat and Time-Chartered vessels?

When in the case of a bareboat charter the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the bareboat charterer, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim.
These provisions apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

***Regina Derkintyte-Kaupiene** is a partner of AVERUS since 2010 and a leading individual in shipping and transport practice in Lithuania. Regina is known as "top maritime lawyer" (The Legal 500 (2017)) for a number of years. Her core specialisations are transport and shipping, dispute resolution and arbitration.*
Regina Derkintyte-Kaupiene is known not only as a shipping law practitioner but also as an active participant of the academic society. Regina is the co-author of the book International Maritime Law, highly appreciated by students and lecturers of Lithuanian universities. Having a solid academic background and extensive practice in the field, she is often invited to deliver lectures in universities and colleges; she is also a prominent speaker in various conferences and seminars.
Regina Derkintyte-Kaupiene is also included in the list of recommended arbitrators by the most reputable arbitration institutions in Lithuania – the Vilnius Court of Commercial Arbitration – and by the Riga District Arbitration Court.
Regina holds a Master's degree in Law from Mykolas Romeris University, a Master's degree in Economics and Business Management from Vilnius Gediminas Technical University and LL.M. (with distinction) in International Maritime Law awarded by International Maritime Law Institute (Malta).

10. Do your Courts require counter-security in order to arrest a ship?

No counter security is required before arresting the ship. The court on request of the ship's interest may order the arrestor to provide counter-security within certain period of time. If this is not complied with, the arrest will be lifted.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In case of maritime claim it is allowed to arrest either the ship in respect of which the maritime claim arose or any sister ship. The subject of the maritime lien is the offending ship only. It can be enforced against the ship regardless of who was in control or possession of the ship when the events which gave rise to maritime lien occurred. Maritime lien is not enforceable against a sister ship. Otherwise, there is no difference.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Lithuania does recognise maritime liens as per the International Convention on Maritime Liens and Mortgages, 1993.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Normally it takes 2-3 working days. In very urgent cases it might be possible to arrest within the same day on which we receive the instruction. The Courts are closed on Saturdays, Sundays and National Holidays. No ship arrest is possible then.

14. Do you need to provide a POA or any other documents of the claim to the Court?

We require a written legal service agreement that needs to be signed by the Client. Faxed or emailed copy of the legal service agreement is sufficient to make a ship arrest application on behalf of the Client. The original copy of the legal representation agreement must be presented if requested by the Court later. No notarisation or legalization of the legal representation agreement is required. Basic claim documentation evidencing existence of a maritime claim in favour of the arrestor is sufficient.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All documents can be filed electronically for the purpose of ship arrest. Only original legal service agreement should be available if so requested by the Court. A ship arrest application normally should be supported by:

- A copy of legal service agreement between the lawyer and the Client;
- A copy of an extract from the Companies' Register of the Client's State, confirming that the Client exists as a legal entity;
- A basic Claim documents that will depend on the type of claim;
- Copy of an agreement containing the arbitration clause in case that the arrest is for obtaining security in respect of maritime claim that is to be pursued in an Arbitration or an agreement to litigate in a foreign State Court, or an evidence that such proceedings have been commenced.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, the Lithuanian courts accept jurisdiction over the substantive claim once the vessel has been arrested, subject that there is no agreement between the relevant parties to litigate in another jurisdiction or to submit dispute to arbitration.

17. What is the procedure to release a ship from arrest?

The Parties should make a written request to the Court to release the ship, in case they reach an agreement. Otherwise an adequate security needs to be deposited to the Court together with request to release the ship from arrest.

18. What type of security needs to be placed for the release?

Any type of security if the Arrestor agrees. Cash payment to the court's account or Lithuanian Bank's guarantee if there is no agreement as to type of guarantee.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Not, if the arrestor does not agree with it.

21. How long does it take to release the ship?

One day if there is no dispute regarding type or amount of security.

22. Is there a procedure to contest the arrest?

Yes, but it can take few months.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

14 days in the National Courts and 30 days in arbitration or in a foreign State Court.

24. Do the Courts of your country acknowledge wrongful arrest?

The court may order the Plaintiff to pay damage for wrongful ship's arrest in case if:

- The claim in respect of which the vessel was arrested was rejected;
- In case of misuse of the procedural rights to seek the ship arrest, for example arresting the vessel despite the fact that an adequate security has been provided, submitting to the court knowingly wrong information when seeking a ship arrest etc.

The ship's interest must prove what loss has been suffered due to ship's arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

There have not been relevant cases heard yet.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No.

**Vytas Ramanauskas* *(1963.03.26) is a leading shipping and maritime as well as insurance lawyer of Lithuania. He advices the Clients on various aspects of maritime law and has a vast experience of litigations in the courts and in arbitration. He had few years of a sea-going experience before qualified as a lawyer and then worked as claims insurance manager for a Lithuanian Shipping company. Vytas Ramanauskas also had spent two years with one of London's leading shipping law firms before he set up his private law firm in Klaipeda.*
Vytas Ramanauskas is a Member of the Bar of Lithuania since 2001.
Professional education: 1992 Law Faculty of Vilnius University (LLM);1984 Ship Navigation Department of Klaipeda Marine College.
Languages spoken: Lithuanian, Russian and English.

SHIP ARREST IN *MALAYSIA*

*By Rahayu Abd Ghani, Principal Partner**
RAHAYU PARTNERSHIP – IN ASSOCIATION WITH JTJB
rahayu@jtjb.com
www.rahayupartnership.com
Suite A-17-17 Menara UOA Bangsar
5 Jalan Bangsar Utama 1, 59000 Kuala Lumpur
Tel: + 6(03)22872322
Fax: + 6(03)22877322

1. Please give an overview of ship arrest practice in your country.

A ship may be arrested in Malaysia where the arresting party's claim falls within the admiralty jurisdiction as set out in sections 20 to 24 of the United Kingdom Senior Courts Act 1981 (UK SCA 1981), as incorporated into Malaysian law through Order 70 of the Rules of Court 2012 and the section 24(b) of the Courts of Judicature Act 1964 (CJA 1964). Any party seeking to arrest a vessel must strictly comply with the procedural requirements under Order 70 of the Rules of Court 2012, which govern admiralty proceedings in the Malaysian High Court. Malaysia has a dedicated Admiralty Court located at the High Court of Malaya in Kuala Lumpur for vessels calling at West Malaysian ports, while applications for vessels calling at East Malaysian ports are heard by the High Courts in Sabah and Sarawak. Under section 10 of the Malaysian Arbitration (Amendment) Act 2011, a ship may also be arrested as security for arbitration proceedings or for the satisfaction of an arbitration award, including in cases where the seat of arbitration is outside of Malaysia.

Malaysia has commenced a phased review of its maritime legislative framework under the Malaysian Maritime Law Revision & Reform Committee (MLRRC), with completion targeted by end–2026. A proposed Admiralty Bill is also being prepared to establish a dedicated maritime court. These developments are prospective and do not alter the existing ship arrest regime described above.

2. Which International Convention applies to arrest of ships in your country?

Malaysia is neither a party to the International Convention relating to the Arrest of Seagoing Ships of 1952 nor the International Convention on Arrest of Ships 1999. However, pursuant to section 24(b) of the CJA 1964, the Malaysian High Court is vested with the same jurisdiction as the English High Court. Therefore, the Malaysian High Court applies the UK SCA 1981 of the Arrest of Sea-Going Ships 1952.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No. Why is saisie conservatoire not available under Malaysian admiralty law? Malaysia follows the common law system, and its admiralty jurisdiction is based on the action in rem procedure derived from English law. Unlike civil jurisdictions, Malaysia does not recognise the saisie conservatoire, a preventive measure used in some civil law systems to secure maritime claims before judgement.

5. For which types of claims can you arrest a ship?

Typical maritime claims capable of supporting an arrest fall within the 18 categories of admiralty matters set out in section 24(b) of the CJA 1964, read together with the corresponding provisions of the UK SCA 1981 as adopted into Malaysian practice. These encompass, among others, claims for unpaid seamen's wages, salvage, collision and damage caused by a ship, as well as claims under section 24(b) of the CJA 1964 that give rise to maritime liens.

The claims under section 24(b) of the CJA 1964 are as follows:

a. any claim to the possession or ownership of a ship or to the ownership of any share therein;
b. any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
c. any claim in respect of a mortgage of or charge on a ship or any share therein;
d. any claim for damage received by a ship;
e. any claim for damage done by a ship;
f. any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of:
g. the owners, charterers or persons in possession or control of a ship; or
h. the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,
i. being an act, neglect or default in the investigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
j. any claim for loss of or damage to goods carried on a ship;
k. any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
l. any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section 51 of the Civil Aviation Act 1949, of the law relating to salvage to aircraft and their apparel and cargo);
m. any claim in the nature of towage in respect of a ship or an aircraft;
n. any claim in the nature of pilotage in respect of a ship or an aircraft;
o. any claim in respect of goods and materials supplied to a ship for her operation or maintenance;
p. any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
q. any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
r. any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
s. any claim arising out of an act which is or is claimed to be a general average act;
t. any claim arising out of bottomry;
u. any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

No. A ship may only be arrested where the person who would be liable on the claim in an action in personam was, at the time the cause of action arose, the owner, bareboat charterer, or the person in possession or control of the vessel, and the vessel sought to be arrested – whether the offending ship or a sister ship – must be beneficially owned by the same debtor both at the time the cause of action arose and at the time the arrest is effected. Accordingly, arrest of a vessel held under associated or related corporate ownership, but not beneficially owned by the debtor, is not permitted.

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships but not associated ships. Sister ships are ships that when the action is brought are owned by the same person who was the owner of the ship in connection with which the claim arises at the time when the cause of action arose.

9. What is the position as regards Bareboat and Time-Chartered vessels?

It is possible to arrest bareboat chartered vessels, but not time-chartered vessels. This is because a time-charterer does not possess the legal title, possession, or control of the vessel required to sustain an action in rem, holding only the contractual right to the ship's services. Under Malaysian admiralty law, only vessels that are owned or bareboat chartered by the party liable on the claim are subject to arrest.

10. Do your Courts require counter-security in order to arrest a ship?

No. However, a written undertaking by the arresting party to the Sheriff to pay the fees and expenses of the Sheriff while the arrested ship is under his custody, must be furnished as a pre-condition to execution of the Warrant of Arrest. In addition, a Court deposit of RM 15,000 must be made prior to issuance of the warrant of arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime claims depend on the vessel's ownership. A ship can only be arrested if its owner at the time the cause of action arose remains the owner at the time of arrest. Maritime liens, however, attach to the vessel and may be enforced despite a subsequent change of ownership, allowing a claimant to issue a claim and arrest the ship under the same procedure.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Malaysia recognizes maritime liens pursuant to section 24(b) of the CJA 1964, which incorporates English admiralty principles into municipal law. Such liens attach to the vessel itself and rise within the traditional categories: damage done by a ship, salvage, seamen's wages, master's wages and disbursements, and bottomry. Malaysia has not adopted an international convention that alters these categories.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

A Warrant of Arrest can generally be obtained quickly once all claim documents are in order and the supporting affidavit has been duly affirmed or sworn. Subject to the receipt of all relevant documentation, the application to the court may be filed within a matter of hours. The timing of the actual arrest depends on the availability of local bailiffs in the area where the vessel is located, but in practice, the arrest is typically effected within 24 hours of the warrant being issued.

14. Do you need to provide a POA or any other documents of the claim to the Court?

There is no requirement for a POA to be furnished. However, the claim documents must be furnished. Prior to the arrest, the arrestor should determine whether there is a caveat against arrest in force against the ship in question.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All court documents including the affidavit leading to the arrest can be filed electronically. All relevant documents must be filed with the court before the warrant of arrest can be issued. Essential filings include the writ in rem, statement of claim, affidavit supporting the arrest, and all supporting evidence. A Power of Attorney is not required to instruct local counsel, although it is commonly requested from foreign clients. Domestic documents generally do not require notarization, but any translations must be certified by a Notary Public. Where the deponent resides outside Malaysia, the affidavit must be affirmed before a Notary Public (for Commonwealth countries) or a Consular Officer at the Malaysian Consulate (for non-Commonwealth countries). Certification or apostille is not required, as Malaysia is not a party to the Hague Apostille Convention.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The court's acceptance of jurisdiction will depend on the facts. If the claim arises under a contract that contains a valid exclusive foreign jurisdiction clause, the Malaysian proceedings may be stayed in favour of the nominated foreign court. In other circumstances, the Malaysian courts will generally accept jurisdiction.

17. What is the procedure to release a ship from arrest?

File into Court the release papers i.e. Praecipe for Release and Release Order, and once issued, serve on the Vessel, Marine Department and Immigration.

18. What type of security needs to be placed for the release?

Bail bond, letter of undertaking from a Protection and Indemnity (P&I) Club or a local bank guarantee.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes.

21. How long does it take to release the ship?

Within the day, depending on what time the Release Order is obtained.

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?

Upon arresting the ship and serving the Writ of Summons on the ship, time starts running under the timetable/procedure set down by the Rules of Court 2012 and the claimants can follow the timelines.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, but only where the arrest of ship is carried out in circumstances where there is mala fides or gross negligence (i.e. crassa negligentia) as to imply malice on the part of the arresting party which results in damage to the owner of the arrested property.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. A corporate veil may be lifted if there are special circumstances which indicate the presence of a faced or sham set up with the object of perpetrating fraud or deception.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes, the court may order that a ship be sold while an action is pending, but only where there are sufficient grounds. The court will consider whether the security represented by the vessel is likely to be progressively eroded by ongoing maintenance expenses and port charges if she remains under arrest. Other relevant factors include the vessel's market value, rate of depreciation, any deterioration in condition, expected delay before trial, the quantum of claims compared with the vessel's value, and the timing and practicability of the proposed sale. The sale procedure typically takes several months as it involves obtaining the court's order, serving the owner, and implementing the sale protocol laid down by the court.

***Rahayu Abd Ghani** is the Principal Partner of Rahayu Partnership. The firm is part of the Joseph Tan Jude Benny (JTJB) GlobalNetwork. Rahayu graduated from the University of Newcastle-upon-Tyne with a Bachelor of Laws Honours Degree in 1996 and upon completing her Certificate in Legal Practice and being called to the Malaysian Bar in 1999, Rahayu started her practice in Messrs L.Y.Leong & Partners, Subang Jaya where she gained experience specializing in shipping, admiralty and insurance cases. She has been exposed to a full range of shipping, admiralty and insurance cases both contentious and non-contentious.*
She also handles civil, corporate and commercial cases. Her exposure includes: project financing; ship financing and registration; ship sale agreements and shipbuilding contracts; ship arrests for all types of claim; charter party and bill of lading disputes; marine insurance claims; arbitration; and shipping litigation.

SHIP ARREST IN *MALTA*

*By Dr. Kevin Dingli & Dr. Tonio Grech**
DINGLI & DINGLI LAW FIRM
kevin@dingli.com.mt & tonio@dingli.com.mt
www.dingli.com.mt
18/2 South Street, Valletta VLT 1102, Malta
Tel: (+356) 21236206
Fax: (+356) 21240321

1. Please give an overview of ship arrest practice in your country.

The law on ship arrest in Malta was, until relatively recently, governed by very archaic rules. Suffice it to say that our admiralty jurisdiction was still regulated by British statutes which had long become defunct in their own country of origin, namely the Vice-Admiralty Court Act 1840 and the Admiralty Court Act 1861. These provided very limited heads of jurisdiction 'in rem' on the basis of which a ship could be arrested, and in particular did not regulate the substance of the action in rem. Problems arose in more recent cases connected with bareboat charterers, for which no provision was made.
Furthermore, there was no right of sister ship or of associated ship arrest. All this changed with statutory amendments introduced in 2006, as further fine tuned in 2008. Although not strictly part of this Questionnaire, it ought also to be mentioned that these amendments also radically reformed the system regulating Judicial Sale by Auction of ships, as well as introduced the concept of Court Approved Sales for Ships.

2. Which International Convention applies to arrest of ships in your country?

Malta is not a signatory to the Arrest Conventions of 1952 and 1999. Ships are arrested in Malta by Warrant of Arrest issued on any one of the grounds listed in Article 742B of the Code of Organisation and Civil Procedure giving rise to the in rem jurisdiction of the Maltese Courts. These include all maritime claims recognised under the Convention. The law provides for a precautionary as well as for an executive warrant of arrest. Creditors seeking to arrest a ship in security of a claim which is not yet judicially acknowledged must have recourse to the precautionary warrant. Judgment creditors and other creditors being in possession of an enforceable executive title or of an Authentic Instrument pursuant to the provisions of Regulation (EC) No. 805/2004 (such as a Mortgagee) may immediately proceed to issue an executive warrant.

3. Is there any other way to arrest a ship in your jurisdiction?

Ships may be arrested in Malta both in security of maritime 'in rem' claims as mentioned above, whenever the ship concerned is physically present within the territorial jurisdiction of the Maltese Courts, as well as in security of in personam claims in those instances where the shipowner may be personally subject to the ordinary jurisdiction of the Maltese Courts. Ships may also be arrested in Malta in security of arbitration proceedings commenced against the shipowner. Finally, ships may also be arrested in Malta pursuant to the provisions of Article 35 of Council Regulation (EC) No. 1215/2012, dealing with provisional including protective measures, in cases where the Courts of another Member State have jurisdiction as to the substance of the matter. However, in all these cases, the ship must always be arrested in virtue of the warrant of arrest, which remains the only way in which a ship may be arrested in Malta.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The law is very clear on this point. A ship can only be arrested in Malta in virtue of a Warrant of Arrest, and no other warrant may be issued out against a ship. In this context it is also to be borne in

mind that in virtue of Article 37A of the Merchant Shipping Act, dealing with detention of ships as security for debts, ships constitute a particular class of movables whereby they form separate and distinct assets within the estate of their owners for the security of actions and claims to which they are subject.

5. For which types of claims can you arrest a ship?

A total number of 25 Maritime Claims giving rise to in rem jurisdiction are provided for under paragraphs (a) – (y) of Article 742B of the Code of Organisation and Civil Procedure. These follow closely the British Supreme Court Act 1981 but also incorporate both Arrest Conventions of 1952 and 1999 even though Malta is not yet signatory to either. The basic heads of claim may be summarised as follows:

a) Claims to possession / ownership / title to ship;
b) Questions arising between co-owners;
c) Claims in respect of mortgage / hypothec / charge on a ship;
d) Claims arising out of a contract of sale;
e) Claims for damages received by ship;
f) Claims for damage caused by ship;
g) Claims for loss of life / personal injury caused by ship;
h) Claims for loss of low damage to goods, including baggage, carried in a ship;
i) Claims arising out of agreement for carriage of goods / use or hire of ship;
j) Claims for salvage;
k) Claims for damage to environment by ship;
l) Claims relating to wrecks;
m) Claims for towage;
n) Claims for pilotage;
o) Claims for supplies / services rendered to ship;
p) Claims for construction / repair / conversion / equipping ship;
q) Claims for port / dock / harbour dues;
r) Claims by crew for wages / repatriation;
s) Claims for disbursements made;
t) Claims for commissions / brokerage / agency fees;
u) Claims arising out of general average act;
v) Claims arising out of bottomry;
w) Claims for forfeiture of ship;
x) Claims for insurance premia and
y) Claims for fees due to Registrar / tonnage dues.

6. Can you arrest a ship irrespective of her flag?

Yes. The only requirement is that the ship has a length exceeding 10 metres, and that the claim in respect of which the ship is arrested be no less than €7,000. All matters relating to jurisdiction and ranking of creditors are subject to Maltese law as the lex fori.

7. Can you arrest a ship irrespective of the debtor?

With very few exceptions, there are no privileged debtors, so that a ship may be arrested irrespective of who the debtor might be. The exceptions relate to ships of war, and ships wholly chartered in the service of the Government of Malta or employed in any postal service either by the Government of Malta or by any other Government. Of course as shall be seen later, the underlying personal liability of the debtor for the maritime claim concerned is an essential requisite for an action in rem following an arrest to succeed.

8. What is the position as regards sister ships and ships in associated ownership?

In cases concerning any one of the maritime claims listed in (a), (b) and (c) under question 5 above, an action in rem may only be brought against that ship in connection with which the claim arose.
In all other cases concerning the remaining maritime claims listed in (d) – (y), an action in rem may be brought against (i) that ship, where the person who would be liable on the claim for an action in personam (the "Relevant Person") was, when the cause of action arose, an owner or charterer of or in possession or in control of, the ship if at the time when the action in brought the Relevant Person is either an owner or beneficial owner of that ship or the bareboat charterer of it, and/or (ii) any other ship of which, at the time when the action is brought, the Relevant Person is the owner or beneficial owner as respects all shares in it. In these cases, therefore, sister ship and associated ship arrest is possible. The requirement of the Relevant Person being the owner or beneficial owner of the ship or the bareboat charterer of it at the time when the action is brought does not apply in regard to those maritime claims secured by a special privilege in accordance with Article 50 of the Merchant Shipping Act, which survive the voluntary sale of the vessel by up to one year from when such sale is recorded in the ship's register.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The answer to this question is already to be found in the response given to Question 8 above. If at the time the cause of action arose the person who would be liable for the claim in personam (the "Relevant Person") was the charterer (which therefore includes both bareboat charterers as well as time and voyage charterers) of the vessel concerned, then if at the time the action is brought that same person is either an owner or beneficial owner of that ship or the bareboat charterer of it, that particular ship may be arrested in security of that maritime claim.
Furthermore, if at the time the action is brought the same charterer liable for the claim in personam happened to be the owner or beneficial owner of any other vessel, then that other vessel could also be arrested in security of the maritime claim concerned.
It is therefore to be noted that a ship under time charter may not be arrested in Malta in security of claims for which the time charterer may be personally liable; and it is also to be noted that a ship under bareboat charter may only be arrested, in the scenario contemplated by the law as stated above, in security of an in rem action to be instituted before the Maltese Courts, in security of a recognised maritime claim giving rise to the in rem jurisdiction of the Maltese Courts, but not in security of an in personam action as may be instituted against the bareboat charterer.

10. Do your Courts require counter-security in order to arrest a ship?

An Owner whose ship has been arrested may request that counter-security be put up by the claimant; and the Court, upon good cause being shown, will uphold such request and determine the quantum of such counter-security in an amount of not less than €11,600 for the payment of the penalty for wrongful arrest, damages and interest; and in default the Court will rescind the warrant of arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maltese law does not recognise the concept of a 'maritime lien' as such. However, a number of 'special privileges on ships' are recognised under Article 50 of the Merchant Shipping Act. The difference between an ordinary maritime claim (as recognised under Article 742B of the Code of Organisation and Civil Procedure) and a special privilege is essentially twofold. Firstly, special privileges survive the voluntary sale of a ship for a period of one year from when such sale is recorded in the ship's register. Secondly, special privileges would rank in priority to ordinary maritime claims.

12. Does your country recognise maritime liens? Under which International Convention, if any?

As mentioned above, Malta does not recognise the concept of a 'maritime lien' as such; and Malta is not a signatory to any International Convention pertinent to maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Provided of course that the ship to be arrested is physically in a Maltese port, or at an anchorage within the territorial jurisdiction of the Maltese Courts, and we have received (i) a sufficient background of facts in relation to the claim; (ii) documentation substantiating the claim, (iii) a power of attorney – all of which may initially be forwarded to us by fax or e-mail – as well as (iv) funds covering fees and costs, then we could proceed to arrest the ship well within 24 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

We always require a power of attorney as we need to substantiate our authority to act as special mandatories of the claimant. In practice we also require to be provided with documents in support of the claim itself, such as copies of agreements or invoices, in order to further support the application for the issuance of a warrant of arrest as well as to avoid any possible claim for wrongful arrest.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

We should perhaps differentiate between two separate and distinct stages, being the stage at which the precautionary Warrant of Arrest itself is issued in security of a maritime claim; and the action on the merits which must follow the precautionary warrant of arrest in order to maintain in vigore the effects of the warrant of arrest. The Warrant of Arrest itself does not require to be substantiated by any documents according to law, which only requires the completion and filing of the official form of warrant. However, in the subsequent action on the merits, documents should be submitted to the Courts in original format, or at least as certified true copies in the manner required by the law of procedure. In the event that only copies of documents are available, these would need to be substantiated by evidence given either viva voce before the Court, or by means of a sworn Affidavit.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Provided the claim falls within the ambit of Article 742B of the Code of Organisation and Civil Procedure, thereby giving rise to a maritime claim, then the Maltese Courts would be vested with jurisdiction to entertain the substantive claim on the merits. There is of course a differentiation to be made between the in rem jurisdiction of the Maltese Courts, and the substance of the action in rem. We have dealt with the substance of the action in rem in response to Question 8 above.
The Maltese Courts would also be vested with jurisdiction over the substantive claim in those cases in which the Courts are vested with ordinary jurisdiction to entertain an in personam action against the shipowner pursuant to Article 742 of the same Code of Organisation and Civil Procedure.

17. What is the procedure to release a ship from arrest?

The procedure entails an application requesting the Court to release the ship from arrest. This may be done by the person arresting the vessel or by the shipowner. A reason has to be given for liberating the vessel from arrest, such as settlement of the claim, the entering into of a compromise agreement, the deposit of the claim amount of an irrevocable local bank guarantee at the Court registry, or the setting up of alternative adequate security acceptable to the claimant.

18. What type of security needs to be placed for the release?

The security involves either the deposit of the claim amount at the Court registry or the putting up of an irrevocable guarantee issued by a bank licensed to carry out the business of banking in Malta. By agreement between the parties also a P&I Letter of Undertaking can be placed for the release.

19. Does security need to cover interest and costs?

Yes, the security needs to cover interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The great majority of maritime lawyers acting on behalf of claimants advise clients to accept P & I Letters of Undertaking.

21. How long does it take to release the ship?

Under normal circumstances the release can be achieved within the course of the day.

22. Is there a procedure to contest the arrest?

Yes, there is. The shipowner can file an application for the issuance of a Counter Warrant, requesting the Court to revoke the arrest, on any of the grounds contemplated by law, such as for example if any one of the conditions required by law for the issue of the warrant of arrest is missing; if the amount claimed is not prima facie justified or is excessive; or if it is shown that in the circumstances it would be unreasonable to maintain the warrant in force or that the warrant is no longer necessary or justifiable.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Action on the merits is to be brought, or arbitration commenced, in respect of the Claim stated in the Warrant of Arrest not yet being judicially acknowledged in virtue of a final and unappealable judgment or arbitration award or not otherwise constituting an executive title (such as would a Ship Mortgage), within 20 days from the date of issue of the Warrant.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Maltese Courts would recognise, and penalise, wrongful arrest. In case the Court were to find that a Warrant of Arrest was issued on a demand maliciously made or unjustly obtained, it may impose a penalty upon the arresting party in an amount of not less than €11,600.
Upon the request of the arrested party the Court may also condemn the arresting party to pay those damages which the issue of the warrant may have caused him. This is intrinsically linked to the same circumstances where a penalty for wrongful arrest may be imposed by the Court.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Our Courts would likely follow English principles of company law in this regard, and would therefore allow the piercing and lifting of the corporate veil in appropriate circumstances.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

The Court may order the sale of an arrested ship pendente lite if, on application of a Creditor, it appears that the debtor is insolvent or unlikely to continue trading and maintaining the asset. In reaching its conclusion, the Court will have regard to all the circumstances, including the nature of the claim, as well as of the defence; as well as to such steps as the defendant may have taken to secure the claim or otherwise to preserve the ship.

***Dr. Kevin F. Dingli** is one of the original founders and currently Managing Partner of Dingli & Dingli Law Firm. He graduated from the University of Malta in 1981, and pursued postgraduate studies in shipping law at the University of London. He was admitted to the Bar at Valletta, Malta, in 1982, and practices as an advocate. He is a member of the Chamber of Advocates and of the Institute of Financial Services Practitioners, and has been appointed as a Member of the Maritime Committee of the World Federation of Consuls as well as the Member for Malta on the Tax Commission of the Union Internationale des Avocats. He is a Deputy Registrar of the International Merchant Marine Registry of Belize, as well as of the Maritime Authority of Jamaica. He is also the Honorary Consul for Jamaica in Malta.*

***Dr. Tonio Grech** is a Senior Partner in the Firm, having joined the Firm in 2001. He graduated as Doctor of Laws (LL.D.) from the University of Malta in 1983. He was admitted to the Bar at Valletta, Malta in 1984, and initially practised as an advocate at the Attorney General's Office.*
He is very much involved in court litigation and arbitration with regard to matters involving transport. He has also drafted the majority of laws on civil aviation. He is a member of the Chamber of Advocates, as well as of the Institute of Financial Services Practitioners. He is a Director of the Firm's licensed fiduciary company DG Fiduciary Limited. He is also the Honorary Consul for Sri Lanka in Malta.

SHIP ARREST IN *MAURITIUS*

By Vijay K. Dwarka; Senior Attorney
WORTELS LEXUS LAW FIRM
vkdwarka@intnet.mu
patcetudedwarka@intnet.mu
www.wortelslexus.com
3rd Floor, Hennessy Tower, 23, Pope Hennessy Street, Port Louis
Tel: 230-212-5278 Fax: 230-208-2777 Mob: 58298630

1. Please give an overview of ship arrest practice in your country.

Originally ship arrest practice in Mauritius springs from its former "Code de Commerce" which itself was out sourced from the Code Napoleon. In 1985 the relevant articles of the Code de Commerce were repealed and replaced by our local Law which is subject to the "Merchant Shipping Act".
However in case of contradiction between the two pieces of legislation, the "Merchant Shipping Act" shall prevail. These two pieces of legislation regulate seafaring and maritime trade.
Following the provisions of the said enactments there are two ways of proceeding. The "Saisie – execution" and the "saisie conservatoire". Both relate naturally to an executor title and to a claim which appears justified to the Judge. Whichever procedure is used the ship arrest can be served by the Port Master when the ship calls at the Port of the Country.
These provisions of the law which are incorporated in our "Code de Commerce" were inspired by the "Décret Français du 27 Octobre 1967" and were stated to follow the main lines of the "International Maritime Law".
It is relevant to note that the fact that the State of Mauritius has or has not subscribed to any International Convention is of no importance since our local Law follow their principles.
The procedural provisions for ship arrest exist.
In case the arrest proceeds from the Court Judgment, it has to be declared executory in the territory of the State of Mauritius. This Exequatur follow its own rules. The claim regarding wages and in some other instances directly relating to the ship including bunker and provisions can give rise to a "Saisie Conservatoire" without being the result of a judgment of a Court.

2. Which International Convention applies to arrest of ships in your country?

See answer above to question 1.

3. Is there any other way to arrest a ship in your jurisdiction?

See answer above to question 1.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

See answer above to question 1.

5. For which types of claims can you arrest a ship?

This answer can be related to the claims for which a Maritime lien can be raised – The details can be seen under the provisions of Art 35 of the "Merchant Shipping Act".

6. Can you arrest a ship irrespective of her flag?

Yes, a ship can be arrested, irrespective of the flag but it will be at the risk and peril of the client requesting the arrest. The claim should relate to the ship or the owner.

7. Can you arrest a ship irrespective of the debtor?

Refer to answer 6 above.

8. What is the position as regards sister ships and ships in associated ownership?

As regards sister ships the claim and/or judgment should relate to the owner on the ship and ships in associated ownership. It will be more difficult in the sense that this issue will require an Executory Judgment to proceed with a "Commandment" to pay followed by a "Saisie-Execution" – Arrest Procedure.

9. What is the position as regards Bareboat and Time-Chartered vessels?

I have taken some time to answer this particular question because I wanted to find out if there was any particular disposition in law and in jurisprudence. I have not been able to find any particular case about this type of situation in Mauritius. As far as I have been able to verify in the law there is no particular rule about this. My opinion is that we can arrest the vessel on debts incurred by the vessel owner himself. I am also of the opinion that the vessel cannot be arrested for debts incurred by any type of charterer.

10. Do your Courts require counter-security in order to arrest a ship?

Counter security is not provided for in Mauritius except for costs, and this comes into play only where the other party moves for security.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes, there is a difference in respect to arresting a ship for a maritime claim, which calls for a "saisie conservatoire" and a maritime lien, which falls under "Merchant Shipping Act".

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. Maritime liens are recognised under the laws of the state, namely the "Merchant Shipping Act".

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

It is rather a question of immediate action. The arrest should be applied for and executed before the ship leaves port. The arrest can be made only while the ship is in Port.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, a Power of Attorney is required. But an instructions paper with proper identification of the claimant can be sufficient.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Certified copies can be used in the application but to substantiate the claim originals should be eventually filed in fixed hearings for physical appearances. At start the certified copies can be filed electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Given that the arrest will only be possible following the court's order, the answer is positive.

17. What is the procedure to release a ship from arrest?

Release of the ship follows the same procedure as for the arrest.

18. What type of security needs to be placed for the release?

The release will be upon the claimant's order if the claim is satisfied or else the claimant shall fix the amount of security for release.

19. Does security need to cover interest and costs?

As a rule the security should cover the total claim including interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

This would be something to be agreed upon by the parties and has no force of law save between the debtor and the creditor.

21. How long does it take to release the ship?

As a rule it is one normal working day, if all conditions are ready to be executed.

22. Is there a procedure to contest the arrest?

Yes, the arrest can be contested. But in practice this is not recommended as the ship cannot move until released with all that this entails as costs.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no prescribed delay under our laws, but usually the court will act diligently.

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.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

The ship will be sold before the Master's Bar at the Supreme Court if the judgment creditor has not been satisfied.

***Vijay Kumar Dwarka** has started his legal career since 1973, when he opened his own law chambers and has acquired extensive legal experience in a variety of sectors. He has nurtured strong professional relationships with other lawyers and solicitors around the world, hence expanding his horizons, with the ambition to offer excellent legal advice to his clients. Advises international counterparts on legal feasibility of projects within the Mauritian legal framework in the following areas: Export Processing Zone, Export Services Zone, Offshore Sector, Banking Sector, Bank of Baroda and previously for the State Bank of India (formerly IOIB), Employees Welfare Fund, Mauritius Housing Corporation, Government and Parastatal Bodies, Insurance Sector, Retail Sector, and Automotive Sector.*
Professionally Qualified Attorney at Law (Solicitor) of the Supreme Court of Mauritius (1973). He has been appointed Senior Attorney by the President of the Republic of Mauritius in June 2010.
Languages:
French: Fluent (written/spoken)
English: Fluent (written/spoken)

SHIP ARREST IN *MEXICO*

*By Bernardo Melo, Partner**
MELO ABOGADOS
bernardo@meloabogados.com
meloabogados.com
Río Hudson # 8, Col. Cuauhtémoc, 06500 Mexico
Tel: +52 55 5212 2364
Us Tel: +1 (631) 594-7282

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 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 admitted 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 of the salvage of the vessel;
IV. Vessels credits, arising for the use of port infrastructure, maritime signaling, waterways and pilot.

V. 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;
VI. 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 legalized or apostilled in order to act on behalf any Legal Entity or Person. All documents written in foreign language should be translated to Spanish by a Court Authorized Translator.

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.

SHIP ARREST IN *MONTENEGRO*

*By Milošević Radomir**
Law Office Milošević in cooperation with ABACO Ltd
r.milosevic@lawmilos.rs
www.abaco.co.me
35 Jovana Tomasevic Str.
85 000, Bar. Montenegro
Tel: +382 30 311890
Fax: +382 30 353585

1. Please give an overview of ship arrest practice in your country.

According to Montenegrin law the arrest of ships is one of the "interim measures/temporary injunctions" that ensures future collection of due and outstanding debt which is the subject of a dispute.

The arrest of ships is governed by a special procedure, non-contentious proceedings and the arrest order is issued under the name of "interim measure". Every arrest must be upheld by a final and conclusive judgment on the merits, and the forced sale of a ship is possible only on the basis of such final judgment (or award).

Marine and Inland Navigation Act (*the Official Gazette of FRY Nos. 12/98, 44/99, 74/99 and 73/2000*; the "**MINA**") governs the interim measures against the vessels. It is a *lex specialis* in regard to interim measures for ship arrests. However, where MMA is silent on certain issues related to ship arrest, the Enforcement and Conservatory Measures Act (*the Official Gazette of Montenegro Nos.br. 36/2011, 28/2014, 20/2015, 22/2017, 76/2017, 25/2019 ;* the "**ECMA**") is applied to fill in the lacunae in the law.

Prior to instituting civil proceedings, compulsory enforcement or administrative court proceedings, the court may, for the purpose of securing the pecuniary claim at the request of the creditor, issue any measure to achieve the goal of such enforcement and in particular to prohibit the alienation or other disposal of the vessel, order the guarding of the vessel and issue the ship arrest warrant.

If the law court issues an arrest warrant prior to institution of civil proceeding, compulsory enforcement or administrative court proceedings, the creditor is under duty to provide evidence within 15 days upon the issuance of the ship arrest warrant that it had commenced civil proceedings, compulsory enforcement or administrative court proceedings.

The goal of the ship arrest is to make available to the creditor assets of the debtor for future compulsory enforcement. Arrested ships may be released if another security is given in lieu thereof. The other security may be money deposit, bank guarantee, P&I Club or other corporate letter of undertaking or other values available for enforcement/collection if accepted as such by the creditor. Monetary deposits and bank guarantees are always accepted.

In the premises, it is possible to obtain the ship arrest or obtain the release of an arrested ship pursuant to accepted international standards and laws of Montenegro.

2. Which International Convention applies to arrest of ships in your country?

International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships 1952 (Brussels Convention) is applicable in Montenegro and consequently MINA is mostly set out in line with the said Convention. Sea-going ship is defined as a vessel intended for sea-going navigation, exceeding 12 meters in length and with GT greater than 15, or authorized to carry more than 12 passengers. Montenegro has made reservation to apply domestic rules for disputes as to the title to or ownership of any ship (Article1, paragraph (1)(o)).

3. Is there any other way to arrest a ship in your jurisdiction?

The ship may be arrested only under the authority of the court for maritime claim with the purpose of security of the claim but other Authority can order detention of the ship such as Harbor Master Office exercising Port State Control. It is worth noting that in 2011 the Maritime Authority of Montenegro joined the Paris MoU as a cooperating member with the prospect of becoming a full member in the future. The Customs Office authorities and the Criminal Court may order temporary

detention of a ship for the purpose of their proceedings and under restricted terms provided in other laws or other international conventions applicable. It is not the arrest in the sense of the Brussels Convention and MINA.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The prohibition of alienation and disposal as a specific measure or alternative to ship's arrest exists in Montenegrin law as a security measure related to maritime claim with the court order to make such entry in the Ship Register in Montenegro. Hence, possible alienation of the ship by the defendant against such prohibition has no legal effect whatsoever.

5. For which types of claims can you arrest a ship?

A ship can be arrested for:
Maritime claims as provided by Article 1 of the Brussels Convention1952 but when Convention is not applicable for all other claims notwithstanding to the nature if there is no reciprocity between Montenegro and the state of the flag. Because of the urgent nature of the ship arrest procedure, examination of the existence of reciprocity by Montenegrin Court is rarely done, and as a consequence thereof the court usually allows arrest for such ship practically for any type of claim. However, as a general note, only a ship owned by a person liable for the claim (action *in personam*) can be arrested in Montenegro meaning that action *in rem* is not allowed under Montenegrin law. Exemption to that rule is prescribed by Article 1021 of MINA which provides, *inter alia*, that a ship may be arrested also for the purpose of securing the contractual right of pledge or the maritime lien of a foreign law. It goes that a ship may be arrested in Montenegro regardless the change of the title over a vessel when such a claim is secured with a maritime lien of a foreign law (Commercial court of Montenegro Case file I. br. 9430/12 MV Arion Good News Holidays, UK vs Constelation Cruise Holding, Panama).

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes.

8. What is the position as regards sister ships and ships in associated ownership?

The concept of sister-ship arrest applies in Montenegro in the spirit of the Brussels Convention and the same is provided for in MINA that the applicant may arrest any ship owned by the person against whom the claim is directed but no other ship than the particular ship in respect of which the claim arose may be arrested in relation to the claim regarding the ownership, mortgage, hypothecs or other like charges attached to a ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

There is no restriction to arrest the vessel as regards bareboat and time-chartered vessel. In this regard MINA does not depart from the Convention.
There is a certain ambiguity in regard to time-chartered vessel for the bunker supplied to the chartered vessel not paid by the charterer to the supplier. There is no sufficient case law established so far in Montenegro to give judge guidelines and the court could be strayed and led to the conclusion that such claim is against the owner of the vessel.

10. Do your Courts require counter-security in order to arrest a ship?

This matter is not regulated by MINA but such possibility does exist in other laws and in our experience the court has never required a counter-security as a precondition for ship's interest in

order to arrest a ship or for maintenance of already ordered arrest. Further, the claimant would have to prove in any case the existence of the claim. ECMA provides for a possibility that the creditor may post counter-security for the damage that could be occasioned to the debtor by rendering and enforcing the interim measure but this is done very rarely in practice.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No, there is no difference from the procedural point of view.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Montenegro has not ratified any convention relating to maritime liens. Until 2019 the MINA was the only source of law governing the priority of claims in Montenegro. The said law is brought in line with the MLM, 1926 but the country has never accessed to this Convention. The recently adopted Law on the Manner of Registration of Ships and in Rem Rights over Ships was prepared in the spirit of MLM, 1993, although Montenegro has not acceded to this Convention yet. It goes that for the net proceeds of sale, the creditors rights shall be settled by the priority rank defined by the Convention. Such maritime liens shall not be extinguished by a change of the owner of a ship, unless otherwise specified by this law. The said law recognizes maritime liens as both substantial and procedural rights and it was adopted in order to allow the Montenegrin shipowners, who are obliged to register their ships with the national registry, to secure long-term financing for acquiring their ships as the banks were refusing to finance such acquisitions before the mortgage institute has been introduced by the national law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

That depends on the contents of the file and supporting documents all of which must be officially translated.
If the claimants have traced the vessel movement and prepared the documents as instructed before vessel's arrival in Montenegrin waters, no more than one day is required to sort documentation and prepare the application, but the official translation of the relevant documents may turn to be time consuming. However, the applicant must put forward a claim meeting the standard of lower level of proof of its existence and be well-grounded *(fumus boni juris)* and that should be observed as the best guidelines in preparing supporting documentation.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes. No special form is required to grant a POA to our law firm which authorizes our Law Office to handle the case. The POA is required to be signed by a duly authorized company officer.
Apart from POA all documents and evidence supporting the claim against the debtor are also required by the court including agreements, vouchers, invoices and survey or inspection report by a surveyor or inspector in relation to the damage, and nature of the claim, etc. If the arrest is based on a mortgage, the mortgage document and the appropriate petition for foreclosure, it is prudent to provide the latest excerpt from the Ship's Register.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Application for arrest must be in original/hard copy because electronic filings with the court are not possible for the time being. It is recommended that the original of POA be submitted. However, while pending receipt of the original POA, copy of POA may be transmitted by facsimile or scanned POA via e-mail which would suffice to lodge application for arrest.
No other documents are required in original but the court may order presentation of original if in doubt or on explicit demand of the debtor.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

That is subject to the nature of the claim and some other factors, but the court shall have jurisdiction to determine the case upon its merits in any of the cases specified in detail in the Brussels Convention 1952, under Article 7, paragraph (1). In general terms and unless otherwise agreed by the parties to the dispute, the Montenegrin court shall have a jurisdiction to decide on the merits subject to any conflict of law provisions prescribed by the national legislation. In this context, the arrest of ship may be deemed as a precautionary measure in order for the Claimant to be able to successfully enforce the future judgment. Once the Claimant obtain the final, binding and enforceable judgement or the Arbitration award he will be able to initiate the forced sale of a ship if his claim was not properly secured otherwise in the meantime (LoU executed by the P&I Club, bank guarantee, court deposit, etc.). In the event when a ship is not already arrested, the court will order (ex officio) a seizure of the vessel to prevent her from sailing out in another jurisdiction. It is also noteworthy that in line with Article 1051 of MINA the Montenegrin courts are exclusively competent for trials in disputes arising in the course of and regarding a forced sail of ships being carried out by the Montenegrin court.

17. What is the procedure to release a ship from arrest?

It is very simple and expeditious procedure. The shipowner may deposit the amount of money or other valuables with the court as ordered by the court in which case the vessel will be set free by the judge without application of the parties in dispute by issuing release order for the ship. The release order can be served to the master through Harbor Master Office to whom the power is presented to act for and on behalf of the court and the release order may be sent by facsimile transmission in order to speed up the release of the vessel.

18. What type of security needs to be placed for the release?

There is a peculiarity in Montenegrin law in regard of security needed for the release. The court may order the deposit only in the amount for which the applicant had made probable the main claim and according to the standard of lower level of proof of claim but without costs and interest thereon, which is very difficult to assess in the early stage of proceedings. That means the court shall not determine the nature and amount of other security met in practice in other jurisdictions but this peculiarity can be easily overcome in practice with one advantage that the claimant cannot be exposed to the risk to be sued for excessive security sought and its consequences.
It is worthwhile to note that deposit with the court as ordered by the court pursuant to provision provided in MINA is without doubt a top-quality security, but may turn out to be a heavy burden for the owner and is rarely done in practice which is reflected in the practice of Montenegrin Courts.
The court shall play an active role and determine the nature and amount of the claim only in case regarding the default in discharging the agreement between the Parties when the ship has been arrested in respect of any maritime claim enumerated in Article 1(1)(o) and (p) allowing vessel to continue trading.

19. Does security need to cover interest and costs?

Restriction imposed on the court as described under point 18. above cannot prevent the applicant and shipowner to negotiate the acceptability or otherwise of any form of guarantee less burdensome for the debtor and if they reach an agreement the applicant must notify the judge in writing and request the judge to release the ship from arrest and that shall be accepted by the judge and considered as good security. Naturally, such security if offered and accepted shall cover the amount of claim plus interest and costs.
When the interest of Montenegrin persons is involved, they will usually accept foreign bank guarantees for the amount of claim plus cost and interest as agreed between the Parties if confirmed by Montenegrin bank because if not confirmed by the Montenegrin bank, may cause difficulties in enforcement as the Montenegrin court has no jurisdiction over the foreign bank, and recognition of a Montenegrin judgment may have to be obtained.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The court cannot force the applicant to accept P&I Letter of undertaking or Letter of guarantee or in combination with P&I Club's bank but irrespective of that we have always instructed our clients without exerting pressure to consider acceptability of first class P&I Clubs of the Group who have always honored their obligation and their Letter of undertaking, which is the advantage in most circumstances to release the vessel or preventing arrest and in its wording total liability is composed of such sum or sums as may be adjudged, inclusive of interest and costs.
Local insurance companies are not prone to issue back to back guarantee when a P&I guarantee had been issued by foreign P&I Club and another disadvantage is that P&I Club cannot post security for an un-insured claim. However, in some cases we have attempted to convince the P&I Club to post guarantee to the satisfaction of our clients exploiting the possibility that each Club may define circumstances when it can issue letter of undertaking for liabilities outside the scope of P&I insurance cover against counter-security from its Members.

21. How long does it take to release the ship?

The ship can be released from the arrest by order of the same judge that granted the arrest upon the occurrence of one of the causes that permit a discharge of an arrest order under Montenegrin law described hereinabove, and the release time usually takes no more than few hours on the same date of application for release subject to official hours of the court.

22. Is there a procedure to contest the arrest?

Yes. The time for appealing an order for arrest to the court of appeals is 8 days from its notification to her master, who is considered to be the legal representative of the shipowner.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After the arrest the claimant must start proceeding on the merits within 15 days if the Montenegrin court has jurisdiction for hearing the entire action on the merits, but if the parties have agreed to submit the dispute to the jurisdiction of particular court or arbitration tribunal other than that within whose jurisdiction the arrest was made the single judge in his discretion may grant a period of 30 up to 60 days to the claimant to start proceeding thereafter and if the action or proceedings are not brought within the time so fixed the defendant may apply for the release of the ship or of the bail or other security provided.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, although that matter is not regulated by MINA. The claim for indemnity can be instituted pursuant to The Law on Obligations and Torts against the applicant inflicting loss who wrongfully arrested the ship. The claim for indemnity should be placed in the separate proceeding. There is not sufficient case law so far whether the complaint for damages for wrongful arrest can be placed in the same arrest proceeding as known in other jurisdictions.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The court will not acknowledge the piercing and lifting of the corporate veil. Such institute does exist in corporate law but is not applicable for maritime claims because pursuant to the provision of MINA the court will acknowledge the Owner/Operator as the key person who is liable for obligation arising from navigation and use of the vessel for intended purpose.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

This matter is not regulated by MINA,1998 pursuant to which the compulsory sale of the vessel must be performed at public auction in rather lengthy court proceeding which must be properly advertised inviting all known creditors. Therefore, the ECMA being a subsidiary source of law which

provides pendente lite sale of other assets in certain circumstances is not applicable in the case of arrested ship or seized in execution or satisfaction of the judgment.
Due to the above said limitation a way was found by instituting the sale of the vessel, somewhat similar to the institute of "pendente lite" but not on the application of parties in dispute or involved either in the sole discretion of the court. For that purpose recently promulgated Law on Safety of Navigation provides that Harbor Master may apply with the court for sale of the vessel "pendente lite" in the court proceeding if her master and the crew abandoned the vessel without being replaced by the Owner or Operator within time left to hire additional crew as per Certificate of Minimum Safe Manning, and as such presenting actual or potential danger for safety of navigation, port facilities or environmental risk as the case may be.
As regards the question how long does it take to sell the vessel "pendente lite" there is not sufficient case law so far, but we may say for certain that will be the shortest and most simplified and expeditious way of proceeding for enforced sale of the vessel experienced in Montenegro.

*Attorney **Radomir Milošević** graduated magna cum laude from Belgrade University School of Law in 1977. He took his Master's degree from Belgrade University School of law in 1983. (Master thesis: Carriage of passengers by ship) and in 2012 earned his PhD degree (PhD thesis: Shipbuilding contracts).
Mr. Milosevic spent a year practicing at Ingledew Botterell law firm, The North of England P&I club in England and Lloyd's insurance Market in 1989, specialization in international maritime law. He started his law practice in 1978 and has worked as an in-house attorney for several Belgrade-based shipping companies prior to launching his career as a practicing lawyer in 1991.
He is managing partner at Law Office Milosevic. As a lawyer he has concentrated on international commercial matters, including shipping and insurance law, both Serbian and international.

SHIP ARREST IN *MOROCCO*

*By Hakim Lahlou**
LAHLOU ASSOCIÉS
h.lahlou@lahlou.law
www.lahlou.law
7, Rue Bendahan 20080
Casablanca, Morocco
Tel: +212522260008
Fax: +212522266928

1. Please give an overview of ship arrest practice in your country.

Legally speaking, Morocco is certainly one of the most attractive forums for vessel arrests:

- No P.O.A required,
- No original documents required
- Arrest order is granted on the sole basis of an ex-parte application
- No counter security is required
- Arrest order is most of time delivered within same day or the day after the application is filed
- An alleged maritime claim is sufficient; besides, the notion of maritime claim is interpreted widely,
- When the claim is related to a vessel, she can be arrested whoever is the debtor (even it is the time charterer)
- Sister ship arrests are admitted
- Associated ship arrest are also admitted on the sole basis of some relevant clues establishing a community of interests
- It is rather difficult to challenge an arrest order because Owners should go through an adversary procedure
- Bank guarantee or cash deposit is required to get the arrest lifted
- Arrest has no impact on jurisdiction (expect for the exceptions provided in Brussels convention)
- There is almost no possibility to get remedies for wrongful arrest

2. Which International Convention applies to arrest of ships in your country?

1952 Brussels convention (for the unification of certain rules relating to the arrest of sea going ships) is applicable in Morocco. It was ratified on 11.07.1990.

3. Is there any other way to arrest a ship in your jurisdiction?

Moroccan vessels and notably fishing boats, can be arrested by Moroccan creditors in application of the national law instead of Brussels Convention.
In the meantime, vessel detention can be carried out by port state control authorities or by Royal Navy in case of violation of administrative or criminal law; however this has nothing to do with an arrest under Brussels convention.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Under Moroccan law, arrest is a conservatory seizure aiming to secure a claim. It is called “saisie conservatoire”. “Saisie execution” requires an enforceable title and can lead to the judicial sale of the arrested vessel.

5. For which types of claims can you arrest a ship?

Vessels can be arrested as security for any maritime claim among those listed under article 1.1 of Brussels Convention.

On top of this, Moroccan courts accept, through an extensive interpretation of article 1.1, to grant arrest even in relation with claims arising out of provision of services (such as claims of ship classification companies…).
In any case, it is sufficient to prove an alleged maritime claim; it is not necessary to prove at the arrest stage that the arrestor has a valid claim which is bound to succeed on the substantives merits. It is sufficient to provide evidence of an alleged maritime claim. So a prima facie evidence of a claim is enough.
In the meantime, if both parties (applicant and owner of the vessel) are Moroccans, Moroccan law would be applicable. In that case that there is no restriction an per the nature of claims in relation of which arrest can be granted.

6. Can you arrest a ship irrespective of her flag?

Yes. Ship can be arrested whatever the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

Yes. The ship in relation of which the maritime claim arose can be arrested whoever is the debtor and even if the claim is related to voyage or time charterers, bareboat charterers…Thus, vessel can be arrested even if:

- she is under charterparty whilst the debt is related to Owners or previous charterers
- she is operated by Owners whilst the debt is related to previous charterers

In any case, security has to be put up on behalf of Master of the vessel as representative of Owners and/or Charterers.

8. What is the position as regards sister ships and ships in associated ownership?

Claimants are entitled to arrest either the vessel in relation of which the maritime claim arose (who ever is the debtor) or any other vessel in the same ownership that the said vessel. Thus, it is possible to arrest sister ship vessels (i.e. owned by the same person who was the owner of the ship in connection with which the claim arises at the time the claim arose).
In the meantime, we should underline that in application of article 3.4 of Brussels convention, in case the claim arose whilst the ship was under charter by demise, claimant may arrest on top of the vessel in question, any other ship in the same ownership of the charterer by demise but no other ship in the same ownership of the registered owner. As per associated vessels, please see Q. 19 “lift of the corporate veil”.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The vessel in respect of which the maritime claim arose can be arrested even though she was under bareboat charterparty or time-chartered. In the meantime, as per article 3.4 of Brussels convention, in case the debtor is the charterer, claimant can arrest either the vessel in respect of which the maritime claim arose or any other vessel owned by charterer but not other vessels owned by registered owners.

10. Do your Courts require counter-security in order to arrest a ship?

Even tough Moroccan law provides such a possibility, practically speaking, counter security s is never required.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No. From a procedural point of view, there is no difference.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Maritime liens are recognized by Moroccan law that provides a list of the privileged debt. Morocco has not ratified any international convention on maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Upon receipt of instructions and relevant documents, arrest order can be carried out within the same day (during week days and court opening time).

14. Do you need to provide a POA or any other documents of the claim to the Court?

No power of attorney is required under Moroccan procedure law. Arrest application should just be supported by relevant documents proving the alleged maritime claim and the relation with the vessel the arrest of which is sought.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

At this arrest stage, no original documents are required. As a general rule, Casablanca court accept to consider documents even if they are drafted in English. In the meantime, it is remains preferable to provide at least a free translation of the most relevant part of same. However, other courts, such as Agadir and Tangiers, uses to demand a sworn translation of all documents drafted in a foreign language.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Moroccan court would accept jurisdiction only in the cases listed in article 7 of Brussels convention or if parties agree to provide competence to Moroccan court.

17. What is the procedure to release a ship from arrest?

A vessel under arrest can be released in three different situations:

- If the claim in respect of which the vessel was arrested is settled: If so, it is up to arrestors to grant a “mainlevée” on the basis of which owners have to seek before the court a release order which has to be served on port authorities.
- If security is posted: If a bank guarantee is issued, arrestors have to grant in consideration of same a “mainlevée “ which enable arrestors to get a release order as described above. If a cash deposit is put at the court, owners seek a release order under the procedure as described in question 18.
- If the arrest is challenged before the court: In order to be in position to get a release order on the grounds that the arrest order was not founded, owners should establish that the conditions of the arrest as set out above are not met (if for instance there is no maritime claim or that the vessel is not concerned by the claim).

18. What type of security needs to be placed for the release?

Security can be put up in two different ways:

- Bank Guarantee
  In some cases, Arrestors accept P&I club LOU to be replaced by a bank guarantee within 8 days. However, as a general rule, they are reluctant to accept so.
- Cash deposit
  The procedure is as follows:
  · File an application seeking authorization to put the amount of the security at the court,
  · Get the order giving such authorization
  · Put the money at the court (either certified check or lawyer check)
  · file proceedings seeking judicial release
  · get a hearing set by the court
  · notify to Opponents lawyer the convocation to the hearing
  · after the hearing court issue a release order
  · same has then to be served on port authorities by a bailiff

19. Does security need to cover interest and costs?

Security should cover the amount granted under the arrest order, which - in principle- does not cover interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Only, if accepted by arrestors which is almost never the case in Morocco.

21. How long does it take to release the ship?

If payment is carried out or security posted, the vessel can be released within one or two days. If the arrest is challenged, it would take 3 to 4 days. However, this is mainly for Casablanca. Before other jurisdictions such as Agadir and Tangiers, it takes much more time.

22. Is there a procedure to contest the arrest?

Yes, as indicated in question 17.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no legal obligation for arrestor to start legal action on the merits within a specific time (in so far as time bar limits are respected).
For the sake of completeness, it should be specified that a couple of years ago Casablanca court was used to impose to arrestors the obligation to start legal action on the merits within 30 days from the date of the arrest order. However, court stooped to do so on the grounds that as per article 7.4 of Brussels Convention such an obligation can be imposed only in case the court in which the arrest was made has jurisdiction to decide the case on the merits.

24. Do the Courts of your country acknowledge wrongful arrest?

A claim seeking remedies for wrongful arrest supposes that the arrest was made knowingly that it was unlawful. Thus, Moroccan courts are very reluctant to accept to grant remedies for wrongful arrest unless malice of arrestor is evidenced.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

As principle, sole the vessel in relation of which maritime claim arose or any other vessel in the same ownership can be arrested. However, given single ship company practice, Moroccan courts accept to pierce corporate veil considering vessels owned by distinctive company as being under the same ownership if applicant can prove that both vessels pertains in fact to the same economical entity (same addresses, same management, same shareholders…).

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Conservatory arrest can be converted into an executory arrest in so far as arrestor gets an enforceable title (e.g. a definitive court condemnation on the merits). This procedure including judicial sale is rather long and complicated. It would take not less than a couple of months.

**Lawyer member of Paris Bar (2002) and Casablanca Bar (2006), Hakim LAHLOU is graduated in Master in law (2001) and holds two Postgraduate Diplomas (DESS and DEA) in insurance Law and Business Law (2002 and 2003) from the University of Paris 1 Panthéon SORBONNE.*
Since 2006, Hakim LAHLOU is partner of Lahlou – Zioui & Associés, a leading law firm in Casablanca Morocco. Hakim LAHLOU is in charge of the Shipping Department of LAHLOU – ZIOUI & Associés Law Firm, and as such, handles litigation and counsel cases in all shipping matters.

SHIP ARREST IN *MOZAMBIQUE*

*José Miguel Oliveira & Francisco Campos Braz & Kenny Laisse**
Vieira de Almeida & Associados (VdA) &
GDA Sociedade de Advogados (exclusive member of VdA Legal Partners in Mozambique)
jmo@vda.pt
www.vda.pt
Torres Rani, Av. Tenente Osvaldo Tazama, Marginal,
Builing 1, Floor 2, Unit 5, Maputo, Mozambique
Tel: +258 21 498 770 | +351 21 311 34 00

1. Please give an overview of ship arrest practice in your country.

In recent years, Mozambique has enacted a number of important laws and regulations at the same time that it has ratified several key international treaties and conventions. The underlying purpose seems to be clear: follow and adopt the latest international trends in the industry and take advantage of the country's location and impacts of the multimillion LNG project in the North (Rovuma Basin) to increase levels of foreign direct investment, upgrade existing port and logistic infrastructures and therefore boost the economy and contribute to the wellbeing and social development of its population.
In that regard, it is important to note the recent enactment of a new Maritime Courts Law, which approves the organisation, composition, functioning and powers of the Maritime Courts. Although the Maritime Courts are not yet operational, it is anticipated that they will bring national legislation and judicial procedures closer to international best practices, notably on arrest proceedings. As an example, maritime courts will operate on public holidays, in a clear response to the need for speed in the assessment of shipping-related issues brought to national courts. This notwithstanding, it has been visible an increasing effort by ordinary courts and maritime authorities to ensure the swiftness that ship arrest procedures require.

2. Which International Convention applies to arrest of ships in your country?

The International Convention Relating to the Arrest of Sea-Going Ships 1952 (the "Brussels Convention") applies in Mozambique.
The United Nations Convention for the Law of the Sea ("UNCLOS") also applies in relation to vessels arrested for the suspicion of participation in criminal activity.

3. Is there any other way to arrest a ship in your jurisdiction?

Outside the scope of the Brussels Convention, Mozambique's Civil Procedure Code applies.
Please refer to next question.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Apart from ship arrest, the claimant may seek to obtain security through the attachment of any other property owned by the debtor (other than vessels) and non-specified injunctions as per the Civil Procedure Code.

5. For which types of claims can you arrest a ship?

Maritime claims in respect of which a vessel may be arrested are those set forth in Article 1(1) of the Brussels Convention:

a. damage caused by any ship either in collision or otherwise;
b. loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
c. salvage;
d. agreement relating to the use or hire of any ship whether by charterparty or otherwise;
e. agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;

f. loss of or damage to goods including baggage carried in any ship;
g. general average;
h. bottomry;
i. towage;
j. pilotage;
k. goods or materials wherever supplied to a ship for her operation or maintenance;
l. construction, repair or equipment of any ship or dock charges and dues;
m. wages of Masters, Officers, or crew;
n. Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
o. disputes as to the title to or ownership of any ship;
p. disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
q. the mortgage or hypothecation of any ship.

Ships may also be arrested when there is the suspicion of participation in criminal activity, before or after criminal proceedings are initiated, under the UNCLOS.
A claimant may seek the arrest of either the vessel in respect of which the maritime claim arose, or any other associated vessel as long as both vessels are owned by the same person(s). Associated ships may not be arrested in situations foreseen in article 1.1, (o), (p), or (q) of the Brussels Convention.

6. Can you arrest a ship irrespective of her flag?

Yes. Under Article 2 of the Brussels Convention a ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim. However the Convention does not extend or restrict any right or powers vested in any governments or their departments, public authorities, or dock or harbour authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.
A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1(1) (please refer to previous question 5.) or of any other claim for which the law of the Contracting State permits arrest.

7. Can you arrest a ship irrespective of the debtor?

It is not required that the owner is liable in persona for an arrest of a vessel to be accepted. Pursuant to Article 3(4) of the Brussels Convention, if the charterer (and not the registered owner) is liable (i.e., debtor) in respect of a maritime claim relating to a vessel, in the context of a charter by demise of a vessel, the claimant may arrest such vessel or any other vessel in the ownership of the charterer by demise, even though no other vessel in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The above-mentioned regime shall apply to any case in which a person other than the registered owner is liable in respect of a maritime claim relating to that vessel.

8. What is the position as regards sister ships and ships in associated ownership?

A claimant may seek the arrest of either the vessel in respect of which the maritime claim arose or any other associated vessel as long as both vessels are owned by the same person(s). Associated ships may not be arrested in situations foreseen in article 1.1, (o), (p) or (q) of the Brussels Convention (please refer to question 5.).
Outside of the Brussels Convention, sister-ships may only be arrested when the owner is personally liable for the debt.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Pursuant to paragraph (4) of article 3 of the Brussels Convention, in the case of a claim against a bareboat charterer, the claimant may seek the arrest of the bareboat (demise) chartered vessel or any other vessel in the ownership of the bareboat charterer, as the charterer and not the registered

owner is liable in respect of such maritime claim relating to that vessel. However, no other vessel of the ownership of the registered owner may be arrested in respect of such maritime claim. The above mentioned legal regime also applies to any case where a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

10. Do your Courts require counter-security in order to arrest a ship?

As a matter of principle, no security is required. Still, the judge is free to decide otherwise and ask the applicant to provide security in an adequate amount and form. Unless otherwise determined by the judge, the amount of the security generally corresponds to the amount of the claim. The security can be posted in any form acceptable by the court, cash deposits and bank guarantees (in terms to be agreed) being the most usual forms.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime claims are dependent upon the ownership of the ship. The ship can only be arrested provided that the owner at the time that the cause of action arose is still the owner at the time of arrest. Maritime liens can be enforced irrespective of ownership and entitle the claimant to file a claim and to arrest the ship despite a change of ownership. The arrest procedure is the same, though.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Although it is understood that the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages is not applicable in Mozambique, as per the Mozambican Commercial Code the following categories of claims afford maritime liens:

1. court costs incurred in the common interest of the creditors;
2. remuneration for salvage;
3. pilotage and towage expenses;
4. tonnage, lights, anchorage, public health and other harbour dues;
5. expenses made in connection with a vessel's maintenance and storage of her appurtenances;
6. master and crew wages;
7. costs incurred in connection with the repair of the vessel, her appurtenances and equipment;
8. reimbursement of the price of the cargo that the master was forced to sell;
9. insurance premiums;
10. any unpaid portion of the price due in connection with the purchase of a vessel;
11. costs incurred in connection with the repair of the vessel, her appurtenances and equipment accruing during the past three years;
12. unpaid amounts arising from shipbuilding contracts;
13. outstanding insurance premiums over the vessel, if insurance coverage was taken in total, or over the covered part of her appurtenances, not mentioned in (11); and
14. sums due to shippers in respect of loss or damage to cargo.

Claims mentioned in (1) to (9) refer to those incurred in the last voyage and as a cause of it.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Subject to the receipt of all documentation relevant to the claim, the application to the court can take place within a matter of hours. The actual arrest will be dependent on the availability of local court in the area that the ship is located but should be effected within 24 to 72 hours of the warrant being issued.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, an original power of attorney must be provided to the court. Where issued abroad, and as a condition for their local acceptance and enforceability, powers of attorney must be previously

notarised, legalised (before the Ministry of Foreign Affairs or equivalent body), translated into Portuguese language (by a sworn translator) and then consularized before the Mozambican Embassy or Consulate with jurisdiction over the country of their issuance (Mozambique is not a party to the 1961 Hague Apostille Convention).
The original power of attorney must be attached to the arrest application at the time of its filling. When that is not possible, lawyers may ask the court to grant additional time for submitting the original (where the original power of attorney is not available, the arrest application must be submitted along with a scanned (coloured) copy of the original 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?

Although the submission of original documents is required, it is common practice to present scanned copies of the same, which in most cases is accepted. However, courts are always entitled to disregard copies or ask the parties to submit the relevant originals.
Documents submitted to the court must be written in Portuguese. When written in a different language, parties are required to submit the relevant originals along with their translation into the Portuguese language (the translation should be certified by a sworn translator).
Where, in view of the urgency, there is not sufficient time available to file the arrest application in compliance with all the required formalities, it is still possible to set the arrest procedure in motion while undertaking to the court to complete the formalities in a reasonable period of time (typically, no more than 10 calendar days).
Documents cannot be filed electronically.
There is no specific term for the preparation of an arrest application; this will typically depend on the urgency of the relevant arrest and on the complexity of the underlying claim.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Mozambique has enacted specialised courts in maritime and shipping matters. These are independent courts exercising jurisdiction over all sorts of maritime contracts (from engineering, procurement and construction contracts for vessels to bareboat charters and disputes. However these courts are not yet in operation and maritime claims are currently heard before common judicial courts. As a rule, jurisdiction clauses stated in contracts (including bills of lading) are valid and enforceable, provided they arise from a written agreement, in which the competent jurisdiction is expressly mentioned, as established by Article 99 of the Civil Procedure Code.
Law 10/2022 further establishes that Mozambican courts' jurisdiction cannot be excluded in matters of international maritime law which would be within the jurisdiction of Mozambican courts in accordance with its domestic law, unless the parties are foreigners and if it is a question regarding an obligation that must be performed in foreign territory and does not relate to assets located, registered or enrolled in Mozambique.

17. What is the procedure to release a ship from arrest?

Pursuant to Article 5 of the Brussels Convention, the vessel shall be released upon sufficient bail or other security being furnished, save in arrests in respect of any of the maritime claims regarding disputes as to the title or ownership of the ship, or in disputes between co-owners of the ship as to the possession, employment or earnings of any vessel (foreseen in article 1.1, (o) and (p) of the Brussels Convention - please refer to question 5.). In such cases, the court may allow the person in possession of the vessel to continue trading it, upon such person furnishing sufficient bail or other security.
Outside the Brussels Convention, the vessel will also be released if security is provided in the form and amount deemed sufficient by the court.
The security may be deposited in any form considered acceptable by the court, including cash deposits or bank guarantees.

Both under and outside the Brussels Convention, the vessel shall also be released:

- upon payment of the debt;

- in the event the main claim is not commenced within 30 days – or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court – from the arrest being ordered or has had no developments for a period of more than 30 days for reasons imputable to the creditor;
- the main claim is definitively dismissed;
- if the main claim is upheld but the debt remains outstanding and the creditor does not initiate the enforcement proceedings within six months from the claim being definitively upheld or they have no development for a period of more than 30 days for reasons imputable to the creditor; or
- if the credit ceases to exist.

18. What type of security needs to be placed for the release?

Security can be posted in any form acceptable by the court or by the arresting party (e.g., cash deposits, bank guarantees, P&I LOUs).

19. Does security need to cover interest and costs?

Typically, the amount of the security corresponds to the amount of the claim (which usually includes interests). Nevertheless, the judge may end up reviewing it subsequently, namely where the amount being claimed does not reflect the amount being effectively disputed. The amount of the security is not likely to exceed the value of the ship.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Although not common, courts have already accepted P&I LOUs as security, dependant on the other party's agreement.

21. How long does it take to release the ship?

Once security has been posted the request for release can be lodged with the court immediately, but it will depend upon the availability of local court officials where the ship is located. Usually it takes between 24 and 48 hours.

22. Is there a procedure to contest the arrest?

After examination of the evidence produced, the arrest may be ordered without hearing the arrested party, provided that the legal requirements have been met; however, where the arrest has been requested to cover more assets than the sufficient to secure the debt/obligation, the guarantee shall be reduced to the just limits. In the particular case of arrest of a ship or its cargo, the arrest will not take place if the debtor immediately offers a guarantee that the creditor accepts or that the judge, within twenty-four hours, deems adequate.
Upon notification to the arrested party of the order granting the arrest, the latter may appeal against the order or lodge an opposition ("embargos"), or use both means of defence simultaneously.
The opposition shall be offered in duplicate within a period of eight days and shall be especially aimed at claiming facts that dismiss the grounds for the arrest or at requesting that the precautionary measure be reduced to its just limits where it has covered more property than necessary.
The arresting party is then notified to answer to the opposition; thereafter, without further pleadings, the terms of the summary proceedings shall follow.
Where the opposition is directed against the grounds of the arrest, the arrested party may claim that the arresting party or the witnesses knowingly failed to tell the truth and request that a fixed sum be fixed as compensation for the damage suffered; in such case, the witnesses shall be summoned to answer the opposition and, if the opposition is upheld, the arresting party and the witnesses in bad faith shall be jointly and severally liable for the compensation.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claimant is required to take action on the merits within 30 days of the arrest order, or a different time period established by the court when the claim is subject to a jurisdiction of a foreign court.

24. Do the Courts of your country acknowledge wrongful arrest?

According to the Civil Code, if the arrest is rendered unjustified or otherwise expires on account of the applicant, same will be held liable for damages caused to the respondent, when it is proved that if failed to act with the necessary normal prudence or due care. Also, if the arrest is in place and the claimant fails to file the initial claim for the main proceedings, within 30 days of the arrest order, the arrest shall be lifted.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. Under the Mozambican Commercial Code, the legal personality of the company shall be disregarded (the same is to say, the corporate veil shall be lifted) and the shareholder shall be held responsible, where he or she acts intentionally, in the following cases: (a) the company is used as an instrument of fraud and abuse of economic power; and (b) in any case where the controlling shareholder or shareholder directs the company for an aim that is alien to the purpose of the company or against the company's interest, causing damage to the other shareholders and to the company.
The legal personality of the corporate company shall also be disregarded and the shareholder shall be held responsible, when the company violates essential consumer and environmental rights, through significant influence of the shareholder, and the corporate assets are not sufficient to repair the damage caused.

26. Is it possible to have a ship sold pendente lite; if so, how long does it take?

In principle, the judicial sale of a ship cannot take place during the arrest proceedings, requiring the bringing of a subsequent enforcement proceeding, in which the arrest is converted into a seizure of the vessel after the existence of the credit has been recognised by the competent court.
After an enforcement application is lodged, the court shall notify the debtor (owner or charterer and other interested parties) to settle the claim or oppose the enforcement and the seizure. If the debtor fails to pay or if no opposition is lodged within an appropriate period, the court will order the sale. To that extent, the court will then decide on how the sale will take place (public auction, private negotiation, sealed bids) and will appoint an auctioneer who will be responsible for the relevant proceedings and arrangements (such as organising the tender and visits to the vessel, collecting the bids, getting the proceeds of the sale and liaising with the court). The debtor will have the power to recover the vessel at any time before completion of the judicial sale, provided it deposits with the court the amount of the credit plus fees and expenses.
The proceeds arising from the sale of the vessel will be used to pay the claimant or other creditors with prevailing rights over the vessel that have claimed credits in the proceedings, the court costs and expenses (including auctioneer’s fees) and other credits and expenses.
Lastly, the judicial sale of a vessel can take several months to complete.

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José Miguel Oliveira *joined VdA in 2015. He is a partner of VdA's Infrastructure, Energy & Natural Resources Group and responsible for the firm's Shipping practice. José leverages his fifteen-plus years' international experience in African jurisdictions, including Angola and Mozambique, where he has been involved in projects and operations across the energy and oil & gas industry's value chains and provided advice regarding regulatory issues, contractual matters, corporate and commercial, restructurings, M&A, foreign direct investment, foreign exchange, and shipping and maritime matters. Over the years, he has acted for the full spectrum of those involved in the shipping industry, including ship-owners and charterers, cargo interests, P&I clubs, banks, ship-yards, port operators, brokers and agents, in all sorts of wet and dry shipping matters.*

Francisco Campos Braz *joined VdA in 2019 and is a senior associate of the Oil & Gas practice, with strong ties to the Equatorial Guinean jurisdiction, where he accumulated 10 years of experience in the areas of oil and gas, construction, corporate, employment, litigation, OHADA, foreign investment and maritime matters. Francisco has advised and assisted, particularly in Equatorial Guinea and Mozambique, international oil companies and oilfield services companies in the incorporation, registration and closure of local entities and branches, labour proceedings and collective dismissals, local content requirements, among other matters.*

Kenny Laisse *collaborates with VdA Legal Partners since 2016, integrating GDA – Sociedade de Advogados, as an Associate. He has been actively involved in criminal, civil, labour and litigation cases, representing and advising the most relevant national and international companies, inclusively in shipping disputes in Mozambique.*

SHIP ARREST IN *THE NETHERLANDS*

*By Peter van der Velden**
Conway Advocaten & Partners
vandervelden@conway-partners.com
www.conway-partners.com
Otto Reuchlinweg 1132, 3072 MD Rotterdam
Tel: +31 [0]88 254 83 53
Fax: +31 [0]88 254 83 83

1. Please give an overview of ship arrest practice in your country.

The Netherlands remains a convenient jurisdiction for ship arrests. The procedure for obtaining leave for arrest starts with the submission of an arrest petition to the court in the respective jurisdiction where the ship is located or is expected to arrive shortly. In 2017 the process for filing an arrest petition became more streamlined in that persons filing a petition were afforded the option of submitting their arrest petition to the Court of Rotterdam irrespective of where in the Netherlands the ship is located. Further, the Court of Rotterdam has been established to have exclusive jurisdiction for certain types of shipping claims given the special expertise of the Rotterdam Maritime Chamber. These arrest proceedings are ex parte, meaning they can be filed without notice being granted to the subject of the arrest. These petitions can additionally be filed after office hours or on weekends.

The arrest petition should contain inter alia a full description of both the creditor and debtor, the grounds for the arrest, the nature and monetary value of the claim, details of the ship, and whether the claim is contested by the (alleged) debtor and if so, on what grounds. Further, any supporting documentation (such as underlying contract, invoices, an overview of outstanding invoices, summoning letters) should be included.

Once an arrest petition is granted, the bailiff enforces an arrest by serving the court order to the master and the port authority. The port authority will subsequently bar the ship from leaving the port. The claim amount for which the arrest is permitted is raised with a certain percentage along a sliding scale between 10 and 30% over the capital claim amount to cover future interest and costs while proceedings are pending.

A time limit is established within which the merits for the underlying claim used as the basis for the arrest must be filed before the competent court or arbitration centre, which will usually be abroad. Failure to initiate proceedings that result in adjudication on the merits within the allotted time will result in the lapse of an arrest order and the ship will be released from arrest.

The arrest must be lifted immediately once the claim is settled or in the event that the debtor provides sufficient alternative security. This is usually done by providing a bank guarantee from a first class (reputable) Dutch bank or a letter of undertaking by P&I Clubs in good standing. An arrest can then be lifted without the intervention of the court by a simple phone call to the bailiff.

The ship owner may apply for an injunction whereby the arrested ship will be released. Injunction proceedings can be initiated on short notice, and a decision is generally rendered relatively quickly thereafter. In these injunction proceedings the court assesses whether the creditor's claim has sufficient merit to justify maintaining the arrest. In practice, deference is given to the creditor and it is an generally difficult to convince the court that a creditor's claim is clearly without merit on a preliminary basis. Nonetheless, it is the creditors job to ensure that it's arrest petition is proper.

It should be noted, the Court of Rotterdam has a specialized Maritime Chamber that is well versed in maritime matters. As a result of this specialization, the Chamber is given exclusive authority to deal with most maritime cases. Further, due to the international character of these cases, parties are given the option of litigating in the English language.

2. Which International Convention applies to arrest of ships in your country?

The Netherlands is a party to the 1952 Brussels Arrest Convention as of 1983. The provisions of this Treaty are not incorporated into the Dutch Civil Code (like in some other countries) and the 1952 Brussels Arrest Convention only applies when the arrest is sought against a ship that is flying the flag of a country that is a signatory to this convention.

Therefore, in cases where the 1952 Brussels Arrest Convention is not applicable, an arrest on a ship is allowed for any, i.e. also non-maritime, claims against the debtor on any vessel (or other asset for that matter) owned by him. In such case the vessel can be arrested more than once for the same claim (which is prohibited under the 1952 Brussels Arrest Convention).

3. Is there any other way to arrest a ship in your jurisdiction?

A distinction must be made between conservatory and executory arrests on a ship. Executory arrests are a means of enforcing a judgment (or arbitral award). For such enforceable/executory arrest, the arrest is allowed based on a judgment rendered by a Dutch court. Express permission for such arrest is then not needed.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

An executory arrest can be followed by public sale if the debtor is, despite the arrest, not willing or able to comply with the judgment or award (see further in answer to question 20).
A conservatory arrest is indeed possible in the Netherlands, as described under the overview above.

5. For which types of claims can you arrest a ship?

If the Brussels Arrest Convention 1952 is applicable, said ship can only be arrested for maritime claims as defined in article 1 of the convention.
If Dutch law applies, and not the Brussels Convention, the ship can be arrested for any type of claim.

6. Can you arrest a ship irrespective of her flag?

Yes, however if the ship is flying a flag of a Contracting State to the Brussels Arrest Convention of 1952, the ship can only be arrested for a maritime claim as defined in that treaty.

7. Can you arrest a ship irrespective of the debtor?

A ship may in principle be arrested only for a claim against the (legal) owner of the ship and not for claims against any other party involved in the operation of the ship.
However, there are various exceptions to this rule. Subject to certain requirements, claims against the bareboat charterer of the subject ship, cargo claims and also claims against the time-charterer for services rendered to the ship in order to keep into operation (such claims for unpaid bunkers, supplies) may be grounds for an arrest of a ship that is not owned by whom the claims are against.
Certain claims can be attached to the ship directly itself for claims related to unpaid crew wages, salvage, general average, mortgage and the like. For these claims, the ship may be arrested, even if it was sold to another after the claim arose.
State-owned ships may enjoy immunity, provided such ships are not commercially used.
Where the claim is against debtors which cannot be considered as 'owners', like a time-charterer, an option could be to place an attachment on the ship's bunkers/fuel reserve (rather than a ship itself). This so-called 'bunker-attachment' can be a useful tool to enforce payment for delivered bunkers ordered, for example, by the time charterer of the ship. Under Dutch law, it is presumed bunkers are owned by the time-charterer.

8. What is the position as regards sister ships and ships in associated ownership?

As mentioned earlier, any asset of a debtor may be arrested in order to obtain security (or may be used to satisfy an existing judgment or award), a sister ship may therefore be arrested. Ships not owned by the debtor cannot be arrested, i.e. only under extra-ordinary circumstances whereby the court "pierces the corporate veil". If a ship is owned by more than one owner, the ship can still be arrested for a claim against one of the "associated" owners.

In an important decision rendered in 2014, the Supreme Court widely interpreted the sister ship / bare boat charterer - clause of Article 3(4) last paragraph Brussels Arrest Convention 1952 (*"a person*

other than the registered owner") in favour of the claimant seeking security. An arrest on a sister ship based on Article 3(4) need not necessarily be on a bare boat charter.

9. What is the position as regards Bareboat and Time-Chartered vessels?

See the answer under question 7.

10. Do your Courts require counter-security in order to arrest a ship?

Dutch courts have discretionary power to demand counter security but in practice this rarely happens. There is however a shifting trend where courts are more receptive to such requests.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The common law concept of "maritime *lien*" is not recognized in Dutch law. However, if a maritime lien means that a certain claim is attached to the ship, i.e. even if the debtor is not the legal owner of the ship, a ship may be arrested for such claim/lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

The Netherlands is not a party to any conventions on maritime liens. However, claims based on a maritime lien, having the legal status of being attached to the ship, may qualify for an arrest.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Generally between 3 and 8 hours depending on the complexity of the case. The petition will be dealt with by the court immediately. Once the arrest is permitted, the bailiff, if put on stand-by beforehand, can then execute the arrest forthwith.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A Power of Attorney is not required when filing the arrest petition. An attorney-at-law is assumed by law to duly represent his client.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The requirement of submitting *original* documents is under Dutch law very rare, i.e. only when the opposing party contests the authenticity of the document. Original documents are not required when applying for arrest petition, nor is notarisation and/or apostille.
In case of utmost dispatch, an arrest petition can even be filed electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The arrest creates jurisdiction unless international conventions to which the Netherlands has ratified provide otherwise. If the parties had agreed on another jurisdiction or arbitration, Dutch courts must step aside.

17. What is the procedure to release a ship from arrest?

By serving a writ of summons in summary proceedings on the arresting party, the ship owner can demand immediate release of the ship from arrest. The court (where the ship is located) will set a date for a hearing on very short notice. The more urgent, the quicker the hearing. At the hearing both parties' lawyers will plead their case orally. A decision will be issued within a few days, if not already immediately after the hearing. The court will lift or maintain the arrest by court order. The ship is then virtually released. To effectuate the court order, the arrestor's lawyer is supposed to instruct the bailiff to call the harbour authorities that the ship is free to go.

18. What type of security needs to be placed for the release?

The type of security to be provided by the ship owner to the arresting party in release from arrest is up to the discretionary powers of the court. But in practice this varies from a (reputable Dutch) bank guarantee, a deposit in an escrow account or a letter of undertaking given by a reputable and financially solvent P&I Club ("Club letter"). Standard forms are in use on the basis of which a bank guarantee or Club letter is given.

19. Does security need to cover interest and costs?

Yes, the arresting party may add 30% (the "raise") over the capital claim (which claim is not exceeding an amount of €300,000) for covering (future) interest and (procedural) costs. To claims exceeding €300,000 applies a sliding scale, i.e. the higher the amount the more limited the raise for covering interest and costs (still 20% for claims up to €1 mil).

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Although case law is divided, technically, a court may reject a request for lifting an arrest despite the presence of a P&I LOU offered by the ship owner if the arresting party refuses to accept the P&I LOU and demands a bank guarantee instead.
However, in practice P&I LOUs are very often accepted by the arresting party in release from arrest, which means the court usually need not to decide whether P&I LOUs are considered sufficient alternative security.
P&I LOUs are only acceptable when provided by a reputable and financially solvent P&I Club.

21. How long does it take to release the ship?

If the court order lifting the arrest is in place or the parties have made an agreement (settlement or alternative security), the arrest can be lifted within 5 minutes. There is no need for the court's intervention, the lawyer acting for the arresting party simply calls the bailiff who enforced the arrest. The bailiff subsequently calls the harbour authorities that the ship is free to leave again.

22. Is there a procedure to contest the arrest?

The arrest can be contested/challenged in summary proceedings as described in the answer to question 17. Usually, the ship owner's lawyer holds the arresting party liable for wrongful arrest and demands immediate release and if refused the ship owner can turn to the court with the request to issue a court order to lift the arrest.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The time limit for filing suit after the arrest has been enforced must be at least eight (8) days after the arrest was enforced. Usually a time limit for filing suit of one to two months is granted when it concerns a foreign ship. Courts are free to determine this time frame.
In case the creditor needs more time for filing suit, or in case the parties are still negotiating a settlement, the creditor can submit a request for an extension of the initial time limit to the Court. The grounds for the extension of the time limit need to be mentioned in the request otherwise it will be rejected by the Court.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. If the claim on which the arrest is based appears not to exist or appears to be unfounded (because it has been rejected later on in proceedings on the merits), the arrest is deemed to be wrongful. The arresting party will be strictly liable for all damages suffered by the ship owner due to the wrongful arrest.
This means the (wrongful) arrestor is by definition obliged to reimburse the ship owner for all his damages and losses, like port dues, but even consequential damages, such as loss of hire (all amounts

to be increased with statutory interest). This is premised on the condition that the ship owner renders sufficient evidence of the damages and losses incurred. Furthermore, the ship owner has a duty to mitigate its damages.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Dutch law is rather strict in the definition of "ownership" and in acknowledging company structures. As a result, Dutch courts are not easily inclined to *"pierce the corporate veil"*, i.e. treat companies as one in the sense that claims on the one can be recovered from the other company. Hence, courts do not quickly allow a ship arrest for a claim against a third party although having close links to the ship owner. If the corporate structure is used to actively mislead creditors in order to avoid payment however, the courts could under exceptional circumstances be inclined to rule differently. The corporate veil may also be pierced if (foreign) law applicable to the question of law provides grounds for piercing the corporate veil or for "identifying" two or more companies as one and the same company.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

If a ship has been arrested and the arrest is not lifted in injunction proceedings or by way of alternative security, the arrest will be maintained until the creditor has obtained a title (judgment or arbitration award). Once such title is obtained, the conservatory arrest will automatically be transformed into an executory arrest. This may be followed by a judicial/public sale of the vessel before the court, if so requested, in which case the court will determine the pre-conditions for such auction.
Auctioning of a foreign seagoing vessel is subject to a detailed time frame and scheme of requirements to be fulfilled prior to the day on which the ship is actually auctioned. These procedural requirements and the bidding system aim at securing proper and fair auction proceedings with the purpose to obtain the highest price for the vessel to be auctioned.
The auction notice must be published in the newspapers as designated by the court at least thirty (30) days prior to the day of the auction. An auction can be organized between 30 and 40 days after the title is obtained in which the creditor's claim was adjudicated.

**Peter van der Velden* *is a partner of Conway Advocaten. His expertise, a result of 25 years of experience, includes Commodity Trade, Distribution/Agency/Franchising, Shipping/Aviation, Letters of Credit, International Arbitration, Complex Commercial Litigation and Business Law. His strength lies in combining these specialized areas, which is illustrated in his ability to draft highly protective, yet commercially viable, business contracts and his repeated success in handling disputes in International arbitration and other types of litigation. Additionally, Mr. van der Velden has unique knowledge about ship arrest/release and steel trade disputes. He is an author of several published trade, shipping and banking law articles and regularly speaks at seminars about his legal experiences.*

SHIP ARREST IN *NEW ZEALAND*

*By Pauline Davies**
Fee Langstone
pauline.davies@feelangstone.co.nz
www.feelangstone.co.nz
51 Shortland Street, Auckland 1140, New Zealand
Tel: 0064 9 373 0050
Fax: 0064 9 379 3679

1. Please give an overview of ship arrest practice in your country.

Please see the below answers.

2. Which International Convention applies to arrest of ships in your country?

None.

3. Is there any other way to arrest a ship in your jurisdiction?

The Admiralty Act 1973 sets out the statutory basis on which a ship can be arrested, with the procedure being set out in Part 25 of the High Court Rules.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

These types of orders can be made in respect of any class of asset and are not limited to ships. However, they tend to be available in a narrow insolvency context, with it needing to be shown that there is an apparent dissipation of assets.

5. For which types of claims can you arrest a ship?

The types of claims for which ships can be arrested are set out in section 4(1) of the Admiralty Act 1973:

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein:
(b) any question arising between the co-owners of a ship as to possession, employment, or earnings of that ship:
(c) any claim in respect of a mortgage of or charge on a ship or any share therein:
(d) any claim for damage done by a ship:
(e) any claim for damage received by a ship:
(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the owners, charterers, or persons in possession or control of a ship are responsible, being an act, neglect, or default in the navigation or management of the ship, in the loading, carriage, or discharge of goods on, in, or from the ship or in the embarkation, carriage, or disembarkation of persons on, in, or from the ship:
(g) any claim for loss of or damage to goods carried in a ship:
(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship:
(i) any claim in the nature of salvage:
(j) any claim in the nature of towage in respect of a ship or an aircraft:
k) any claim in the nature of pilotage in respect of a ship or an aircraft:
(l) any claim in respect of goods, materials, or services (including stevedoring and lighterage services) supplied or to be supplied to a ship in its operation or maintenance:

(m) any claim in respect of the construction, repair, or equipment of a ship or for dock or port or harbour charges or dues:
(n) any claim by a master or member of the crew of a ship for wages:
(o) any claim by a master, shipper, charterer, or agent in respect of disbursements made on account of a ship:
(p) any claim arising out of an act which is or is claimed to be a general average act:
(q) any claim arising out of bottomry:
(r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

It depends on the nature of the claim. With a few exceptions, where there is no maritime lien or similar charge being claimed, it is necessary that the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or control of the ship.

8. What is the position as regards sister ships and ships in associated ownership?

In most cases an arrest can be made of any ship which, at the time when the action is brought, is beneficially owned or is on charter by demise to the same person who would be liable *in personam* (as above). Claims which cannot be brought against a sister ship are claims for possession or ownership, claims between co-owners, claims in respect of a mortgage, and claims for forfeiture, restoration or droits of Admiralty..

9. What is the position as regards Bareboat and Time-Chartered vessels?

The position above applies in relation to bareboat charters. There is no right of arrest of a time chartered vessel in respect of a claim against the time charterer.

10. Do your Courts require counter-security in order to arrest a ship?

No, but the court registrar requires to be pre-funded for the costs of arrest (eg harbour dues, crew costs), and for the funded sum to be topped up as it is spent.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Where there is a maritime lien, a ship can be arrested regardless of ownership. For other types of maritime claim, the position as outlined in the answer to question 8 applies.

12. Does your country recognise maritime liens? Under which International Convention, if any?

New Zealand recognises the common law maritime liens (damage done by a ship, salvage, bottomry, respondentia, master's wages and expenses, seafarers' wages). There are no international conventions that apply.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

The preparation of the court documents takes only a short time. Delays can occur in having the plaintiff execute the supporting affidavit and remit funds to cover the Registrar's expenses, particularly where different time zones are involved. In theory, and assuming all documents

relating to the claim are available, the arrest documents can be filed on the same day. The timing of the arrest itself can depend on which port is involved and whether the Registrar has to send a bailiff from a main centre to a regional centre.

14. Do you need to provide a POA or any other documents of the claim to the Court?

No.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

No original documents are needed and none need an apostille or notarisation. All court documents prepared by the law firm can be filed in any court registry, and will be accepted electronically in the first instance in cases of urgency.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, but this can be subject to challenge on the grounds of *forum non conveniens* or where an arbitration clause or foreign jurisdiction clause applied.

17. What is the procedure to release a ship from arrest?

Provided there is no caveat against release in place, a short standard form document requesting release can be filed with the court. The release will be issued by the registrar if a court order has been made or if all parties consent. The costs of the arrest must be paid, or an undertaking to pay them must be given.

18. What type of security needs to be placed for the release?

The sum sought in the claim must be paid into court, or alternative security to the satisfaction of the registrar must be given.

19. Does security need to cover interest and costs?

Yes. The plaintiff is entitled to security to the level of its best arguable case, inclusive of interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, when issued by an International Group company. The registrar would likely accept an LOU from an non-IG Club if satisfied as to its means, and provided the plaintiff agrees.

21. How long does it take to release the ship?

Once security is in place, or the claim has been settled and the necessary request has been filed, the release can occur immediately (during working hours, or after hours by prior arrangement).

22. Is there a procedure to contest the release?

Yes. A ship owner may file a conditional appearance and then apply to set aside the proceeding.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Once a defendant has filed an unconditional appearance, the plaintiff must file a formally pleaded claim within 10 working days.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, in the limited situations where a claim has been made in bad faith or with gross negligence.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Again, in limited circumstances only and only where a failure to do so would cause substantial injustice.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes, the court may order a sale pendente lite where a ship is deteriorating or losing value. It is not a quick process, requiring an independent valuation and often marketing of the ship offshore.

***Pauline Davies** is very well known in her specialist field of maritime law and is regarded as a leading lawyer in that area. Her practice covers the full range of both "wet" and "dry" maritime work including Admiralty litigation, marine and aviation insurance, the international sale and carriage of goods, domestic carriage of goods, the law relating to freight forwarders, charterparty advice and the sale and purchase of vessels.*
Pauline's clients include major marine insurers from both New Zealand and around the world, a number of New Zealand's major exporting and chartering interests, and a significant number of freight forwarders and carriers, both domestic and multi-national.
She is also regularly instructed by non-marine liability insurers where the claim has maritime aspects, such as claims against yacht and spar designers, ship repairers and builders.
Pauline is named in numerous legal guides, including the Guides to the World's Leading Shipping and Maritime Lawyers and to Women in Business Law, Best Lawyers and the Chambers Asia Pacific Guide. She is also admitted to the Supreme Court of Samoa. In 2016 she was named by Best Lawyers as Auckland Maritime Law's "Lawyer of the Year". Aside from her legal practice Pauline is a director of Insured HQ Limited. She is also Secretary of the Raglan Sailing Club.

"Within the insurance industry, marine insurance is considered a specialist field and Fee Langstone have marine insurance expertise by way of Pauline Davies and senior associate Bradley Alcorn. Pauline Davies has established herself as a leading expert in all matters marine and we seek her advice on all classes including Marine Cargo, Pleasure Craft, Commercial Hull and Marine Liability products."

"Pauline Davies' strengths lie in, policy interpretation, recovery action and settlement negotiation. What sets Pauline apart from the others is her ability to articulate complex marine concepts and communicate her response in a way where the insurer is able to understand and in turn relay this information to our end customers."

"I feel when working with Pauline Davies that we are partners ultimately looking for a solution to a problem if one can be found. Pauline also assists with advice on unique marine underwriting risks and is acknowledged for her expertise and sound interpretation of the Institute Clauses. We feel her skills in marine insurance are unique and if not the top is amongst the top marine legal experts in the marine industry."

"Pauline Davies is always available and extremely knowledgeable."

"Pauline Davies is meticulous and considers issues from all possible angles. Her advice is always succinct without sacrificing clarity."

— Client testimonials, Legal 500 Asia Pacific Rankings 2020/2023

SHIP ARREST IN *NIGERIA*

By Mr. Lawrence Fubara Anga
*ÁELEX**
lfanga@aelex.com
www.aelex.com
7th Floor, Marble House
1 Kingsway Road, Falomo-Ikoyi, Lagos
Tel: +234 1 4614057
Fax: +234 1 2692072

1. Please give an overview of ship arrest practice in your country.

Nigerian law provides a simple uncomplicated procedure for the arrest of ships thereby making the country a suitable and favourable jurisdiction for such proceedings. Jurisdiction in respect of admiralty matters is vested exclusively in the Federal High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court. The court can order the arrest of a vessel in order to confer jurisdiction upon itself or to provide pre-judgment security for the applicant. The jurisdiction of the court applies to all maritime claims however arising and to all ships irrespective of their places of residence or domicile of their owners.

2. Which International Convention applies to arrest of ships in your country?

Nigeria has acceded to the International Convention for the Unification of Certain Rules Relating to the Arrest of Ocean Going Vessels, 1952 simply referred to as "The Arrest Convention" but has not promulgated it as municipal law so arrest is under extant municipal law.

3. Is there any other way to arrest a ship in your jurisdiction?

The Admiralty Jurisdiction Act, 1991 and the Admiralty Jurisdiction Procedure Rules, 2011, govern admiralty matters. The Act provides for two general classes of maritime claims namely: proprietary maritime claims and general maritime claims. A ship may be arrested pursuant to an action in rem brought against such ship in respect of a proprietary or general maritime claim.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

No. Arrests can only be effected pursuant to an action in rem brought against the ship or a sister ship.

5. For which types of claims can you arrest a ship?

A person seeking to arrest a ship in Nigeria's territorial waters must satisfy the court that his claim qualifies as a 'Maritime Claim' as define in §2 of the Admiralty Jurisdiction Act, 1991. This generally means that it must be a proprietary maritime claim or a general maritime claim.
1. Proprietary maritime claims relating to the possession of a ship, title to or ownership of a ship or a share in a ship, mortgage of a ship or of a share in a ship, mortgage of a ship's freight or claims between co-owners of a ship relating to the possession, ownership, operation or earning of a ship. Also claims for the satisfaction or enforcement of a judgment given by the Court or a court (including a court of a foreign country) against a ship or other property in an admiralty proceeding in rem are maritime claims.
2. General maritime claims includes claims for damage done or received by a ship (whether by collision or otherwise), claims for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship as well as arising out of an act or omission of the owners or characters of a ship. Prior to applying to the court for an order to arrest a ship, the applicant must conduct a search of the caveat book to ascertain whether there is a caveat against arrest in force with respect to that ship. Where such a caveat exists, the applicant must inform the court of same. Once an applicant has ascertained that his claim falls within the meaning of a maritime claim as defined by the Act and that there are no caveats registered against the ship, he may commence proceedings by filing an action in rem at the Federal High Court in the judicial

division covering the port or area where the ship is located. He may at the same time file an ex-parte application disclosing a strong prima facie case for the arrest of the ship. This application must be supported by an affidavit deposed to by the applicant, his counsel, or his agent stating the following:

i. The nature of the claim.
ii. That the ship is within the jurisdiction of the court or is expected to arrive within the jurisdiction within three days.
iii. That the ship may leave the jurisdiction of the court at anytime thereby depriving the applicant of his pre-judgment security.

The applicant is also required to provide with the application the following:

i. A statement of claim
ii. Exhibits supporting the claim
iii. An undertaking to indemnify the ship against wrongful arrest.
iv. An undertaking to indemnify the Admiralty Marshal in respect of any expenses incurred in affecting the arrest.
v. An affidavit of urgency stating facts why the application must be heard expeditiously.

Although, at this stage of the proceedings, the court may admit photocopies of exhibits and undertakings, the applicant would subsequently be required to provide the originals or certified true copies. It is important to note that Nigerian courts will entertain an application for an arrest only when the ship has entered its jurisdiction. So where a prospective applicant is aware that a ship sought to be arrested is bound for a Nigerian port, it is advisable for him to instruct his counsel in Nigeria as soon as possible so that the requisite processes can be prepared and filed immediately the ship is within three days of entering Nigerian territorial water.

An arrest order is usually served along side an arrest warrant and the writ of summons and statement of claim by affixing sealed copies of the processes to a mast or some other conspicuous part of the ship. Copies of the said processes must also be delivered to the appropriate officers of the Nigerian Port Plc, for example the Chief Harbour Master, Traffic Manager and Port Manager.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship can be arrested irrespective of its flag, as long as it is within Nigerian territorial waters.

7. Can you arrest a ship irrespective of the debtor?

No. In order to sustain an arrest, the claimant has to show that at the time his application is brought before the court the person liable to him otherwise known as the 'relevant person' is the beneficial owner or the demise charterer of the ship.

8. What is the position as regards sister ships and ships in associated ownership?

A sister ship may be arrested in place of the offending ship if it is found within Nigerian territorial waters and if the 'relevant person' is also the beneficial owner in respect of all the shares in the sister ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Admiralty Jurisdiction Act is silent on Time-Charters. However under §4(a) of the Act an action in rem may be brought against a ship where the 'relevant person' is the demise (bareboat) charterer of the vessel.

10. Do your Courts require counter-security in order to arrest a ship?

An applicant for an arrest order may be required to give security for costs. The court will order security for costs where the claim is in excess of Five Million Naira or its foreign currency equivalent or where the plaintiff has no assets in Nigeria. The form of security required is usually a deposit of the sum specified by the court; or a guarantee supplied by a Protection and Indemnity Club (P & I Club), an insurance company or a bank. In determining the quantum or nature of security to be provided, the court shall have regard to all the circumstances of the case and shall not restrict itself to the costs of the legal proceedings.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Where the claim is one in respect of a maritime lien (a lien for salvage, damage done by a ship, wages of the master of a ship or other crew member and master's disbursements), or a claim in respect of a proprietary maritime claim (relating to the possession of a ship, title to or ownership of the ship or a share in the ship, a mortgage of a ship or a share in a ship, or a mortgage of a ship's freight), or a claim as between the co-owners of a ship as regards the possession, ownership, operation or earning of the ship, an admiralty action in rem may be brought against the ship or property in connection with which the claim arises. In this instance, the ownership of the vessel is not material.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. Nigeria recognises maritime liens by virtue of §5(3) of the Admiralty Jurisdiction Act which provides for a closed list of maritime liens such as liens for salvage; or damage done by a ship; or wages of the master or of a member of the crew of a ship; or master's disbursements. Furthermore, Nigeria is a signatory to the International Convention on Maritime Liens and Mortgages 1993 but has not promulgated the Convention as municipal law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

An arrest order can be obtained within 24 hours of filing the requisite processes.

14. Do you need to provide a POA or any other documents of the claim to the Court?

There is no need to provide a POA, however copies of the documents listed in answer 5 above have to be presented to the court in support of the claim.

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, hard copies of all the documents are required, but do not have to be notarised. Documents cannot be filed electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Nigerian courts will accept jurisdiction over the substantive claim once a vessel has been arrested within Nigerian territorial waters.

17. What is the procedure to release a ship from arrest?

Where owners have placed acceptable security for the release of a ship, the court may order release of the ship upon request made by the owners for release of the ship. In some cases, the arrestor could request for release of the ship, where owners have placed acceptable security for the release. In some cases, the court may order release of a ship under arrest, if owners successfully challenge an order of arrest.

18. What type of security needs to be placed for the release?

Security such as bank guarantees, P and I Club LOUs and insurance bonds are acceptable to be placed for the release of ships.

19. Does security need to cover interest and costs?

Yes, security must cover the claim, interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, P&I LOUs are accepted as sufficient to lift the arrest.

21. How long does it take to release the ship?

A ship can be released within 24hours of filing an acceptable security.

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

An order for an arrest will not be granted unless the ex-parte motion for a warrant of arrest is accompanied by the statement of claim and supporting documents. There is accordingly no waiting period between the arrest taking place and the commencement of the substantive action.

24. Do the Courts of your country acknowledge wrongful arrest?

An applicant for an arrest order is liable to the ship owner for damages arising from a wrongful arrest. A ship owner has three options to with:

i. He may apply to court within three months from the termination of the suit for general damage of such amount as the courts may deem a reasonable compensation; or
ii. He may make an oral application for damages immediately after judgment. The court in this instance is entitled to summarily assess the damages due to the ship owner; or
iii. He may also bring an action for wrongful arrest claiming all the damages arising from the arrest, which he can establish.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Nigerian courts recognize and exercise the powers to pierce or lift the corporate veil, in this regard an action may be commenced against a sister ship in respect of general maritime claims. However, the ship in relation to which it is a sister ship must be identified in the writ of summons. The writ of summons may identify more than one ship as a sister ship.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

The court may, on application by a party before final judgement in a proceeding, order that a ship that is under arrest in the proceeding be sold. Where the ship is deteriorating in value, the court may at any stage of the proceeding, either with or without application, order it to be sold (order 16 rules 1 & 3 Admiralty Jurisdiction Procedure Rules). The sale of a ship ordered to be sold shall be by auction 21 days after the advertisement shall have been placed in two national daily papers by the Admiralty Marshal.

***ÁELEX** is the leading Nigerian firm with expertise and institutional depth in Transportation. Our Maritime practice has evolved with developments in the sector, gaining us invaluable experience and capabilities. We offer various shipping services from ship finance to corporate, regulatory compliance and litigation.*
Members of our Maritime team are located in Lagos and Port Harcourt in Nigeria and Accra, Ghana with an aggregate of over 30 years experience in maritime law. We act as counsel to ship-owners, P&I clubs, charterers, operators of ships and other offshore assets, insurance companies, financial institutions, oil and gas companies, port owners and operators.
ÁELEX advises on ship and mortgage registration, asset financing for off shore oil and gas operations, ship registration, ship finance and lease transactions. Our expertise also extends to claims arising from charter parties, collision, cargo and demurrage, both at arbitration and in the courts of law in Nigeria and Ghana. We are regularly instructed to undertake subrogated claims on behalf of insurers, arrest and release of vessels as well as negotiating the settlement of claims.

SHIP ARREST IN *NORTHERN IRELAND*

Craig Dunford, KC
Bar of Northern Ireland
craig.dunford@barlibrary.com
www.barofni.com
The Bar Library
91 Chichester Street, Belfast
BT1 1JQ, Northern Ireland
Tel: +44 (0)28 9056 2551

1. Please give an overview of ship arrest practice in your country.

An arresting party must first issue a writ *in rem*, which gives the arresting party standing to apply for the issue of a warrant for arrest, and then check the caveat book at the High Court in Belfast to ensure that no caveat against the vessel's arrest has been entered. The arresting party then files an application (called a praecipe) applying for issue of the arrest warrant, grounded by an affidavit containing the particulars set out in O.75 r.5 of the Rules of the Court of Judicature (NI) 1980 (as amended) ("the RCJ"). The application itself is made to the Admiralty Judge (or any other available High Court Judge in the absence of the Admiralty Judge). The mechanics of arresting a vessel are dealt with by the Admiralty Marshall, and the arresting party must undertake to meet the Admiralty Marshall's costs and expenses. The application is relatively straightforward and will be treated by the High Court as urgent. Once the warrant of arrest has been issued, it needs to be transmitted to the Admiralty Marshall who will then execute it by affixing it to the wheelhouse or other prominent part of the arrested vessel.

2. Which international convention applies to the arrest of ships in your country?

Northern Ireland is a part of the United Kingdom. As such it is bound by the Brussels Convention relating to the Arrest of Sea Going Ships, 1952.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

There is the possibility of obtaining a freezing (or Mareva) injunction, but this is uncommon, more uncertain, quite probably more expensive, and would require an applicant for such relief to give a cross undertaking in damages. In practice, if the remedy of arrest is available, it is preferable to pursue this.

5. For which types of claims can you arrest a ship?

The admiralty jurisdiction of the High Court in Northern Ireland is set out in the first schedule to the Administration of Justice Act 1956. This sets out nineteen types of maritime claims in respect of which the High Court may make an order of arrest of a vessel:

a) Claims to possession or ownership of a ship or any shares in her;
b) Questions arising between co-owners of a ship as to possession, employment or earnings of that ship;
c) Claims in respect of a mortgage of or charge on a ship or any share in her;
d) Claims for damage done by a ship;
e) Claim for damage received by a ship;
f) Claims for loss of life or personal injury sustained by reason of any defect in the ship or her apparel or equipment or the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship;

g) Claim for loss of or damage to goods carried in a ship;
h) Claimsarisingoutofanyagreementrelatingtothecarriageofgoodsinashiportotheuse or hire of a ship;
i) Any claim in the nature of salvage;
j) Any claim in the nature of towage;
k) Any claim in the nature of pilotage;
l) Any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
m) Claims in respect of the construction, repair or equipment of a ship, or dock charges/dues;
n) Claims by a Master or member of the crew of a ship for wages;
o) Claims by a Master, shipper, charterer or agent in respect of disbursements made on account of a ship;
p) Claims arising out of an act claimed to be an act of general average;
q) Any claim arising out of bottomry;
r) Any claim for the forfeiture or condemnation of a ship or goods which are being or have been carried in a ship or for the restoration of a ship or any such goods after seizure, or for *droits* of Admiralty.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Paragraph 3(4) of schedule 1 to the Administration of Justice Act 1956 provides that in the case of any such claim as is mentioned in paragraphs (d) to (r) in question 5 above (being a claim arising in connection with a ship), then where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship, the Admiralty jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against (a) that ship, if at the time when the action is brought, she is beneficially owned as respects all the shares in her by that person; or (b) any other ship which at the time when the action is brought, is beneficially owned as aforesaid (this is the "sister ship" provision).

8. What is the position as regards sister ships, and ships in associated ownership?

Sister ships are liable to arrest (see 7 above) but not ships in associated ownership.

9. What is the position as regards bareboat and time chartered vessels?

It is a requirement that the person liable *in personam* must have a beneficial interest in the ship arrested: it is unclear (as the point has not been tested before the Northern Irish courts) whether a demise charterer of a vessel would be a person with a "beneficial interest" in her. The English authorities on the point were in conflict, and that conflict remained unresolved when English statute law was changed in 1981 to bring bareboat chartered vessels specifically into the scope of arrest jurisdiction in England. In Northern Ireland it has, however, been held that the court may look behind the register in order to determine where the true beneficial interest in the arrested ship lies (*The Star Viking* (No 1) [2014] NIQB 137). The status of a time charterer of a vessel is also untested in this context, but the better view is that a time charterer is not a "beneficial owner" for these purposes.

10. Do your courts require counter security in order to arrest a ship?

No.

11. Is there any difference in respect to arresting ship for a maritime claim and a maritime lien?

With regard to maritime claims a ship can only be arrested if the party who owned her at the time that the cause of action arose in respect of the maritime claim still owns her at the time of arrest. By contrast, maritime liens are enforceable against a vessel irrespective of ownership. The Plaintiff seeking to enforce a maritime lien can therefore issue a writ in rem against, and arrest, the ship even if her ownership has changed.

12. Does your country recognise maritime liens?

Maritime liens are recognised in respect of salvage, crew wages, damage done by a vessel, Master's wages and disbursements, and bottomry and *respondentia*. These last two are virtually redundant – they arise in theory where the vessel herself was pledged as security, and this rarely happens in today's conditions.

13. What period of time is required in order to arrest a ship following receipt of instructions by your law firm?

As an independent QC, I cannot accept instructions directly to issue proceedings of any description. I am, however, instructed to appear in court in relation to these matters by solicitors with direct experience of arrest procedure in Northern Ireland. In my experience, provided that the solicitors are furnished with all the documents relevant to the claim, the application can be issued and brought before the court very quickly (the courts treat these matters as urgent). Once the warrant of arrest has been issued, the Admiralty Marshall acts as a matter of urgency to serve it upon the arrested vessel.

14. Do you need to provide a POA or any other documents in support of the claim to the court?

There is no need for a Power of Attorney in order to arrest a ship. The documents needed to support the application are set out in O. 75 of the RCJ, and copies of those documents should be sufficient as exhibits to the affidavit to lead arrest. Any such documents which are not in the English language may require a duly certified translation.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The court will expect the original writ *in rem*, a praecipe and a form of warrant of arrest to be filed before hearing the application to arrest. The matters of evidence on which an arresting party must satisfy the court are set out in O.75 r.5 of the RCJ. The arresting party must also undertake to meet the Admiralty Marshall's expenses in serving the writ *in rem* and the warrant of arrest. There is currently no facility for electronic filing of these documents. Certification or apostille by a notary is not required, although if any of the documents supporting the
documentation are in a foreign language, then these will need to be translated and the translation duly certified by a notary.

16. Will your courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The issue of the writ *in rem* invokes the court's jurisdiction, and this will be exercised unless circumstances dictate otherwise, such as where a claim arises out of a contract containing an exclusive jurisdiction clause, or an obligation to refer a dispute to arbitration.

17. What is the procedure to release a ship from arrest?

If the ship is to be released from arrest because acceptable security has been procured which the arresting party is prepared to accept, then the release is brought about by filing a praecipe for release, together with a further undertaking to be responsible for any costs the Admiralty Marshall

may incur in dealing with the release. If the owners of the vessel dispute the arrest, they will need to make an independent application to the court to order the arrest to be lifted – see below.

18. What type of security needs to be placed for the release?

This is a matter for the parties to agree – a very common form of security is the provision of a P & I Club letter of undertaking – see below.

19. Does security need to cover interest and costs?

An owner looking to post security in order to secure the release of an arrested vessel would be well advised to post security for the value of the arresting party's best reasonably arguable case (including interest and costs).

20. Are P & I LOUs accepted as sufficient to lift the arrest?

This will depend upon the level of P & I cover upon which a ship owner can call. If the vessel is entered for cover in respect of claims generally (and not merely freight, demurrage and defence), then generally yes. If not, some form of bank-backed security is likely to be needed.

21. How long does it take to release the ship?

This should happen virtually immediately, once acceptable security has been posted.

22. Is there a procedure to contest the arrest?

There is no specifically dedicated procedure, but it is open to the owner of the vessel who considers that she has been wrongly arrested (on the grounds either of gross negligence or bad faith) to bring an application before the court seeking an order releasing the vessel from arrest. If the court is not satisfied that the arrest has been procured through gross negligence and/or bad faith and finds that the arresting party was entitled to arrest the vessel, then the arrest will be maintained pending the provision of adequate security.

23. What period of time will be granted by the court in order for the claimants to take legal action on the merits?

The issue and service of the writ *in rem* is the "gateway" to asking the court to arrest the vessel. In practice, these events are essentially simultaneous, and if the Northern Irish court is to accept jurisdiction on the merits of the claim, it proceeds accordingly, with the defendant being obliged to enter an appearance to the writ within 14 days of service. The plaintiff has six weeks from the date of entry of the appearance within which to serve a statement of claim. The defendant then has six weeks, running from the date of service of the statement of claim, in which to serve any defence. The court has power to alter these time limits, or even to order trial without pleadings, if appropriate.

24. Do the courts of your country acknowledge wrongful arrest?

Yes. Arrests are wrongful either if made in bad faith or by way of gross negligence.

25. Do the courts of your country acknowledge piercing and lifting of the corporate veil?

This is highly unusual, but it is possible in very limited circumstances if the court has cogent evidence before it that there is an intention of deception in the way that corporate structures/ registrations have been used in a particular case.

26. Is it possible to have a ship sold pendente lite? If so how long does it take?

This is possible, and the Northern Irish court has made such an order (*Star Viking (No 3)* [2015] NIQB 70). If a vessel has remained under arrest for a considerable period of time, and the expenses of keeping her under arrest are mounting with a consequent loss of value to the vessel herself, then this may justify a sale. A judicial sale, under the direction of the Admiralty Marshall, (following a court order to this effect) will have the effect of cleansing the vessel from all claims against her including maritime liens.

***Craig Dunford** has over thirteen years' experience specialising in commercial and chancery litigation, insolvency law and company disputes;*
Extensive experience in advising and representing government departments, insolvency practitioners and private clients in commercial and insolvency-related matters;
Author of Litigation in the Commercial List in Northern Ireland published in 2012;
In practice as a solicitor in England and Northern Ireland for nine years before being called to the Bar of Northern Ireland in 2000, and the Bar of Ireland in 2006;
Experience in England included three years in a City of London law firm undertaking major maritime and insolvency litigation;
Part-time tutor at the Institute for Professional Legal Studies in Belfast, and coaches and supports senior school students interested in the legal profession, and in providing training for expert witnesses in civil court cases.

SHIP ARREST IN *NORWAY*

By Mr. Kristian Østberg & Alexander W. Barg***
Ræder Bing advokatfirma AS
kos@raederbing.no - awb@raederbing.no
raederbing.no/en
P.O. Box 2944, Solli, N-0230 Oslo, NORWAY
Tel: +47 23 27 27 00 | +47 23 27 51 57

1. Please give an overview of ship arrest practice in your country.

Arresting a ship in Norway can be arranged quickly and at a reasonable cost. Norwegian courts do not require the claimant to provide any documents in original, and legal counsel does not need to present a POA from the claimant. Further, Norwegian courts rarely request translation of documents written in English or any of the Scandinavian languages.

To arrest a vessel under Norwegian jurisdiction, the claimant must submit an arrest application to a District Court with jurisdiction, i.e., the vessel's current port or the vessel's port of call. If the defendant is Norwegian, the claimant may also submit its arrest application to the District Court of the defendant's office or residence.

Several conditions for arrest must be proven upon a balance of probability. Most importantly, the claimant must hold a valid maritime claim for which the shipowner is debtor. Norwegian law does not acknowledge actions against the vessel "in rem", and the arrest will not succeed unless the shipowner is also the debtor.

Another peculiarity of Norwegian arrest law is that the claimant has to prove upon a balance of probability that it has a "reason for arrest". For claims secured with maritime lien, the maritime lien provides sufficient "reason for arrest". For all other claims, the court may only award arrest if the conduct of the debtor gives grounds to fear that enforcement of the claim "would otherwise be evaded or considerably impeded or would have to take place outside the realm", ref. Section 33-2 of the Norwegian Dispute Act. Consequently, the court has discretionary power to deny an arrest petition if there is no "reason for arrest".

The courts will usually consider the arrest petition on the basis the claimant's submission without a defense reply or a hearing, as time will often be of major importance. If the application succeeds, the courts will notify the local enforcement authorities, which will secure that the ship does not leave the harbor, and that the arrest is reported to the ship register. The shipowner may subsequently request a hearing to dispute the claim or the "reason for arrest", and in case of wrongful arrest, claim damages.

2. Which International Convention applies to arrest of ships in your country?

Norway is a party to the 1952 Arrest Convention, which is incorporated into Norwegian law through the Norwegian Maritime Code and the Norwegian Dispute Act. Norway has reserved its rights in accordance with Art 10 (b). Norway is signatory to but has not yet ratified the 1999 Arrest Convention. We do not expect Norway to ratify the 1999 Arrest Convention in the near future.

3. Is there any other way to arrest a ship in your jurisdiction?

There is really no alternative to the normal procedures for arrest of ships. However, Norwegian flagged vessels may be subject to so-called "register arrest", where the arrest is registered as an encumbrance in the ship register, but without physically seizing the ship. Although normally not as effective as a physical arrest, this might be an option e.g. if the claim is not a maritime claim, as this will provide some security against the owner's legal dispositions of the vessel.

Further, it might reduce the claimant's exposure to liability for wrongful arrest as the vessel will still be able to sail.

Finally, the claimant may file for arrest of bunkers or cargo if it does not have a maritime claim against the owner and therefore is unable to arrest the ship as such. This may have effect until the bunkers or cargo is loaded off the ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

With the exception of freezing orders related to bankruptcy proceedings, no. However, a vessel may serve as security for a claim in other ways than arrest. One possibility is by way of liens or mortgages, which may also give the creditor the right of enforcement. Such security can be based on contract or take effect by statute, or more commonly when considered as an alternative to arrest, by order of the enforcement courts.
The general right of detention/retention may also give security for a claimant in physical possession of the vessel, e.g. the yard's right to detain the vessel in its docks until its claims have been paid in full.

5. For which types of claims can you arrest a ship?

According to the Maritime Code section 92, arrest of a ship can only be granted for a maritime claim. The definition of "maritime claim" in the Norwegian Maritime Code section 92 includes all maritime claims listed in the 1952 Arrest convention article 1(1), with the addition of claims for compensation after wreck removal.

6. Can you arrest a ship irrespective of her flag?

Yes. Norwegian courts will also recognize maritime liens established in accordance with the law of the flag.

7. Can you arrest a ship irrespective of the debtor?

No. Norwegian law does not acknowledge action "in rem", and as a general rule the owner of the ship has to be the debtor of the maritime claim (with the exception for certain maritime liens).

8. What is the position as regards sister ships and ships in associated ownership?

As a general rule, the maritime claim must be related to the ship. . Nevertheless, and as allowed for under the Arrest Convention, the Norwegian Maritime Code section 93 allows for sister ship arrest as long as the vessels have the same legal entity as direct owner. There is also a possibility pursuant to the Maritime Act Section 93 to arrest other ships owned by the party personally liable for the claim, when the one personally liable for the claim is not the owner of the ship which the maritime claim concerns.
It is not possible to arrest ships with associated ownership, e.g. two ship owning companies with the same holding company.

9. What is the position as regards Bareboat and Time-Chartered vessels?

As mentioned above, an arrest will only be granted if the debtor is also the owner of the ship. The charterer therefore must respect an arrest award related to claims against the shipowner. The claimant, on the other hand, may not file for arrest on basis of a claim against the charterer, unless the ship owner is also liable for the claim. Bunker invoices issued "to the charterer and/or vessel and/or owner" (or similar wording) will normally not be regarded as a claim against the shipowner in this respect.

10. Do your Courts require counter-security in order to arrest a ship?

Section 33-3 of the Norwegian Dispute Act empowers the courts with discretion to grant arrest subject to the claimant depositing counter-security. The security is fixed at the courts discretion based on the potential liability in case of a wrongful arrest. Furthermore, by operation of Section 97 of the Norwegian Maritime Court, the claimant shall post security for harbor dues accruing on the vessel while it remains arrested.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No. Section 92 (2)(q) of the Norwegian Maritime Code exempts maritime liens from the definition of a maritime claim, and theoretically it is not possible to arrest a ship on basis of maritime liens.

Nevertheless, a claim secured by a maritime lien will normally be within the definition of a maritime claim and thus serve as basis of an arrest on that basis.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, maritime liens are recognized under Norwegian law. The provisions on maritime liens are found in the Maritime Code Section 51, and they are similar to those found in the 1967 Maritime Lien Convention although Norway is not a signatory.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Ræder Bing advokatfirma will typically be able to arrange for the arrest of a vessel in any Norwegian port within 24 hours after receiving necessary documentation by email.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Norwegian courts will not require claimant's legal counsel to present a POA. We normally advise claimants to submit copy of written evidence, e.g. copy of invoice, claims letter etc. This increases the chance of a successful arrest, as in most cases the claimant must prove the substantive claim on a balance of probabilities. Evidence in languages other than English, Norwegian, Swedish or Danish, may have to be translated.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Norwegian courts do not require any documents to be submitted in original, notarised or legalized. The arrest petition, including evidence will be filed electronically to the court online

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, unless the parties have entered into a legal and valid agreement on venue or arbitration, the arrest court will accept jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

There are several procedures to release a ship from arrest. Firstly, the arrest will be released on payment or on acceptable or formally compliant security being posted for the claim being basis for the arrest award. Secondly, release may be sought by disputing the arrest award by requesting a subsequent hearing on either the substantive claim, or the claimant's "reason for arrest", or both. It normally takes some time to obtain a release on basis of disputing the arrest award, unless the shipowner is able to provide evidence of an obviously wrongful arrest. Thirdly, the arrest will lapse one month after the claimant has obtained an award on the substantive claim, unless the claimant has taken legal steps to enforce the judgment. If not released yet, the arrest will lapse once the claimant has been awarded an enforcement lien for its substantive claim.

18. What type of security needs to be placed for the release?

Norwegian courts only accept cash deposit and unconditional bank guarantees issued by a Norwegian financial institution.

19. Does security need to cover interest and costs?

The security has to cover the full amount of the claim with interest and costs, provided that interest and costs are included in the claim.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Norwegian courts do not accept LOUs as security for lifting an arrest. Claimants, however, may accept LOUs from reputable P&I clubs as sufficient security to agree to lift the arrest.

21. How long does it take to release the ship?

The vessel will be released immediately upon the lapse or lifting of the arrest. The time it takes from an arrest award to actual release depends on which alternative release procedure is applied. Normally the ship should be allowed to sail within hours following evidence of security. In case the ship owner decides to contest the arrest, it may take weeks and even months.

22. Is there a procedure to contest the arrest?

Yes, the defendant may request a hearing in which he may contest the claim or the claimant's "reason for arrest". Such request is made by a submission to the court which awarded the arrest. In the submission, arguments and supporting evidence will normally be presented.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The defendant can request the courts to fix a time-limit by which the claimant must institute legal proceedings. If no such time-limit has been fixed by the court, the period will be one year from the issue of the arrest order. If proceedings are not instituted within the time-limit, the arrest order will be quashed. The court may, at its own discretion, extend the one-year time limit upon request by the claimant.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Pursuant to section 32-11 of the Norwegian Dispute Act, the claimant may be held strictly liable for all of the defendant's economic loss if the claim did not exist at the time of arrest. The same applies if the claimant by negligence or intent has given wrongful or misleading information regarding the "reason for arrest".

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

As a general rule under Norwegian law the integrity of legal constructions is respected and the shareholders of a company with limited liability will not be personally liable for the obligations of the company.
Pursuant to the Norwegian Limited Liability Companies Acts section 17-1, however, the company's Directors, general manager and shareholders may be held liable in damages in case of own or contributory negligence or willful misconduct.
In addition, and although there is no legal precedence yet, the Norwegian Supreme court has in previous cases stated that piercing and lifting the corporate veil cannot be ruled out "in exceptional circumstances".

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

When a ship has been arrested, the owner does no longer have legal rights to dispose of the ship. On the other hand, an arrest does not give the claimant the legal rights to dispose of the ship or seek enforcement in and to the ship. Consequently, enforcement is subject to a final award on the merits of the substantive claim and thereafter proper enforcement proceedings. However, the courts can agree to a sale "pendente lite" if the arrest holder requests it, and it is necessary to avoid substantial decrease in the value of the ship.

**Kristian* *is a partner and specializes in maritime, transportation and insurance law. He has extensive experience with negotiation, conflict resolution and advice within his areas of expertise as well as with general business law, often in the context of international transactions and projects. Before joining Rœder Bing, Kristian worked as an in-house lawyer and general counsel in leading industrial companies, as well as in private practices in Oslo.*
***Alexander* *is a managing partner with broad experience within liability/tort, insurance and transportation law. Alexander assists in coverage issues, recourse and liability/tort cases related to product liability, professional liability and transportation law, in addition to advising in general contract and commercial law. Alexander also has experience as an in-house lawyer in a Norwegian insurance company.*

SHIP ARREST IN *OMAN*

*By Omar N. Omar**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
www.tamimi.com
Regus Business Centre LLC, Building 1340, Block 40
Plot No. 183, Street 327, PO Box 395 - P.C. 118, Muscat
Tel: +96893332341

1. Please give an overview of ship arrest practice in your country.

The Omani Maritime Code (Royal Decree No. 19/2023) regulates the conservatory arrest of ships. The arrest application must be submitted to the Court of First Instance. The Court normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte on the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is one of the maritime debts listed in the Omani Maritime Code (please see Question No. 5 below).
The arrest order may be challenged but this procedure is usually complex and lengthy, and the quickest way to lift the arrest is to put up security (please see Question No. 18 below).
After the execution of the arrest, the claimant has 15 days from the date of executing the seizure report to commence legal action on the merits (Article 71).

2. Which International Convention applies to arrest of ships in your country?

Oman is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the Arrest of Ships of 1999. Oman applies its domestic Maritime Code (Royal Decree No. 19/2023).

3. Is there any other way to arrest a ship in your jurisdiction?

Yes. A ship can be arrested in Oman through either:

a) Precautionary (Conservatory) Arrest: The applicant is not required to have an execution deed against the ship. This is regulated by Articles 67-73 of the Maritime Code.

b) Executive Seizure: Requires the applicant to possess an enforceable executive deed (such as a final court judgment or arbitral award) and is followed by judicial sale procedures. This is regulated by Articles 74-83 of the Maritime Code.

The main difference is that executive seizure requires a pre-existing executable title, while precautionary arrest does not.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

There are no alternatives for the arrest of ships in Oman. The Maritime Code that regulates the arrest of ships prevents the applicant from relying on other laws in Oman for ship arrest purposes.

5. For which types of claims can you arrest a ship?

In order to arrest a vessel in the Omani territorial waters, the creditor must have a “maritime debt” against the ship. Article 67 of the Omani Maritime Code defines maritime debts as follows:

1. Port fees, sea lanes, navigational aids fees, royalties, and amounts owned by the ship
2. Damage caused by marine collision, pollution, or other marine accidents
3. Loss of human life or bodily injury caused by the ship or arising from its exploitation
4. Sea rescue operation
5. Joint Maritime Losses
6. Towage of the ship
7. Pilotage

8. Insurance on the ship
9. Contracts for the use of Chartering of the ship
10. Contracts for the carriage of goods under a lease, bill of lading, or other agreements
11. Supplying products, providing fuel to the ship, or furnishing necessary tools for operating, maintaining or preserving the ship at any location where the supply occurs
12. Construction, reconstruction, repair, or outfitting of the ship, including dry dock expenses
13. Salaries of the captain, officers, crew, and other personnel working onboard the ship under Maritime Employment Contracts, including expenses for repatriation
14. Damages arising from loss of or damage to goods and luggage carried by the ship, as well as damages for delays in the delivery of goods and luggage
15. Expenditures made by the captain, shippers, Charterers, or agents of the ship on behalf of the ship or its owner
16. Dispute relating to the ownership of the ship
17. Dispute relating to the joint ownership of the ship and the rights and profits resulting from its operation
18. Maritime mortgage
19. Expenses for salvaging the sunken ship or its wreckage, including any cargo or other items it contains, floating the stranded ship, or relocating it to another location
20. Costs relating to the maintenance of the abandoned ship and the support of its crew
21. Fees for maritime affairs services

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Omani territorial waters can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

Pursuant to Article 68 of the Omani Maritime Code, any creditor whose debt is qualified as a maritime debt may arrest the ship anchored in Omani territorial waters, subject to the ownership and control conditions stipulated under the Code.

8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Oman is possible as long as the sister ship was owned by the debtor at the time the maritime debt arose and the ship is under the management of the owner (Article 68). However, if the debt resulted from expenses incurred by the master, charterers, or agents (Art. 67/15), disputes over ownership of the ship (Art. 67/16), or co-ownership and rights/profits from exploitation (Art. 67/17), then the arrest is restricted to the specific ship concerned, and sister ships cannot be targeted.
Regarding ships under management by a party other than the owner (e.g., a charterer), Article 69 provides that the creditor may arrest the ship in question or any other ship owned by the responsible manager, but cannot arrest other ships owned by the actual owner of the vessel. This rule applies to all maritime debts relating to ships whose management is entrusted to someone other than the owner, thereby protecting the owner's other vessels from arrest.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Under Article 69 of the Omani Maritime Code, the creditor of a charterer who was given control over the nautical navigation of the ship has the right to arrest the ship for a debt resulting from the charterer's actions. In addition, the creditor has the right to arrest any other ship owned by the charterer.

10. Do your Courts require counter-security in order to arrest a ship?

No counter-security is required in Oman to obtain a ship arrest order.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a ship for a maritime claim and the arrest of ship for a maritime lien. Both follow the same procedural framework under the Maritime Code.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Oman recognizes maritime liens. Maritime liens are specifically enumerated in Article 40 of the Omani Maritime Code under Part Three, "Rights in Rem Attaching to the Ship." Oman has not acceded to any international convention on maritime liens; therefore, domestic law governs.

According to Article 40, the holder of a maritime lien may pursue their claim against the ship, in the following order of priority:

1. Judicial and preservation expenses: Costs incurred for preserving and maintaining the ship, selling it, and distributing its proceeds, as well as port fees, pilotage fees, loading fees, taxes due to the state, compensation for damages to living aquatic resources, ports, basins, and navigational routes, and expenses for services provided to the ship and its crew.
2. Maritime employment rights: Claims arising from employment contracts of the master, seamen, and others bound by maritime employment contracts aboard the ship.
3. Salvage and general average contributions: Amounts due for salvage operations and the ship's share of contributions in general average losses.
4. Maritime accident compensations: Compensation arising from maritime accidents and for damages to persons, cargo, and baggage on board.
5. Contracts entered into by the master: Rights from contracts concluded by the master outside the ship's port of registration, necessary for the completion of the ship's voyage.

Maritime liens take precedence over all other rights attached to the ship, ensuring that holders of such liens are paid first according to the above order.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in Oman, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA duly notarised and legalised either by an Apostille or through authentication by the Omani Embassy and the Ministry of Foreign Affairs in the country where the POA is executed, must be submitted to the competent Court along with the arrest application. In addition, all documentation supporting the claim against the ship must be attached to the arrest application. It should also be noted that the official language in Oman is Arabic, which means that all documents in a foreign language must be translated into Arabic by a sworn translator in Oman prior to submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The documentation supporting the claim must be attached to the application in original or certified copies. Electronic filing is currently available for ship arrest applications in Oman.

As mentioned under Question 14 above, if these documents are in a foreign language they must be translated into Arabic by a sworn translator in Oman.

Only official documents must be legalised up to the Omani Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Oman.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

According to Article 8 of the Omani Maritime Code:
For Omani ships: The court where the registration office is situated has jurisdiction over legal proceedings related to the ship.
For foreign ships: Omani courts have jurisdiction over foreign ships located in Omani maritime areas.
However, the Omani courts will not accept jurisdiction over the substantive claim once the vessel has been arrested if the parties have validly agreed to give exclusive jurisdiction to a foreign court or arbitration tribunal.
In such cases, the arrest can still be executed as a conservatory measure pending resolution of the dispute in the agreed forum, but the Omani courts will not hear the merits of the underlying claim..

17. What is the procedure to release a ship from arrest?

There are two methods to release a ship from arrest.

A) Release by the Applicant (Claimant):
The ship may be released at the request of the applicant by submitting a simple memorandum (written request) to the competent court requesting the release of the vessel. Upon receipt of such request, the court will issue a decision ordering the release, which must then be served on the ship as well as on the harbor master or the coast guard.

B) Release by the Defendant (Ship Owner):
If the defendant wishes to secure the release of the ship, he must first deposit the security amount determined by the judge. Thereafter, the defendant shall submit a request to the judge for the release of the vessel. Once the court order for release is issued, the order must be served on the harbor master or the coast guard in order for the release to take effect.

18. What type of security needs to be placed for the release?

According to Article 73 of the Maritime Code, the precautionary arrest shall be lifted by order of the competent court if "adequate guarantee or assurance" is provided to satisfy the debt.

In practice, Omani courts typically accept:
a) Bank guarantee issued by a locally-licensed bank in Oman, OR
b) Cash deposit with the court

The new law's terminology "adequate guarantee or assurance" is broader than previous provisions and provides courts with discretion to accept other forms of security deemed sufficient. However, in practice, courts consistently require one of the two forms mentioned above.

19. Does security need to cover interest and costs?

The security needs to be equal to the amount included in the arrest order which will be assessed by the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I Letters of Undertaking (LOUs) are generally not accepted by Omani courts for lifting ship arrests.

Important Note: This represents established judicial practice in Oman rather than an explicit statutory prohibition.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

Yes, the defendant in an arrest application may file a grievance (objection) before the court that issued the arrest order. The Maritime Law does not prescribe a specific time limit for filing a maritime grievance (however, it is preferable that the grievance be filed within seven (7) days from the date of issuance of the arrest order). After considering the grievance, the court may issue an order lifting the arrest, and such decision shall be enforceable through the usual legal channels. The time limit for appealing the judgment issued in the grievance is 15 days from the date of issuance of the judgment.

It is an important point that, if the arrest order relates to a maritime debt arising from maritime sale contracts, the time limit for filing the grievance shall be 7 days, in accordance with the provisions of the Investment and Commercial Court Law. In such cases, the judgment issued on the grievance shall be final and not subject to appeal.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After the execution of the arrest, a period of 15 days from the date of executing the seizure report is granted for the claimant to take legal action on the merits.
If the claimant fails to commence legal proceedings within this period, the defendant may apply to the court to lift the arrest.

24. Do the Courts of your country acknowledge wrongful arrest?

There are no specific legal precedents establishing a dedicated cause of action for wrongful arrest of ships in Oman.

However, under the general principles of civil law in Oman, a claim for damages arising from wrongful arrest may succeed if the party claiming indemnification can prove:

a) Bad faith of the arresting party (malicious intent or gross negligence)
b) Actual losses arising from the arrest (demurrage, lost profits, etc.)
c) Causation between the wrongful arrest and the damages

The burden of proof is on the party alleging wrongful arrest, and such claims are evaluated under general tort principles rather than specialized maritime law provisions.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This concept is not explicitly recognized in Omani maritime law or general commercial law as it exists in common law jurisdictions.

Omani law generally respects the separate legal personality of corporate entities. However, in exceptional cases involving fraud, abuse of corporate form, or where corporate structures are used to evade legal obligations, Omani courts may consider the economic reality behind corporate structures.

Such cases are rare and highly fact-specific, and there is no established doctrine or clear legal framework for "piercing the corporate veil" as understood in common law systems.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Such a sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

*In 2008 Omar joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries.
Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.
Omar is an author of the UAE Vessel Registration and Mortgage Section in the Kluwer International Maritime Law Handbook. He is currently heading the EMAC team to establish the first Maritime Arbitration Centre in the UAE and the region.

SHIP ARREST IN *PAKISTAN*

By Junaid Daudpota
Daudpota International
junaid@daudpota.com
www.daudpota.com
Suite No. 306, Horizon Tower, Block-3,
Clifton, Karachi
Tel: +92 3332275544

1. Please give an overview of ship arrest practice in your country.

In Pakistan arrest of ship is regulated under the "Admiralty Jurisdiction of High Court Ordinance 1980" (AJHCO'80) and the Sindh Chief Court Rules (SCCR). In addition to the aforesaid, the Civil Procedure Code, 1908, is also applicable.
Utilizing these rules, a claimant may, on filing an affidavit, obtain a warrant for the arrest of ship, from an Admiralty Court / High Court. Thereafter, such warrant is served by the court bailiff with the assistance of port master, by way of delivering it to the captain of ship or by way of affixing it on the mast of the ship. The bailiff then reports back to the Admiralty Court as to service of warrant.
An action in rem against a ship without making it a defendant. The real defendants are described as owner of or persons interested in the ship, and the writ of arrest may be effected by serving it on the ship which may be accepted by the master, owner or by nailing or pasting it on the mast or other conspicuous part of the ship. As a consequence of such service if the owner or person interested in the res enters appearance and puts up the defence then the person so appearing becomes party to the action and thereby becomes personally liable for whatever may be decreed against him. If no appearance is entered the action remains as an action in rem operating against the ship arrested and if a judgment is passed in favour of the plaintiff it can be enforced by sale of the ship but not against the owner personally or any of his property.

2. Which International Convention applies to arrest of ships in your country?

None. thus far. On 11 July 2000, Pakistan signed the United Nations International Convention on Arrest of Ships, 1999, but has not yet ratified the same.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No.

5. For which types of claims can you arrest a ship?

According to AJHCO '80, arrest of ships is possible for the following causes of action:

(a) – Any claim to the possession or ownership of a ship or to the ownership of any share therein or for recovery of documents of title and ownership of ship, including registration certificate. Logbook and such certificates as may be necessary for the operation or navigation of the ship (this can be an in rem claim)

(b) – Any question between co-owners of a ship as to possession, employment or earnings of that ship (this can be an in rem claim)

(c) – Any claim in respect of a mortgage of or charge on a ship or any share therein (this can be an in rem claim)

(d) – Any claim for damage done by a ship (this can be an in rem claim)

(e) – Any claim for damage received by a ship (this cannot be an in rem claim)

(f) – Any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults, the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship (this cannot be an in rem claim)

(g) – Any claim for loss of or damage to goods carried in a ship (this cannot be an in rem claim)

(h) – Any claim arising out of any agreement relating to the carriage of goods in a ship or to use or hire of the ship (this cannot be an in rem claim)

(i) – Any claim in the nature of salvage of life from a ship or cargo or any property on board a ship or the ship or the ship itself or its apparel, whether services rendered on high sea or within territorial waters or internal waters or in a port, …(this can be an in rem claim)

(j) – Any claim in the nature of towage in respect of a ship or an aircraft, whether services were rendered on the high sea or within the territorial waters or internal waters or in a port (this cannot be an in rem claim)

(k) – Any claim in the nature of pilotage in respect of a ship or an aircraft (this cannot be an in rem claim)

(l) – Any claim in respect of necessaries supplied to a ship (this cannot be an in rem claim)

(m) – Any claim in respect of the construction, repair or equipment of a ship or dock charges or dues (this cannot be an in rem claim)

(n) – Any claim by a master or members of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which under any of the provisions of the Merchant Shipping Acts … is recoverable as wages or in the Court and in the manner in which wages may be recovered' (this cannot be an in rem claim)

(o) – Any claim by a master, shipper, charterer, agent in respect of disbursements made on account of a ship (this cannot be an in rem claim)

(p) – Any claim arising out of an act which is or is claimed to be a general average act (this cannot be an in rem claim)

(q) – Any claim arising out of bottomry or respondentia (this cannot be an in rem claim)

(r) – Any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship as a Naval Prize or in violation of customary law of sea or otherwise, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty (this can be an in rem claim)

6. Can you arrest a ship irrespective of her flag?

Yes, any national or foreign ship can be arrested. AJHCO'80 applies to ships and a "ship" is defined as "any description of vessel used in navigation" – it does not distinguish between national or foreign ships. However, Admiralty Court cannot arrest any ship belonging to Pakistan's Navy.

7. Can you arrest a ship irrespective of the debtor?

Depends on the facts leading to the cause of action.

8. What is the position as regards sister ships and ships in associated ownership?

Any ship or one of her sister ships, may be arrested in the case having proper cause of action and the ship and sister ship is available in Pakistani waters.
As for associated ownership, per Section 4(4) of AJHCO'80, actions falling under clauses (e) to (h) and (j) to (q) mentioned in Section 3(2) above which may be brought against a person who is owner of the ship or in possession or control of the ship may be brought in rem against any other ship which, at the time when the action is brought, is beneficially owned by that person.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Arrest is possible of Bareboat and Time-Chartered vessels also.

10. Do your Courts require counter-security in order to arrest a ship?

Generally the Admiralty Court does not require any counter-security in order to arrest a ship.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No. The procedure remains the same.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. admiralty jurisdiction can be invoked in a case where there is a maritime lien. The limitation period to initiate a claim concerning enforcement of maritime lien is 2 years from the date of the damage occurring or the maritime lien arising.
Pakistan has ratified any international conventions pertaining to maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

3 to 5 working days.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, a notarized or legalized POA is required.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Attested true copies are acceptable at the time of presenting the claim. Supporting documents need to be in English or accompanied with certified English translations. All documents are filed in Admiralty Court in hard copies. There is no e-filing system in place as yet.

The essential information and documents that are needed include:

(1) Details/documents as to ownership of the ship,
(2) details of ship's port of call, and
(3) documents demonstrating the plaintiff's in rem claim.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes.

17. What is the procedure to release a ship from arrest?

The provisions of AJHCO'80 and SCCR maintain that an arrested ship can only be released by the order of the Admiralty Court. Normally, to order a release of an arrested ship, the Admiralty Courts require furnishing of security for the amount for which the suit has been instituted.

18. What type of security needs to be placed for the release?

Admiralty Courts have ruled that there must be some material before the Court to tentatively adopt a figure for the security amount. In one instance the Admiralty Court had given no basis for fixing the low amount of security for the release of ship, therefore, the Appellate Court increased the amount of security to the extent of the amount as shown to have been received by supplier as a result of alleged fraudulent entry in the bill of lading.

19. Does security need to cover interest and costs?

Yes, if the Admiralty Court directs so.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

In the past cases an agreed contractual security (usually a P&I club letter of undertaking) were acceptable. However, current practice is to furnish, a bail bond, or bank / corporate surety, or the to deposit cash into Admiralty Court.

21. How long does it take to release the ship?

Within 24 to 48 hours of the order of the Admiralty Court to release the ship.

22. Is there a procedure to contest the arrest?

An order of arrest is contested by filing a written statement supported by an affidavit stating the arguments against the claim.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

It takes about three to six years of an admiralty suit to conclude in first instance Admiralty Court.

24. Do the Courts of your country acknowledge wrongful arrest?

Not per se. However, the winning defendant can claim costs against the claimant at the time of disposal of admiralty claim.
Additionally, the winning defendant can file a civil suit for damages claiming malicious abuse of civil proceedings if it is found that winning defendant could not be properly compensated by awarding costs in the original suit.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, piercing of veil of incorporation is possible in cases where beneficial ownership of the vessel is to be determined the court is competent to investigate it in full and even probe into the facts to find out the person who really is the beneficial owner. Such probing inquiry becomes necessary where it can be shown that by fraudulent and deceitful means the beneficial owner of the majority shares is kept behind the scene to defraud the claimants. In such cases the court can even 'pierce the corporate veil'.

26. Is it possible to have a ship sold pendente lite; if so, how long does it take?

As a rule, the Admiralty Court will order the sale of the arrested ship only after the judgment and decree has been issued in its respect. However, as an exception, if all the parties to the pending suit agree to sale of ship pendente lite then the Admiralty Court may order the sale of the arrested ship, with or without conditions.

**Junaid Daudpota* *is the partner at Daudpota International, whose practice mainly focuses on Middle East and South Asia.*
Mr. Daudpota's practice covers transactional and contentious matters relating to various other areas of laws, such as competition, employment, banking, internet, agency and franchising, defamation, and anti-corruption, and arbitration.
Mr. Daudpota is expert at counseling clients on all aspects of laws relating to intellectual property prosecutions and enforcement in the gulf countries (including Saudi Arabia). He has coordinated multiple litigations and advised on IP strategy, portfolio management, and infringement matters in various gulf countries.
Mr. Daudpota has also acted as a consultant for the World Bank for Doing Business (country specific) reports. He has also co-authored the books on Competition Law in Pakistan and Anti-Money Laundering Law, and has commented on a number of national legislations around the world.
Mr. Daudpota is a member of International Bar Association (IBA), American Bar Association (ABA), and International Trademark Association (INTA), Singapore Institute of Arbitrators (SIArb). He has also been part of number of policy and educational committees.
Mr. Daudpota has also authored articles covering various legal disciplines, and regularly attends and speaks at international conferences and seminars.

SHIP ARREST IN *PANAMA*

*By Jorge Loaiza III**
ARIAS, FABREGA & FABREGA
jloaiza@arifa.com
www.arifa.com
16th Floor, P.H. Plaza 2000, Panama
Tel: (507) 205 70 00
Fax: (507) 205 70 01/02

1. Please give an overview of ship arrest practice in your country.

The Republic of Panama and the Panama Canal are brand names in international shipping. The Panamanian Ship Registry is the largest in the world in number of vessels as well as tonnage. The Panama Canal is a focal point since there are over 21,000 ships calling Panamanian Ports every year and over 14,000 of them transit the waterway, more cargo and port activities are the result of the enlargement inaugurated in 2016. In reference to maritime jurisdiction, until March, 1982, a United States Federal District Court for the Canal Zone handled maritime claims at the Panama Canal. Since then, as a result of the Panama Canal Treaties Torrijos-Carter, Panama took over maritime jurisdiction in all canal waters and the Maritime Court of Panama was created by Law 8 of 1982. The Maritime Court of Panama adopted procedural rules closely patterned following the U.S. Rules of Civil Procedure. Since 1982 Maritime Court of Panama functioned as a specialized tribunal where the Judge is required by law to bear maritime law expertise, being fluent in English among other requirements; today there are two specialized maritime courts, being a direct consequence of a growing practice in the maritime litigation field. Furthermore, the National Assembly of Panama adopted a bill amending the existing procedural rules for admiralty claims. The Maritime Code of Panama amended by Law 12 of 2009, fashioned after the U.S. Supplemental Rules for certain Admiralty and Maritime Claims of Federal Rules of Civil Procedure, incorporated American procedural devices such as: oral trials, discovery, speedy arrests procedures, limitation of liability and mixed *in rem* and *in personam* claims. All ships present in Panama, whether transiting the canal or calling any Panamanian port, are subject to the jurisdiction of the Maritime Courts of Panama, regardless of the flag, or the place where the claim arose, whether inside or outside Panama, the Maritime Courts will exercise its maritime jurisdiction if requested. This is commonly referred to as *forum arresti*. Any vessel present in Panama is subject to be arrested either under an in rem theory or an *in personam* action against owners and charterers.

2.Which International Convention applies to arrest of ships in your country?

Panama has not ratified any of the International Conventions related to Ship Arrests. However where the applicable law to the underlying claim is that of a country which has ratified any Convention the Maritime Courts of Panama will enforce it in cases where the law of the flag or the law of a particular country applies to the dispute. In the area of conflicts of law Panama adopted a statutory provision for the determination of the applicable law.

3. Is there any other way to arrest a ship in your jurisdiction?

Under our procedural rules, there are three ways to arrest a vessel. First, any vessel or property can be arrested so that a defendant cannot dissipate assets beyond the jurisdiction by depositing a 20-30% bond of the amount in controversy when defendant's property is found within the territory of the Republic of Panama. A defendant is "present" in Panama when its real and effective place of business is in the territory of the Republic of Panama. Second, a vessel can be arrested ascribe the Courts jurisdiction when such a defendant is not present for purposes of jurisdiction or when an asset of defendant property is attached in order to serve process. Third, a Maritime Court may exercise its jurisdiction to enforce maritime liens or encumbrances via an in rem action. Another option which has become very popular is the "flag arrest", which is an injunction preventing the vessel from being sold, deleted, mortgaged, transferred to another registry, in other words maintain

the status quo until the court decides otherwise. Under Article 206 of the Panama Maritime Code, any Panamanian Vessels´ Registration can be blocked at the Shipping Registry so as to prohibit its sale, deletion, transfer or registration of a mortgage or encumbrance. The evidentiary standard for this type of proceeding requires a showing that an "immediate and irreparable harm" may occur. A discretionary deposit may be ordered by the Court in the sum of no less than US$10,000 to not more than US$50,000, the court decision as to bond is totally based on the available evidence of the claim.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Panama does not have the saisie conservatoire or freezing orders as they are known in France or in the United Kingdom. However, the same results are obtainable under the arrest procedure established by the Maritime Code.

5. For which types of claims can you arrest a ship?

In the case of in rem claim, if the applicable law concedes a maritime lien or a statutory right in rem, any vessel can be arrested. In Panama cargo or freight belonging to the defendant are also subject to being arrested on an in rem claim. In the case of an in personam claim, any claim arising out of acts related to maritime commerce, transportation and traffic arising inside or outside the territory of Panama and when the claims arises from an act or that are or should be executed from, through or to Panama the Court will try the claim. The amended maritime Law of 2009 also permits the filing of "mixed" or combined actions in rem and in personam, where the applicable law sets in rem and in personam liability for the underlying claim. Claims that have been tried in the Panamanian Courts involve Personal Injury claims, Seaman labour claims, Longshore workers claims, Insurance litigation, P&I direct actions, Collisions & allisions, Charter party disputes, Contractual claims, Cargo claims, Necessaries, Bunkers, Maritime claims based on negligence, Vessel property disputes, Mortgage executions, Towage, Limitations of liability procedures, Salvage, General Average and Arbitration.

6. Can you arrest a ship irrespective of her flag?

Yes, in Panama the mere presence of any vessel at Panamanian waters, whether to transit the Panama Canal or to call any Panamanian port, gives the maritime court jurisdiction in rem over the vessel and *in personam* over the owners, operators and charterers. Panama does not recognize governmental immunity for state owned commercial trading vessels.

7. Can you arrest a ship irrespective of the debtor?

In Panama, the claims subject to Panamanian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer. Under Panama Law anyone with authority binds the vessel in rem, if the supplier is not timely notified otherwise.

8. What is the position as regards sister ships and ships in associated ownership?

There are two separate matters here. If the applicable law to the claim permits the arrest of sister ships or associated ownership vessels, Panama will recognize it. In cases where Panama Law is applicable sister ship arrest is permitted if the vessel are owned by the same company in an *in personam* claim. If the claim is *in rem*, the action has to be directed against the same vessel. However, Panama permits mixed or combined claims, where there is a maritime lien or a statutory right *in rem* and there is *in personam* liability upon owners, operators or charterers. In addition, where the applicable foreign law permits the arrest of "associated" ships Panama will recognize it. In Panama piercing the corporate veil is an extraordinary remedy only available in cases of fraud or violation of public policy.
In Panama piercing the corporate veil is an extraordinary remedy only available in cases of fraud or violation of public policy.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Under Panama Law anyone with authority over the vessel, owner, disponent owner, bareboat charterer, operator and/or time charterer binds the vessel for goods and services provided, except where the supplier is timely advised otherwise. As to cargo damages liability, the vessel is liable in rem regardless of who has control. In addition Bareboat and Time Charterers are liable in an in personam claim where the applicable law so permits. Notice should be taken that under Panama law there is a system of registration of bareboat charters, which sets the liability of the charterer for operative liability of the vessel, keeping ownership issues in the original registration.

10. Do your Courts require counter-security in order to arrest a ship?

Yes. Under Article 166 of Law 8, it would depend on the purpose of the arrest: a) if it is to prevent disposition of the vessel and solely as security for the outcome of the proceedings, 20 to 30% of the amount of the complaint; or b) to give jurisdiction to the court over the owner, US$1,000.00; or c) for enforcement of maritime liens, US$1,000.00. An up-front amount of US$2,500.00 would be required upon submitting the arrest petition for maintenance and arrests costs, and the Marshall would thereupon be entitled to require additional amounts. Failure to do so within five days would result in the release of the vessel.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Not in terms of the procedure for the arrest itself. Law 8 also provides for mix proceedings (in rem and in personam). Foreign law could apply to determine the right to arrest.

12. Does your country recognise maritime liens? Under which International Convention, if any?

The concept of maritime lien is contemplated in the law of Maritime Commerce and implies the right to enforce certain claims against the vessel, freight and cargo, irrespective if the obligor is the ship owner, which includes contractual or extra-contractual claims. The list of such claims and their order of priority in each case are also expressly contemplated in said law. Liens may be recognised under foreign law, by application of conflict of law rules and there are also special provisions for enforcement of naval mortgages, which apply to national and foreign vessels which are arrested in Panama. Panama has not ratified international conventions on maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

No specific time lapse is required. The arrest of a vessel could be arranged on a same day basis, considering that the Court and the Marshall would be available (as provided in the law) 24-7, including holidays. The Maritime Courts, two of them, would have shifts for arrests outside working hours and personnel assigned to attain those tasks.

14. Do you need to provide a POA or any other documents of the claim to the Court?

The POA, in principle, and prima facie evidence of the right to claim would be needed when submitting the application for arrest (and the corresponding complaint). The PoA must be provided in original form, notarized and either apostilled or legalized by a Panamanian Consul.

By suppletory application of the Code of Civil Procedure, it is possible for a lawyer to act in lieu of POA (i.e. negotiorum gestor). The POA would have to be submitted within two months. In case of foreign entities, proof of existence of the same (i.e. certificate of existence or good-standing) as well as authority of the grantor, in case of individuals acting for entities, would also be necessary. Such separate evidence would not be required if the notary attesting the PoA confirms (pursuant to evidence submitted) such elements of authority and existence.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The general rule is that documents must be filed in original form; in particular, documents deemed of a "public" source (coming from an official or Governmental entity).
The law expressly provides that public documents issued outside of Panama would have to be legalized to be admissible in Court, either by Panamanian Consul or, where the 1961 Hague Convention applies, Apostilled, or in lieu thereof by the Consul of a country deem amicable to Panama.
The law provides for the possibility of admission of copies, including discovery motions to seek agreement of the parties in this connection, which is commonly accepted. The Judge should assess the evidence overall and altogether, including indicia, under rules of logic and experience (i.e. sana crítica).
Documents deem essential for the representation of the parties, such as powers of attorney are to be produced in original and duly notarised and legalised (see 14 above). Currently, documents are to be filed with the Court as opposed to allowing electronic filings. Nonetheless, a new procedure for electronic filings and docket keeping is currently available.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Generally, the arrest in the events mentioned in item 10 above are meant to support proceedings which, in turn, implies the review of a matter on the merits by the Court. For example, the rules of competence and jurisdiction contained in the Law of Maritime Procedure, grant exclusive jurisdiction to the Maritime Courts of Panama, when an asset of the defendant is arrest, i.e. a vessel in respect to a claim against its owner.

17. What is the procedure to release a ship from arrest?

The law provides that the plaintiff may unilaterally do so. Also, by posting security and filing a request. This could be made unilaterally by the defendant/owner of the asset or a third party, or jointly by plaintiff and defendant/owner of the asset. Failure of the plaintiff to consign relevant maintenance amounts, after five days from a request, also allows the Marshall to proceed with the release.

18. What type of security needs to be placed for the release?

The law provides the following alternatives:

1. Cash or Certificate of Judicial Deposit at the National Bank of Panama
2. Letter of Guarantee, Certified or Cashier's Cheque from a local bank holding a general license.
3. Surety from an insurance company licensed in Panama.
4. Other which the parties may agree.

19. Does security need to cover interest and costs?

Generally, yes, these would be assessed by the Judge upon fixing the amount of release bond. The defendant, shipowner or any interested party may request the release of the arrest, in which case the law provides for the amount of the security to cover principal, legal interest for three years and judicial costs as assessed by the Judge based on a schedule of fees approved by the Supreme Court.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes. These would be subject to the acquiescence of the plaintiff.

21. How long does it take to release the ship?

Usually within the day of filing of the petition (including if the necessary release bond is duly consigned with the Court), as the law provides for availability 24-7 for this.

22. Is there a procedure to contest the arrest?

Yes, this involves a motion duly supported for wrongful arrest, when there is a mistake in the asset to be attached or ownership thereof, the absence or inexistence of an alleged maritime lien causing the arrest or in breach of a previous agreement not to arrest.

On a more recent case, we have been able to lift a flag arrest, which could apply to a physical arrest, based on a procedural defense of lack of standing to sue the owner in a case with more than one defendant sued for damages related to the cargo, whilst the owner had bareboat chartered the vessel. Due to the proven disconnection of the owners with the operation of the vessel, the owner was dismissed and the flag arrest which served as security, was vacated as being an asset of the owner and not otherwise tied to the claim.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

As per 16, above, the complaint would have to be filed at the same time that the petition for the arrest is filed. The Court would review if the underlying claim stands (prima facie) as to initiate the proceedings with the admission of the complaint and order the arrest under separate order, back-to-back. Court documents including the order of admission of the complaint and arrest order would be served on the master of the vessel when the arrest is carried out by the Marshall.

24. Do the Courts of your country acknowledge wrongful arrest?

The law contemplates the following scenarios of arrest done in bad faith as wrongful arrest, to wit:

a) If the arrest has been performed over property which is different from the one against which the suit was brought; or
b) If the arrested property does not belong to the defendant in cases where the arrest is carried out to give the court jurisdiction over the owner as defendant; or
c) If the maritime lien or in rem right for whose execution the arrest was requested is extinguished or inexistent; or
d) If the arrest was requested in contravention of a prior agreement between the parties not to arrest.

We have applied the rules of wrongful arrest to have successfully obtained the release of an injunction over the vessel, known as “flag arrest”, and such mechanism is now being used by other colleagues. However, there are new rulings which tend to reject such position, under a narrow interpretation that the rules of arrest do not apply to the special provision of the law which allow general protective injunctions, whilst said section of the law is contained within the Chapter of the law corresponding to the arrest of assets and it expressly states that the injunctions are subject to procedures within said Chapter.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This would be in exceptional situations involving fraud or criminal actions, before competent courts in that respect. Therefore, it should be noted that Maritime Courts may be reluctant to do so, on strictly maritime causes of action, without an order or further support from a Criminal Court or Judicial authority in respect to criminal investigations.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes, in the following situations:

a) If the arrest may result in a deterioration of the vessel (depending on its type);
b) If 30 days have elapsed from date of the arrest without the same having been lifted;
c) If the costs for custody and maintenance become excessive with respect to the sale value;
d) If the complaint is not timely answered*;

The first three scenarios would require the intervention of both parties, *whilst the fourth would proceed at the request of the claimant and in case of enforcement of naval mortgages, ipso jure. The proceeds would then be deposited at the National Bank of Panama, in an interest-bearing account.
The process for the sale would be the same as for a regular judicial sale and it may take in the region of six months, from the initiation until final adjudication. However, the order of adjudication may be appealed and the process may be objected pursuant to other motions provided in the law, which may extend such estimated timeframe.

***Jorge Loaiza III**. Bachelor of Laws and Political Science - Santa Maria La Antigua University (1988) - Master of Laws, Southern Methodist University (1989) (concentration on comparative and international law).
Foreign associate with Kelley Drye & Warren in Washington D.C. (1989); over 35 years concentrating in ship registration, maritime contracts, ports, licensing and concessions related to auxiliary maritime services, ship finance and maritime litigation – Partner at Arias, Fabrega & Fabrega; Board of Directors of the Panama Maritime Law Association from 2008- 2012; Drafting Committee to Amendments of 2009 to Law 8 of 1982 of Maritime Judicial Procedure.
Part of the joint Commission for complementary regulations to Law 57 of 2008 - Merchant Marine; Speaker: Seminars at the Panama Maritime University; Inter-institutional Commission for the National Maritime Strategy (2011).
Recognition on Marine Money's 2012 "Deals of the Year". Leading Shipping lawyer (2010-2025) and Recognized Shipping Litigation lawyer (2025) in Panama by Chambers Global, Leading Shipping and Shipping Litigation lawyer in Panama by Chambers Latin America (2010-2026), and Hall of Fame Shipping lawyer in Panama by Legal 500 Latin America (2013-2026).*

SHIP ARREST IN *PERU*

*By Sandro O. Monteblanco, Managing Partner**
LAW OFFICES OF MONTEBLANCO & ASSOCIATES
legal@MonteblancoLaw.com
www.MonteblancoLaw.com
Manuel de la Fuente 676, Barranco, Lima-04
Tel: +51 (1) 940-288-390

1. Please give an overview of ship arrest practice in your country.

a. Introduction:
Peru is a country lacking specific maritime laws, so when it comes to trying cases of this nature, counsel must rely primarily on international treaties, doctrine and local laws currently in place. In fact, the term "*arresting a ship*" in itself is inapplicable in Peru regardless the objective being sought. Peru has a handful of maritime attorneys who can be referred to as such only by the length of time they have been practicing in this specialty, keeping in mind that we are practicing maritime law in a country that lacks formal regulation in the subject matter. The concept of arresting a ship in Peru is non-existent per se, nevertheless, it can be achieved through the implementation of a preliminary injunction that if requested out of process, may be obtained in a matter of days, but achieving this monumental task on its own can prove to be a costly, tedious and complex temporary solution. The other option to requesting an injunction is to do so within the judiciary proceeding, but in Peru, if the courts are not on strike, holidays or month-long vacation, then this can easily take months to achieve. In summary, while placing an arrest order on a ship is a viable option, keep in mind that apostilled/legalized and officially translated documents will need to be in place whilst the claim is being drawn up.

b. Legal proceedings in the Peruvian judicial system are classified into two large groups: "Contested" and "Uncontested". In this regard, maritime claims are processed within the so-called contentious (contested) proceedings, which, in turn, are sub-classified into: cognizance proceedings; summary proceedings; expeditious proceedings; and claimed proceedings based on amount. The typical procedure characterizing maritime claims in these kinds of legal proceedings is the following: claim (lawsuit); preliminary pleas and points of defense; responding to preliminary pleas; evidentiary hearing and controversial issues, allegations, and judgment. The lead time can range from 12 to 18 months in the Superior Court, mainly due to legal backlog. The legal basis governing the various judicial proceedings and their respective lead times are stipulated in the Peruvian Civil Procedural Code (from Articles 475 to 607).

c. The Peruvian arbitration option has grown in popularity due to the crisis that has been afflicting the traditional judicial system over the past years but now more so exacerbated by the presence of COVID-19. It is widely used in deciding maritime claims, provided that a valid arbitration clause is in place. The lead time for the final resolution can take several months to reach. The legal basis governing both the proceeding and lead times in Arbitration is stipulated in Executive Decree No. 1071 – Law Governing the Arbitration, in force and included in the Peruvian legal system since September 1st, 2008. However, in the case of institutional arbitration proceedings, such as the Lima Chamber of Commerce (CCL) or the American Chamber of Commerce of Peru (AMCHAM), they are regulated by their respective regulations of arbitration and additionally by the above-referenced Arbitration Law and the Civil Procedural Code, in that order of preference.

d. Conciliation is a prior step that claimants must follow to be able to initiate legal action, however, reaching a mutually agreeable solution through this procedure in maritime matters is rare occurrence. With regards to the lead time applied to maritime claims in the conciliation proceedings, it is necessary to specify that the proceeding can be resolved within a month.

e. The legal basis governing both the proceeding and lead time in the conciliation is stipulated in Law No. 26872 – Law of Conciliation, in force in Peru since November 13th, 1997 and Supreme Executive Decree No. 004-2005-JUS-Regulations of the Conciliation Law.

2. Which International Convention applies to arrest of ships in your country?

a. International Convention on the Arrest of Ships, Geneva 1999
b. Santiago Declaration
c. The Hague Rules
d. Convemar
e. Cartagena Agreement
f. Decision 487
g. Decision 532

3. Is there any other way to arrest a ship in your jurisdiction?

The precautionary measure of placing a lien on the ship is a solid option that goes hand in hand with filing a formal claim before the pertinent authorities. This however leaves a great deal up for interpretation, as it requires counsel to approach the court presiding over the case for an *ex-parte* meeting with the judge to explain the case. In COVID times, this can only be done via on-line meeting. However, this is an option that is widely used and mostly accepted in the event the defendant has incurred debts with companies or government agencies located within the Peruvian territory. I would add that limiting this task to debts incurred in Peru only would be erroneous as we have been able to detain and hold vessels for debts with foreign entities in Peruvian waters just as well.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Only precautionary measure.

5. For which types of claims can you arrest a ship?

a. Debts,
b. Criminal activities,
c. International arrest warrants,
d. Suspicion of illegal trafficking, or
e. Human trade, etc.

6. Can you arrest a ship irrespective of her flag?

Yes, in accordance with the Convention of 1999.

7. Can you arrest a ship irrespective of the debtor?

Yes, if it can be demonstrated that there is just cause and a pre-existing debt that is currently part of an active proceeding in Peru.

8. What is the position as regards sister ships and ships in associated ownership?

A sister ship or any other property for that matter can be arrested or frozen if it can be demonstrated that the property is that of the debtor.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The bareboat chartered is only for charter; its specific purpose is freight cargo. The Time-chartered is a charterparty. Either ship can be detained and held under a Do Not Sail order if a court order so mandates it.

10. Do your Courts require countersecurity in order to arrest a ship?

Yes, based on Articles 608, 610 and 613 of the Peruvian Procedural Civil Code, counterclaims are mandatory and represent a percentage of the outstanding amount allegedly owed.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The judicial proceedings will be the same for both.

12. Does your country recognize maritime liens? Under which International Convention, if any?

Yes. International Convention on Maritime Liens and Mortgages.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

We require duly apostilled company documents that attest to the debt (invoices, Charterparty, amounts, wire transfers, etc). documents must be couriered to our Lima, Madrid or New York office, they then need to be officially translated into Spanish. Also, a Power of Attorney (POA) must be enacted in our favor at the Peruvian Consulate in the client's jurisdiction. Please note that if any document is procured from the Peruvian Consulate, upon arrival in Peru, it must be legalized once again at the Peruvian Ministry of Foreign Affairs in Lima thus adding more the time. Lastly, the POA must be registered locally before the Lima Public Records. These steps require that clients initiate proceedings as soon as possible in order to have them completed in time. All but the POA can be obtained in 72 hours and even less depending on the circumstances and while pending a litigious process.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, POA is necessary as well as all supporting documents that would lead to a ship detention. These documents are be BL, Invoices, Charter party, etc. Power of Attorney will be provided to client on the day they contact and retain our services, but they will process it internally.

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

No original documents are ever needed, that is why the court requests legalizations by way of Peruvian Consulate or Apostille services to ensure the copies reflect that of the originals. These documents are needed in order for the court to issue an initial yet preliminary ruling, but given the time constraints, we file claims with simple copies while the client prepares the ones he will send.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, as long as all documentation support the claim then the court will issue a Do Not Sail order awaiting the start of the case or further indication from outside courts.

17. What is the procedure to release a ship from arrest?

In order for the Sail block to be lifted, the court that issued the block in the first place has to be the one that lifts it. This can only take place once the reason that initiated the block in the first place has been satisfied, i.e. an outstanding debt has been paid, ship has been turned over to its rightful owners, etc.

18. What type of security needs to be placed for the release?

In principle, the arrested vessel may be released on the offering of a bank guarantee in the amount for which the arrest was issued in the first place. Otherwise, a release can also occur when all debts and commitments between the defendant and the plaintiffs have been satisfied accordingly.

19. Does security need to cover interest and costs?

If that makes up part of the agreement, then yes. Other times the debtor agrees only to a written agreement, but this is entirely between the parties, all the courts need to know is if the plaintiff is desisting in his endeavors at recovering a debt.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No, since Peru has no specific maritime law it needs to only go by that which is stated in the Peruvian Civil Code and/or international treaties.

21. How long does it take to release the ship?

The court order indicating the release of the vessel can be issued in two to five days, however, this order needs to go through various channels and in addition to the delays caused by COVID restrictions, considerable additional time to complete the process is expected.

22. Is there a procedure to contest the arrest?

The defendant, in responding to the initial claim can assert a lack of validity to the invoices, the BL, and even question the Charterparty itself in order to cast a shadow of doubt to the claim. We have seen some courts prefer to discard an initial claim in fear of starting an international debate while others actually go through the due diligence process in order to determine who has legitimate cause. This is why it is imperative that all documents related to the nature of the lien be provided duly legalized and translated so no doubt can be casted on the nature of the claim.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Legal action starts with the granting of the arrest of the ship, which can take place in two forms: out of process or within the process. In the foremost the claimant must initiate legal actions by filing the claim immediately after said arrest has been granted, while in the latter the lien is granted as a result of the legal proceedings initiated by the plaintiff.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, and in safeguard of this, the claimant is asked to deposit a counterclaim with the court to assure damages in the event of a wrongful arrest. However, if the defendant can through the judicial proceedings demonstrate that it was in fact a wrongful claim then the affected party can file for additional damages and loss of income against the claimant.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Corporate veils can only be lifted through a court order, which must be ratified by a local judge in the event the order is foreign.

26. Is it possible to have a ship sold pendente lite; if so, how long does it take?

Yes, it is possible but under two conditions: only through a court order from a local judge and only if the buyer is fully aware that the ship being sold is currently undergoing a legal proceeding.

** **Dr. Sandro O. Monteblanco** is an attorney who operates out of Lima, New York, Madrid, and London. Raised in the United States, he spent his formative years between Oregon and New York prior to relocating to Europe where he studied in the UK achieving an advanced degree in International Business Administration. Dr. Monteblanco spent a decade living in Europe prior to moving to Peru where he worked as a foreign business consultant assisting foreign franchises set up operations in Peru and throughout South and Central America. While successful at this venture, Dr. Monteblanco decided to bridge the gap between designing the perfect business plan and implementing it. This is where de decided to attend law school and thus focused his studies on corporate law and international trade. Nowadays, Dr. Monteblanco is member of various international Bars and the Managing Partner of a successful law practice headquartered in New York with offices in Lima, Madrid, and London that specialize in Maritime, Mining, Corporate and International Law as well as other specialties.*

SHIP ARREST IN *POLAND*

*Bartosz Biechowski**
Attorney-at-law, Maritime and Commercial Law Office
bartosz@biechowski.com
www.biechowski.com
ul. Swietojanska 118/9, 81-388, Gdynia, Poland
Tel: + 48 50 462 89 29
Fax: + 48 58 661 33 38

1. Please give an overview of ship arrest practice in your country.

Under Polish law, to arrest a vessel you will need a **court order**. Such order is granted by a court in accordance with provisions of the Polish Civil Procedure Code (PCPC) regarding securing claims (art. 730-757 of the PCPC). These provisions do not apply only to vessels but also to any other types of assets.
Under the art. 730 (1) of the PCPC the security order will be granted to a creditor:

- whose claim is probable (at this stage of proceedings the court will examine just prima facie probability of the claim) and,
- who has legal interest in the arrest.

Legal interest means the situation in which: (1) lack of security will make it impossible to satisfy creditor's claim or (2) satisfaction of this claim will be connected with serious difficulties
The example argumentation in this respect is that the vessel is the only asset of a debtor known to a creditor, a debtor has its vessel registered in the FOC jurisdiction and can transfer its ownership very quickly, debtor's company is registered in the tax haven, debtor has acknowledged the claim, time bars for claims are short etc.
A vessel is arrested by a bailiff who prior to seizure of a vessel should inform maritime authorities and the Polish Border Guard about the arrest so that the vessel cannot flee.

2. Which International Convention applies to arrest of ships in your country?

International Convention Relating to the Arrest of Sea-Going Ships of 10th May 1952 (Brussels Convention) applies to arrest in Poland. The Brussels Convention is an integral part of Polish law and is applied directly.

3. Is there any other way to arrest a ship in your jurisdiction?

Maritime authorities may detain a vessel for up to 72 hours (on Sundays and public holidays this time does not run) to secure claims for outstanding port fees, claims for damages in port facilities, docks or sailing routes and claims arising from environmental pollution. This is used sometimes if you need to gain some extra time.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

If a vessel is entered into the Polish register this is possible to encumber it with compulsory mortgage. In practice this is used mainly for securing creditors' claims on vessels under construction.

5. For which types of claims can you arrest a ship?

Vessels flying flag of member states of the Brussels Convention can be arrested only for maritime claims listed in art. 1.1 of this convention. Other vessels can be arrested also for other claims on the basis of provisions of the PCPC.

6. Can you arrest a ship irrespective of her flag?

Yes, this is possible.

7. Can you arrest a ship irrespective of the debtor?

Yes (excluding warships and other vessels in state service).

8. What is the position as regards sister ships and ships in associated ownership?

As under the article 3.1. of the Brussels Convention.

9. What is the position as regards Bareboat and Time-Chartered vessels?

As under the article 3.4 of the Brussels Convention.

10. Do your Courts require counter-security in order to arrest a ship?

The court may require payment of deposit to satisfy potential claims of the debtor connected with wrongful arrest. This is, however, very rare situation.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

The procedure is the same.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Poland is a party to Brussels convention on maritime liens and mortgages of 1926. Polish Maritime Code also contains provisions concerning maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

About 3-4 days (much depends on the judge).

14. Do you need to provide a POA or any other documents of the claim to the Court?

We need POA and documents which prove that the person(s) who signed the POA is (are) duly authorised to represent the company (extract from commercial registers, etc.) We also need documents supporting the claim and its probability (invoices, contracts, bunker delivery orders etc.). Certified translations of all these documents to Polish are necessary in all cases.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All documents should be filed in the Court in paper version – scans and copies are acceptable provided they are certified as “true copy” by Polish attorney-at-law (legal adviser or advocate). Additional legalisation, notarisation or apostille may (but does not have to) be necessary for claims listed in art. 1 para 1 letters “o”, “p”, “q” and with respect to maritime liens (actions in rem).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

As under the art. 7.1 of the Brussels Convention. Moreover, careful examination of other sources of law is recommended (the PCPC and Council Regulation 44/2001 in the first instance).

17. What is the procedure to release a ship from arrest?

The ship may be released in following cases:

- when the arrest is successfully contested (see question 22).
- when the cash security is given by a debtor (see questions 18 & 22).
- when the arrest collapses (see question 23 & 24),
- when the creditor agrees for the release (see question 20).

18. What type of security needs to be placed for the release?

The fastest way to release the vessel is to **pay full amount determined in an arrest order into deposit bank account of a court which granted an arrest order.** In such case, **arrest will collapse automatically**. Main disadvantage of this procedure is that this money cannot be withdrawn from the deposit account until the proceedings are finished in final and legally binging way (see also point 24). However, debtor may at any time try to negotiate a change of type of security. See also question 22 in fine.

19. Does security need to cover interest and costs?

Under Polish law, it is possible to secure future costs of proceedings and interest but it is not obligatory - only creditor decides whether to do so or not. So, if an arrest order includes costs of proceedings and interest, these costs will also be secured.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Under Polish law, a vessel will be released automatically by virtue of law ONLY if full amount determined in the arrest order is **paid into deposit bank account of a court which granted an arrest order** (see point 18).
Vessel can also be released at creditor's motion if creditor accepts bank guarantee, insurance guarantee, P&I LOU etc. as a sufficient security of its claim instead of court deposit. Anyway, this is always only creditor's decision.

21. How long does it take to release the ship?

Depends on the case - usually from two days to one week.

22. Is there a procedure to contest the arrest?

Under Polish law, it is possible to lodge a **complaint against an unjust arrest**. It should be done within 7 days as from a date of arrest of the vessel. This procedure is quite time - consuming and may take **up to four months**. However, if debtor has time (for example if a vessel is arrested in a shipyard), lodging such complaint should be given careful consideration.
ATTENTION: If you pay full amount determined in an arrest order into deposit bank account of a court which granted an arrest order (see points 18 & 20 above), your complaint will be dismissed (payment of full amount determined in an arrest order into deposit bank account of a court automatically releases the vessel and where there is no arrest anymore, there are no grounds to lodge a complaint).
However, if debtor is trying to release vessel on the basis of other type of security - i.e. bank guarantee, insurance guarantee or P&I LOU, lodging of such complaint is should be given careful consideration.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Up to 14 (fourteen) days. Otherwise, arrest will collapse (see also art. 3.3 of the Brussels Convention).

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Debtor can lodge a complaint against the security order and if the court allows the complaint, a debtor may claim for compensation for its losses connected with the arrest. The same relates to situation when the arrest collapses – for example: (1) if the action as to the merits is not commenced in prescribed time, (2) the writ of summons is returned or rejected for formal reasons or (3) the claim is dismissed.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No. Generally, no forced sale of the vessel in Poland is recommended. This is too complex (provisions regarding forced sale of the real estate will apply in this case) and takes too much time.

*__Bartosz Biechowski,__ *attorney-at-law, owner of the Maritime & Commercial Law Office in Gdynia, rendering tailor-made services to customers worldwide and dealing with maritime law since 2003. Graduated from the Faculty of Law of the University of Gdansk and Postgraduate Study of Intellectual Property Law of the Uniwersytety of Warsaw.*
In his professional carreer, Bartosz represents both individual clients and large companies. With maritime law as his main area of interest and expertise, he specialises mostly in arrests and release of vessels as well as claims related to marine accidents, damages to cargo, oil pollution, shipbuilding and shiprepair, marine insurance etc..
In addition to this Bartosz deals also with company law, international trade law as well as intellectual property law.
Bartosz has vast experience in international business environment and speaks fluently English as well as some Russian and French.

SHIP ARREST IN *PORTUGAL*

*By Ana Cristina Pimentel**
ANA CRISTINA PIMENTEL & ASSOCIADOS
SOCIEDADE DE ADVOGADOS, SP, RL
acp-11305L@adv.oa.pt
www.acpadv.pt
Av. Elias Garcia, 176 – 2º Esq.
1050-103 Lisboa - Portugal
Tel: 351 21 781 99 90

1. Please give an overview of ship arrest practice in your country.

We may say that Portugal is a friendly jurisdiction for the arrest of a ship. Portugal is a party to the 1952 Brussels Arrest Convention. The Lisbon Maritime Court, with jurisdiction for all the continental territory (Madeira and Azores Islands excluded) has always been aware of the importance of this procedure and is very expedite in dealing with all the steps of the arrest procedure. The first detention order is decided by the judge within a period of 24 hours after the file is presented to the judge and such detention order is immediately sent by the court to the Harbour Master office of the port where the vessel is staying, thus preventing the vessel from leaving the port. A counter security from the arrestor although legally possible has never been requested by the court. The release procedure is also expedite although a LOU is only acceptable with the agreement of the arrestor.

2. Which International Convention applies to arrest of ships in your country?

Portugal is a party to the 1952 Brussels International Convention for the Unification of Certain Rules relating to the Arrest of seagoing Ships

3. Is there any other way to arrest a ship in your jurisdiction?

No, but in certain situations, depending on the flag of the vessel, Portuguese law may apply, namely when we are talking about the arrest of a vessel that is sailing under the flag of a non-contractual State and when we are talking about the arrest of a Portuguese vessel in Portugal at the request of a Portuguese creditor (article 8 nr. 4 of the 1952 Brussels Arrest Convention)

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No, the creditor will have to apply for the arrest. Several arrests may be granted against the same vessel at the request of different creditors.

5. For which types of claims can you arrest a ship?

Depending on the flag of the vessel, according to article 8 nr. 2 of the 1952 Brussels Arrest Convention, the ships sailing under a flag of a contracting State may only be arrested on the basis of a maritime credit as defined by article 1 of the same Convention.
Vessels sailing under the flag of a non-contracting State may be arrested on the basis of a maritime credit according to the definition provided on the arrest convention, but also on the basis of any other credit allowing the arrest under national law. In such case, besides alleging the existence of the credit, the arrestor will also have to provide evidence on the existence of a periculum in mora, thus justifying the need for the arrest as the sole way of providing the creditor with a payment guarantee for his claim.

6. Can you arrest a ship irrespective of her flag?

Yes, but the applicable rules may be different. Depending on the flag of the arresting vessel, Portuguese law may be applicable instead of the 1952 Brussels arrest convention, as determined on its article 8 nrs. 2 and 4.

7. Can you arrest a ship irrespective of the debtor?

The debtor should be the owner of the vessel. If the debtor is not the registered owner of the vessel the arrest may be granted but the creditor will have difficulties in enforcing his title if there is no lien on the vessel (contractual or legal).

8. What is the position as regards sisters ships and ships in associated ownership?

According to article 3 paragraph 1 of the 1952 Brussels Arrest Convention, it is possible to arrest the vessel that gave rise to the credit, as well as another vessel belonging to the same ownership.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The arrest of the vessel may be granted on the basis of the existence of a maritime credit. However, if the claim is not immediately settled and the main proceedings subsequent to the arrest have to be engaged, the arrestor might have difficulties in enforcing the condemning decision obtained against the bareboat charter or the time charterer if there is no lien on the vessel (contractual or legal).

10. Do your Courts require counter-security in order to arrest a ship?

Although it is established on article 374 nr. 2 of the Portuguese Code of Civil Procedure that the judge may request the arrestor to put up an adequate security, considering the circumstances of the case, to our knowledge never did a Maritime Court Judge request for such counter-security to be given by the arrestor as a requisite for the arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference in respect of arresting a ship for a maritime credit or maritime lien; the same rules apply on both situations. However, when the arrest is requested on the basis of national law only, the arrestor will have to produce evidence on the probability of the existence of his credit, as well as on the financial situation of the arrestee, to justify that the arrest of the ship will be the only measure that will allow the arrestor to be able to receive payment considering the overall situation of the arrestee and his assets.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Since 13th May 2012, Portugal is no longer be a party to the 1926 Brussels Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages. The issue of maritime liens is now ruled by the Commercial Code, namely article 578, listing as maritime liens the “hypothèque” in the third place, after court costs and expenses incurred in the common interest of the creditors and salvage, and before other liens such as pilotage and tug costs; light, harbour and port dues; crew wages; supplies and repairs to the vessel; insurance premiums; unpaid last sale price of the vessel; unpaid amounts arising from shipbuilding contracts and indemnities due to cargo owners.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Once the file is analysed by the Lawyers, it will be necessary to prepare and draft the arrest application stating clearly all the relevant facts of the case, the reasons for the arrest to be granted and the amount claimed, all dully supported by the relevant documentary evidence (contracts, invoices, exchange of correspondence, etc.), translated into Portuguese (at least the most relevant documents). A list of witnesses to be heard has also to be included. The judge will have a period of 24 hours to analyse the file and give the first detention order preventing the vessel from sailing. This order is immediately sent by the Court to the Harbour Master office of the port where the vessel is staying. The hearing of the witnesses appointed, if necessary, will take place a few days later.

14. Do you need to provide a POA or any other documents of the claim to the Court?

When submitting the arrest application, it will be necessary to attach a power of attorney, as well as all the supporting documents evidencing the facts of the case and the amount of the claim for the judge to be able to analyse the merits of the arrest application.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All documents are filed electronically, and the originals kept by the Lawyers. The original POA is kept by the Lawyers; the supporting documents may be kept only in copies. The POA has to be legalized with apostille or alternatively documents evidencing the identity and powers of the person signing the power of attorney should be presented to the Lawyer and considered as sufficient evidence.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Portuguese Courts will accept jurisdiction over the substantive claim on the situations listed on article 7 no. 1 of the 1952 Brussels Arrest Convention.

17. What is the procedure to release a ship from arrest?

The arrestee will have to discuss settlement with the arrestor or alternatively put up security, directly within the court or in the hands of the arrestor. The ship will be released as soon as requested by the arrestor or when the judge considers the security provided is adequate.

18. What type of security needs to be placed for the release?

Any kind of security will be accepted provided it receives the agreement of the arrestor. If security is placed directly with the court only cash deposit or bank guarantee will be acceptable.

19. Does security need to cover interest and costs?

Not necessarily, security will have to be sufficient to replace the amount of the claim guaranteed by the ship as established on the arrest decision.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are only accepted if they receive the agreement of the arrestor. The judge alone will not consider P&I LOU as adequate security.

21. How long does it take to release the ship?

As soon as payment is made, or the security provided is considered adequate, the release request is sent to the court by the arrestor; the release order will follow immediately after. However, the release request will have to be submitted within the courts' working hours (week-ends and holidays are excluded).

22. Is there a procedure to contest the arrest?

The arrestee may oppose to the arrest decision within 10 days from service of the arrest documents or alternatively appeal from the arrest decision. In case of opposition, the arrestee may submit documents and list witnesses to be heard by the court. A new arrest decision will be given after the judge has considered the arguments of the arrestee. The arrest may thereafter be lifted, maintained or the amount granted reduced.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The time limit for the claimant to take legal action on the merits is thirty days counting from the date the arrestor is notified by the Court that the arrest application has been served on the arrestee. On

the basis of article 7 number 2 of the 1952 Brussels Arrest Convention the judge normally establishes a time limit of 60 days for the legal action on merits to be engaged.

24. Do the Courts in your country acknowledge wrongful arrest?

Yes. Article 374 of the Code of Civil Procedure determines that if the arrest is considered unjustified or will become void because of the arrestor, the arrestor is responsible for the damages caused to the arrestee if the arrestor did not act as a normal and prudent man should have done. Civil liability rules will apply.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No. In principle only the debtor / arrestee and his registered assets are liable for the payment of the debts claimed against such debtor, an individual or a company. The Court will not look into the links between different companies and their shareholders.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It will be possible to request for the anticipated sale of the ship, providing one can justify the need for such measure because of, for instance, the depreciation of the value of the ship and the consequences thereof for the owner and claimants. The circumstances of each particular case are analysed by the Court and the sale is normally only allowed when the ship is abandoned by the owner/arrestee, remains arrested for a long period of time and her situation is uncertain. The sale procedure will take several months considering the need to obtain the judge's order, the service on the owner of the ship and the sale procedure that will follow thereafter.

***Ana Cristina Pimentel** obtained her degree in Law in 1991, at the Université Catolique de Louvain-la-Neuve in Belgium and in 2003 a post graduate diploma on Maritime Law at the London Metropolitan University in the UK. She is a Lawyer and a member of the Portuguese Bar Association since 1994, working actively in Shipping, as well as in road and air transport and insurance. She has also been an invited teacher at the Escola Superior Náutica Infante D. Henrique, the Portuguese Maritime College, since 2004, giving lectures on different subjects on Maritime Law and Transport Law.*

SHIP ARREST IN *QATAR*

*By Omar N. Omar**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
www.tamimi.com
Al Jazeera Tower, 7th Floor 61 Conference Street,
Zone 61 PO Box 23443, West Bay Doha
Tel: +97444572777
Fax: +97444360921

1. Please give an overview of ship arrest practice in your country.

The Qatar Maritime Code (Law No. 15 of 1980) regulates the conservatory arrest of ships. The arrest application is submitted to the "Summary Judge dealing with urgent matters". The Court normally considers the application of arrest of a vessel on a prima facie basis and the arrest order is usually rendered ex-parte within typically within 49-72 hours of the date of the filing of the application for arrest (or the earliest thereafter) provided that the claim is proven based on the face of things). The arrest order may be challenged but this procedure is usually complex and lengthy.

2. Which International Convention applies to arrest of ships in your country?

Qatar is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

The ship could be arrested in Qatar in the context of either a precautionary seizure procedure or an enforcement procedure commenced against her. The main difference between both procedures is that the applicant is not required to have an execution deed against the ship in order to commence precautionary arrest proceedings against the ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

There are no alternatives for the arrest of ships in Qatar as the Maritime Code that regulates the arrest of ships prevents the applicant from relying on other laws in Qatar.

5. For which types of claims can you arrest a ship?

In order to arrest a vessel in the Qatari territorial waters the creditor must have a maritime debt against the ship. Article 42 of the Qatari Maritime Code defines "maritime debts" as follows:

a. Damage caused by the vessel by reason of a collision or otherwise.
b. Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.
c. Assistance and salvage.
d. Contracts relating to the use or exploitation of the vessel under a charter party or otherwise.
e. Contracts relating to the carriage of goods under a charter party, bill of lading, or other documents.
f. Loss of or damage to goods or chattels being carried on board the vessel.
g. General average.
h. Towage or pilotage of the vessel.
i. Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.
j. Construction, repair or fitting out of the vessel, and costs of it being in dock.
k. Wages of the master, officers and crew.
l. Sums spent by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.
m. A dispute as to the ownership of the vessel.

n. A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the Qatari territorial waters can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

The ship can be arrested in the Qatari territorial waters if the claimant successfully proves that he has a maritime debt against the vessel.

8. What is the position as regards sister ships and ships in associated ownership?

The arrest of sister ships in Qatar is possible for any of the maritime debts listed under question 5 above with the exception of debts arising out of a dispute as to the ownership or co-ownership or possession of the vessel (See question 5(m) and (n) above). Regarding the arrest of associated ships, there is a great degree of uncertainty as, for the arrest to be successful, we need to prove to the judge the close link between the entity owning the ship that incurred the debt and the entity owning the associated ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Qatar Maritime Code gives the creditor of the charterer who has control over the nautical navigation of the ship the right to arrest the ship for a debt resulting from the charterer's actions. In addition, the creditor has the right to arrest any other ship owned by the charterer.

10. Do your Courts require counter-security in order to arrest a ship?

No counter-security is required in Qatar.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice, there is no difference between the arrest of a ship for a maritime claim and the arrest of ship for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

The Qatar Maritime Code recognizes maritime liens. In fact, the Qatar Maritime Code has listed the maritime liens in Article 33 as follows:

1. Judicial expenses that were spent to maintain the Vessel, sell it, distribute its price, cargo and port charges as well as other charges, public taxes of the same kind, and charges of pilotage and compensations for the damage that caused to the installations of the ports, docks and navigation routes, and expenses for removing navigation obstacles caused by the Vessel as well as expenses of sentry duty and maintenance since the entry of the Vessel to the last port.
2. Debts resulting from the employment contract of the captain, sailors and others relating to the Vessel with an employment contract.
3. Monies due for assistance and salvage, and the share of the Vessel in general marine average.
4. Compensation due for collisions and other navigational accidents, compensation due for bodily injuries to the passengers and crew, and compensation for loss or damage to goods and possessions.
5. Debts arising out of contracts made by the master, and operations carried out by him outside the port of registration of the Vessel within the scope of his lawful powers for an actual requirement dictated by the maintenance of the vessel or the continuance of its voyage, whether or not the master is also the owner of the Vessel, or whether the debt is

due to him, or to persons undertaking supply, or lenders, persons who have repaired the vessel, or other contractors. Qatar did not accede any of the International Conventions relating to Maritime Liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that we have the needed attested PoA and all forwarded documents have been translated into Arabic by a sworn translator in Qatar, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the Qatari Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in Qatar is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in Qatar prior to submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The documentation supporting the claim must be attached to the application and electronic filing is available, but not the PoA. As mentioned under question 14 above, if these documents are in foreign language they must be translated into Arabic language. Only official documents must be legalised up to the Qatar Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in Qatar.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

There is uncertainty in this area of law especially where the jurisdiction is given to a foreign court and not arbitral tribunal. Therefore, and if jurisdiction is given to an arbitral tribunal, we recommend our clients to commence arbitration within the two weeks period (as highlighted under question 23 below) and request from the court the stay of the proceedings until an arbitral award is issued. However, if jurisdiction is given to a foreign court, we may argue in court that Qatari courts have jurisdiction over the substantive claim.

17. What is the procedure to release a ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. The decision issued must be served upon the ship and the harbour master or the coast guard. If the defendant to the application wants to release the ship then he must deposit the security requested by the judge and request from the judge the release of the vessel.

18. What type of security needs to be placed for the release?

The security that needs to be placed to release the ship must take the form either of a bank guarantee issued by a local bank or bank transfer to the court bank account.

19. Does security need to cover interest and costs?

The judge will decide on the amount of the security that must be deposited by the defendant to the arrest application.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No, P&I LOUs are unacceptable.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file a grievance before the Court of First Instance who issued the arrest order. Upon hearing the grievance, the Court may make an order lifting the arrest order and such judgment shall be enforceable through the normal channels. The grievance shall be submitted within seven days from the date of issue of the arrest order.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must commence substantive proceedings within two weeks starting from the service of the arrest order on the ship.

24. Do the Courts of your country acknowledge wrongful arrest?

There are no legal precedents on the liability for the wrongful arrest of a ship. However, under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

In principle, the concept of piercing and lifting the corporate veil is not recognised in Qatar. The Qatari courts might consider piercing and lifting the corporate veil where conclusive proof is submitted to the court in relation to the fictitious character of the company owning the ship.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Such a sale could be authorized only if the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

In 2008 **Omar joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries.*
Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.
Omar is an author of the UAE Vessel Registration and Mortgage Section in the Kluwer International Maritime Law Handbook. He is currently heading the EMAC team to establish the first Maritime Arbitration Centre in the UAE and the region.

SHIP ARREST IN *ROMANIA*

By Adrian Cristea & Ciprian Cristea*
CRISTEA & PARTNERS Law Office
adrian@cristealaw.ro
ciprian@cristealaw.ro
www.cristealaw.ro
54 Cuza-Voda Street, flat 3,
G floor, 900682 Constanta
Tel: +40 744 518 583
Fax: +40 241 518802

*By Augustin Zabrautanu**
Zabrautanu Popescu & Associates
augustin.zabrautanu@pialaw.ro
www.pialaw.ro
16 Splaiul Unirii, 8th Floor, room 807
Sector 4, 040035 Bucharest
Tel: +40 21 336 73 71
Fax: +40 21 336 73 72

1. Please give an overview of ship arrest practice in your country.

Conditions imposed by Romanian law:

a) Indicate and provide evidences to the Court that plaintiffs have started the main legal action (Court action or arbitration proceedings according to the provisions of the C/P or B/L) against the defendant in 20 days from the date the Main Arrest has been granted by the Court. The evidence should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration was started;

b) Indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel;

c) In accordance with the Romanian Civil Procedural Code, the amount of the counter-security should be placed in cash and is limited at 20% of the claimed amount (usually this is between 5-10% of the claimed amount).

In case the matter is very urgent, vessels can be provisionally arrested through the Harbor Master, paying a tax of Euro 400 (Saturdays and Sundays the fees are in the amount of Euro 800).
A notice of the arrest will be notified to the Harbor Master.
The Harbor Master will issue the arrest order and submit it to the vessel's file and will not interrupt in any way vessel's operations. The arrest will become effective when the vessel will finalize operations and vessel's agent will attend the Harbor Master to receive the vessel's permit to leave the port. Starting with the hour when the vessel's agent will ask for the Permit to leave, the Harbor Master will count 24 hours (Saturdays and Sundays are not included within this hours anyway) and the vessel will be arrested for 24 hours. During these 24 hours, the plaintiff will need to apply to the Court asking for the arrest of the vessel. Courts are judging these cases on an urgent basis and normally are issuing the decision within 24 hrs. There is no need for the time being to place the counter-security which will be requested by the Court at a later stage.
The Court fees are low (about 200 Euros). The lawyer's fees are normally calculated on hourly basis. The costs are usually recoverable from the defendant.

2. Which International Convention applies to arrest of ships in your country?

Romania has ratified the International Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels on May 10, 1952, on November 8th, 1995. For the participant states of the 9th Diplomatic Convention of Maritime Law, it was enforced on February 24th, 1956.
Article 8(1) of the Convention provides that its provisions are applicable in any contracting state to any vessel that flies the flag of a contracting state. Paragraph 2 of the same article mentions the possibility to arrest any vessels flying the flag of a non-Contracting State in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest.. Romanian Courts are
applying this principle when taking into consideration the arrest of a vessel in the Romanian jurisdiction.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No.

5. For which types of claims can you arrest a ship?

A ship can be arrested in Romania for one or more of the claims listed in article 1(1) of the 1952 Arrest Convention. Ships may be arrested in Romania also for one or more of the claims listed by the International Convention for the unification of certain rules of law relating to maritime liens and mortgages, 1926.

6. Can you arrest a ship irrespective of her flag?

Article 8(2) of the 1952 Arrest Convention mentions the possibility that vessels flying the flag of a non-contracting state may be arrested in one of the contracting states according to one of the claims listed in Article 1, or according to any other claim that permits the arrest according to the laws of that state.

7. Can you arrest a ship irrespective of the debtor?

As already mentioned, it is compulsory to indicate and provide evidences to the Court that the defendant in the main proceedings is the owner of the vessel.

8. What is the position as regards sister ships and ships in associated ownership?

Sister ships may be arrested in Romania, according to the provisions of articles 951-952, 959-968 of the Romanian Civil Procedural Code and the provisions of Article 3(1) the 1952 Arrest Convention. Ships in associated ownership cannot be arrested in Romania.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat and Time-Chartered vessels cannot be arrested in Romania for the claims against the Bareboat and/or Time-Charterer, with the exception stated in art. 3(4) of the 1952 Arrest Convention.

10. Do your Courts require counter-security in order to arrest a ship?

The Court will order the claimant to provide an amount as counter-security to the Court as a percentage of the claimed amount (the amount will be fixed by the Court, but in most of the cases is 5-10%). In accordance with the provisions of the new Civil Procedural Code the amount of the guarantee may be increased up to 20% of the claimed amount and needs to be placed in cash at the disposal of the Court. According to the recent case law from the Romanian Courts involving a ship arrest in Galati, the Court has set the amount of the counter-security at 1.5% from the claimed value.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Arrest of a ship for a maritime claim will be done according to the procedure established by the 1952 Arrest Convention and in case of arrest of a ship for a maritime lien mentioned by the 1926 Maritime Liens and Mortgages Convention.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Romania recognizes maritime liens according to the 1926 Maritime Liens and Mortgages Convention. Romania is not a party to the 1993 Maritime Liens and Mortgages Convention.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

A notice of the arrest can immediately be sent to the Harbor Master.
The Harbor Master will place the order of arrest to the vessel's file and will not interrupt in any way the vessel's operations. Notice of the arrest will be placed immediately when the file arrives to our law firm and an Engagement Letter will be signed by the client and sent by e-mail and/or fax.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Based on the Engagement Letter signed by the client, the law firm will provide to the Court a power of attorney in the standard format prescribed by the Lawyers statute.

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 is no need to provide original documents to the Court, only copies mentioned to be true copies will be provided to the Court, on the understanding that the originals will be kept by the law office. It is necessary to be provided with originals of the documents, or Notary certified copies in order to translate them into Romanian and present legalized translations to the Court, taking into consideration that Public Notaries will not legalize translations without being provided with the originals of the documents. The evidence that the main claim proceedings has been instituted should be a letter from a Court, apostilled according to Hague Convention 1961 or a letter from the arbitrator appointed showing that arbitration has started.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No.

17. What is the procedure to release a ship from arrest?

As long as the debt has been paid or a Letter of Undertaking/Bank letter of guarantee has been provided in order to release the ship, the debtor can request the Court to release the vessel from arrest. The Court will release the vessel from arrest on urgent basis, even in the same day.

18. What type of security needs to be placed for the release?

In accordance with the Civil Procedural Code provisions, the security needs to be provided in cash at the disposal of the Court. Only in case the creditor agrees, the debtor may provide a Bank Letter of Guarantee or a P&I Letter of Undertaking at the disposal of the Court.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The P&I LOUs may be accepted by the Court for lifting the arrest only in case the creditor agrees to accept such undertakings.

21.How long does it take to release the ship?

1-2 days, usually.

22.Is there a procedure to contest the arrest?

The arrest order issued by the Court may be appealed to the Court of Appeal.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Arrest cannot be requested if legal action on the merits has not yet started prior to the application to the Court. According to the Romanian Civil Procedural Code, it is possible that, in urgent cases, arrest of the vessel to be permitted without the need to commence substantive claim proceedings in advance. In such a case, substantive claim proceedings needs to be started in 20 days from the date the arrest application has been admitted by the Court.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. In practice, it is very difficult to prove such a claim.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No.

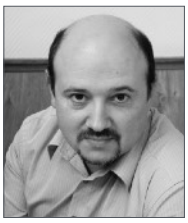
26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No.

**Adrian* *has written several articles exclusively on maritime law published by well-known Romanian publications such as "Law" and "Com- mercial Law Journal" as well as by the English "International Journal of Shipping Law". In 2001, he published the "Maritime Law" Book. Adrian current practice focuses on commercial and maritime law, international trade law, private international law, insolvency & bankruptcy law, intellectual property law, real estate, administrative and tax law.*
Lawyer within the Constanta Bar Association since 1996. He also regularly acts as an arbitrator within the Romanian International Commercial Arbitration Court. He is an authorised mediator and insolvency practitioner. He speaks English and Romanian.
**Augustin Zabrautanu* *is a graduate of Bucharest University. He is a licensed attorney in Romania. His post graduate activity included Master in maritime law at Constantza Maritime University, private legal practice and criminology at Bucharest University School of Law. He is a member of the Bucharest Bar.*
Although Augustin is a experienced and dedicated criminal law litigator, his current practice focuses on commercial and maritime law, inter- national trade law, private international law, insolvency & bankruptcy law, intellectual property law, real estate, administrative and tax law.
Starting in 2005, Augustin Zabrautanu and his colleagues had successfully represented numerous and various clients (both of domestic and international companies), in a broad array of maritime issues, including arrest of ships. Augustin speaks English and Romanian.

SHIP ARREST IN *RUSSIA* (QUESTIONS 1 TO 9)

Andrey Kosmachevskiy & Andrey Suprunenko
*REMEDY Law Firm**
ankos@remedy.ru & info@remedy.ru
www.remedy.ru
Prof. Popova str., 23-V, office 3-N
197022 St.Petersburg
Tel: (+7 812) 702-51-00
Fax: (+7 812) 702-51-01



(QUESTIONS 10 TO 26)

*By Alexander Mednikov**
JURINFLOT
Alexander.Mednikov@jurinflot.ru
www.jurinflot.ru
PO Box 60 Moscow, 109147 Moscow, Russia
Tel: (+7 495) 792-57-01
Fax: (+7 495) 792-57-00

1. Please give an overview of ship arrest practice in your country.

The ship arrest practice in Russia is wide and may be different due to the differences in court practice in regions – west, south, north, east. Basic ports where there is wide practice of ship arrest are: St. Petersburg, Novorossiysk, Vladivostok, Kaliningrad, Murmansk.

2. Which International Convention applies to arrest of ships in your country?

Russia ratified the International Convention on the Arrest of Sea-Going Ships (10 May 1952, Brussels). The provisions of this Convention are mandatory applicable to all ships flying the flag of another Contracting State and calling at Russian ports. Merchant Shipping Code of Russia (1999) is the domestic law which implemented basic principles of the 1952 Brussels Convention and even Merchant Shipping Code (1999) is an advance over the 1952 Brussels Convention as it is based on principles of International Convention on Arrest of Ships (Geneva, 1999) especially in regard to the wide list of claims subject to ship arrest. According to both above mentioned Conventions a ship may be arrested only under the authority of a Court. The regulations of procedure for the Court in Russia are defined in two Codes: the Civil Procedural Code of Russia and Arbitration Procedural Code of Russia. In general the Civil Procedural Code defines the procedure for the physical persons acting as claimants or applicants, and the Arbitration Procedural Code defines the procedural for the legal entities.

3. Is there any other way to arrest a ship in your jurisdiction?

Due to absence in above mentioned procedural codes of special clauses devoted to the ship arrest there is a way to arrest the ship as property of the debtor (regardless of status of a ship as special kind of property) by means of filing to the Court the application for the arrest of property of the debtor. Such application is filed together with the statement of the claim. The ship may be arrested also under criminal or administrative procedure as exhibit of case or as subject of criminal or administrative offense.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

There is a way to arrest the ship as property of debtor in security of civil action as well as in the bankruptcy proceeding.

5. For which types of claims can you arrest a ship?

Under Domestic Law - In Merchant Shipping Code of Russia (1999) the whole list of maritime claims (a to v) from the 1999 Geneva Convention is included. The domestic law is applied by the Russian courts mostly in respect of the Russian flag seagoing vessels. Under the 1952 Brussels Convention – the Russian courts are more or less in line with the list of the maritime claims indicated in the 1952 Brussels Convention. But the courts apply this Convention mostly to the foreign flag vessels.

6. Can you arrest a ship irrespective of her flag?

You can arrest a ship irrespective of her flag.

7. Can you arrest a ship irrespective of the debtor?

According to the 1952 Brussels Convention which was ratified by Russia a ship may only be arrested in respect of a maritime claim only. Therefore bearing in mind the regulations established in the Arbitration Procedural Code of Russia the claimant first of all should prove the existence of the maritime claim in respect of the specific ship and same time the claimant should prove that the claim arose due to the actions of the specific debtor in respect of this specific ship when (as the claimant supposes) the debtor was the owner/ charterer of this ship. It may lead to that the real owner of the ship will try to object the arrest saying the ship never belongs to the debtor. The claims "in rem" can not be initiated in Russia. Certain claims may follow the ship regardless in whose hands it may be, e.g. claims for crew wages, salvage, port dues (maritime liens).

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ship as the property owned to same debtor.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The provisions for the arrest of the vessels in accordance with the domestic law are the same as in the Convention, 1999 article 3 par.(1)-(2). If the Convention, 1952 is to be applied then the provisions for the arrest from Convention, 1952 will be applied.

For more than 20 years, **Remedy Law Firm has helped in obtaining a highly professional and commercially oriented advice on issues relating to shipping and transportation in the widest range. Remedy Law Firm deals mainly with claims handling, represents cases of its clients in common law courts, arbitrations and appeals courts on all aspects of civil, maritime and administrative law, scrutinizes documentation and its enforceability under Russian and international laws and gives legal opinions on different issues.*
We also offer advice on the interpretation of charter party clauses, bills of lading, insurance policies and other contracts. Mr. Andrey Suprunenko is a director of the firm. Mr. Andrey Kosmachevskiy is Head of Marine Practice.

10. Do your Courts require counter-security in order to arrest a ship?

In accordance with article 393 of the Code of Merchant Shipping, the court or arbitration which considers the application on arrest of a ship, may (but is not obliged to) order an applicant for arrest to provide security against any damages which may be caused by arrest and for which the applicant may be held liable. Amount and terms of such security shall be determined by the court. In practice, courts often require such counter-security as a condition for imposition or continuation of arrest of the ship. Therefore, the applicants should normally be prepared to provide counter-security in advance (together with application) in order to increase the chances of success of arrest application. However, counter-security may not be required from the applicant which demands arrest of a ship on the basis of a claim for amounts due to the master or crew of the ship for their work on board.

11. Is there any difference in respect of arresting a ship for a maritime claim and a maritime lien?

In accordance with the Code of Merchant Shipping (article 388), a ship may only be arrested on the basis of a maritime claim. However, all types of claims which are, under the Russian law, secured by a maritime lien are, at the same time, included in the list of maritime claims provided by the CMS. Therefore, there is no practical difference in arrest procedures whether the maritime claim is secured by a lien or not.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes it does - by the Federal law dated of 17/12/1998, Russia acceded to the International Convention on Maritime Liens and Mortgages of 1993.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

In practice, and in an optimistic scenario, it normally takes 4-5 days from the date of arrival of the full package of necessary documents is the shortest term to have the vessel arrested:

(a) on day 1 the documents arrive and [if the documents come from abroad] - a certified translation of foreign documents is arranged;

(b) on the evening of day 1 or the morning of day 2, the authorized lawyer leaves for the city where the territorially competent court is located (normally – the arbitration (commercial) court of the), (c) on day 2, the application for arrest with attachments is filed to the competent court;

(d) on day 3, the court considers the application and grants the arrest,

(e) on day 3 or 4, the court issues an executive order on the basis of its decision by which arrest is granted,

(f) on day 4 or 5, executive order is submitted to the bailiffs service which commences executive procedure and filed the executive order to the harbor-master of the port where the vessel is located.

In practice of some (but not all) courts and ports, procedure may be sped up by 2 days if the court is requested to include in the arrest ruling the order to the harbour-master not to grant to the vessel the permission to leave the port. If such order is included in the ruling, the vessel will be effectively immobilized before involvement of the bailiffs. It must be noted, though, that in order for the above-mentioned time-frames to be observed and for the arrest to be successfully obtained, coherent work between the clients and the lawyers is required at the preparatory stage, so as to ensure that the correct information is provided for drafting of an application and the necessary support documents are also supplied.

14. Do you need to provide a POA, or any other documents of claim to the court?

Yes, the POA is necessary. Documents which confirm the existence of a maritime claim must also be provided in order to confirm the existence of grounds provided in the law for imposing the arrest.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Of the documents filed together with the application, only the POA needs to be in original (or a copy certified by the notary public). Other documents may be presented in copy certified by the applicant (an endorsement saying 'true copy of an original', a signature of a director and a company stamp). A general requirement of the law is that documents in the foreign language must be accompanied by a certified translation into Russian and that a document obtained abroad must be legalized, unless such requirement is abolished by an international treaty to which Russia is a party (for example, the Hague convention of 05/10/1961 and other multi-lateral or bilateral treaties, including the ones with CIS countries, Baltic countries, India, Argentina, Poland, Spain, etc.). In practice, commercial documents are not required to be apostilled but do require a certified translation. Filing of documents in electronic form is also possible.

16. Will the Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

When an arrest over the ship has been imposed in Russia, the Russian courts may accept jurisdiction over the substantive claim in cases provided for by the 1952 Convention:

- if a person which is a creditor under such claim has its main place of residence or business in Russia;
- if the substantial claim arose in Russia;
- if the claim relates to the voyage during which the arrest was imposed;
- if the claim arose from a collision or from other damages caused by one vessel to another vessel, or to people or goods on board of such a vessel;
- if the claim arose from salvage;
- if the claim is based on mortgage of the arrested vessel.
- Alternatively, Russian courts may accept jurisdiction over the substantive claim on one of the general grounds which the procedural legislation provides for Russian courts to consider matters with foreign element. They include, i.e.:
- defendant having a place of residence, place of business or property located in Russia;
- the dispute arising from the contract which was intended to be fulfilled on the territory of Russia;
- the dispute arose out of damage to property, if such damage was caused or arose on the territory of Russia.

17. What is the procedure to release a ship from arrest?

Release from arrest is allowed only in case if sufficient security is provided (or the maritime claim in question is satisfied for good) and is effected on the basis of a ruling of a tribunal which ordered the arrest. In case if the bailiffs have been involved in the arrest, they also need to be notified of the tribunal's ruling and must terminate their execution proceedings.

18. What type of security needs to be placed for the release?

Type and value of security may be determined by the agreement of the parties concerned. In case if the parties fail to reach such agreement, these issues may be determined by the tribunal which handles arrest proceedings. In the latter case, value of security may not exceed the value of the ship arrested but if the value of a ship is higher that the extent of the underlying claim, security in amount of the claim (including also the reasonable costs and interest) will in most cases be sufficient. Acceptable form is either to be agreed on by the parties or by the competent tribunal and may be provided in the form of deposit on the account of the court, pledge of other property or guarantee/surety from the third party (banks, insurers including P&I clubs).

19. Does security need to cover interest and costs?

Yes, security, unless it would exceed the value of the ship, would need to cover also interest and costs accrued by the respective time (i.e. date of application for release).

20. Are P&I LOUs accepted as sufficient to lift arrest?

P&I LOUs are starting to be accepted as forms of security.

21. How long does it take to release the ship?

Release of a ship would, in practice, require at least two-three days: the courts are obliged to consider pleas for termination of security measures not later than the next day after filing of such pleas (provided that the defendant also submitted proof of providing the counter-security) and in case if arrest has been effected by the bailiffs, the latter would need to be notified and take respective action as well.

22. Is there a procedure to contest the arrest?

Arrest (as any other security measure imposed by the tribunal), in addition to being lifted in case of provision of security, may be contested by filing a respective plea to the tribunal is case if the arrest is unfounded (for example, when the vessel does not have the relation to the debtor which allows it to be arrested).

23. What period of time will be granted by the Courts in order for the claimant to take legal action on the merits?

If arrest will be treated as a preliminary security measure for the purposes of commencing the main suit in the Russian court, than such period will be determined by the court in its ruling by which arrest will be granted. But in any event, it should not exceed 15 days.

24. Do the Courts of your country acknowledge wrongful arrest?

Russian courts have a right to refuse application of arrest. When the judge considers the application, he/she refuses or satisfies it on the basis of its internal conviction. Also, as mentioned above, it is possible for the court to order the applicant to provide counter-security against any damages which may be caused by the arrest, including wrongful arrest and to determine the extent of applicant's liability in such case.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

It may be said that at present, Russian courts dealing with maritime claims will not be likely to pierce/lift the corporate veil, but at the same time, in one of the acts of the Supreme Arbitration [Commercial] Court (in a case completely unrelated to shipping), the doctrine of piercing the corporate veil was expressly acknowledged, so it is quite possible that this doctrine will gain wider application in Russia in the near future.

26. Is it possible to have a ship sold pendent lite; if so how long does it take?

No.

*Since 2003, ***Alexander Mednikov*** *is a partner in "Jurinflot International law office", a Russian law firm which specializes in maritime law. His primary professional interests include ship finance and vessel mortgage, as well as joint-ventures and M&A in shipping and other spheres. Alexander graduated with honours from the law faculty of the Russian Peoples' Friendship University and speaks English and French.*

SHIP ARREST IN *SAUDI ARABIA*

*By Omar N. Omar & Ahmed Hashem**
AL TAMIMI AND COMPANY
o.omar@tamimi.com
a.hashem@tamimi.com
www.tamimi.com
11th Floor, King's Road Tower,
King Abdulaziz Road, Al Shate'a District
PO Box 9337, Jeddah 21413, Saudi Arabia
Tel: +966 12 263 8900 F: +966 12 263 8901

1. Please give an overview of ship arrest practice in your country.

The Kingdom of Saudi Arabia has recently introduced the new Commercial Maritime Law No. 179 for the year 1440H (the "Maritime Law"). Pursuant to Articles 74 -81 of the Maritime Law a party who is seeking to recover a maritime debt may do so through the commercial courts and obtain an arrest warrant against the vessel to prevent her from sailing. Further, the arrest warrant can be served upon any sister-ship belonging to the same registered owner.
The arrest application should be filed through the online court system - Najiz - or in person and, once accepted, the court shall give its decision within three days.
Note that it is not uncommon for proceedings to require the presence of Owners and/or their agents, granting an opportunity to dispute the merits of the arrest. This may change over time.
A Power of Attorney is mandatory and this often takes time to arrange prior to an arrest being contemplated.

2. Which International Convention applies to arrest of ships in your country?

KSA is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

Ships may be arrested in KSA in reliance upon the Maritime Law only.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No, there are no alternatives outside of the procedures stated in the Maritime Law.

5. For which types of claims can you arrest a ship?

It is essential to have a "maritime debt" to make a ship arrest application. A "maritime debt" is defined in Article 75 of the Maritime Law, which stipulates that a debt is a "maritime" debt if it arises out of one or more of the following:

1. Damage caused by the vessel by reason of collision, pollution, or other similar maritime accidents;
2. Loss of life or bodily injury caused by the vessel or arising from the operation thereof;
3. Contracts relating to the operation or charter of the vessel;
4. Contracts relating to carriage of goods under a charterparty or a bill of lading;
5. Loss of or damage to goods and baggage carried by the vessel;
6. Rescue operations;
7. General average losses;
8. Towage of the vessel;
9. Pilotage;
10. Supply of materials or equipment necessary for the operation or maintenance of the vessel;
11. Construction, repair or fitting of the vessel, and its docking costs;
12. Wages of the master, officers, crew members, and maritime agents;

13. Amounts expended by the master, consignors, charterers, or maritime agents on account of the vessel or its owner;
14. A dispute over the ownership of a vessel;
15. A dispute in connection with the co-ownership, possession, or utilization of a vessel, or with the co-owners' rights tot he amounts resulting from utilization thereof in connection with the rights of co-owners to amounts arising from the exploitation;
16. A Maritime mortgage;
17. Fees and charges of ports and waterways;
18. Insurance of a vessel;
19. Costs of raising and removing wreckage or goods.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the territorial waters of KSA can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

In general, a ship can be arrested regardless who the debtor is. However, the creditor must prove the connection with the debtor that led to the maritime debt.

8. What is the position as regards sister ships and ships in associated ownership?

The Maritime Law article No. 76 provides that a party who has a maritime debt may bring a legal action against the ship which is responsible for the debt or any sister ship owned by the same registered ship-owner, the same will be applicable for the associated ownership. It may be possible to obtain a sister ship arrest even where the vessel is not owned by the same registered-owner – however, this is more difficult, and would require concrete evidence of the relationship between the parties.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The arrest of a ship for a charterer's debt is possible, provided that the charterer retains operational control over the vessel pursuant to which the maritime debt relates. Additionally, any other vessel which is directly owned by the charterer may be the subject of an arrest, pursuant to Article 77 of the Maritime Law.

10. Do your Courts require counter-security in order to arrest a ship?

Yes. The courts to require counter-security subject to the discretion of the court.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice there is no difference between the arrest of a ship for any maritime debt and the arrest of ship for a maritime lien as both are mentioned in the article 75 of the Maritime Law.

12. Does your country recognise maritime liens? Under which International Convention, if any?

KSA did not accede to any of the International Conventions relating to Maritime Liens. However, the Maritime Law recognises maritime liens in articles 46 to 58.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in KSA and a legalised PoA is in place, the ship can be arrested within 1 week. It is advisable to start the process as early as possible to expedite the proceedings as far as possible.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the KSA Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in KSA is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in KSA prior to submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The arrest application shall be submitted through the online court system and the documents shall be attached along with the application. In our experience, all the documents can be submitted electronically. However, the original POA will be required if the application is submitted via the Minisitry of Justice judicial services center.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, the court will accept it if the claimant file the substantive case within 8 days from the court order subject to article 79 of the Maritime Law which says "The creditor must bring the action for the debt and for a declaration the validity of the arrest before the competent court within whose area the arrest was imposed within the eight days following service of the notice of arrest on the master or the person standing in his stead, failing which the arrest shall be treated as void ab initio, and the operator of the ship or the person acting on his behalf shall have the right to obtain a judicial order annulling the arrest.

17. What is the procedure to release a ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request the issuance of an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The only type of security acceptable by the court is bank guarantee issued by a local bank.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are not recognised forms of security.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

Yes it is possible to contest the arrest. There may be occasions where notice of the arrest proceedings may be given to Owners, permitting them to contest the application before the courts. If the precautionary arrest order is given, then the Owners have a period of 15 days to appeal the decision.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must, within eight days starting from the issue of the arrest order, file substantive proceedings before the competent court to sustain the arrest order, failing which the arrest order will be void ab initio.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This may be possible but in very limited circumstances.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is not possible, until securing a final judgement.

*__Omar__ *joined Al Tamimi & Company in 2008. He is a Partner, Head of the Transport & Logistics sector group and Head of the Insurance practice in the UAE. Omar is also a core member of the Projects sector group.*
Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. With a multinational team covering all the GCC countries, Egypt, Iraq and Jordan, his team advises many governmental bodies on the establishment and development of maritime and land transport laws, regulations and policies. In addition, Omar has distinctive experience in laws related to logistics and customs in the GCC.
Omar regularly advises on cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sales and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He has also drafted and advised on various types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover.
Omar is ranked in Band 1 by Chambers & Partners and ranked as a Leading Individual by Legal 500 EMEA for Shipping UAE. He is also an author of the UAE Vessel Registration and Mortgage Section in the internationally renowned Kluwer International Maritime Law Handbook..

*__Ahmed Hashem__ *is a Partner and the Head of Shipping of the firm within the Kingdom of Saudi Arabia. Prior to joining the Jeddah office, Ahmed was a Senior Associate in Kuwait office for almost three years. Before that, Ahmed was a Head of legal in Gulf Agency (Egypt) Ltd.*
He has extensive experience spanning over twelve years in Maritime law in the Middle East including freight forwarder disputes, agencies, customs and insurance.
Ahmed is a skilled litigator, he has handled hundreds of cases either on Maritime cases or commercial, labor, Civil and arbitration.
Being a head of legal and Senior lawyer, he is responsible for providing specialist legal advice in respect of commercial, corporate, customs and Maritime law. This includes providing legal oversight and legal risk analysis in respect to the development of rules as well as negotiating, reviewing, coordinating, drafting and revising all contracts/ agreements / tenders. Drafting all legal documents (memos, notifications, and statements) that are relevant to running or potential claims to be submitted to the competent court. Negotiating, reviewing, coordinating, drafting and checking of contracts/agreements, which clearly reflect the commercial, technical and financial objectives of GAC. Draft and review other documents and materials where there may be legal implications and responsible for ensuring dual language drafting accuracy in documentation with legal implications.

SHIP ARREST IN *SCOTLAND*

*By Bruce Craig**
Pinsent Masons LLP
Bruce.Craig@pinsentmasons.com
www.pinsentmasons.com
13 Queen's Road, Aberdeen AB15 4YL
Scotland, UK
Tel: +44 1224 377900

1. Please give an overview of ship arrest practice in your country.

The right to arrest a ship in Scotland derives from Part V of the Administration of Justice Act 1956. This part is headed "Admiralty Jurisdiction and Arrestment of Ships in Scotland". This has been amended over the years, most recently by the Bankruptcy and Diligence etc. (Scotland) Act 2007 which is an Act of the Scottish Parliament.
For the ship to be capable of being arrested in Scotland in security of a claim it must be the very ship with which the dispute is concerned and the defender must either own at least one share in the ship or be the bareboat charterer. Alternatively, a ship can be arrested where the defender owns all the shares even if it is not the ship with which the dispute is concerned. If the Scottish courts would not otherwise have jurisdiction, the ship can be arrested in a Scottish Port "to found jurisdiction". Arresting in this way however merely gives the court jurisdiction, but does not create any security over the ship itself.
A Claimant (Pursuer/Plaintiff) can often obtain a significant advantage by being able to arrest a ship at the outset of a court action for payment. This is one of the few instances in Scots Law where it is feasible for a Claimant to obtain security pre judgement. It is necessary to go to the court (either the Court of Session in Edinburgh or the local Sheriff Court) to seek the permission of the Judge to arrest the ship if the case can be brought within one of the many categories listed in the 1956 Act. If the Judge grants the permission then the ship can be arrested by Court Officers even without the alleged debtor (or anyone else associated with the ship) necessarily being aware up to that point that an arrest is being contemplated, far less that it is imminent. The court papers then require to be served on the Defender (Defendant) albeit that the papers can be served on the ship itself if what is raised is an action in rem in respect of a maritime lien such collision, salvage or for crew wages. The Defender then has an opportunity to challenge the arrest with the Pursuer being liable in damages if it is found to be an unlawful arrest.

2. Which International Convention applies to arrest of ships in your country?

The United Kingdom (of which Scotland forms part) is a signatory to the International Convention Relating to the Arrest of Seagoing Ships 1952. This was brought into UK domestic law by the 1956 Act. Jurisdiction is governed by the Brussels Convention 1968 and the Lugano Convention 1988. These were introduced into UK Law by the Civil Jurisdiction and Judgements Act 1982 as amended.

3. Is there any other way to arrest a ship in your jurisdiction?

Port Authorities in Scotland have the right to detain a ship for non-payment of harbour dues in terms of the Harbours, Docks and Piers Clauses Act 1847. Detention under the 1847 Act is the equivalent of arrestment. It is also possible to arrest a ship in a Scottish port in implementation of an order of a foreign court. Such an arrestment must comply with the Civil Jurisdiction and Judgements Act 1982. In certain circumstances, arbitration judgements can also result in ship arrest in Scotland.

4. Are there alternatives, for example saisie conservatoire or freezing orders?

Scots Law does not provide any alternatives beyond arrestment under the 1956 Act, detention by a Port Authority and in respect of a foreign action, all as referred to above.

5. For which types of claims can you arrest a ship?

A ship can be arrested in a Scottish port in implementation of a Court or Arbitration Judgement. More common, however, is an attempt to arrest on the dependence of an on-going court action. Where the entrance requirements set out at number 1 above apply, 47 (2) of the 1956 Act lists various circumstances in which arrestment on the dependence is permissible. These categories include damage done or received by any ship, loss of life or personal injury relating to the ship, salvage, any agreement relating to the use or hire of any ship, loss of or damage to goods carried in any ship, towage, pilotage, liability for dock charges or dues and Master's disbursements.

6. Can you arrest a ship irrespective of her flag?

The question of flag is irrelevant to arrest in Scotland except that UK ships owned by the Crown and ships which themselves are owned by foreign states cannot be arrested unless they have been contracted for commercial purposes.

7. Can you arrest a ship irrespective of the debtor?

Scots Law recognises the exercise of a right in rem in certain specific circumstances, for example in relation to collision damage and salvage. Where there is a right in rem a court action can be raised directly against the ship with the court papers served on the ship itself. This can create a significant advantage for a Claimant since it obviates the need which would otherwise exist to serve the court papers on the owner which of course might be abroad in a remote jurisdiction.

8. What is the position as regards sister ships and ships in associated ownership?

As set out above, it is possible to arrest sister ships and ships in associated ownership so long as all the shares in the ship being arrested are owned by the Defender in the court action. Common ownership is however now relatively unusual.

9. What is the position as regards bareboat and time-chartered ships?

Bareboat chartered ships can be arrested in Scotland where the alleged debtor is the bareboat charterer. Ships under time charter can however only be arrested in respect of an action in rem.

10. Do your Courts require counter-security in order to arrest a ship?

In Scotland, no counter-security is required except in an extreme case.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. Where Scots law identifies a claim as a maritime lien a court action can be raised "in rem" i.e. directly against the ship itself. Maritime liens apply to 4 different categories of claim - collision damage, salvage, seamen's wages, and master's wages and disbursements. Other claims where it is possible to arrest are claims "in personam" and are taken against the vessel's owner or the bareboat charterer.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. The 4 maritime liens are collision damage, salvage, seamen's wages, and master's wages and disbursements. These liens apply at common law.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

If the party seeking to arrest is able to provide all the necessary paperwork right at the start, it can be possible to get the case into court within a few hours. If the court is then willing to grant the necessary warrant, the arrest can be put in place as soon as the process servers can get to the vessel.

14. Do you need to provide a POA or any other documents of the claim to the Court?

It is not necessary to provide a Power of Attorney. The judge will however want to see prima facie evidence of ownership (for example the Transcript of Registry) and paperwork backing up the basis of the claim.

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 possible to file documentation electronically. With a view to persuading the judge to allow arrest, we will need to show a copy of the Transcript of Registry or, if applicable, a copy of the bareboat charter. If the arrest is disputed and the case goes to Proof (Trial) the court would expect to see principal documentation or certified copies.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

It is possible to arrest "to found jurisdiction" even if the only link between the case and the Scottish courts is the fact that the vessel has been arrested in a Scottish port. Generally, the court will accept jurisdiction but there are exceptions for example if there is a substantive dispute forum non conveniens can apply. Also, if the basis of the dispute is a contract which provides exclusive jurisdiction elsewhere the arrest remains valid even although the substantive dispute is litigated elsewhere.

17. What is the procedure to release a ship from arrest?

An arrestment can be released in one of two ways. If the arrestment is disputed and the judge decides to release it then the court order is sufficient to release it. Secondly, if there is agreement between the parties either to release the arrestment unconditionally or because for example a bank/ P&I Club guarantee has been put in place it is sufficient for the arresting party to advise the harbour master that the vessel is no longer under arrest.

18. What type of security needs to be placed for the release?

Security is ordinarily by way of a guarantee/letter of undertaking from one of the P&I Clubs or a UK bank.

19. Does security need to cover interest and costs?

Security does require to cover interest and costs. If there is a dispute between the parties the judge will set the level of security required.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, P&I Club letters of undertaking are accepted as sufficient to lift the arrest – except in exceptional circumstances.

21. How long does it take to release the ship?

If agreement is reached between the parties the arrest can be immediate. If matters are in dispute the lawyers for the vessel can get the case into court within a few days (sometimes within a few hours) and argue that the ship should be released.

22. Is there a procedure to contest the arrest?

When an arrestment is put in place the court will fix a hearing for a few court days later and the arrestment will only last until then unless the judge is persuaded at the hearing that the arrest should continue. A lawyer on behalf of the ship can make representations at that hearing.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

A defender has 21 days from service of the court papers to enter appearance (42 days if outwith Europe) and either another 7 or 14 days after (depending on which court the case is in) to lodge a written defence. The case will then proceed through the court system but it may be many months before an evidential hearing takes place, if needed.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Wrongful arrest resulting in damages applies if it transpires the proceedings are incompetent or there has been a procedural irregularity by the arresting party.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, it is possible to lift the corporate veil in appropriate circumstances.

26. Is it possible to have a ship sold pendent lite; if so how long does it take?

No, this is not possible in Scotland.

**Bruce Craig* *is a Partner in the International Law Firm Pinsent Masons. He is based in Aberdeen and acts throughout Scotland and abroad. He deals primarily with marine claims and litigation including ship arrest. He is highly experienced in offshore and shipboard accident and casualty investigation. He regularly acts for shipowners, charterers, offshore drilling contractors, P&I Clubs and marine insurers.*

SHIP ARREST IN *SENEGAL*

Dr. Aboubacar FALL
AF Legal Law Firm
a.fall@aflegal.sn
www.aflegal.sn
Résidence EH Abasse SALL, Avenue Bourguiba
PO Box 17295 Dakar-Liberté - Dakar (SENEGAL)
Tel: +(221) 33 864 05 59 Direct
Mobile: + (221) 77 184 65 45 (WhatsApp)

1. Please give an overview of ship arrest practice in your country.

Ship arrest is a frequent activity in Senegal due to the geographical location of Dakar where the main seaport is located and the dynamism of the import-export activity by sea in the country.
A part from the major shipping lines present in Dakar (Maersk, MSC, CMA-GMN, etc.) there is an intense activity of bulk transport by charter-party which often gives rise to arrest of vessels for various business and legal reasons such as non payment of demurrage, non payment of vessel hire, non payment of freight by shipper, etc.
Arrest activity must not be confused with the detention of the vessel which is an administrative operation generally carried out by customs for violation of customs regulations such as deficit or excess to the cargo manifest and the like.
This frequent arrest and/or detention activities justify the presence of major P&I Clubs in Dakar.

2. Which International Convention applies to arrest of ships in your country?

Senegal is a party to the 1952 Brussels Convention on Arrest of Seagoing Ships, the provisions of which have been transposed into the Senegalese Merchant Marine Code.

3. Is there any other way to arrest a ship in your jurisdiction?

The Senegalese maritime law distinguishes between saisie conservatoire (arrest of vessel) which is authorized by a judge and the detention of a ship which is executed by an administrative authority such as the Port Authority, Customs, etc. The latter does not require the authorisation of a judge.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

There are any other alternatives if it comes to arrest a ship under Senegal Law. The proceedings are described in both the Merchant Marine Code as well as the code of civil procedure (CCP). Only the President of the commercial court is competent to issue an arrest order. This operation is called “saisie conservatoire” as the arrestor would be required to transform the saisie conservatoire into a saisie execution. With the latter, the claimant would be able to sell the ship in order for the payment of his maritime claim.

5. For which types of claims can you arrest a ship?

There are two categories of claims which open the possibility to seek an arrest order against a vessel.

i. the first category is composed of limited maritime claims which are listed in the 1952 Brussels Convention as well as the Merchant Marine Code.
ii. The second category consists of any commercial claim in relation to the vessel of the vessel owner. Such arrest would be based on Senegalese general commercial law.

6. Can you arrest a ship irrespective of her flag?

YES

7. Can you arrest a ship irrespective of the debtor?

YES; except if the ship belongs to the military defence (see the ARA Libertard case before the ITLOS).

8. What is the position as regards sister ships and ships in associated ownership?

Provided that the legal and business relationship between the sister ship and/or the ship in associated ownership is established, the President of the commercial court generally grants the arrest order. This is consistent with Article 3 paragraph 2 of the 1952 Brussels Convention on Arrest of Ships to which Senegal is a Party.

9. What is the position as regards Bareboat and Time-Chartered vessels?

In both cases, the vessel can be arrested if the charterer is the debtor. While the Merchant Marine does not provide for a solution, local courts rely on the Brussels Convention which article 3 paragraph 4 provides that "when in the case of a charter by demise of a ship, the charter and NOT the registered owner is liable in respect of a marine claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship".
It is worth noting that the nature of the claim, i.e. a maritime claim, is a prerequisite condition to perform the arrest in the case of a bareboat or time charter.

10. Do your Courts require counter-security in order to arrest a ship?

NO, Senegalese courts do not require counter-security in order to arrest a vessel.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No, the there is no difference. To get an arrest order in both cases, the claimant will have to submit an application for arrest to the Court along with all necessary supporting documents evidencing the claim.

12. Does your country recognise maritime liens? Under which International Convention, if any?

While Senegal recognizes maritime liens and mortgages, its Maritime Code does not refer to any international Convention in this regard.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Provided that all documents supporting the claim are translated into French, the arrest could be obtained within the same day.

14. Do you need to provide a POA or any other documents of the claim to the Court?

NO, there is no need to provide a power of attorney (POA). The claimants need only to submit the most pertinent documents supporting the claim.

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 advisable to submit original documents (BL, etc). However, where that is not possible, the copies must be readable and translated into French. All documents can be filed electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

YES, according to the Senegal private international law, Senegalese courts retain jurisdiction on the merit over the vessel arrested in Senegalese waters (lex loci), except in cases where an arbitration clause exists.

17. What is the procedure to release a ship from arrest?

When the claim is not disputed, the conditions of the release are negotiated between the claimant and vessel owner or manager through the posting of a security bond in the form of bank guarantee or P&I Club letter of guarantee. When the claim is disputed, a short notice and emergency proceedings will take place before the President of the Court who will either order the release of the vessel or set the conditions for the release, i.e; the posting of a security bond (bank guarantee or P&I Club letter of guarantee).

18. What type of security needs to be placed for the release?

As indicated above, the security could take the form of bank guarantee or a P&I Club letter of guarantee.

19. Does security need to cover interest and costs?

It is common practice in Senegal that the security posted covers principal, interest, and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

YES, in principle P&I letters of guarantee (LoG) are generally deemed sufficient to obtain the lifting of an arrest. However, the Court cannot force a claimant to accept a P&I LoG if the latter requires a bank guarantee. It is after all a matter of negotiation.

21. How long does it take to release the ship?

While the procedure to obtain the release order by the Court can sometimes take two to three days, the effective release of the vessel by the Port authorities is carried out the very same day.

22. Is there a procedure to contest the arrest?

YES, a procedure to contest the arrest does exist under Senegalese maritime law.

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 arrest order is granted by the President of the Court, the claimant has 30 days from that date to file a legal action on the merits, it is called validation procedure.

24. Do the Courts of your country acknowledge wrongful arrest?

YES, in principle, the Courts recognize and indemnify wrongful arrest provided that sufficient evidence of abuse of rights has been shown. It is worth noting, however, that to prevent wrongful arrest, the President of the Court generally rejects the request for arrest when she/he considers the evidence insufficient or the claim baseless.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

YES, the Senegalese Courts acknowledge the piercing of corporate veil based of the civil law concept of “therorie de l’apparence”.

26. Is it possible to have a ship sold pendente lite; if so, how long does it take?

The only way to legally sell a ship is by auction before the Court. To that end, a whole formal procedure must be followed as prescribed by the Maritime Code.

**Dr FALL is a member of the Senegal Bar (West Africa) and a former member of the Paris Bar (France). He holds a Masters in International Transportation from University of Paris 1 Pantheon-Sorbonne (France), a PhD in International Business Law from University of Rouen Haute-Normandie (France) with a thesis on «The Fraudulent Practices in International Maritime Trade» and an LL.M in Law & Maritime Affairs from University of Washington in Seattle (USA).*

Dr FALL is a Titulary Member of the Comité Maritime International (CMI) and the former President of the Senegalese Maritime Law Association. He is currently serving as the President of the Senegalese Branch of the International Law Association (ILA) and is a member of its Commission on Maritime Law and the Law of the Sea. He is the Senior Partner at AF Legal and is recognized as one of the most prominent maritime lawyer in fracophone Africa. He is the co-founder of Africa Law Alliance (ALA) which is composed of independent business law firms from 17 West and Central African countries.

Over more than 30 years, Dr FALL has developed strong experience in maritime law and policy in general and ship arrest in particular. He has advised and represented shipping companies, shipowners, P&I Clubs etc. He has led the legal team which drafted the new maritime legislation of the Republic of Guinea. He was also a member of the team which advised and represented the seven (7) West African costal States in their legal action against illegal fishing before the International Tribunal of the Law of the Sea (ITLOS). He teaches international maritime law as well as the law of the sea at Senegalese and foreign universities. He speaks at international seminars, colloquia and conferences including the International Conference of Maritime Arbitrators (ICMA) where he presented a paper entitled: Defence and Illustration of Lex Mercatoria: the Case Study of the Extracontractual detention of a Vessel in Voyage Charterparty Disputes (published in the Journal of International Arbitration).

Dr FALL has published extensively in maritime law journals and reviews including Le Droit Maritime Français (DMF) la Revue de Droit commercial, Maritime et Fiscal (Scapel), IBA Maritime Transport Committee Newsletter etc.

SHIP ARREST IN *SERBIA*

*By Milošević Radomir**
Law Office Milošević
r.milosevic@lawmilos.rs
lawoffice@lawmilos.rs
Prote Mateje 24, 11000 Belgrade
Republic of Serbia
Tel: +381 11 3441161
Fax: + 381 11 3448548

1. Please give an overview of ship arrest practice in your country.

Please note that Serbia is a land-locked country and that navigation is performed only in international rivers - inland waterways.
According to Serbian law the arrest of ships is one of the "interim measures/temporary injunctions" that ensures future collection of due and outstanding debt which is in dispute.
The arrest of ships is governed by a special procedure, non-contentious proceedings and the order for arrest is issued under the name of "interim measure". Every arrest must be upheld by a final and conclusive judgment on the merits, and it is only on the basis of such final judgment (or award) that it is possible to start proceedings for the sale of the vessel.
Merchant Marine Act (*Zakon o trgovačkom brodarstvu "Sl. glasnik RS", br. 96/2015 i 113/2017 - dr. zakon*; the "**MMA**") governs the interim measures against the vessels. It is a lex specialis in regard to interim measures. However, where MMA is silent on certain issues related to ship arrest, the Enforcement and Conservatory Measures Act (*Zakon o izvršenju i obezbeđenju "Sl. glasnik RS", br. 106/2015, 106/2016 - autentično tumačenje i 113/2017 - autentično tumačenje*, the "**ECMA**") is applied to fill in the lacunae in the law.
Prior to instituting civil proceedings, compulsory enforcement or administrative court proceedings, the court may, for the purpose of securing the pecuniary claim at the request of the creditor, issue any measure to achieve the goal of such enforcement and in particular to prohibit the alienation or other disposal of the vessel, order the guarding of the vessel and issue the ship arrest warrant.
If the law court issues an arrest warrant prior to institution of civil proceeding, compulsory enforcement or administrative court proceedings, the creditor is under duty to provide evidence within 15 days upon the issuance of the ship arrest warrant that it had commenced civil proceedings, compulsory enforcement or administrative court proceedings.
The goal of the ship arrest is to make available to the creditor assets of the debtor for future compulsory enforcement. Arrested ships may be released if another security is given in lieu thereof. The other security may be money deposit, bank guarantee, P&I Club or other corporate letter of undertaking or other values available for enforcement/collection if accepted as such by the creditor. Monetary deposits and bank guarantees are always accepted.
In the premises, it is possible to obtain the ship arrest or obtain the release of an arrested ship pursuant to accepted international standards and laws of Serbia.

2. Which International Convention applies to arrest of ships in your country?

International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships 1952 (Brussels Convention) is applicable in Serbia and consequently the Marine and Inland Navigation Act (MINA, 1998) is mostly set out in line with the said Convention. Serbia has made reservation to apply domestic rules for disputes as to the title to or ownership of any ship (Article1, paragraph (1)(o)). Sea-going ship is defined as a vessel intended for sea-going navigation, exceeding 12 meters in length and with GT greater than15, or authorized to carry more than 12 passengers.

3. Is there any other way to arrest a ship in your jurisdiction?

The ship may be arrested only under the authority of the law court for claim with the purpose of security of the claim but other authority can order detention of the ship such as Harbor Master Office exercising Port State Control. The Customs Office authorities and the Criminal Court may order temporary detention of a ship for the purpose of their proceedings and under restricted terms

provided in other laws or other international conventions applicable. It is not the arrest in the sense of the Brussels Convention and MMA.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The prohibition of alienation and disposal as a specific measure or alternative to ship's arrest exists in Serbian law as a security measure related to claim with the court order to make such entry in the Ship Register in Serbia. Hence, possible alienation of the ship by the defendant against such prohibition has no legal effect whatsoever.

5. For which types of claims can you arrest a ship?

A ship can be arrested for:
Claims as provided by Article 1 of the Brussels Convention1952 but when Convention is not applicable for all other claims notwithstanding to the nature if there is no reciprocity between Serbia and the state of the flag. Because of the urgent nature of the ship arrest procedure, examination of the existence of reciprocity by Serbian Court is rarely done, and as a consequence thereof the court usually allows arrest for such ship practically for any type of claim.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes.

8. What is the position as regards sister ships and ships in associated ownership?

The concept of sister-ship arrest applies in Serbia in the spirit of the Brussels Convention and the same is provided for in MMA which substituted the abrogated Maritime and Inland Navigation Act (MINA) that the applicant may arrest any ship owned by the person against whom the claim is directed but no other ship than the particular ship in respect of which the claim arose may be arrested in relation to the claim regarding the ownership, mortgage, hypothecs or other like charges attached to a ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

There is no restriction to arrest the vessel as regards bareboat and time-chartered vessel. In this regard MMA does not depart from the Convention.
There is a certain ambiguity in regard to time-chartered vessel for the bunker supplied to the chartered vessel not paid by the charterer to the supplier. There is no sufficient case law established so far in Serbia to give judge guidelines and the court could be strayed and led to the conclusion that such claim is against the owner of the vessel.

10. Do your Courts require counter-security in order to arrest a ship?

This matter is not regulated by MMA but such possibility does exist in other laws and in our experience the court has never required a counter-security as a precondition for ship's interest in order to arrest a ship or for maintenance of already ordered arrest. Further, the claimant would have to prove in any case the existence of the claim. ECMA provides for a possibility that the creditor may post counter-security for the damage that could be occasioned to the debtor by rendering and enforcing the interim measure, but as said, this is done very rarely in practice.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No, there is no difference from the procedural point of view.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Serbia has ratified International Convention on Maritime Liens and Mortgages of 06 May 1993 relating to maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

That depends on the contents of the file and supporting documents all of which must be officially translated.
If the claimants have traced the vessel movement and prepared the documents as instructed before vessel's arrival in Serbian territorial waters, at least two days is required to sort documentation and prepare the application, but the official translation of the relevant documents may turn to be time consuming. However, the applicant must put forward a claim meeting the standard of lower level of proof of its existence and be well-grounded (*fumus boni juris*) and that should be observed as the best guidelines in preparing supporting documentation.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes. No special form is required to grant a POA to our law firm which authorizes our Law Office to handle the case. The POA is required to be signed by a duly authorized company officer.
Apart from POA all documents and evidence supporting the claim against the debtor are also required by the Court including agreements, vouchers, invoices and survey or inspection report by a surveyor or inspector in relation to the damage, and nature of the claim, etc. If the arrest is based on a mortgage, the mortgage document and the appropriate petition for foreclosure, it is prudent to provide the latest excerpt from the Ship's Register.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Application for arrest must be in original/hard copy because electronic filings with the Court are not possible for the time being. It is recommended that the original of POA be submitted and while pending receipt of the original the POA may be transmitted by facsimile or scanned POA via e-mail will suffice to lodge application for arrest.
No other documents are required in original but the court may order presentation of original if in doubt or on explicit demand of the debtor.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

That is subject to the nature of the claim and some other factors, but the court shall have jurisdiction to determine the case upon its merits in any of the cases specified in detail in the Brussels Convention, under Article 7, paragraph (1). Serbian courts apply *forum rei sitae* and will have jurisdiction on the merits in practically every case unless some other jurisdiction has been validly agreed upon.

17. What is the procedure to release a ship from arrest?

It is very simple and expeditious procedure. The shipowner may deposit the amount of money or other valuables with the court as ordered by the court in which case the vessel will be set free by the judge without application of the parties in dispute by issuing release order for the ship. The release order can be served to the master through Harbor Master Office to whom the power is presented to act for and on behalf of the court and the release order may be sent by facsimile transmission in order to speed up the release of the vessel.

18. What type of security needs to be placed for the release?

There is a peculiarity in Serbian law in regard of security needed for the release. The court may order the deposit only in the amount for which the applicant had made probable the main claim and

according to the standard of lower level of proof of claim but without costs and interest thereon, which is very difficult to assess in the early stage of proceedings. That means the court shall not determine the nature and amount of other security met in practice in other jurisdictions but this peculiarity can be easily overcome in practice with one advantage that the claimant cannot be exposed to the risk to be sued for excessive security sought and its consequences
It is worthwhile to note that deposit with the court as ordered by the court pursuant to provision provided in MMA is without doubt a top-quality security, but may turn out to be a heavy burden for the owner and is rarely done in practice which is reflected in the practice of Serbian Courts.
The court shall play an active role and determine the nature and amount of the claim only in case regarding the default in discharging the agreement between the Parties when the ship has been arrested in respect of any claim enumerated in Article 1(1)(o) and (p) allowing vessel to continue trading.

19. Does security need to cover interest and costs?

Restriction imposed on the court as described under point 18 above cannot prevent the applicant and shipowner to negotiate the acceptability or otherwise of any form of guarantee less burdensome for the debtor and if they reach an agreement the applicant must notify the judge in writing and request the judge to release the ship from arrest and that shall be accepted by the judge and considered as good security. Naturally, such security if offered and accepted shall cover the amount of claim plus interest and costs.
When the interest of Serbian persons is involved, they will usually accept foreign bank guarantees for the amount of claim plus cost and interest as agreed between the Parties if confirmed by Serbian bank because if not confirmed by the Serbian bank, may cause difficulties in enforcement as the Serbian court has no jurisdiction over the foreign bank, and recognition of a Serbian judgment may have to be obtained.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The court cannot force the applicant to accept P&I Letter of undertaking or Letter of guarantee or in combination with P&I Club's bank but irrespective of that we have always instructed our clients without exerting pressure to consider acceptability of first class P&I Clubs of the Group who have always honored their obligation and their Letter of undertaking, which is the advantage in most circumstances to release the vessel or preventing arrest and in its wording total liability is composed of such sum or sums as may be adjudged, inclusive of interest and costs.
Local insurance companies are not prone to issue back to back guarantee when a P&I guarantee had been issued by foreign P&I Club and another disadvantage is that P&I Club cannot post security for an un-insured claim.

21. How long does it take to release the ship?

The ship can be released from the arrest by order of the same judge that granted the arrest upon the occurrence of one of the causes that permit a discharge of an arrest order under Serbian law described herein above, and the release time usually takes no more than few hours on the same date of application for release subject to official hours of the court.

22. Is there a procedure to contest the arrest?

Yes. The time for appealing an order for arrest to the Court of Appeal is 8 days from its notification to her master, who is considered to be the legal representative of the shipowner.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

After the arrest the claimant must start proceeding on the merits within 15 days if the Serbian Court has jurisdiction for hearing the entire action on the merits, but if the parties have agreed to submit the dispute to the jurisdiction of particular court or arbitration tribunal other than that within whose jurisdiction the arrest was made the single judge in his discretion may grant a period of 30 up

to 60 days to the claimant to start proceeding thereafter and if the action or proceedings are not brought within the time so fixed the defendant may apply for the release of the ship or of the bail or other security provided.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, although that matter is not regulated with MMA. The claim for indemnity can be instituted pursuant to The Law on Obligations and Torts against the applicant inflicting loss who wrongfully arrested the ship. The claim for indemnity should be placed in the separate proceeding. There is not sufficient case law so far whether the complaint for damages for wrongful arrest can be placed in the same arrest proceeding as known in other jurisdictions.
Also, the claim for indemnity may be filed pursuant to ECMA, which provides that the debtor is entitled to compensation of damage inflicted upon him by ungrounded interim measure or measure that had not been "justified" by the creditor.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Court will not acknowledge the piercing and lifting of the corporate veil. Such institute does exist in corporate law but is not applicable for maritime claims because pursuant to the provision of MMA, the court will acknowledge the owner/operator/charterer/manager as the key person who is liable for obligation arising from navigation and use of the vessel for intended purpose.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

This matter (sale *pendente lite*) is not regulated by MMA pursuant to which the compulsory sale of the vessel must be performed at public auction in rather lengthy court proceeding which must be properly advertised and inviting all known creditors. Therefore, ECMA being a subsidiary source of law which provides pendente lite sale of other assets in certain circumstances is not applicable in the case of arrested ship or seized in execution or satisfaction of the judgment.

Attorney **Radomir Milošević graduated magna cum laude from Belgrade University School of Law in 1977. He took his Master's degree from Belgrade University School of law in 1983. (Master thesis: Carriage of passengers by ship) and in 2012 earned his PhD degree (PhD thesis: Shipbuilding contracts).*
Mr. Milosevic spent a year practicing at Ingledew Botterell law rm, The North of England P&I club in England and Lloyd's insurance Market in 1989, specialization in international maritime law. He started his law practice in 1978 and has worked as an in-house attorney for several Belgrade-based shipping companies prior to launching his career as a practicing lawyer in 1991.
He is managing partner at Law Office Milosevic. As a lawyer he has concentrated on international commercial matters, including shipping and insurance law, both Serbian and international.

SHIP ARREST IN *SINGAPORE*

*By Dato Jude P Benny, Consultant*and Mary-Anne Chua, Partner***
JOSEPH TAN JUDE BENNY LLP
judebenny@jtjb.com
maryanne@jtjb.com
www.jtjb.com
168 Robinson Road, @18-02, Capital Tower,
Singapore 068912
Tel: 65-62209388
Fax: 65-62257827

1. Please give an overview of ship arrest practice in your country.

Ship arrests in Singapore are frequently contemplated due to various factors, including Singapore's being one of the world's busiest ports, being a key bunkering port, and having an efficient court system with specialist Admiralty judges to promptly handle arrest matters and the adjudication of substantive maritime disputes. As a key maritime port, Singapore has several specialised maritime law firms, including JTJB, which advise on and manage arrest cases on a regular basis.

2. Which International Convention applies to arrest of ships in your country?

Singapore is a signatory to the Convention on Limitation of Liability for Maritime Claims 1976, which has been given effect and incorporated into the First Schedule of Singapore's Merchant Shipping Act 1995.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

It is possible to obtain an injunction to prevent a shipowner from dealing with or disposing of a vessel. However, unlike an application for a warrant of arrest which is targeted at obtaining security for a litigant, the purpose of an injunction is usually to prevent a defendant from taking action to defeat any judgment or order that the claimant may obtain. The test which the court will apply when considering such applications will therefore be different from that in respect of an arrest.

5. For which types of claims can you arrest a ship?

Section 3 of the Singapore High Court (Admiralty Jurisdiction) Act 1961 (HCAJA) sets out a closed list of claims for which the Court may exercise its admiralty jurisdiction to arrest a vessel. This list is similar to section 20(2) of the U.K. Senior Courts Act 1981.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes, but for certain claims the debtor will need to satisfy the ownership requirements set out in the HCAJA.

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships but not ships in associated ownership.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The HCAJA states that in respect of certain types of claims, where a claim arises in connection with a ship, a warrant of arrest may be issued against that ship, if at the time the originating claim is issued, that ship is bareboat chartered to the person who would be liable to the claimant for the claim. It is not possible to arrest a vessel that is under time charter to the person liable for the claim.

10. Do your Courts require counter-security in order to arrest a ship?

No. However, the Sheriff is entitled to request that the arresting party place security to cover the Sheriff's expenses in maintaining the vessel while under arrest, as the arresting party is obliged to maintain the vessel during the period of arrest. This is requested at the outset of the arrest, and from time to time, when the Sheriff deems necessary. The initial deposit to be placed with the Sheriff is SGD 10,000. This is placed by way of bank draft or cashier's order. If funds are not provided to maintain the vessel, the court may release the vessel from arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes, maritime claims are divided into maritime liens and statutory claims (non-maritime lien claims listed in the HCAJA. Maritime liens will survive a change of ownership such that it is still possible to arrest for claims incurred by the ex-owners, notwithstanding a change of ownership. For statutory liens, the right of arrest will be extinguished if ownership of the vessel changes before the originating claim is issued. It is possible, but difficult, to challenge the change of ownership, on the basis that it is a sham transaction designed to avoid liability.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, in respect of claims for salvage; crew wages; damage done by a vessel; Master's wages and disbursements; and bottomry and respondentia. This is recognised as a matter of common law, and not by Convention or statute.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Due to the strict requirements of disclosure of all relevant documents and information that may have an impact on the Court's decision to grant a warrant of arrest, we will usually request that supporting documents and correspondence be provided at least 48 hours in advance of any intended arrest. Additional lead time may be required if the matter appears complicated and/or if the documents are voluminous. One of the documents required to be filed with the Court is an affidavit supporting the application for the warrant of arrest and the affidavit will exhibit the documents and correspondence supporting the application. All such documents should be translated in English. However, once the documents are prepared and ready for an arrest, the Court hearing for the issuance of the warrant of arrest can be very quickly arranged within a few hours. Once the warrant of arrest is issued, a vessel can be arrested within a matter of a few hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA is not required for the arrest. However, it is necessary for the arresting claimant to file an originating claim that briefly describes the claim, and to prepare an affidavit which is in support of the application for a warrant of arrest for the vessel.

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 documents are usually not required to effect an arrest, though the claimant must retain the originals of the documents, and to make these available for inspection, if and when necessary / ordered by the Court. Copies of all relevant documents must be exhibited in the supporting affidavit, including those that may be detrimental to the claim. All Court documents for the arrest are filed electronically in the Court's electronic system. The affidavit in support needs to be signed before a Commissioner of Oaths (if in Singapore), or a Notary Public (if the affidavit is executed overseas).

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Court generally assumes jurisdiction over the substantive claim, following an arrest. However, it is possible to arrest to obtain security for a foreign arbitration proceedings (ongoing or anticipated), and it is the obligation of the arresting claimant to identify any relevant dispute clauses for the court's attention and to explain any ongoing or intended proceedings in the affidavit supporting the application for the warrant of arrest. Following provision of adequate security such as a P&I club letter of undertaking or payment into court, the vessel can be released, and the action stayed in favour of the local/foreign arbitration proceedings.

17. What is the procedure to release a ship from arrest?

An application will have to be put into court for the release of the ship. The arresting claimant's counsel will also have to conduct a caveat search to ensure that no caveats have been filed against the release of the vessel and attend in court to have the application heard. Once the court approves the release, notification of the release and copies of the release papers may be given to the ship's agents and/or counsel for defendant. There is no need to serve the release papers on the vessel.

18. What type of security needs to be placed for the release?

Usually, a first class guarantee from a Singapore bank, a bail bond, payment into court, or a letter of undertaking from a reputable and internationally recognised P&I club / H&M underwriter will be sufficient.

19. Does security need to cover interest and costs?

It can, even though it does not have to. Security is usually sought for the arresting claimant's reasonably arguable best case, together with interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes if the P&I club is a reputable and internationally recognised one.

21. How long does it take to release the ship?

Assuming there are no complications, this may be done within half a working day from security being provided.

22. Is there a procedure to contest the arrest?

Yes. A Defendant who wishes to challenge the arrest may enter appearance and put in an application to court to set aside the originating claim and/or service of the originating claim.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

As stated above, an originating claim is filed at the time the application is made for the warrant of arrest. In an arrest scenario, the originating claim should be served together with the warrant of arrest. Upon the issuance of the originating claim, the Singapore proceedings are deemed to have commenced, and the procedural timelines for the progress of the substantive claim will start to run once service of the originating claim is effected. Under the Singapore Rules of Court 2021, a defendant who has been served with an originating claim in Singapore must file and serve a notice of intention to contest or not contest, within 14 days after the originating claim is served.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. However, in order to be entitled to damages for wrongful arrest, the Defendant will have to show that the arrest was carried out in bad faith or with gross negligence.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

While the Courts have allowed the piercing/lifting of the corporate veil, this is done only in exceptional cases, as the Courts do generally give effect and recognise the principle of separate legal entities, with each company having its own legal rights and liabilities.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is possible to do so. The application for sale of the vessel can be done fairly quickly once the arresting party can show that the vessel has been arrested for some time but no security is forthcoming, and in the meantime the vessel is a wasting asset and continues to incur costs. After the order has been granted for the vessel to be sold pendente lite, the question as to how long it will take it to actually sell the vessel will depend on the commercial circumstances, i.e. the prevailing market conditions and demand for that type of vessel. The vessel will usually be put up for public auction and the potential purchasers will have to meet the reserve price put up by the Sheriff. In poor market conditions, it may take several auctions to sell the vessel. It may be possible to sell the vessel by way of a private treaty if that will result in a better return for the vessel, as opposed to a public auction. Any sale by private treaty will have to be sanctioned by the Court.

**Jude P. Benny* *is a Consultant with Joseph Tan Jude Benny LLP (JTJB). He commenced practice in 1983, after completing his legal education at Queen Mary College, University of London, and being admitted as a Barrister at Middle Temple. In 1988, he set up the firm of JTJB. Jude has an extensive maritime practice, in both the wet and dry side, including ship financing and sale and purchase. In addition, he is a panel / accredited / associate arbitrator with the Emirates Maritime Arbitration Centre (EMAC), Singapore International Arbitration Centre (SIAC), Singapore Chamber of Maritime Arbitration (SCMA), Singapore Institute of Arbitrators (SIArb), Singapore Trade Development Board (Timber), Korean Commercial Arbitration Board (KCAB), Badan Arbitrase Nasional Indonesia (BANI), Kuala Lumpur Regional Centre for Arbitration (KLRCA), and London Maritime Arbitrators Association (LMAA). He is the editor of Halsbury's Laws of Singapore, Shipping Volumes and has previously served on the Maritime and Port Authority of Singapore, BW LPG, and PACC Offshore Services Holdings Ltd boards.*

***Mary-Anne Chua* *is a Partner Partner with Joseph Tan Jude Benny LLP. Her main areas of practice are dispute resolution and legal advisory work, with an emphasis on work in the shipping and international trade space. She is qualified in both Singapore and in the UK.*

SHIP ARREST IN *SLOVENIA*

*By Patrick Vlacic**
patrick.vlacic@fpp.uni-lj.si
patrick@lex-move.com
Seca 38, 6320 Portoroz
Portorose, Slovenia
Tel: +38641718474

1. Please give an overview of ship arrest practice in your country.

There is exclusive jurisdiction of the District Court of Koper for all maritime cases. The eventual appeal should be field before the Court of Appeal of Koper. Under certain circumstances it is possible to file extraordinary appeal before the Supreme Court of the Republic of Slovenia.
It is essential for both parties to retain local lawyers as all the documents must be filed in Slovenian and the proceedings before the court are in Slovenian. The POA could be a fax or scanned document but during the procedure (before the court decision) the original has to be presented. For the defendant attorney the vessel's master signature of POA would suffice.
Article 8 of Constitution of the Republic of Slovenia provides: Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.
There are two situations for the non-contracting states of International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, 1952 (the 1952 arrest convention). The first situation would be when there is reciprocity between the state whose flag the ship flies that could potentially be arrested in Slovenia. If a vessel flying a Slovenian flag could be arrested in that state only as a security for maritime claims also a ship flying the flag of that state could be arrested in Slovenia only for maritime claims as provided in Maritime Code 2001. The second situation is when there is no reciprocity. In that case the ship could be arrested in Slovenia for any kind of claim.
In order to achieve the arrest of ship the claimant should submit the following documents:

-An application (usually filed by a local attorney) and POA,
-A description of the claim, the amount and eventual claim for interest and costs,
-Documents that support the claim (translation in Slovenian by sworn in translators).

Usually the court would issue the arrest order without hearing. In some cases a hearing could be possible (e.g. oral evidence is needed).

2. Which International Convention applies to arrest of ships in your country?

Slovenia is a party of the 1952 arrest convention since 1967 (at the time still as a part of ex Yugoslavia) and has adopted the 1952 arrest convention also after 1991 as a sovereign state, on 13 October 1993.

3. Is there any other way to arrest a ship in your jurisdiction?

In cases when the 1952 arrest convention is not applicable the Maritime Code 2001 would apply. In these cases Maritime Code 2001 is a lex specialis governing the type of claims, other maritime matters and procedure whereas the Enforcement and Security Act 1998 applies in all civil proceedings and is lex generalis for enforcement in Slovenia.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

In certain circumstances (see the answer to question 1) there are some alternatives for arrest of ship through temporary injunctions under Enforcement and Security Act 1998.

5. For which types of claims can you arrest a ship?

For the parties (i.e. ships flying a flag of contracting state) of the 1952 arrest convention the types of claims are the ones from the original text - exclusively maritime claims listed in article 1 of the 1952

arrest convention. For non-contracting states of the 1952 arrest convention the list of claims from Maritime Code 2001 applies. Clams in Maritime Code 2001 are broader than the ones listed in article 1 of the 1952 arrest convention and are almost identical to the claims of International Convention on Arrest of Ships, 1999 (the 1999 arrest convention).

6. Can you arrest a ship irrespective of her flag?

Yes, taking into account the differences mentioned above.

7. Can you arrest a ship irrespective of the debtor?

The Article 948 of the Maritime Code 2001 provides:
Any ship may be arrested which is owned by the same personal debtors, or which is for the claim for which arrest is sought, encumbered by maritime lien of hypothec for another right of pledge based on the foreign law, and or another claims listed in Maritime Code 2001, which relate to the ship.
If the debtor is the bareboat or demise charterer of the ship or a charterer, who according to the law applicable to the contractual relation between him and the shipowner or ship operator is alone liable to the third persons - this ship may be arrested or any other ship which is owned by the debtor.
The provisions of the previous paragraph shall also apply in all other cases where an operator or employer who is a personal debtor, and who is not the owner of the ship is himself liable for the claims for which the arrest of the ship is sought.
In respect of a claim that relates to the ownership, co-ownership or a hypothec on the ship, only the ship to which this claim relates may be arrested. Slovenian law does not allow “actio in rem” therefore the personal liability is relevant.

8. What is the position as regards sister ships and ships in associated ownership?

The claimant must prove that at the time of arrest the sister ship(s) are in the ownership of the debtor.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The ship can be arrested for claims against the Bareboat and Time-Chartered vessels.

10. Do your Courts require counter-security in order to arrest a ship?

Usually not but it might happen that the court demands the necessary funds for maintenance of the ship and of the crew and necessary funds for the watching of the ship. This happens when a ship owner or a carrier fails to perform his obligation to maintain the ship and the crew.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, it does recognize the maritime liens. The provisions governing the maritime liens are in Maritime Code 2001 and are more or less the same as the one in International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages. Slovenia is not party of any international convention governing maritime liens, though.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

The arrest of ship would be usually obtained the same day when it is applied or the following day.

14. Do you need to provide a POA or any other documents of the claim to the Court?

The original POA is required but in the first phase the copy (e.g. fax or scan of original POA) would suffice. The proof of the claim is required (probability of existence of claim) and the claimant has also proof the danger that without the arrest there is a risk that the debtor will alienate the ship, conceal, take away the ship or in any other way prevent or make difficult enforcement of the claim.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Copies of documents suffice at the stage of petition for arrest. Sworn translators should translate the documents that are not in the Slovenian language.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The court in Slovenia will grant an arrest even if the contract contains a jurisdiction or arbitration clause. Anyway, any arrest has to be justified by commencement of proceedings of the merits. If the parties do not agree on the jurisdiction or arbitration clause the court will in most cases also decide the case on the merits.

17. What is the procedure to release a ship from arrest?

There is no special procedure. When debtor presents an adequate security the temporary injunction is removed and the arrested ship is immediately released.

18. What type of security needs to be placed for the release?

Debtor has to provide an adequate security. If there is agreement between creditor and debtor on type of security the court will accept it. Usually if debtor would present the bank guaranty of reputable bank the court of law would accept it as suitable security. There is on going debate on this topic.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, if debtor and creditor agree with that kind of security.

21. How long does it take to release the ship?

The proceedings are fast as the decision is issued within duty judge of the court of law that has exclusive jurisdiction in maritime cases.

22. Is there a procedure to contest the arrest?

Debtor has a right to file objection against the temporary injunction by which a ship is arrested. Once the court receives the debtor's objection against the decision of arrest it shall without delay convene a hearing. At this hearing the court weigh the facts and evidence upon which the temporary injunction for arrest was issued.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claimant has to start the legal action on the merits within 15 days.

24. Do the Courts of your country acknowledge wrongful arrest?

Courts in Slovenia do acknowledge a wrongful arrest. The claimant is liable to pay damages to the debtor if the arrest subsequently turns out as not justified. There is no need for “mala fide” in order to prove a wrongful arrest. Damages are assessed in special proceedings on classic civil law ground (e.g. ordinary damages and loss of profit).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

There are provisions regarding the piercing and lifting of the corporate veil but in practice there have not been decisions like that in past in connection to arrest of ship.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is possible but in practice it does not happen. Procedures for a sale of ship are anyway quite long.

***Patrick Vlacic** got his bachelorship from Faculty of Law in University of Ljubljana, Slovenia, masters from Faculty of Law in University of Split, Croatia and Ph. D. form Faculty of Law in University of Ljubljana, Slovenia. Worked for two years as judicial trainee (1995¬1997) and passed bar exam (1998). From 1998 to present time he was lecturing Maritime Law, Transport Law, Commercial Law, Civil Law and Air Law at University of Ljubljana, Faculty for Maritime Studies and Transport and Faculty of Mechanical Engineering. In between, he was CEO of Airport of Portoroz (2002-2004) and Minister of Transport of Republic of Slovenia (2008-2012). At present, besides lecturing, he is also practicing law.*

SHIP ARREST IN *SOUTH AFRICA*

*By Pauline Kumlehn**
Shepstone & Wylie
kumlehn@wylie.co.za
www.wylie.co.za
6th Floor, 33 Bree Street, Cape Town, South Africa
Tel: +27 (0) 21 419 6495

1. Please give an overview of ship arrest practice in your country.

There are essentially three ways in which one can arrest or attach a ship in South Africa:
(i) An arrest *in rem*

A maritime claim may be enforced by an action in rem:

- if the claimant has a maritime lien over the property to be arrested; or
- if the owner of the property to be arrested would be liable to the claimant in an action in personam – where he/she would be personally liable in a direct action against them.

(ii) An arrest *in personam*

A maritime claim may be enforced by an action in personam when the Defendant is a:

- person resident or carrying on business at any place in South Africa;
- person whose property within the Court's area of Jurisdiction has been attached by the claimant to found or confirm jurisdiction;
- person who has consented or submitted to the jurisdiction of the Court;
- company, if the company has a registered office in South Africa.

Note that it is only where the defendant is a foreigner and therefore it is necessary to found jurisdiction that their property has to be attached to establish that jurisdiction. An "attachment" is the term used for this proceeding, borrowed from Roman Dutch law, as distinct from an "arrest" which is the procedure to commence an action in rem, based on the English in rem Admiralty procedure.
(iii) A security arrest

- A court may order the arrest of any property for the purpose of providing security for a claim which is or may be the subject of arbitration or any proceedings contemplated, pending or proceeding, either in the Republic of South Africa or elsewhere, and whether or not it is subject to the law of South Africa.

The Court will have jurisdiction over all matters pertaining to the arrest itself and any security furnished in relation thereto. The claimant, however, does not submit to South African jurisdiction for the merits of the claim in respect of which security is sought.

2. Which International Convention applies to arrest of ships in your country?

South Africa has not acceded to any International Convention related to the arrest of ships. The law and practice in respect of the arrest of ships in South Africa is regulated by the Admiralty Jurisdiction Regulation Act of 1983 as amended with effect from 1 July 1992 ("the Act"). In the drafting of the Act, certain aspects of the Arrest Convention 1952 were taken into account and incorporated into the legislation, such as the provision for the arrest of "associated ships", which is a wider concept than "sister ships". The Act provides the formula to determine what law applies to the substantive merits of a maritime claim, but the arrest procedures are determined by the provisions of the Act itself.

3. Is there any other way to arrest a ship in your jurisdiction?

Apart from the procedure to "attach" a ship in personam there is no other procedure to detain a ship for a maritime claim. The Act is specific in its requirements for the arrest or attachment of a ship, where the claim is a maritime claim as defined in Section 1 of the Act. If the claim is not a maritime claim as defined and the claimant has a claim enforceable in personam against its owner, then

subject to certain restrictions such as that the claimant must be domiciled locally and the defendant must be a foreigner, the ship could be attached by order of the High Court in exercise of its parochial (non-admiralty) jurisdiction to found jurisdiction to sue in common (Roman Dutch) law.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

See above. They might have certain similarities, but they are not identical. Under certain circumstances our law also allows for a creditor to have recourse to interdictory relief to prevent a debtor from disposing of its assets before judgment which, although not constituting security, has the same effect.

5. For which types of claims can you arrest a ship?

The definition of a maritime claim in the Act effectively covers all causes of action in relation to ships, the carriage of cargo and matters maritime. The definitions are also wide enough to cover matters which are ancillary to "shipping" matters. A comprehensive list of maritime claims can be found in Section 1 of the Act.

6. Can you arrest a ship irrespective of her flag?

Yes, a vessel can be arrested within our jurisdiction irrespective of the flag under which she is registered.

7. Can you arrest a ship irrespective of the debtor?

No - the claim must be enforceable in personam against the owner or demise charterer (who is deemed to be the owner for this purpose). However a vessel can also be arrested on an associated ship basis, meaning that where the maritime claim arises in respect of one ship, it is possible to bring an action in rem, or a security arrest, by arresting an "associated ship" instead of the ship in respect of which the maritime claim arose. The ship will be an "associated" one, effectively where the respective companies which own the "guilty" ship and the "associated" ship, are controlled directly or indirectly by the same person or persons

8. What is the position as regards sister ships and ships in associated ownership?

A sister ship as well as an associated ship can be arrested (in fact the former falls within the definition of the latter) for liabilities of the owner or bareboat charterer of what is termed the "ship concerned" or "guilty ship". An associated ship is one (in simple terms) which is owned by a company which is controlled directly or indirectly by the same person who controlled the company which owned the "guilty ship" (the ship concerned) at the time the cause of action arose.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat charterers (or "demise charterers") are deemed to have been and to be, the owner of a vessel for purposes of an arrest in rem. As such, if the liability sought to be enforced, is that of the bareboat charterer, the ship can be arrested in rem for the liabilities of the bareboat charterer. The same does not however apply to a time chartered vessel. Nevertheless, for purposes of an associated ship arrest, the charterer (whether bareboat, time or voyage) is deemed to have been the owner of the ship concerned (the "guilty ship") for purposes of the arrest of an associated ship (i.e. one owned by a company which is controlled by a person who controlled the company which was the charterer and therefore the deemed owner of the guilty ship, at the time the cause of action arose).

10. Do your Courts require counter-security in order to arrest a ship?

No, South African courts do not require counter-security as a pre-condition for ordering the arrest of a ship. However, the owner of the ship arrested can seek an order for counter security to be put up, if they can make out a case that the arrest has prima facie been obtained without reasonable and probable cause, or the security demanded to obtain its release, is excessive.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. The concept of a maritime lien is different to a maritime claim. A ship can always be arrested in rem for the claims recognised by South African law as maritime liens (but not for claims giving rise to a maritime lien in a foreign jurisdiction), even if the ship has been sold. It is a claim which properly lies in rem against the ship, notwithstanding in personam liability of its owner. In addition a vessel can be arrested for enforcement of a maritime claim, as defined in the Act, even if not a maritime lien, where the owner is liable in personam.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, but only those restricted maritime liens recognised in terms of our common law as being so classified, which are in effect those claims recognised by English law. These are those that were recognised by the Colonial Courts of Admiralty in 1890, i.e. claims for bottomry, salvage, seamen's wages, master's wages, disbursements and liabilities, and any claims for damage caused by a vessel. No International Convention applies and no claim classified as a maritime lien by a foreign law, will be enforced as such.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

In the case of an in rem arrest, an arrest can generally be effected as soon as the papers are drafted and issued at Court. This can usually be achieved within a few hours after instructions are received. In the case of a security arrest however, an Affidavit is required to be deposed to and as soon as a Judge is available to hear the application, an order can be granted and the arrest effected. Accordingly, a substantive application to Court is required in order to obtain a security arrest order, and we usually require at least two days, and subject to complexity often more, to prepare the application papers.

14. Do you need to provide a POA or any other documents of the claim to the Court?

No power of attorney has to be filed at the time of seeking an arrest order. All that is needed initially in order to place a vessel under arrest is –

i. the issuing and service of a Summons that includes a statement of the facts upon which the claim is based, as well as the issuing and service of a Warrant of Arrest; and
ii. a Certificate in terms of Rule 4(3) of the Act, deposed to by the attorney representing the claimant, or by the claimant itself, in support of the Summons and the Warrant, which sets out the necessary averments as required by the Act and confirms the accuracy thereof.

If a security arrest is sought however, an affidavit must be filed and this must have the relevant documents in support of the cause of action (if any) attached to it. The owner of the ship can after the arrest is granted, challenge the authority of the attorney who obtained the arrest, in which case a power of attorney must be filed.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

For an arrest no original or notarised or authenticated documents are required. It is permissible to file electronically transmitted documents, whether faxed or scanned and emailed. If however a matter proceeds to trial and documents are required to be submitted in proof of the claim, it may be necessary to produce the original document or a copy thereof, which would then have to be authenticated by notarisation and apostille.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

If an action is commenced before this court in rem or following an attachment to found jurisdiction, in personam, then it is the court seized of the matter notwithstanding where the cause of action

arose, or where the claimant or the defendant are domiciled and the court will as a matter of domestic law have inherent and statutory jurisdiction. The defendant can however seek an order that the court thereafter decline to continue to exercise jurisdiction, or stay the action on the merits, on the basis of forum non conveniens where e.g. there is a choice of forum clause in a contract or where it is more appropriate that the matter be heard in the jurisdiction where e.g. a collision occurred. The test of when the court should consider deferring jurisdiction in favour of another court or forum, is determined by the common law of South Africa, which however follows the test applied by the English courts.

17. What is the procedure to release a ship from arrest?

Once a ship has been arrested by service through the Court Sheriff of an arrest order or warrant, served on the ship and the harbour master, it can only be released again by service by the Sheriff of a warrant of release issued by the High Court (Admiralty) Registrar, again service being effected on the ship and the harbour master.
The party who arrested the ship must apply to the Registrar for the issue of the warrant of release, either because the claim has been settled, or because security for payment of the claim has been provided, or because the claimant abandons the arrest for any reason.
If the arrest is challenged and the Court upholds the challenge and sets aside the arrest, the release will be ordered by the court and that order will be served on the ship and harbour master.
If agreement on the form of security or the amount thereof cannot be agreed by negotiation between the parties, then again application can be made to the Registrar or the Court for a ruling on what amount or form would be acceptable and if it is provided in that amount and form, either to the claimants lawyers or to the Registrar, the Registrar will issue a release warrant without the arresting party's express agreement.

18. What type of security needs to be placed for the release?

Security has to be provided by cash paid into court (which is unusual), a Bank Guarantee from a South African bank, an Insurance Company or an acceptable P&I Club, Letter of Undertaking. In the case of an arrest in rem, the amount is either for the amount of the claim plus interest and costs, or for the value of the ship or other asset arrested, whichever is the lesser. With an attachment to found jurisdiction in personam however, the full value of the claim has to be secured, whatever the value of the asset attached.

19. Does security need to cover interest and costs?

Yes. For purposes of calculating the amount to be secured in respect of the interest portion, apart from interest already accrued, customarily interest for three or four further years is calculated and provided for, on the basis that this is how long it could take for the action on the merits to be disposed of, if the action is being pursued here. The amount to be allowed for possible costs is a matter for negotiation, or the Registrar can be requested to set a figure.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, if the P&I Club providing the LOU is a member of the International Group. For non-IG Club's or insurers, it is a matter for negotiation, or an application to court could be required, with the Club or other P&I insurer's financial statements being required to be disclosed to persuade the Court that they will be able to pay any judgment rendered in due course.

21. How long does it take to release the ship?

If the ship is in port and security is provided in normal working hours when the Court Registrar's office is open to arrange the issue of the Release Warrant, the release can usually be effected within a few hours. Over weekends, or after normal office hours, it can take longer and if the Sheriff has to then proceed off shore to the anchorage by launch to serve the Release Warrant on the ship, that will obviously delay matters still further.

22. Is there a procedure to contest the arrest?

Yes. Generally the ship owner who wishes to contest the right of the claimant to have arrested the ship on some technical basis (such as that the cited defendant does not own the ship, or that the ship is not an "associated ship" as defined in the Act) will have to make application to court to set aside the arrest, filing affidavits to support the argument that the ship should not be susceptible to the arrest.
The court will however not entertain such an application to set aside simply because the owner disputes that the underlying debt is due on the merits and as long as a prima facie case was made out for the claim at the stage of arrest, the owner needs to provide security to release the ship and then defend the merits of the substantive action (or arbitration).

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The arrest procedure in rem is itself the commencement of the substantive proceedings on the merits and is not merely a conservatory procedure, as a summons is served simultaneously with the warrant of arrest which has to be answered with a defence on the merits. With an attachment to found jurisdiction in personam the court will normally authorize and direct that particulars of claim be served within one month of the attachment.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. It is however termed an arrest "without reasonable and probable cause", which is a narrower concept to one of "wrongful arrest".

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, but strictly speaking only when circumstances of fraud have been proven. The associated ship arrest provisions also allow a measure of piercing the corporate veil, but only where the strict issues of common control of owning companies is proven.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes. From the time of the order the ship can be sold within 6 weeks but the time period can be longer if the owner or another creditor opposes the sale or the terms for sale stipulated by the Court.

*__Pauline__ *is a Partner in Shipping & Logistics (including Customs @ Wylie) at Shepstone & Wylie's Cape Town office having joined the firm in 2007. She specializes in maritime law and litigation as well as customs related work.*
In relation to maritime law, she practices both "wet" and "dry" work relating to admiralty litigation, including the enforcement of maritime claims in South Africa, judicial sales and matters consequent to casualties (including access to and preservation of evidence).
Litigation experience includes administrative litigation applications relating to state owned entities and other government departments, including the Minister of Transport and the Department of Agriculture, Forestry and Fisheries.
As part of the firm's Customs team, her practice has over recent years expanded to providing advice to clients at various levels of the supply chain, including importers, exporters, clearing agents and manufacturers. She has also dealt with various applications such as tariff applications and related disputes submitted to the South African Revenue Services (SARS) and, where required, aids clients in progressing litigation against SARS in relation to various disputes.
Pauline is an admitted Conveyancer and holds membership both with the Maritime Law Association of South Africa (MLA) and WISTA (South Africa).

Practice Areas
Shipping & Logistics
Customs, Excise, VAT & Trade Remedies

Qualifications *BA (cum laude) (UKZN), LLB, LLM (cum laude) (UNISA)*

SHIP ARREST IN *SOUTH KOREA*

Taejin Kim, Managing partner*
K&P Law Firm
taejin.kim@kimnpark.com
T : +82 32 864 8300
www.kimnpark.com
B-2901, 323, Incheon Tower Dae-ro,
Incehon, South Korea

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 ship arrest.

3. Is there any other way to arrest a ship in your jurisdiction?

Only Korean laws can be applied to the arrest of ships.

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)
Korea University (LL.M. 2005)
Korea University (LL.B. 1999)

SHIP ARREST IN *SPAIN*

*By Dr. Felipe Arizon**
ARIZON ABOGADOS SLP
felipearizon@arizon.es
www.arizon.es
Paseo de Reding 43, groundfloor
29016, Malaga, Spain
Tel: +34 952 211774
Fax: +34 952 226676

1. Please give an overview of ship arrest practice in your country.

Arresting a ship in Spain is very common as it provides a very fast and effective tool to enforce claims against ship owners and other operators. The implementation of specialized mercantile Courts in Spain has improved the swiftness of the procedure and reaction of the Court where an *ex parte* arrest application is presented, becoming one of the fastest jurisdictions to carry out an arrest. If a team of skilled and well learned lawyers is employed, a ship arrest can be carried out in 3 or 4 hours from the client's first call. A power of attorney is required in order to aver the representation of the plaintiff. A lawyer and a bailiff need to be employed before the Court. Registration of a lawyer before any Spanish province entitles him to act before all Spanish ports for a ship arrest, including the Canaries and Balearics islands, Ceuta and Melilla. After the entry into force of the 2014 Navigation Act, the application of the arrest can be presented before the ship arrives to the port, which has increased the chances to enforce an arrest even over the weekend as all the necessary arrangements can be ready before the ship enters the port. Moreover, ships can be arrested under the 1999 Convention up to the date a judgment or an arbitration award is issued or obtained.

2. Which International Convention applies to arrest of ships in your country?

On the 25 of September 2014, The Navigation Act entered into force in Spain, changing some aspects of the law related to the arrest of ships. Nevertheless, the 1999 Geneva Arrest Convention remains the main law that applies when arresting a ship in Spain.

3. Is there any other way to arrest a ship in your jurisdiction?

Ships flying a 1999 Arrest Convention State flag can be arrested in Spain for the claims listed in the 1999 Arrest Convention only. Ships flying the Spanish flag can be arrested for any other claim in addition to those set out within Art. 1 of the 1999 Arrest Convention provided the creditor has its usual residence in Spain, its principal place of business in Spain, or has obtained the credit via subrogation, or assignment. Ships not flying a flag of a 1999 Convention signatory State, the great majority, can be arrested in Spain for maritime claims as well as for any other claims.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No, they are not. In practice the stoppage of a ship can only be made by an arrest of the ship. A different scenario may come up where the ship is detained by her involvement in a criminal matter, or for having breached Administrative Laws.

5. For which types of claims can you arrest a ship?

It depends on the flag of the ship, see response to question number 3 above.
Under the 1999 Brussels Convention you may arrest a ship for the following claims:
1. "Maritime Claim" means a claim arising out of one or more of the following:
   (a) loss or damage caused by the operation of the ship;
   (b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
   (c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
(i) general average;
(j) towage;
(k) pilotage;
(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
(m) construction, reconstruction, repair, converting or equipping of the ship;
(n) port, canal, dock, harbour and other waterway dues and charges;
(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance, contributions payable on their behalf;
(p) disbursements incurred on behalf of the ship or its owners;
(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
(s) any dispute as to ownership or possession of the ship;
(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
(u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
(v) any dispute arising out of a contract for the sale of the ship.

6. Can you arrest a ship irrespective of her flag?

In Spain, the 1999 Arrest Convention applies irrespective of the ship's flag but the list of claims is restricted where the ship flies a 1999 Arrest Convention flag. Otherwise the ship can be arrested for any claim.

7. Can you arrest a ship irrespective of the debtor?

Not in all cases, but in some, depends on the facts of the case. This question needs to be paid careful attention. The response is to be positive where the claim is based upon a maritime lien. Equally, the same result can be reached by application of the new article 149 of the Spanish Navigation Act which states "Responsibility of the armatour: The armatour is responsible before third parties for the acts and omissions of the Masters, the crew, and the obligations assumed by the Master in accordance to Art. 185".
Moreover, the new article 316 of the Spanish Navigation Act further states: "In its relationships with third parties the Manager shall manifest his condition as agent, identifying the armatour and his domicile in the contracts. Should the manager fail to do so, he shall be liable with the armatour of the obligations assume on behalf of him."
Where the ship is under a time charter or a voyage charter, or operated under the management of a third Company the 1999 Geneva Convention establishes the possibility of arresting a ship for those

cases in which a person different to the owners shall respond of the maritime claim, for such cases see the 1999 Convention text.

8. What is the position as regards sister ships and ships in associated ownership?

Sister ships can be arrested in accordance to the provisions of the 1999 Arrest Convention. For cases of associated ownership see below "lift of the corporate veil".

9. What is the position as regards Bareboat and Time-Chartered vessels?

There is no case law setting out the position on these cases. However, as far as bareboat chartered ships are concerned, the 1999 Arrest Convention sets it clear that the ship can be arrested. Time and voyage charterers ships can also be arrested if the claim amounts to a maritime lien, or where the ship owner is legally liable for the claim.

10. Do your Courts require counter-security in order to arrest a ship?

Yes, the amount varies according to the criterion of the Judge. A certain practice has been accepted whereby Courts admitted as sufficient counter-security an amount of circa 10% of the claimed amount. However, the 2014 Spanish Shipping Act sets out that security shall be fixed in a minimum of 15% of the amount of the alleged maritime claim.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no procedural difference.

12. Does your country recognise maritime liens? Under which International Convention, if any?

The International Convention on Maritime Liens and Mortgages 1993 applies in Spain, setting out the regime of maritime liens applicable in Spain. Other liens recognized under Spanish or foreign laws will rank after the list provided by this international Convention.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Provided all the necessary arrangements are made, namely a copy of the POA is advanced by fax, and supporting documents are likewise delivered, the arrest by a skillful and learned team of lawyers can be carried out in less than 3 or 4 hours. The concrete timing will depend on the reaction of the Court's officials and Judges towards the writ.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA issued before a Notary, and ideally apostilled, is indeed needed. A faxed copy may suffice, but originals duly legalized shall be ready for submission in case the Court or the opponents request their production. Moreover, while the documentary evidence of the claim is not necessary in the arrest application, a mere allegation suffices, it is very advisable to provide the Court with some of them enabling the Judge to foresee a good claim, which also may play a role in the Magistrate's agreement to fix a low amount of counter-security.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The 1065/2015 Royal Decree has implemented an electronic service of communications before the Court. So originals are no longer initially required by the Court.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Under the 1999 Convention, article 5 sets out the following:
Article 7. Jurisdiction on the merits of the case:

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.
2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.
3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:
    (a) does not have jurisdiction to determine the case upon its merits; or
    (b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.(...). In accordance to article 479 of the 2014 Spanish Shipping Act the Court, for those cases where Spain is not competent will fixed a time period from 30 to 90 days for the claimants to commence proceedings on the merits.

17. What is the procedure to release a ship from arrest?

It is necessary to appear before the Court and place the security requested by the arrest order. In the alternative, the arrest can be challenged, following the presentation of the challenge writ, the Court will fix a hearing to hear both parties, and this will be followed by a new judgment on the arrest.

18. What type of security needs to be placed for the release?

A Bank guarantee or cash is most common.

19. Does security need to cover interest and costs?

It depends on what the Court has ruled in the arrest order.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

If the claimant agrees, yes. If no agreement is reached, the position has been that they are not.

21. How long does it take to release the ship?

The time to appear before the Court (few hours), normally with the Master of the ship, and put the security.

22. Is there a procedure to contest the arrest?

Yes, within a period of 20 days from service of the arrest order the arrest can be challenged.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Normally, the Court grants between 30 to 90 days for presentation of the action on the merits if in the case the Spanish Courts are competent.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. Where the claimant fails in his action on the merits or in the arrest procedure per se, the Court will normally hold the plaintiff to pay for the legal costs of the defendants and the damages flowing from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, Spanish jurisprudence accepts both, the lifting and the piercing of the veil. The former aimed at discovering the reality behind the corporation, while the latter goes a step further, by unmaking the illegality sought under the corporation. In Spain, for it to be able to pierce the corporate veil, the claimant needs to establish the following; enough evidence to prove the unity of assets, interest, management, and actions between the Companies; the existence of an aim to defraud or prevent the application of the law, damaging the creditors rights; no other possibility to obtain satisfaction of his credit.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

A ship's auction will normally take place at the end of the enforcement of an action, hence at the end of the proceedings. However, a recent practice has been observed where the ship has been auctioned at the request of the Port Authority. This has resulted after an administrative procedure was initiated by the Port Authority for the abandonment of the ship. Port Authorities are pressed in the Spanish ports to impede that a non operational ship occupies space in the port area. In these cases the proceeds of the public sale will be distributed in accordance to the ranking and amounts of the credits.

***Felipe Arizon** is the managing partner of Arizon Abogados S.L.P. He holds a Ph.D in English Law from Newcastle University, a LL.M from Southampton University, and has been a "Visiting Scholar" at the University of Tulane-New Orleans. With a legal practice of more than 25 years, Dr. Arizon acts before many international and domestic arbitration forums including ICC, Gafta, Fosfa, CAP and RSA. He is a well-known barrister before Spanish Courts, including High Courts, Appeal Courts, and Supreme Courts. Felipe is an author of the world leading maritime law book series, The Lloyd's Shipping Law Library (co-author of the volume Maritime Letters of Indemnity). He is regular contributor to international and Spanish publications in commercial law, carriage of goods, insurance and arrest of ships and is The founder of www.shiparrested.com. Felipe is lecturer at the Spanish State Institute for International Trade and has lectured widely in Spain and abroad, including: England (Newcastle University; Lloyd's Maritime Academy), Russia, Ukraine, Netherlands, France, Singapore, Hong Kong, Cairo, and Turkey. Felipe is a supporting member of the LMAA.*

SHIP ARREST IN *SRI LANKA*

*By S.A. Cader, Senior Partner**
JULIUS & CREASY
jcship@sltnet.lk
www.juliusandcreasy.com
No.371, R.A. de Mel Mawatha
Julius & Creasy Building
Colombo 1, Sri Lanka
Tel: 0094 11 4708327
Fax: 0094 11 2446663

1. Please give an overview of ship arrest practice in your country.

In terms of the Admiralty Jurisdiction Act No. 40 of 1983, A ship can be arrested in terms of claims arising under Section 2 of the Act. In an Action in rem filed in the Admiralty High Court of Sri Lanka, a ship can be served with a Writ of Arrest for claims arising on matters as set out in Section 2(1)(e) to (q) in the Admiralty Jurisdiction Act No. 40 of 1983.
An application to arrest a ship is made ex-parte by filing an affidavit by the plaintiff, setting out the full claim with all the supporting documents and supported by way of a motion with a draft copy of the warrant of arrest to be issued by the judge of the High Court to the Marshal commanding him to arrest the vessel and until further orders are given by court.

2. Which international Convention applies to arrest of ships in Sri Lanka?

Sri Lanka is a signatory to the 1952, Brussels Convention on the arrest of sea going ships. Sri Lanka was also in the committee which drafted the "INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999.

3. Is there any other way to arrest a ship in the Sri Lankan jurisdiction?

Other than under the provisions of the Admiralty Jurisdiction Act No. 40 of 1983, there are no other ways to arrest a ship within the Sri Lankan jurisdiction.

4. Are these alternatives e. g. saisie conservatoire or freezing order?

These are not applicable under the Sri Lankan law.

5. For which types of claims can you arrest a ship?

Section 2(1)(e) to (q) of the Admiralty Jurisdiction Act No. 40 of 1983 sets out the following types of claims under for which a ship can be arrested.
Section 2(1) states that :

(e) any claim for damage done by a ship;
(f) any claim for loss of life or personal injury sustained in consequence of
  (i) any defect in a ship or in her apparel or equipment; or
  (ii) the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglect or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of good on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
(g) any claim for loss of or damage to goods carried in a ship;
(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or, hire of a ship;
(i) any claim in the nature of salvage;

(j) any claim in the nature of towage in respect of a ship;
(k) any claim in the nature of pilotage in respect of a ship;
(l) any claim in respect of
(i) goods or materials supplied, or
(ii) services rendered, to a ship for her operation or maintenance ;
(m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
(n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which under any law in force for the time being is recoverable as wages ;
(o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
(p) any claim arising out of an act which is or is claimed to be a general average act;
(q) any claim arising out of bottomry;"

6. Can you arrest a ship irrespective of her flag?

Yes. Irrespective of the flag of the vessel, anyone can file papers to arrest a vessel.

7. Can you arrest a ship irrespective of the debtor?

Yes. Immaterial of the debtor, if there is a prima facie claim for damages a ship can be arrested.

8. What is the position as regards sister ships and ships in associated ownership?

If the owner of a ship or ships is liable to a maritime claim, then not only the ship in respect of which the maritime claim arose may be arrested but also all other ships in the same ownership, when all the shares of those ships are owned by the same person or persons. However, Admiralty Jurisdiction Act is silent, on sister ships and associated ownership.

9. What is the position as regards Bareboat and Time-Chartered vessels?

If the registered owner of the ship is not liable for a maritime claim, then an arrest of a vessel under the bareboat or time charter is not possible. Only where the owner is found to be the debtor of the maritime claim an arrest is possible. Arrest of the vessel is not possible, if the time charterer or bareboat charterer is solely liable for the claim. A vessel can be arrested for a maritime lien, even if the vessel is on a bareboat or time charter. However if the claim is in respect of the property itself such as relating to the supply of bunkers to the vessel or unpaid repair bills which has enhanced the value of the property, the ship may be arrested even if it is under the bareboat or the time charter.

10. Do your Courts require counter-security in order to arrest a ship?

No. It is the debtor who has to provide security to have the arrested vessel released.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime claims for which a ship can be arrested are mentioned under under Section 2(1)(e) to (q) in the Admiralty Jurisdiction Act No. 40 of 1983. On the basis of these claims, a ship can be arrested provided the owner is the same at the time, the cause of action arose and is still the owner at the time of the arrest of the vessel.
Maritime liens however can be enforced irrespective of the ownership of the vessel. Maritime lien can be enforced even if the ownership has changed.
The procedure for arrest of a ship is the same whether it be for a maritime claim or arising out of a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. Sri Lanka is a signatory to the International Convention on Maritime Liens and Mortgages, 1993. Maritime liens under the law of Sri Lanka are set out in Section 83 of the Merchant Shipping Act No. 52 of 1971 as follows:

"Maritime liens of a ship shall arise out of-

(a) wages and other sums due to the master, officers and other members of the ship's complement, in respect of their employment on the ship
(b) port, canal and other waterway dues and pilot age dues;
(c) claims against the owner (which term shall for the purposes of this section also include the charterer, manager or operator of the ship) in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship;
(d) claims against the owner, based on a wrongful act and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship;
(e) claims for salvage, wreck removal and contribution in general average."

Priority of liens it is set out in the Merchant Shipping Act, Section 84 as follows:

"84. The maritime liens set out in section 83 shall take priority over mortgages and preferential rights registered under Chapter 4, or arising under the Crown Debtors Ordinance or the Insolvency Ordinance, and no other claim shall take priority over them, except as is provided in section 86."

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

An application to court can be made immediately, if all the documents to support the maritime claim or lien is ready with the affidavit of the plaintiff on an urgent basis once filed can be supported even after normal hours in the chambers of the judge.

14. Do you need to provide a POA or any other documents of the claim to the Court?

No Power of Attorney is required to arrest a ship. Normal proxy form has to be signed by the plaintiff, authorizing the instructing attorney appearing for the plaintiff to file papers. Thereafter an affidavit of the plaintiff fully setting out the maritime claim with all the supporting documents should be prepared and filed in court to proceed to arrest a vessel.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Under Sri Lankan Law, filing of documents electronically is not yet in practice. All documents filed in courts can be certified as true copies by the instructing attorney of the plaintiff. When the case proceed to hear on merits, the original documents need to be produced in court.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Once the Admiralty Court orders the arrest of a ship, it retains jurisdiction to adjudicate the substantive claim of the plaintiff, unless there is exclusive agreement between the relevant parties to litigate in another jurisdiction or to submit their dispute to arbitration. In such a situation the arrest of the ship may not be maintainable.

17. What is the procedure to release a ship from arrest?

See Section 37(1) Admiralty rules

18. What type of security needs to be placed for the release?

Normally a Bank Guarantee issued by a first class Bank subject to the jurisdiction of Sri Lanka.

19. Does security need to cover interest and costs?

Yes.

20. Are P& I LOU accepted as sufficient to lift the arrest?

No.

21. How long does it take to arrest the ship?

It all depends on when security for claim is made.

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?

Once the ship is arrested on the ex-parte application of the plaintiff, court will grant time to file objections to the arrest. If no objections are filed to the arrest of the vessel, court acting under rules framed under the Admiralty Jurisdiction Act, will grant time to the plaintiff to file by way of a petition all matters to be adjudicated by court on the merits of the case.

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?

If a vessel is sold to a separate legal entity for the purpose of evading a claim, the court can examine the circumstances of the sale and in exceptional situations will allow the piercing of the corporate veil on grounds of fraud.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

A vessel can be sold, if the party who made the application for the sale of the vessel can show that the vessel had been arrested for some time and the ship is losing its value by deterioration. Therefore court can sanction the sale of the vessel by public auction and deposit auction money in a court account to settle claims arising in respect of the vessel. It is specifically provided under Section 7(3) of the Admiralty Jurisdiction Act No. 40 of 1983 that if the property arrested is "subject to speedy decay the court may on an application made in that behalf by the marshal direct that such property be sold and the proceeds deposited in courts, pending the determination of the action".

***Sakeen Cader** mainly focuses on the area of Admiralty and Maritime, Litigation and Arbitration and Customs Law. He has extensive experience in acting for many local foreign clients, including many P & I Clubs, Charterers, Salvors and Ship-managers. He advises the top 5 P&I Clubs in respect of their legal matters and handles assignments on the instructions of several leading City of London Solicitors Firms specializing in shipping, and law firms in the USA. Mr. Cader acts for clients in the Admiralty Court. He is also involved in handling alternate dispute resolution proceedings including arbitration proceedings in respect of shipping matters. He has acted for Sri Lanka Ports Authority and also for the Pakistan National Shipping Corporation in several matters, He is the consultant for Ceylon Association of Shipping Agents (CASA) and Lanka Ship Owners Association (LASO). He also advises on legal issues of the Sri Lanka Medical Council. He was a former legal advisor to the Sri Lanka Rugby Football Union.*

SHIP ARREST IN *SUDAN*

*By Abdalla A. Abuzeid & Associates**
abozaidlaw@yahoo.com
SudanBusinessLawFirm
#39, Block 17, Al Riyadh Area
Khartoum 11113, Sudan
Tel:+249 912960239

1. Please give an overview of ship arrest practice in your country.

Ship arrest is a relatively new procedure in the jurisdiction of Sudan as it was introduced for the first time in 2010 when a new law of Sea Transport was enacted. According to the law of Sea Transportation of 2010 any claimant of a maritime claim may apply to the competent court to arrest a ship to which the debt is connected or any other ship owned by the debtor at the time of the debt emergence. A claimant seeking to arrest a ship should file with the competent court an application annexed with the documents showing the genuineness of the claim; the court should issue an order of temporary arrest upon reviewing the produced documents and fix a date not exceeding fifteen days for a session for which the debtor should be summoned to appear in that session to contest the arrest or present the security provided for in article 49 of the law of Sea Transport.

2. Which International Convention applies to arrest of ships in your country?

INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No.

5. For which types of claims can you arrest a ship?

Maritime claims only

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes.

8. What is the position as regards sister ships and ships in associated ownership?

Sister ships are subject to arrest while ships in associate ownership can't be arrested.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The provisions of the law of Sea Transport of 2010 apply to all species of ships except the worships.

10. Do your Courts require counter-security in order to arrest a ship?

The law of Sea Transport didn't provide for counter security neither the courts created a rule for counter security, but as the law of Civil Procedures empowers the court to demand such security in case of saisie conservatoire it is possible that a court may apply such provision on a ship arrest case.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No difference.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Sudan is party to the International Convention on Maritime Liens and Mortgages 1993 Geneva.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

In the event all the necessary documents are available and the prescribed court fees paid, an arrest can be done in the same day an application

14. Do you need to provide a POA or any other documents of the claim to the Court?

POA is not required but documents supporting the claim must produced before the court.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The documents supporting the claim are required to be produced at the time of hearing the application.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes.

17. What is the procedure to release a ship from arrest?

By virtue of of article 49/1 of the Sea Transport law the, the court may order to release the arrested ship if the security required is placed by the debtor. In practice if the parties settled the dispute during the temporary arrest and before the date of the session fixed by the court, the applicant files an application with the court requesting the release of the ship upon the settlement reached by the parties and the court shall immediately issue an order to release the ship.

18. What type of security needs to be placed for the release?

- The amount of the security in cash or certified check deposited in the court's treasury.
- Placing a letter of guarantee valid up to the end of the implementation stage
- Placing a P&I letter of undertaking
- Any security accepted by the claimant.

19. Does security need to cover interest and costs?

Interest is not applicable in Sudan but costs may be included

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes.

21. How long does it take to release the ship?

Only one day.

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?

The law of Sea Transport ignored that so it is up to courts to decide the period Upon the discretion of the judge .

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.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

By virtue of article 149 of the Civil Procedures Law, if it is proved during the process of a suit that the attached property is liable to loss, damage or transfer of title by owner, the court may issue the temporary order it deems suitable to maintain the property and prevent its loss, damage or title transfer thereof. So pursuant to the provision of the aforesaid article, if the claimant placed solid evidence that the ship is liable to dissipation during the process of the suit then the court may issue an order of selling the ship pendent e lite. It is difficult to estimate the time needed to sell the ship as it depends on the circumstances of each case, however, it takes long time a bit.

**Abdalla A. Abuzeid & Associates maritime law practice lawyers do not only acquire knowledge of the law and court system, they also understand shipboard operations and procedures as well as how sea accidents occur and how cargo damage occurs on the water. Hence they have all factors of success in maritime and admiralty law claims and lawsuits.*
Our Maritime legal services comprise the following:
Cargo damage, Crewmember injuries, Maritime arbitration, Marine insurance, Sea accidents, Vessel arrest, Vessel accident, and personal injuries.

SHIP ARREST IN *TAIWAN*

*By Vincent W. Liu**
LIU & CO.
liuncotw@ms31.hinet.net
http://www.liunco.com
7th Floor, 73, Fu-Sing North Road
Taipei 105039, Taiwan
Tel.: +886 2 2773 1133
Fax: +886 2 8773 0880

1. Please give an overview of ship arrest practice in your country.

An arrest of ship in Taiwan shall be subject to either the Chapter on Precautionary Proceedings under the Civil Procedure Code, promulgated on 1st February, 1935, effective from 1st July, 1935, and last amended on 29th November, 2023 (the "CPC"), the Compulsory Execution/Enforcement Act, promulgated on 19th January, 1940, effective from 21st January, 1940, and last amended on 29th May, 2019 (the "CEA"), and the Maritime Act, promulgated on 30th December, 1929, effective form 1st January, 1931, and last amended on 8th July, 2009 (the "MC"). In addition to the foreclosure of ship mortgage and the enforcement of a final and irrevocable Court Judgment or Arbitration Award in favour of the claimant/creditor against the registered shipowner as the debtor; wherein, any ship of the same shipowner shell be at stake under the CEA, the competent Court may grant a Civil Ruling to provisionally seize/attach or dispose the ship in question, upon an application therefor submitted by the creditor/claimant. The criteria thereof, however, are stringent, and the procedures involved are cumbersome.

2. Which International Convention applies to arrest of ships in your country?

Taiwan is not a signatory country to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952. Ship arrest is governed by the CPC, CEA and/or MC as mentioned under Question 1.

3. Is there any other way to arrest a ship in your jurisdiction?

No, there is no other way to arrest a ship, in terms of securing the creditor's/claimant's alleged claim.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Under certain circumstances, the ship could be subject to freezing order or saisie conservative, if she violates specific Taiwan administrative laws and/or regulations.

5. For which types of claims can you arrest a ship?

Ship arrest is available for general claims, no matter maritime or not, under the lex causae, vis-à-vis the registered shipowner of the ship to be arrested, and for maritime liens according to the law of ship's flag, albeit the debtor in this context may be different from the registered shipowner.
MC provides, inter alia, that the claims listed hereunder may be secured by maritime liens and are entitled to a preferential right of compensation:

(1.) Claims of the shipmaster, seafarer or other members of the ship's complement which have arisen from their contracts of employment;
(2.) Claims against the shipowner, in respect of loss of life or personal injury directly arising from the operation of the vessel;
(3.) Claims for salvage rewards, expenses for wreck removal or ships' contribution on general average;
(4.) Claims against the shipowner, based on tort in respect of damage to or loss of property occurring, whether on land or on water, in direct connection with the operation of the vessel; and
(5.) Harbour charges, canal or other waterway dues or pilotage dues.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes, as long as the debtor/opponent is the registered shipowner, or whom the maritime lien claim is against.

8. What is the position as regards sister ships and ships in associated ownership?

It is possible to arrest sister ships owned, at the time when arrest is effectuated, by the identical registered shipowner who is liable for the general claims mentioned hereinabove. The "ships in associated ownership" has not been defined under Taiwanese laws, including the MA.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Unless the alleged claim constitutes a maritime lien against the subject ship, the ship may not be arrested for any claims vis-à-vis her bareboat charterer, or time charterer.

10. Do your Courts require counter-security in order to arrest a ship?

With the exception of an arrest based upon the final and irrevocable Court Judgment, Arbitration Award, or Civil Ruling granting the foreclosure of ship mortgage, the Court would only grant, without adjudicating the validity of claimant's application or claims on the merits of the case, such an arrest, seizure/attachment against a counter-security in the form of cash, the amount of which is subject to the Court's discretion, normally one-half (1/2) or more of the alleged claim amount. In addition, the claimant should pay around zero point eight percent (0.8% or 8/1,000) of its claim amount to the Court for the provisional seizure execution/enforcement fees when submitting the subject application, which shall be deductible when the compulsory enforcement/execution of the final and irrevocable Court Judgment is eventually lodged.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Subject to the law of ship's flag, an arrest for a maritime lien can be done irrespective of ship's ownership, who may not be identical to the registered shipowner. The application for arrest in this context should be thoroughly elaborated upon since generally speaking, the Court adjudges such an application prudently and strictly, as there is no concept of "action in rem" under Taiwanese legal system.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, but it is subject to the law of ship's flag. As to the maritime liens under Taiwanese law, please refer to above-mentioned 5. Taiwan is not a signatory country to any International Conventions on maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Provided the required information, documents and counter-security, if necessary, are well-prepared, an arrest may be completed within three (3) to five (5) days, should no complications arise.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, notarized and legalized Powers of Attorney (the "POA") as well as the following documents/ information are required:

(1) The full style of claimants, including their full name, registered address of headquarters and the name of their legal/statutory representative, i.e., the chairman of board of directors, the managing director, the president or the general manager who is the legal/

statutory representative for the claimants under the law of the country/state where the claimants are duly incorporated;

(2) The information set forth in the preceding Item (1) of the debtors/opponents and if necessary, the proof in this context;

(3) The proof as to the ownership of the vessel to be arrested, i.e., a Certificate issued by the competent authorities of the state/country of her flag, which could sufficiently certify that she is currently owned by and registered under the name of debtors, or a similar statement on search therefore issued by the lawyer practising in the state/country of her flag;

(4) The description of claimants' claims vis-à-vis the debtors;

(5) Copies of all the relevant documents regarding the claimants' claims; and

(6) ETA and ETD of the vessel.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Certain numbers of type-written originals each of POA duly and separately executed by the chairman of directors board, the managing director, the president, or the general manager, who is deemed to be the legal/statutory representative therefor under the laws of the country where the claimants have been incorporated, of the claimants, before a notary public (notarization) and legalized/authenticated by the Taiwanese consulate or de facto consulate stationed in the country where POAs shall have to be issued and then sent to us by e-mail, facsimile and post. For the purpose of arresting ship, other documents could be submitted in copies thereof at the outset. Nevertheless, all the respective originals thereof shall be required to present before the court of trial, if any, at a later stage.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Unless the claim arising from a contract contains an exclusive foreign jurisdiction clause, or an arbitration in foreign forum clause, the Taiwanese Court accepts jurisdiction over the substantive claim once the vessel has been arrested.

17. What is the procedure to release a ship from arrest?

In the case of an arrest based upon the final and irrevocable Court Judgment, Arbitration Award, or Civil Ruling granting the foreclosure of ship mortgage, the debtor, registered shipowner, or the interested part may apply, relying upon CEA, etc., to the Court for releasing the arrested ship against the lodgment of security in the amount of the alleged claim amount as well as the execution fees as court costs; or an equivalency of the ship's value; or an appropriate assets. As to the provisional seizure/attachment or disposal proceedings, the Court, when granting a Civil Ruling to provisionally seize/attach or dispose the ship in question, mentioned under Question 1, would normally allow the debtor/opponent or registered shipowner to revoke the provisional seizure/attachment or disposal proceedings, resulting in the release of arrested ship, against the lodgment of security, the amount of which is normally tantamount to the creditor's alleged claimed amount or more.

18. What type of security needs to be placed for the release?

The security could be in form of: (1) cash; (2) the interest bearing term deposit/certificate issued by a local bank, (3) an appropriate asset(s); or (4) a letter of guaranty issued by local underwriter/insurer, or local bank running insurance business, which should explicitly undertake, inter alia, that the issuer shall be responsible for recouping the alleged debt and/or compensating the creditor for a certain sum in the event that the debtor, or registered shipowner does not fulfill its obligation. Items (2) to (4) shall be subject to Court's discretional approval.

19. Does security need to cover interest and costs?

The security needs to cover the alleged claim amount and the court costs, or execution fees.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs would not be accepted, unless it is a local underwriter/insurer.

21. How long does it take to release the ship?

It would take around ten (10) business working days, should no complications arise.

22. Is there a procedure to contest the arrest?

There are several approaches to contest the arrest under CEL and CPC.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The shipowner of an arrested ship, or the named debtor may apply with the Court for a Ruling ordering the claimant to take legal action on the merits within normally seven (7) days, failing which the arrest may be left. Such a Ruling shall be rendered within two (2) to three (3) weeks upon an application.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes, but the substantiation of damages and/or loss shall be subject to another lawsuit.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Very rarely.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is almost impossible.

**Vincent W. Liu*, *LL.M., The London School of Economics and Political Science, University of London; LL.B., Faculty of Law, Fu-Jen Catholic University; admitted in Taiwan as an attorney–at-law, patent attorney & licensed conveyancer, as well as arbitrator (registered in panel). Mr. Liu helms Liu & Co. and has been nominated and selected since December, 1999 as one of three leading international trade and maritime lawyers in Taiwan by Euromoney Legal Media Group and published annually in its "Guide to the World's Leading Shipping & Maritime Lawyers" and "Guide to the World's Leading International Trade and Shipping Lawyers".*

SHIP ARREST IN *THAILAND*

*By Naiyachon Tathong**
Managing Director
JTJB Intl Lawyers Co., Ltd.
Bangkok, Thailand
naiyachon@jtjb.com
www.jtjb.co.th
Tel: +66 2116 1747 Ext. 11

1. Please give an overview of ship arrest practice in your country.

The arrest of ships is a well-known practice worldwide, especially in the country performing the marine trading. In the past, Thailand did not enforce the specific provisions regarding the arrest of ships. In late 1991, Thai law enacted the Arrest of Ship Act B.E.2534 (1991) with the purpose to arrest the ship for security when there is a dispute in association with the ship and the usage of ship. Moreover, Thailand has neither become a member in the treaty nor ratified the International Convention relating to the arrest of seagoing ships, Brussels, May, 10, 1952. However, the Arrest of Ship Act B.E.2534 (1991) has the similar model as to the arrest of seagoing ships, Brussels, May, 10, 1952.

2. Which International Convention applies to arrest of ships in your country?

Thailand is not a party of the International Convention regarding the arrest of ships.

3. Is there any other way to arrest a ship in your jurisdiction?

According to Thai law, there are two Acts which are related to the arrest of ship; (1) Arrest of Ship Act B.E.2534 (1991), and (2) Navigation in the Thai Waters Act B.E.2456 (1913.)

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The temporary protection shall be requested from the Court of Thailand to seize or freeze an asset but such alternatives shall not be the security for debt repayment.

5. For which types of claims can you arrest a ship?

The creditor may claim for arrest of a ship by the following matters:

1. Any damages arising from the ship whether by ship collision or other event;
2. Death or injury caused by the ship or related to the operation of any ship;
3. Marine salvage;
4. Charter agreement whether by the Charter-party agreement or other agreement;
5. Shipment agreement whether by Charter agreement or other agreement;
6. Loss or damages causing to the product includinng luggages carried by the ship;
7. General damages;
8. Loan agreement for carry on the business of ship by ship security(Bottomry);
9. Towage;
10. Pilotage;
11. Supply any goods or materials for ship operation or maintenance;
12. Shipbuilding, ship repairing;
13. Wages of naval officer, ship officer, ship equipment installation, or Dock charges and dues;
14. Disbursement which naval officer, consigner, charterer or the representative of the shipowner has caused in the name of the ship or the shipowner;
15. Disputes as to the title or ownership of any ship;
16. Disputes between the co-owners as to the possession, usage earning from the ship; or
17. Mortgage or hypothecation of any ship.

6. Can you arrest a ship irrespective of her flag?

According to Thai law, any ship can be arrested regardless of the flag.

7. Can you arrest a ship irrespective of the debtor?

The arrest of a ship shall be performed as long as the type of claim falls under the matters in question no.5.

8. What is the position as regards sister ships and ships in associated ownership?

If the ownership of the sister ships and the ships in associated ownership are the same and the damages arise from the ships in associated ownership, the sister ships and the ships in associated ownership can be arrested on the same grounds to provide the full debt repayment except for these following disputes: 1) Disputes of rights or ownership of the ships; 2) Disputes between the co-owners regarding the right to possession; and 3) Mortgage of ships.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Both Bareboat and Time-Chartered vessels give the possession of the ship to the charterer. If the cause of the claim arises from the ship or the business of the ship in particular while the debtor has the right to possession over the ship, the creditor may request arrest of the ship from the Court.

10. Do your Courts require counter-security in order to arrest a ship?

The counter-security shall be at the discretion of the Court, but in practice, the Court shall require the counter-security.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime claim provides the right to arrest of ship but maritime lien provides the right to receive the debt repayment prior to other creditors and shall not be limited to the preferential creditors.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Thai law recognizes Ship Mortgage and Marine Preferential Right Act B.E.2537 (1994.)

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

The ship arrest shall be executed within 3-5 days if the documentary evidence is complete and the witness has to attend to the Court. The Court may consider the inquiry forthwith which is similar to the emergency inquiry.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Under Thai law, the following documents must be provided; (1) Motion to request the court to arrest the ship, (2) Deed of lawyer appointment, (3) Power of attorney (in case the creditor appoint someone or lawyer to be the attorney-in-fact), (4) Document regarding status of the ship, (5) Document regarding the status of the debtor and creditor, (6) Document regarding to the debts.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Under Thai law, although the Thai Court accepts filing documents electronically, the Motion to request the court to arrest a ship still has to be manually filed because the Court shall consider such motion in emergency. Once the Court accepts the Motion, the Court will immediately conduct the inquiry hearing. However, other documents after the above step can be electronically filed by the lawyer. Moreover, the original Power Of Attorney shall be required, but the copies of other original documents may be filed except when a challenge is made by another party.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Thai Court does not accept jurisdiction over the substantive claim. The creditor shall have the domicile in Thailand to file the case to the Court. If the Thai Court does not have the jurisdiction over the case, the Court may dismiss the case and also dismiss the security deposit.

17. What is the procedure to release a ship from arrest?

The ship shall be released by the following procedure:

(1) When the debtor has provided the deposit not less than the amount prescribed in the ship arrest order and the debtor accepts the claim, the arrest shall be terminated and the Court shall release the arrested ship immediately; or

(2) When the debtor has the domicile in Thailand and the debtor has provided the deposit not less than the amount prescribed in the ship arrest order and the debtor does not accept the claim, the arrest shall be terminated and the Court shall release the arrested ship immediately; or

(3) The offshore debtor or the third party may request the Court to release the arrested ship by submission of petition to the Court and provide the security in the amount as prescribed by the Court order of the ship arrest for the security of debt repayment to the creditor. If the Court finds reasonable, the arrested ship shall be released.

18. What type of security needs to be placed for the release?

Generally, the Thai Court accepts cash, government bond, and bank account shall be provided for security to release the arrested ship. Other types of security may be provided by the discretion of the Court.

19. Does security need to cover interest and costs?

The discretion shall be determined by the Court.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I and LOUs are not accepted to lift the arrest. The security deposit shall be provided exclusively.

21. How long does it take to release the ship?

The procedure on no. (1) and (2) under answer to question 17 shall be taken approximately 3-5 days from the period of the Court ruled the order until the release of ship. The procedure on no. (3) under answer to question 17 shall be taken approximately 1-3 months from the period of submitting the petition to the Court until the release of ship.

22. Is there a procedure to contest the arrest?

According to the Arrest of Ship Act B.E. 2534 (1991), the last paragraph of section 8 states that the order of the ship arrest shall be final. Therefore, the arrest of a ship shall not be contested nor appeal the order.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claim shall be made within 30 days from the date that the enforcement officer posts the arrest of ship as according to section 12(2) of Arrest of Ahip Act B.E.2534 (1991.)

24. Do the Courts of your country acknowledge wrongful arrest?

The Thai Courts accept the wrongful arrest of ship, but the claim for damages to wrongful arrest of ship shall be filed in separate case.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Thai Courts do not 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?

It is not possible to have a ship sold pendente lite. Under Thai Law, the ship can only be sold by public auction in the process of legal execution as long as the Court has rendered the judgment for Plaintiff to win the case.

***Naiyachon** has been appointed as the Managing Partner of JTJB International Lawyers since August 2015. He was previously experienced in a leading International law firm, specializing in Dispute Resolution and Arbitration, Shipping & Maritime and Transportation. While his practice has been focused on litigation in the past 15 years, he has a rich practice experience in handling both contentious and non-contentious matters.*

Naiyachon has focused in Shipping & Maritime and Transportation practices, Naiyachon's areas of work include maritime disputes on charterparty claim, demurrage claims, bunker claim, cargo claim, and arrest & release of vessel. Naiyachon has also been involved in a shipping project transactional work such as registration of vessels, flag of ship, logistic and freight forwarder contract, and international trade transaction.

Naiyachon's litigation work has generally been in the area of Business and Commercial Dispute in both Local Thai Court and Arbitration especially in construction dispute, shareholder dispute, labour dispute, intellectual property dispute and class action claim as well as trade competition dispute. For non-litigation matters, Naiyachon has extensive experience in commercial agreement, environmental & regulatory and real estate transaction.

Naiyachon has been appointed to be the Panel of Arbitrators of the Thailand Arbitration Center (THAC).

Naiyachon has been ranked as Recommended Lawyer on Transportation Practice by Legal 500 and Distinguished Practitioner on Dispute Resolution by Asialaw Leading Lawyers 2018 - 2021. He was also ranked as Litigation Star on Commercial and Transactions, Shipping, Intellectual Property by Benchmark Litigation 2019 - 2020. Furthermore, Naiyachon is listed in the Thailand Top 100 Lawyers published by Asia Business Law Journal in 2018 - 2020.

In addition, Naiyachon was a legal lecturer in Maritime Law, Dispute Resolution and Arbitration Law and Labour Law at Thai International Freight Forwarders Association (TIFFA), Asia Business Connect and some Public Company Limited in Thailand.

Naiyachon obtained LL.B. and LL.M. (International Trade Law) from Thammasat University and he also obtained Barrister-at-Law from Thai Bar Association and Certificate of Specialized Environmental Lawyer from Lawyer Council of Thailand.

SHIP ARREST IN *TRINIDAD & TOBAGO*

*By Cherie Gopie** & Gregory Pantin**
M. Hamel Smith & Co.
mhs@trinidadlaw.com
www.trinidadlaw.com
Port-of-Spain, Trinidad and Tobago
Tel: +1 868 299 0981
Fax: +1 868 625 9177

1. Please give an overview of ship arrest practice in your country.

Admiralty proceedings in Trinidad and Tobago are governed essentially by Part 74 of the Civil Proceeding Rules ("CPR"). Part 74.2 of the CPR covers the following claims, questions and proceedings, namely—

a) any claim to the possession or ownership of a ship or to the ownership of any share therein, including power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, must be sold, and to make such other order as the court thinks fit;

b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

c) any claim in respect of a mortgage of or charge on a ship or any share therein;

d) any claim for damage received by a ship;

e) any claim for damage done by a ship;

f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or fault of— (i) the owners, charterers or persons in possession or control of a ship; or (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of a ship, in the loading, carriage or disembarkation of persons on, in or from the ship;

g) all proceedings to enforce a claim for damage, loss of life or personal injury arising out of
   i. a collision between ships;
   ii. the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
   iii. non-compliance, on the part of one or more of two or more ships, with the collision regulations;

h) any claim for loss or damage to goods carried in a ship;

i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

j) any claim— (i) under the International Convention on Salvage 1989; (ii) under any contract for or in relation to salvage services; or (iii) in the nature of salvage not falling within (i) or ii) above, or any corresponding claim in connection with an aircraft;

k) any claim in the nature of towage in respect of a ship or an aircraft;

l) any claim in the nature of pilotage in respect of a ship or an aircraft;

m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

o) subject to the limitations imposed by section 136 of the Act, any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);

p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

q) any claim arising out of an act which is or is claimed to be a general average act;

r) any claim arising out of bottomry;

s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty;

t) any application to the court under the Act; and

u) every limitation claim, in relation to— (i) all ships or aircraft whether Trinidadian or not and whether registered or not and wherever the residence or domicile of their owners may be; (ii) all claims, whether arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and (iii) (so far as they relate to mortgages or charges) all mortgages or charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law.

2. Which International Convention applies to arrest of ships in your country?

The United Nations Convention on the Law of the Sea ("UNCLOS"). The **Archipelagic Waters and Exclusive Economic Zone Act Chapter 51:06** of the Laws of Trinidad and Tobago was enacted partly to make provision for matters connected therewith in accordance with UNCLOS. The International Convention on Salvage 1989 also applies.

3. Is there any other way to arrest a ship in your jurisdiction?

Yes, Part 74 of the CPR governs the arrest of ships in Admiralty proceedings in rem in Trinidad and Tobago. Furthermore, a ship may be detained under the **Quarantine (Maritime) Regulations Chapter 28:05** of the Laws of Trinidad and Tobago in order to prevent the spread of infection. In addition, **S.317** of the **Shipping Act, Chapter 50:10** grants the Registrar or inspector the power to cause an unseaworthy Trinidad and Tobago ship or foreign ship to be detained until it is fit to proceed to sea.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The above may be available although not strictly as alternatives to arrest. The seizure of a ship or detention of its cargo may be effected through the arrest process or through the processes in 3 above.

5. For which types of claims can you arrest a ship?

In the case of any such claim or question as is mentioned in rule74.2(a), (b), (c) or (s) a claim in rem may be brought against the ship or property in connection with which the claim or question arises. In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, a claim in rem may be brought against that ship, aircraft or property.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship can be arrested irrespective of its flag, as long as it is within the jurisdiction of Trinidad and Tobago territorial waters, or the contiguous zone in the event that the vessel is seeking the flee. Ships of all States enjoy the right of innocent passage in the archipelagic waters of Trinidad and

Tobago. Under **S. 12. (1) Archipelagic Waters and Exclusive Economic Zone Act Chapter 51:06,** passage of a ship is innocent so long as it is not prejudicial to the peace, good order or security of Trinidad and Tobago and is in conformity with the provisions of the Convention and such other relevant rules of international law. The President may however, by Proclamation suspend, temporarily, in specified areas of the archipelagic waters, the innocent passage of foreign ships, where such suspension is essential for the protection of its security. Under **S.28**, certain entities are empowered to stop and board, inspect, seize and detain a foreign fishing craft, seize any fish and equipment found on board the foreign fishing craft, and arrest the master and crew of any foreign fishing craft, in the exclusive economic zone, the territorial sea and the archipelagic waters, and may also institute such criminal proceedings against them, as may be necessary to ensure compliance with the Act and the Regulations.

7. Can you arrest a ship irrespective of the debtor?

No, a claimant may only issue an arrest warrant in Admiralty proceedings in rem against: a) the ship in connection with the claim; or b) any other ship, if at the time when the claim is made, the Relevant Person is the beneficial owner of all the shares in it.

8. What is the position as regards sister ships and ships in associated ownership?

Sister ships can be arrested. In the case where the claim arises in connection with a ship and the relevant person was when the cause of the action arose, the owner or charterer or in possession or in control of the ship, a claim in rem may be brought against that ship if at the time the claim the relevant person is the beneficial owner of the ship in respect of all the shares in it or any other ship, of which at the time the claim was made, the relevant person was the beneficial owner in respect of all the shares in it.

9. What is the position as regards Bareboat and Time-Chartered vessels?

There is no specific provision regarding these vessels. However, under **Shipping Act, Chapter 50:10** "Ship" is defined as a vessel used in navigation not propelled by oars. As such, these vessels fall within the definition of ship and so may be arrested pursuant to the provisions of Part 74 of the CPR.

10. Do your Courts require counter-security in order to arrest a ship?

There is no provision requiring counter-security. However, pursuant to Rule 74.12 (3) of the CPR the warrant may not be executed the arresting party's attorney at law provides a personal undertaking to the Court to be responsible for the Admiralty Marshal's expenses in respect of the arrest including the care/custody of the property under arrest. In practice, such attorney usually requires this undertaking to be backed by a suitable deposit into the Firm's client account and to have such deposit increased in the event that the expenses increase. Costs of arrest can quickly build up and be subject to unexpected contingencies.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

No, there is no difference in the process for arrest.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Trinidad and Tobago recognizes maritime liens under **Part 5** of the **Shipping Act Chapter 50:10** of the Laws of Trinidad and Tobago. They are as follows: (a) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship; (b) port, canal, and other waterway dues and pilotage dues and any outstanding fees payable under this Act in respect of the ship; (c) claims against the owner in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship; (d) claims against the owner, based on tort and not capable of being based on contract, in respect of loss

of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship; claims for salvage, wreck removal and contribution in general average.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

It should be possible to effect the arrest of a vessel within 48 to 72 hours of obtaining instructions and filing the application, provided that the relevant information and documents to support the application to the High Court for the warrant of arrest are available and an appropriate undertaking in writing to match the attorney's personal undertaking to pay the fees and expenses of the Marshal of the Court. The arrest of a ship is not of itself inordinately time consuming, although it is somewhat technical. However, the procedure subsequent to an arrest can be quite time consuming and complex.

14. Do you need to provide a POA or any other documents of the claim to the Court?

There is no need to provide 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, hard copies of all the documents are required, but do not have to be notarised. Documents cannot be filed electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Trinidad and Tobago courts will accept jurisdiction over the substantive claim once a vessel has been arrested within our territorial waters.

17. What is the procedure to release a ship from arrest?

Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, such property may only be released under the authority of a release by filing the appropriate practice form. A release may not be issued with respect to property as to which a caveat against release is in force, unless, either (a) at the time of the issue of the release the property is under arrest in one or more other proceedings; or (b) the court so orders.
Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal either pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred. The court, on the application of any party who objects to directions given to him by the marshal under the preceding paragraph may vary or revoke the directions.

18. What type of security needs to be placed for the release?

Security such as bank guarantees, P and I Club LOUs and insurance bonds are acceptable to be placed for the release of ships.

19. Does security need to cover interest and costs?

Yes, security must cover the claim, interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, P&I LOUs are accepted as sufficient to lift the arrest. The court is entitled to be satisfied as to the adequacy and reliability of the security proposed.

21. How long does it take to release the ship?

A ship can be released within 24hours of filing an acceptable security

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest as is set out in CPR 74.10.
Generally, a person who wishes to prevent the arrest of a ship must file a request in the prescribed form containing an undertaking a) to acknowledge issue or service of the claim form in any claim that may be made against the property described in the request; and b) within 3 days of receipt of notice that such a claim has been made, give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court. This request must be signed by the person seeking to prevent the arrest or his attorney-at-law. When the request is filed, the Registrar must enter a caveat against the issue of a warrant to arrest the property described in the request in the caveat book. Every caveat entered in the caveat book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a request in the appropriate practice form.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

An order for an arrest will not be granted unless the *ex parte* application for a warrant of arrest is accompanied by the claim form, statement of case and supporting documents. There is accordingly no waiting period between the arrest taking place and the commencement of the substantive action. The precise timelines are difficult to pin down and will vary depending on the course of the matter. A Claimant may apply for judgment in default and an order for sale where a defendant to a claim in rem fails to acknowledge service of the claim within the time limited for doing so, then, on the expiration of 14 days after service, of the claim and upon filing an affidavit proving due service of the claim, an affidavit verifying the facts on which the proceedings is based and, if a statement of case was not served with the claim form, a copy of the statement of case. If the court is satisfied that the applicant's claim is well founded it may give judgment for the claim and may at the same time order the property against which the claim or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. A party claiming that a vessel has been wrongfully arrested can sue the arresting party for damages under this tort. However the threshold for recovering damages under this head is quite high - A claimant for damages for wrongful arrest of a ship must prove that the arrest was malicious or the result of gross negligence.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Trinidad and Tobago courts recognize and exercise the powers to pierce or lift the corporate veil.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Yes. The court may, on application by a party before final judgement in a proceeding, order that a ship that is under arrest in the proceeding be sold. Where the ship is deteriorating in value, the court may at any stage of the proceeding, either with or without application, order it to be sold. The time frame from application to order may be relatively short, that is attained within two weeks, (if uncontested) however, the time frame for actual sale can be much longer and depends on whether the application is contested, the state of the vessel and the availability of a reasonable market.

***Mr. Gregory Pantin** is a Partner at Hamel-Smith & Co. Law Firm with more than 23 years practice as an Attorney- at- Law. His core practice is in the area of litigation. He handles a variety of complex commercial disputes particularly matters involving issues in Admiralty, Construction and Development, Corporate Law & Governance, Employment and Industrial Relations and the Environment. In addition to his core areas of practice, Gregory is also trained in mediation as well as arbitration through the Chartered Institute of Arbitrators. Gregory is also a Chambers Global ranked Attorney. Gregory practices as an Advocate before the High Court, Court of Appeal, and specialist courts such as the Industrial Court, Environmental Commission, Trinidad and Tobago Securities and Exchange Commission, the Caribbean Court of Justice (Original Jurisdiction) and arbitral panels.*

***Ms. Cherie Gopie** is Partner at Hamel-Smith & Co. Law Firm with more than 18 years practice as an Attorney at Law. She has graduated from the University of the West Indies (LL.M. 2016), specialisation in Corporate and Commercial Law. At Hamel-Smith & Co., Cherie has appeared in and works closely instructing Counsel in the High Court, the Court of Appeal, and other specialist courts of Trinidad and Tobago. Cherie focuses on all areas of dispute resolution and advises the firm's clients on, among other areas, Admiralty Law, General Commercial Litigation, Medical Negligence Law, Personal Injury, Debt Collection, and Insurance Law.*

SHIP ARREST IN *TUNISIA*

By Dr. Brahim LATRECH
LATRECH Law Firm
contact@cabinetavocat-bl.com
http://www.cabinetavocat-bl.com
Immeuble Lafayette Center - Tunis – Tunisia
Mob : +216 24 29 27 00
Tel : + 216 71 830 257
Fax : +216 71 830 257

1. Please give an overview of ship arrest practice in your country.

Tunisia with eight commercial ports opened to international traffic remains one of the best countries in the world for ship arrests with simple and fast procedure.

2. Which International Convention applies to arrest of ships in your country?

Tunisia not ratify any International Convention, and only local laws will apply to the arresting of ships, but the legislator of Tunisian Maritime Law was influenced by the International Convention Relating to the Arrest of Sea-Going Ships Brussels, May 10, 1952.

3. Is there any other way to arrest a ship in your jurisdiction?

- Arrest in accordance with an on-going or a final foreign arbitration award;
- Arrest within the frame of enforcement of a foreign Court decision;
- Arrest in accordance with a settlement agreement;
- Arrest in accordance with a contract;
- Arrest under procedures of execution.
- Arrest under a criminal matte or a civil debt against the ship owners.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

These measures are similar to saisie conservatoire or freezing order (immobilisation du navire).

5. For which types of claims can you arrest a ship?

Tunisian Maritime Commercial Law defines “maritime claims” for the purposes of Tunisian law (créances maritimes). Claims falling within the definition of Maritime Claims include claims for:

- Bunkers, Goods, materials, provisions, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
- Loss or damage caused by the operation of the ship;
- Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
- Any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
- Loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- General average; Towage; Pilotage;
- Construction, reconstruction, repair, converting or equipping of the ship;
- Port, canal, dock, harbour and other waterway dues and charges;
- Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- Loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- Disbursements incurred on behalf of the ship or its owners;
- Insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

- Any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
- Any dispute as to ownership or possession of the ship; any dispute between co-owners of the ship as to the employment or earnings of the ship;
- Any dispute between co-owners of the ship as to the employment or earnings of the ship;
- A mortgage or a "hypothèque" or a charge of the same nature on the ship;
- Any dispute arising out of a contract for the sale of the ship.
- Salvage operations or any salvage agreement;
- Damage or threat of damage caused by the ship to the environment, coastline or related interests; - Measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken;
- Loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph;
- Costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew.

6. Can you arrest a ship irrespective of her flag?

In Tunisia the presence of any vessel at Tunisian waters gives the court jurisdiction" in rem" over the vessel and "in personam" over the owners, operators and charterers. Tunisia does not recognize governmental immunity for state owned commercial trading vessels. Any vessel capable of being used in navigation can be arrested therefore pleasure vessels can be arrested.

7. Can you arrest a ship irrespective of the debtor?

In Tunisia, the claims subject to Tunisian Law permit the arrest of a vessel, regardless of whether the underlying debt is incurred by owner, disponent owner, operator or charterer. Under Tunisian Law anyone with authority binds the vessel in rem (in rem actions, meaning that the action is against a thing, rather than against a person). The ship can be arrested even if the ship owner's is not the debtor of the maritime claim. In order to have his ship released from arrest, the ship owner's have to pay the claim or to give a Bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasure Department of Tunisia. The ship owner's will have to guarantee the payment of the claim, even if a third person charterer, issuer of the Bill of Lading is the debtor toward the arresting party. Generally, the vessel, itself, is responsible owner encumbers a vessel with a First Preferred Ship's Mortgage, it is the vessel that guarantees payment, rather than the owner. However, the owner may be personally liable if they signed a personal promise or guaranty to pay.

8. What is the position as regards sister ships and ships in associated ownership?

Tunisian Maritime Law allows the arrest of sister ship and ship associated.

9. What is the position as regards Bareboat and Time-Chartered vessels?

A vessel that is in the ownership of the charterer can be arrested for a maritime claim against a time charterer.

10. Do your Courts require counter-security in order to arrest a ship?

Tunisian Maritime law in practice does not impose on the claimant the deposit of a counter-security to cover costs, charges, damages, fees or other expenses but Any attempt to use a provision of Tunisian law in an abusive manner is a wrong actionable in tort as a fundamental principle of Tunisian law. In particular, pursuant to this fundamental principle, a plaintiff will have an action for abuse of the arrest provisions contained in Articles 100 to 105 of the Maritime Commercial Law (a claim broadly equivalent to a wrongful arrest claim under a common law legal system) if it can

show that the party who arrested a vessel knew or should have known that it had no right of arrest at the time the application for the arrest and the Court's order granting the arrest were made. Accordingly, the Plaintiffs' claim is actionable as a tort in Tunisia.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no substantial difference between arresting a ship for a maritime claim or a maritime lien, both are subject to the same procedures.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Tunisia recognizes maritime liens under the Tunisian Maritime Trade Law n° 13 /1962.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Upon receipt of instructions and relevant documents, arrest order can be carried out within the same day.

14. Do you need to provide a POA or any other documents of the claim to the Court?

No power of Attorney is requested, no original documents required, no counter security.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The claim's supporting documents or the documents proving the matter are required, documents filed electronically are accepted. All documents must be presented to the judge with a sworn translation into Arabic language.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, Tunisian courts accept the substantive claim or the action on merits if a ship is arrested in any Tunisian ports.

17. What is the procedure to release a ship from arrest?

A release can usually be obtained promptly provided the requirements for release are satisfied it may be done by any of the following:

- An emergency action to release the ship from arrest, submitted by the defendant to the Court.
- Amicably settlement agreement between applicant and defendant to release the ship.
- A Tunisian bank guarantee
- A cash deposit in the General Treasure Department of Tunisia.
- A repudiation of the arrest order by court decision.

18. What type of security needs to be placed for the release?

A bank guarantee issued by a Tunisian bank or else a cash deposit at the General Treasure Department of Tunisia. LoU Club are not accepted by Tunisian court.

19. Does security need to cover interest and costs?

In some cases, but it always depends on the judge's ordinance.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No, Club LOUs are not accepted in Tunisia.

21. How long does it take to release the ship?

Between 4 and 10 hours.

22. Is there a procedure to contest the arrest?

An emergency action called “référé” to be presented within 8 days from the date of notification of the arrest.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The order authorizing the arrest shall indicate the deadline to start an action on merits, and it may not exceed one month within which the claimant will have to commence his action on the merits before the competent court. If the action is not made within this deadline, the conservatory arrest shall become null and void.

24. Do the Courts of your country acknowledge wrongful arrest?

In an only case if the claimant knew it had no maritime lien or right of arrest and nonetheless proceeded with the arrest and with the intention to cause damage to the defendant. The burden of proof in relation to these matters rests on the Defendant who claims damages for wrongful arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The vessel in relation of which maritime claim arose or any other vessel in the same ownership can be arrested.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Under Tunisian Law when the arrester gets an enforceable title like a final arbitration award or a final court decision the procedure of sale of the vessel is made through public auction and it generally takes three to six months. The court’s decision to sell the vessel is not susceptible of any appeal but can be either invalidated if the procedures were not respected. Such action must be brought 10 days at least before the auction or claimed by third parties who are entitled to do so at any time of the process.

***Brahim Latrech,** born in 1965, has a Master Degree in Law from the University of Perpignan (France) and holds the title of Docteur d’Etat en Droit. In 2002 he set up the Brahim Latrech Law Firm, specialised in maritime law.*
Brahim Latrech is member of the Association Française du Droit Maritime, of the Association Tunisienne du Droit Maritime and founder of the Revue du Droit Maritime Tunisien.

SHIP ARREST IN *TURKEY*

*By Zeynep Özkan**
ÖZKAN LAW OFFICE
zeynep@ozkan.av.tr
www.ozkan.av.tr
Vali Konağı Cad. Hacı Mansur Sk.
Inka Residence No:2/12, 34363
Nişantaşı, İstanbul, Turkey
Tel: +(90 212) 327 69 40
Fax: +(90 212) 327 69 43

1. Please give an overview of ship arrest practice in your country.

The arrest of vessels in Turkey is mainly governed by the provisions of the Turkish Commercial Code ("TCC"), which reflects the provisions of the International Convention on the Arrest of Ships 1999 ("1999 Convention"). A new Draft Compulsory Enforcement Law ("Draft Law")[1] has recently been prepared and published for public debate. The Draft Law aims to put together enforcement related shipping law matters under a specific chapter.

2. Which International Convention applies to arrest of ships in your country?

Turkey is a party to the International Convention on the Arrest of Ships 1999[2] and the International Convention on Maritime Liens and Mortgages 1993[3].

3. Is there any other way to arrest a ship in your jurisdiction?

The TCC regulates the arrest of ships specifically and prohibits any other ways to arrest a ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

From the procedural point of view, conservatory attachment leading to the arrest of the vessel is the only conservatory measure permitted under the TCC. Other conservatory measures such as a freezing order or similar shall not be applicable with respect to a maritime claim.

5. For which types of claims can you arrest a ship?

Arrest is possible only for "maritime claims" listed in the TCC, which are the same as those lited in 1999 Convention.

6. Can you arrest a ship irrespective of her flag?

A ship can be arrested in Turkey irrespective of her flag.

7. Can you arrest a ship irrespective of the debtor?

Except for arrests in order to enforce a maritime lien, only the vessels owned by the debtor can be arrested.

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[1] *"Draft Compulsory Enforcement Law" (Draft Law), prepared by the Enforcement and Bankruptcy Law Scientific Commission and published on the website of the Ministry of Justice aims to reform the existing Enforcement and Bankruptcy Law, which has been in force since 1932 and has undergone partial changes from time to time.*

[2] *The Ratification Law related to "1999 Convention" Law No: 6904 published in the Official Gazette dated 25 March 2017 numbered 30018*

[3] *The Ratification Law related to "International Convention on Maritime Liens and Mortgages 1993" Law No: 6940 published in the Official Gazette dated 25 March 2017 numbered 30018*

8. What is position as regards sister ships and ships in associated ownership?

The TCC specifically deals with the issue and permits the arrest of any other ship of the debtor provided that they are owned by the debtor liable for the maritime claim.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Except for arrests based on a maritime lien, only the vessels owned by the debtor can be arrested. The arrest of a ship due to the debt of a charterer is not possible if such debt does not grant a maritime lien.

10. Do your Courts require counter-security in order to arrest a ship?

Except for claims related to crew wages, a fixed countersecurity of 10.000SDR has to be lodged before the court along with the arrest application regardless of the claim amount. The counter-security may be in the form of cash or bank letter of guarantee. The countersecurity may be increased or decreased by the court at a later stage upon the application of the parties.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Maritime lien gives an *in rem* action against the vessel. Apart from that the same arrest procedure is applicable.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Turkey is a party to the International Convention on Maritime Liens and Mortgages 1993 and the TCC provisions on maritime liens reflects the aforesaid Convention.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

We would need one day after we receive the supporting documents related to the claim in order to prepare and file the application and the countersecurity must be received as it has to be deposited with the application. The time required for the court to process application varies depending on the court and due to work load of such court. For example, while it takes a couple of days before Istanbul while it may be possible to obtain arrest order on the same day of application in other courts after filing.

14. Do you need to provide a POA or any other documents of the claim to the Court?

We need a notarised and duly legalized POA, scanned copy of which will suffice provided that the original follows shortly.
Documents evidencing a possible claim along with their translations in Turkish need to be submitted.

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 documents or notarization/leaglization of the documents are not required during filing or at a later stage unless the opponents object to the authenticity of such documents.
The only document that needs to be notarized and apostilled is the POA. (see our remarks for Question No.14)

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

In addition to the other rules for jurisdiction and subject to any agreement on jurisdiction or arbitration, the TCC explicitly provides that the arrest itself confers international jurisdiction to the Turkish court which has given the arrest order to hear the action in merits of the claim.

17. What is the procedure to release a ship from arrest?

The vessel may be released by putting up a security covering the claim amount, interest accrued and costs.
It is also possible to file an objection against the arrest if the arrest order is given based on the *ex parte* application of the arrestor.

18. What type of security needs to be placed for the release?

The security may be in the form of cash or bank letter of guarantee.

19. Does security need to cover interest and costs?

The security needs to cover the claim amount, interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The security may be in the form of cash or bank letter of guarantee. In the event that the parties agree on another form of security such as a P&I letter, that may be possible as well.

21. How long does it take to release the ship?

It can be done within a couple of hours provided that the security required by the court is deposited.

22. Is there a procedure to contest the arrest?

It is possible contest the arrest if the arrest order is given based on the *ex parte* application of the arrestor. The objection may be filed either before the court that has given the arrest order or if an action in merit has been filed before a Turkish court, before that court within 7 days after learning the arrest order. If the action in merits is filed before an arbitral tribunal or a foreign court, the objection may be filed before the court that has granted the arrest order. The court has to hold a hearing in order to hear the challenge to the arrest. The court's decision on the objection to the arrest is subject to appeal.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Under the TCC, the action in merits has to be filed within one month before the court or arbitration tribunal that has jurisdiction in merits. In addition to the other rules for jurisdiction, the TCC explicitly provides that the arrest itself confers international jurisdiction to the Turkish court which has given the arrest order to hear the action in merits of the claim.

24. Do the Courts of your country acknowledge wrongful arrest?

Should the arresting party lose the action in merits, there may be liability for loss and damages suffered due to wrongful arrest which may be enforced on the countersecurity.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The concept of piercing and lfting the corporate veil does exist through court precedence. However in practice it is very difficult to resort to in practice. In the rare cases where this was possible, the courts take facts such as common address, management, shareholding and interest as among possible grounds to consider the possibility of piercing the corporate veil.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Under TCC it is possible to have a ship sold pendente lite base on Enforcement Court decisions (i) with the application of the owner, who is also the debtor, (ii) with the application of the claimants or Bailiff Officer if the vessel's value reduces significantly or costs of maintenance substantially (iii) with the application of the Bailiff Officer or Harbor Master if the vessel poses environmental or other security risks. The process would take minimum three months.

***Zeynep Özkan Özeren** has a degree in both law and international relations and a post graduate degree in shipping law from University of Southampton. After working with various international consultancy firms specialized in transportation law and a local law firm in Istanbul, she founded Özkan Law Office in 2005. Her practice mainly focuses on shipping law and international trade law. Zeynep Özkan Özeren is as a lecturer of international trade law at the Bogaziçi University, Istanbul. She is a member of Istanbul Bar Association and International Bar Association..*

SHIP ARREST IN *UKRAINE* (QUESTIONS 1 TO 9)

*By Arthur Nitsevych**
INTERLEGAL Law Firm
nitsevych@interlegal.com.ua
www.interlegal.com.ua
1 a, Gretska St.,
Odessa, 65062
Tel/Fax: +38 (0482) 337528 / 29

(QUESTIONS 10 TO 26)

*By Evgeniy Sukachev**
Black Sea Law Company
e.sukachev@blacksealawcompany.com
www.blacksealawcompany.com
66/2, French Boulevard, office 301
Odessa, 65062, Ukraine
Tel : +38 (094) 948 05 50
Fax: +38 (048) 737 37 10

1. Please give an overview of ship arrest practice in your country.

Initial ship arrest in Ukraine is fast, simple and inexpensive. In order to start the arrest procedure one needs to file the application on arrest as preliminary measures to the local Court/local Commercial court under the Civil Procedural Code of Ukraine/Commercial Procedural Code of Ukraine.

Civil Procedural Code of Ukraine regulates the ship arrest procedure in relation to labour or civil maritime claims (most often, the holders of such maritime claims are natural persons).
The Commercial Procedural Code of Ukraine regulates the ship arrest procedure in relation to commercial maritime claims (most often, the holders of such maritime claims are legal entities).
Usual term of considering the application is 2 working days, weekend excluded. Ordinary base of the demand is maritime claim. Normal period of the arrest: 30 days, until the claim on the merits will be filed to the relevant court/arbitration (from time to time it is better to file the claim on the merits to the same court in Ukraine in spite of Arbitration clause).

The practice of ship arrest is rather wide, more than 20 arrests per year, especially in the ports of Big Odesa (Odesa, Chornomorsk and Pivdennyi). At the same time, practice of ship arrest shows that courts also arrest vessels in Danube ports – Izmail, Reni, Ust-Dunaisk..

2. Which International Convention applies to arrest of ships in your country?

The International Convention for the Unification of Certain Rules Relating to the Arrest of a-Going Ships (Brussels, May 10, 1952) is the basic Convention. Also Ukraine adhered to the International Convention on Maritime Liens and Mortgages 1993 on 22 November 2002.

3. Is there any other way to arrest a ship in your jurisdiction?

There are many ways to arrest a ship in a Ukrainian port. As a rule vessels are arrested in Ukraine by means of:

a. preliminary arrest in security of a maritime claim pursuant to the order of the Court/ Commercial court;
b. arrest within the frame of enforcement of Court or arbitration award in accordance with national legislation;
c. arrest of a ship under a criminal matter.

Commercial courts and courts of general jurisdiction are the state courts which exercise jurisdiction over maritime disputes.

The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine is a domestic arbitral institution with a panel of arbitrators specializing in maritime arbitration. The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine may, at the written request of either party and if the request is considered justified, issue a decision to arrest a vessel. The application must clearly explain that the claim is maritime in nature.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

These measures are similar to saisie conservatoire or freezing order.

5. For which types of claims can you arrest a ship?

In Ukraine the ship, being the debtor's property, can be arrested regardless whether claims are maritime or not.

Vessels registered under a foreign flag may be arrested on the basis of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) for the following maritime claims:

a) damage caused by any ship as a result of collision or otherwise;
b) loss of life or personal injury caused by any ship or occurring in connection with its operation;
c) salvage of a ship or its cargo;
d) any agreement relating to the use or hire of a ship under a charter party or otherwise;
e) any agreement relating to the carriage of goods by a ship under a charter party or otherwise;
f) loss of or damage to goods, including baggage, carried by a ship;
g) general average;
h) bottomry;
i) towage;
j) pilotage;
k) supply of goods or materials for the operation or maintenance of a ship, regardless of where the supply is made;
l) construction, repair or equipping of a ship, or dock dues;
m) wages of masters, officers or crew;
n) expenses of the master, including disbursements made on behalf of the ship or its owner by shippers, charterers or agents;
o) disputes concerning ownership of a ship;
p) disputes between co-owners of a ship regarding ownership, operation or earnings from the ship;
q) mortgage or maritime lien on a ship.

Vessels registered in Ukraine may be arrested under the Code of Merchant Shipping of Ukraine for a broader range of maritime claims, subject to certain conditions and procedural requirements.

Code of Merchant Shipping of Ukraine contains range of maritime claims that is not included in Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships: causing damage to the natural environment; remuneration due for carrying out salvage operations or fulfilling the requirements of any salvage agreements; compensation and other amounts due for eliminating or attempting to eliminate the threat of damage, for taking preventive measures, or performing similar operations; raising, removal, or destruction of a vessel that has become a wreck, or its cargo, and the expenses incurred thereby; port, canal, and other navigational waterway dues, as well as dock charges; insurance premium, including contributions for mutual insurance, payable in respect of the vessel by its owner or bareboat charterer; any commission, brokerage, or agency fee payable in respect of the vessel by its owner or bareboat charterer; any dispute arising from a contract of sale of the vessel.

6. Can you arrest a ship irrespective of her flag?

It is possible to arrest a ship irrespective of her flag in Ukraine.

7. Can you arrest a ship irrespective of the debtor?

Ukrainian legislation recognizes jurisdiction in personam and does not support the action in rem, therefore it is impossible to bring a suit in rem against the vessel to satisfy debts arising from the operation or use of the vessel, by the person other than the owner.

8. What is the position as regards sister ships and ships in associated ownership?

Sister ships can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the proprietor/owner of the vessel to which the said claim has arisen. Additionally, there is no practice of lifting a corporate veil in Ukraine, so it is not possible to arrest a ship in associated ownership.

9. What is the position as regards Bareboat and Time-Chartered vessels?

If a charterer has possession of a ship under charterparty of a ship (with transfer of possession to the charterer) and is responsible for a maritime claim, the ship or any other ship owned by the charterer can be arrested. However, ships owned by the registered owner cannot be arrested for such claims.

***Arthur Nitsevych** is a Partner of "Interlegal" law firm. Membership: LMAA (London Maritime Arbitrators Association); IBA (International Bar Association); SCMA (Singapore Chamber of Maritime Arbitration); The Nautical Institute of the United Kingdom; EMLO (European Maritime Law Organization). Region, solicitor of the Odessa City Bar Association. Mr. Arthur Nitsevych has been practicing law since 1992 specializing in Shipping, Transport and Logistics, Transactions and Investments. Arthur Nitsevych is the Head of Organization Committee of the Annual International Conference "Practice of Maritime business: sharing experience" (2005-2011) and Maritime Days in Odessa 2012-2019. He conducted numerous seminars and legal trainings at national law schools and international conferences remaining the author of more than 90 articles.*
"Interlegal", celebrating 23 years of practice, is a top listed Ukrainian law firm focused on Transport, Shipping and Trade. The company employs over 50 lawyers headquartered in Odessa, Ukraine with its offices in Turkey, Georgia, Romania, Bulgaria, Moldova.

10. Do your Courts require counter-security in order to arrest a ship?

Counter-security in the arrest of the vessel in the Ukrainian jurisdiction applied based on the general rules established by Art. 154-155 of the Civil Procedure Code of Ukraine and Art. 141-142 of the Commercial Procedural Code of Ukraine.
Counter-security is a right, and not an obligation of the court, except for the cases specified in Art. 154 of the Civil Procedure Code of Ukraine (the plaintiff does not have a registered place of residence in Ukraine or the court has evidence that the plaintiff's property status or his actions may complicate or make impossible the execution of the court's decision on compensation for damages for wrongful arrest).
Counter-security can be provided as a court deposit, bank guarantee, or other actions determined by the court to eliminate potential losses. The amount of counter-security is determined by the court taking into account the circumstances of the case. The Plaintiff has 10 days for counter-security (if applicable), otherwise the arrest of a ship will be cancelled. Definitely, the best-case scenario would be not to use counter-security.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

From a procedural point of view, there is no difference between the arrest of the ship for the maritime claim or a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Ukraine ratified the International Convention on Maritime Liens and Mortgages (Geneva, 1993), by Ukrainian Law N 240-IV (240-15) of November 22, 2002.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Two-three businesses days are enough to arrest ship or release.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Under Ukrainian law, a lawyer's warrant and license are sufficient for a court or other authority. Also, the Ukrainian legislation requires an agreement between Attorney and the Client. Thereby, additional power of attorney does not require.

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 special requirements for documents to be submitted to the court, but the evidence must be sufficient. It is also necessary to submit to the court a copy of the Certificate of Good Standing if this company is not registered in Ukraine. If the documents are in a foreign language, they must be translated and, if possible, notarized.
It is also possible to submit documents in electronic form, in which documents will be certified by an electronic signature. However, it is also possible to file documents in hard copy.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

If the parties have not chosen jurisdiction and applicable law, the Court may consider the case on the merits in Ukrainian jurisdiction in accordance with Article 7 of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships and in some cases when domestic law otherwise gives the local Court jurisdiction, e.g.:

(a) any claims if one of the defendants is domiciled in Ukraine;
(b) claims to a nonresident defendant in Ukraine may be filed at the place of his property location;
(c) claims arising out of employment contract with ship’s crew if a claimant is domiciled in Ukraine;

(d) claims arising out of loss of life or personal injury to a person who is domiciled in Ukraine or in case the accident took place in Ukraine;
(e) claims arising out of damage caused in Ukraine to property of private persons or legal entities during the operation of a ship;
(f) claims arising out of any contract which specified a place of its execution or has to be executed in Ukraine only.
(g) claims arising out of damage, caused in Ukraine.

17. What is the procedure to release a ship from arrest?

There are two options for the release of the vessel from arrest. The first option is to apply for the release of the vessel from arrest to the same court that arrested the vessel, i.e. to the court of the first instance. The second option is to appeal the court's decision to the court of appeal. Undoubtedly, each of these options has its own characteristics, but the first option is more effective in most cases.

18. What type of security needs to be placed for the release?

To release the vessel from arrest, appropriate security will be Bank guarantee, a court deposit, or LOU of P&I Clubs. As a rule, a bank guarantee can be used as a substitute for an arrest and, generally, Ukrainian courts recognise a bank guarantee as an appropriate form of security for a maritime claim. As for P&I Club's LOU, recent court practice admits the possibility of using a P&I letter of undertaking as a form of security in commercial proceedings.

19. Does security need to cover interest and costs?

Ukrainian legislation requires that the security be in the amount indicated by the Claimant in the maritime claim, that is, in the application to the Court.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, Ukrainian Courts accept the P&I letter of undertaking as a form of security.

21. How long does it take to release the ship?

In the first option (paragraph 17) – 2 days, if a Bank guarantee, a court deposit, or LOU of P&I Clubs, in other cases – 5 days. In the second option (paragraph 17), the appellate court can consider the case for 30-45 days.

22. Is there a procedure to contest the arrest?

Yes, arrest of the vessel can be canceled by filing a statement with the Judge who arrested the vessel (that is, the court of the first instance), or by applying to the Court of Appeal within 10 days.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The arrest of the vessel is possible before the filing of the claim, so if the Plaintiff does not file a claim within the specified period (30 days) then the Court may release the ship from arrest. Also within 30 days, the Plaintiff must submit to the court evidence of filing a lawsuit with the claim, or commencement of the arbitration.

24. Do the Courts of your country acknowledge wrongful arrest?

Under Ukrainian law, Courts acknowledge wrongful arrest. The wrongful arrest will be subject to legal proceedings, and it is possible to compensate for damages and losses due to wrongful arrest.
In addition, in case of leaving the claim without consideration, closing the proceedings, refuse to satisfy the claim, failure of the applicant to file a lawsuit, the court has to release the vessel from arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No, Ukrainian Courts do not acknowledge the pierce and lift of the corporate veil.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No, the sale of the vessel is only possible after the final decision of the Court.

Mr Sukachev *is the Senior Partner at Black Sea Law Company and head of the company's shipping practice department, practicing in maritime law, particularly related to ship arrest and release, maritime arbitration, insurance, and assisting Ukrainian and international clients such as shipowners, P&I Clubs, ship-repair factories and shipyards, insurance companies, banks and other parties of maritime business. He has extensive litigation experience in ship arrest and releases cases.*
Mr Sukachev is a Board Member of the Ukrainian Maritime Bar Association, represents Ukraine on the Comité Maritime International, and is a Supporting Member of the London Maritime Arbitrators Association.
He graduated from the faculty of law of Odessa National Maritime Academy (LLB), the faculty of administrative law of Odessa National Law Academy – High School of Judgment (LLM), the faculty of history of Mechnikov I.I. Odessa National University and was the first Ukrainian participant of the Maritime Law Short Course of Southampton University (the course program 2019).

SHIP ARREST IN *UNITED ARAB EMIRATES* (QUESTIONS 1 TO 9)

*By Bashir Ahmed & Chatura Randeniya**
AFRIDI & ANGELL
bahmed@afridi-angell.com
crandeniya@afridi-angell.com
www.afridi-angell.com
P.O. Box 9371 Dubai, UAE
Tel: +971-4-330-3900
Fax: +971-4-330-3800

(QUESTIONS 10-26)

*By Adam Gray & Omar Omar**
AL TAMIMI AND COMPANY
a.gray@tamimi.com
o.omar@tamimi.com
www.tamimi.com
Level 7, Central Park Towers
PO Box 9275, Dubai, UAE
Tel: +971 4 364 1641
Fax: +971 4 364 1777

1. Please give an overview of ship arrest practice in your country.

Under the UAE Federal Maritime Law (Law No. 26 of 1981) ("FML") a right of arrest as provisional relief may be exercised in respect of a maritime debt. Claims constituting "maritime debts" are listed in Article 115 of the FML (see question 5).

An ex parte application is made to the Civil Court having jurisdiction over the port where the vessel is and the grant of any relief is entirely discretionary. A Plaintiff must provide prima facie evidence that it has a maritime debt against the Defendant, and that unless an arrest order is made, the Defendant is likely either to leave the Emirates permanently or to act in a manner which is likely to prejudice the Plaintiff 's rights. The court will after examination of the application and the supporting documents filed arrive at a decision -often without hearing Counsel. The Court may require counter security from the Plaintiff in the form of a bank guarantee (see question 10). The court will also require the following from the Plaintiff:

(a) An undertaking to pay all official fees and expenses relating to the towing or moving of the vessel or in any way connected with the arrest of the vessel including any amounts due to the crew;

(b) An undertaking to compensate the owners of the vessel against any delay or damage that may arise from the arrest of the vessel if the arrest is held to be wrongful by a judgment of the court.

(c) The Dubai courts have in the past been known to require confirmation from the port that the defendant is the owner of the vessel and that the vessel is within port limits.

The FML (Article 122) provides that the civil court in whose area of jurisdiction the arrest took place shall be competent to decide on the subject matter of the claim in certain circumstances even if the vessel does not fly the UAE flag (see question 16).

The FML (Article 325) contains certain provisions as to the jurisdiction of the courts in cases involving collisions. The UAE Civil Procedure Code of 1992 was most recently amended by Cabinet Resolutions Nos. 27 of 2018 and 33 of 2020 ("CPC") and appears to confer jurisdiction upon the UAE courts to hear a case against a foreign defendant who has no domicile or residence in the UAE and also to order provisional relief (such as the arrest of a vessel) even when the courts do not have jurisdiction to adjudicate upon the substantive merits of the matter.

The UAE courts have granted arrest applications as security for arbitration proceedings in another jurisdiction. In addition to the powers of arrest conferred by the Maritime Law, the Port Authorities of each Emirate also have certain powers of arrest and detention. The UAE courts do not award legal

costs other than in a token amount. Accordingly, the costs relating to the arrest and substantive claim will not be recoverable.

2. Which International Convention applies to arrest of ships in your country?

The UAE is not a party to any International Convention relating to arrest of ships. The arrest will be under the FML.

3. Is there any other way to arrest a ship in your jurisdiction?

See questions 1 and 2 above. The arrest is under the FML.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The arrest is under the FML.

5. For which types of claims can you arrest a ship?

Claims which constitute "maritime debts" as listed in Article 115 of the FML. These are:

(a) damage caused by a vessel as a result of a collision or other accident;
(b) loss of life or personal injury occasioned by the vessel and arising out of the use thereof;
(c) assistance and salvage;
(d) contracts relating to the use or exploitation of the vessel under a charter party or otherwise;
(e) contracts relating to the carriage of goods under a charter party, bill of lading, or other documents;
(f) loss of or damage to goods or chattels transported by a vessel;
(g) general average;
(h) towage or pilotage of a vessel;
(i) supplies of products or equipment necessary for the use or maintenance of the vessel, in whichever place the supply is made;
(j) building, repairing or supplying a vessel and dock dues;
(k) sums expended by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof;
(l) wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment;
(m) disputes over the vessel's ownership;
(n) a dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof;
(o) a maritime mortgage.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes, assuming that it is not a sovereign asset enjoying immunity in law.

8. What is the position as regards sister ships and ships in associated ownership?

The Plaintiff may arrest not only the vessel to which the claim relates, but also any vessel owned by the Defendant provided it was owned by him at the time the claim arose. The courts are not generally inclined to lift the veil of corporate personality. There is no right to arrest other vessels owned by a Defendant in the following circumstances (Article 116.2 and 117 of the FML):

a) in a dispute regarding the ownership of the vessel;
b) in a dispute relating to the co-ownership of the vessel, or the possession or use thereof, or the right to profits arising out of the use thereof;

c) in a claim arising from a maritime mortgage;
d) where the vessel was chartered by demise.

In relation to a claim against a vessel not owned by the owner but by the demise charterer, the Plaintiff may arrest either the vessel in respect of which the claim arose or any other vessel owned by the demise charterer. The Plaintiff may not arrest other vessels owned by the owner of the vessel in respect of which the claim arose.

9. What is the position as regards Bareboat and Time-Chartered vessels?

See question 8.

***Bashir Ahmed** joined Afridi & Angell in 1988. He advises clients on cross-border, maritime, general corporate and commercial, private equity, and banking matters. His maritime practice involves advising ship owners and P&I Clubs, dry docks and a number of ship repair companies on shipbuilding contracts, arrest of vessels, cargo claims, as well as advising on disputes. He represents a number of banks on ship financing transactions.*

Bashir has considerable experience advising international and domestic banks on a wide range of matters including loan and credit facilities, syndications and regulatory matters and has advised on a number of mining and refinery projects as well as infrastructure projects. He was seconded to the regional of office of an international bank for a period of 18 months, and acted as counsel for the Middle East and South Asia operations.

***Chatura Randeniya** joined Afridi & Angell in 2008. His practice consists primarily of dispute resolution, ranging from pre-litigation strategy to representation in substantive litigation and arbitration. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, and ICC arbitrations. He also works with local advocates on matters before the UAE Federal Courts, including the Federal Supreme Court in matters of national security, as well as the Courts of Dubai and Ras Al Khaimah.*

Mr Randeniya advises on maritime and shipping disputes, real estate and construction disputes, and disputes relating to commercial transactions. He has advised ship owners, P&I clubs, and drydocks on a wide range of disputes including arrest of vessels and cargo claims. Prior to joining Afridi & Angell, Mr. Randeniya was in the private bar of Sri Lanka practicing in the Law Chambers of Dr Harsha Cabral, President's Counsel. He was also a visiting lecturer in law at the faculties of Law and Management at the University of Colombo.

10. Do your Courts require counter-security in order to arrest a ship?

Yes, Article 56 of the Maritime Code 2024 provides that it will not be permissible to arrest a vessel unless the arrest applicant provides a "financial guarantee" to cover the ship's and crew's necessary safety needs during arrest; these outlays are treated as judicial expenses. The financial guarantee form and value shall be at the discretion of the Urgent Matters Judge and can fluctuate in value on a case-by-case basis, and differ from emirate to emirate.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Arrest is available for any "maritime debt" listed in Article 53; maritime liens (referred to as "priority debts" in the Maritime Code) are a separate, preferred set of claims with statutory priority and specific rules on scope, priority, prescription, and extinction; both can found an arrest, but priority debts / liens carry enhanced priority for a period between 6-12 months and follow the ship/price upon sale per the statute.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, liens are recognised under domestic law (Articles 29–37) , albeit termed as "priority debts", with an enumerated list and priorities. The statute does not rely on a ratified maritime lien convention for recognition.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

An application is filed for consideration by the Urgent Matters Judge. In most emirates the application is now filed online and applications are typically heard within 1-3 working days. Applications are not considered over the weekend.
The efficiency of the courts varies across the different emirates and can change over time. In practice, the time frame will depend on the availability of (i) a finalised power of attorney, and (ii) translation of the supporting documents. If all these documents are available in hand, an arrest order can often be procedured within 1-2 working days.

14. Do you need to provide a POA or any other documents of the claim to the Court?

To arrest any vessel in the UAE, the applicant shall provide a POA to lawyers having right of audience before the UAE courts. The UAE is not a party to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (the Apostille Convention). Accordingly, if the POA originates outside of the UAE, it must be notarized in the place of issuance and then attested by the diplomatic institutions. Once legalized and couriered to the UAE, it will undergo attestation in the UAE by the Ministry of Foreign Affairs and Ministry of Justice, along with translation into Arabic by a certified legal translator. This process typically takes a minimum of one week and consequently often rule out urgent arrests where a POA is not already in hand.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

To file an arrest application in the UAE, the following documents must be provided, in Ariabic:
a) a notarized and legalized POA;
b) all the claim documents evidencing the extant maritime debt, translated into Arabic by a certified legal translator;
c) evidence that the debtor is the registered owner of the ship or the targeted sister ship; and
d) payment of the appropriate court fee a provision of a financial guarantee.

It is good practice to provide evidence that the vessel is in territorial waters, and only the POA is required to be notarised/legalised. It has to be stressed however that all documents need to be translated into Arabic by a certified legal translator. Most emirates require filing of the arrest application online.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Article 60 stipuldates that the court in whose jurisdiction the arrest order is made may seize jurisdiction over the substantive claim in specified cases (e.g., plaintiff domiciled in UAE; the maritime debt arose in the UAE; the maritime debt arose during the voyage when arrest was made; collision/salvage debts; mortgage–secured debt), without prejudice to any arbitration agreement.
The court will want to see evidence of the commencement of substantive proceedings within five (5) calendar days from and including the date of the arrest order, failing which the arrest will be lifted.

17. What is the procedure to release a ship from arrest?

The court must lift the arrest upon provision of "guarantee or other security" sufficient to satisfy the debt, except for ownership/possession and co–owner disputes (Art. 53(2)(S)–(T)), where the court may allow exploitation under security or appoint a manager. Absent the deposit of an acceptable guarantee or other security, the court will only lift the arrest upon confirmation of agreement between the parties / withdrawal of the arrest by the applicant or against a final and unappealable judgment / recognised and enforceable final arbitration award.

18. What type of security needs to be placed for the release?

Article 118(2) Federal Law No. (26) of 1981 ("Maritime Code") states that: "The civil court having jurisdiction shall order that the arrest be set aside upon presentation of a guarantee or other security sufficient to satisfy the debt." In practice, the courts typically recognise three standard forms of security for a maritime debt: cash, a manager's cheque deposited in court, or a bank guarantee issued by a UAE-based bank.
In line with the Maritime Code, the courts tend to only accept security equal to the full value of the claim, which may not always be a fair assessment.

19. Does security need to cover interest and costs?

No, there is no requirement for the security to cover interest and costs in the UAE. However, we have seen instances where the court includes interest as part of the debt when submitted in the arrest application by the claimant. However, this varies on a case by case basis and as a result, if not worded carefully in the arrest application, could result in the rejection of the arrest.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The parties may agree for a P&I LOU to be accepted to lift an arrest, however, in such a case the UAE courts will usually not be involved and the parties will need to withdraw the request to arrest/ precautionary attachment accordingly once the LOU is received. The UAE courts do not generally accept LOUs from P&I Clubs to lift arrests because P&I clubs are not based in the UAE. However, in some instances, we have succeeded, further to the parties' agreement, in obtaining the courts acceptance of the LOU from P&I Clubs to lift the arrests.

21. How long does it take to release the ship?

The timing of when the release order is received may impact when the vessel is released, i.e., where the release order is received in the afternoon or before a weekend, however generally a vessel is released on the same day or the next working day after the court order has been issued.

22. Is there a procedure to contest the arrest?

Yes, in accordance with the Civil Procedure Code, any party whose vessel has been arrested is entitled to file a grievance against the arrest. It is worth noting, that the court will review only two things in relation to a grievance; (a) the procedural elements of the arrest; and (b) whether the debt in question is a maritime debt in accordance with the law.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claimant is provided with a time frame of eight (8) calendar days to initiate legal proceedings, running from from the date that the arrest order is granted.

24. Do the Courts of your country acknowledge wrongful arrest?

No, the legal framework of the UAE does not contain any specific provisions termed “wrongful arrests”. However, in the event of a wrongful arrest, an aggrieved party may seek compensation only if they can demonstrate to the court that the arrest was carried out with malicious intent or in bad faith, including submission of any fraudulent documents, amongst other things, with the intention of causing harm.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

In the regulatory framework of the UAE, there are no legal provisions enabling the courts to pierce or lift the corporate veil. As a consequence, such proceedings are not mandatory and remain subject to the court's own discretion. As a result, it would be challenging for a claimant to seek such an action. However, it is worth highlighting that vessels owned by the same group owners will typically be regarded as sister vessels by the courts.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

During the course of proceedings against a vessel, the applicable regulations do not provide for private sales of the ship. For a private sale to occur all debtors in relation to the arrest must come to an agreement on the private sale with no involvement of the court.
However, a judicial sale may be authorized if the vessel owners consent to the sale and a joint application is submitted to the court. The only other scenario in which a judicial sale may occur is when a claimant, following a court's judgment in their favour, is unable to recover damages from the defendant. In such cases, the Maritime Code empowers the court to order a judicial sale in favour of the claimant.

*In 2008 ***Omar*** *joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries. Ranked by both Legal 500 and Chambers and Partners, Omar’s experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.*
Omar is an author of the UAE Vessel Registration and Mortgage Section in the Kluwer International Maritime Law Handbook. He is currently heading the EMAC team to establish the first Maritime Arbitration Centre in the UAE and the region.
***Adam Gray** - LLB Law, University of Surrey 2010, LPC, College of Law 2011, England & Wales Roll of Solicitors 2013. Adam is a UK qualified Solicitor having trained at an International Group P&I Club in London. He now practices as an Associate Legal Consultant in Dubai. Adam has a particular interest in maritime dispute resolution and insurance matters. He has assisted clients in litigating, defending, negotiating and settling complex contentious cases on a wide spectrum of matters, including ship arrests, charterparty and cargo disputes and P&I claims.*

SHIP ARREST IN *USA*

*By George M. Chalos**
CHALOS & CO, P.C. – INTERNATIONAL LAW FIRM
gmc@chaloslaw.com
www.chaloslaw.com
55 Hamilton Avenue, Oyster Bay, New York 11771
Tel: +1 516 714 4300
Fax: +1 516 750 9051
7210 Tickner Street, Houston, TX, 77055
Tel: + 1 713 574 9582
Fax: + 1 866 702 4577

1. Please give an overview of ship arrest practice in your country.

The Federal Rules of Civil Procedure (F.R.C.P.)'s Supplemental Rules for Certain Admiralty and Maritime Claims (hereinafter "the Supplemental Rules") govern the procedure for arresting or attaching a vessel in the United States. The Supplemental Rules apply to all admiralty and maritime claims within the meaning of F.R.C.P. 9(h). Rule C of the Supplemental Rules (hereinafter "Rule C") is the procedural mechanism used to arrest property (i.e. – a vessel) that is subject to a maritime lien or other U.S. statute that creates an in rem cause of action. Once the arresting party has obtained a warrant of arrest from the Court, the U.S. Marshal Service will serve the Court's warrant on the vessel to affect the arrest. Rule C(3)(b) provides that only the marshal may serve the warrant to seize the vessel. However, due to Covid-19 many jurisdictions began permitting the Court approved substitute custodian to serve the warrant of arrest on behalf of the Marshal Service. Should the change become permanent, it will greatly expand the window within which vessels may be served and seized, i.e. 24-hours a day, instead of just business hours during weekdays used by many U.S. Marshal offices.

2. Which International Convention applies to arrest of ships in your country?

None.

3. Is there any other way to arrest a ship in your jurisdiction?

No.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Supplemental Rule B (hereinafter "Rule B") provides for the pre-judgment attachment of a defendant's property (including a vessel) if the claimant has an in personam maritime claim against the owner of the vessel, provided that the defendant/owner cannot be "found" in the district where the attachment is sought.

5. For which types of claims can you arrest a ship?

Under the applicable U.S. law, a vessel may either be arrested (under Rule C) or attached (under Rule B).

- Rule C arrest: Procedural mechanism used to arrest property subject to maritime lien or where U.S. statute provides for maritime action in rem
  - Property arrested must be related to the Plaintiff's claim
  - Maritime lien claims under U.S. law include: ship repairs; ship supplies; towage; use of dry dock or maritime railway or other necessities to any ship; crew wages; tort claims arising from a collision; personal injury claims (excluding Jones Act claims against employer); wharfage; stevedoring; cargo damage/loss; certain maritime contracts (e.g. breach of charter party); preferred ship mortgages; salvage; claims for maritime pollution.

- If the underlying contract, service, or transaction is subject to foreign law and the substantive foreign law provides for a maritime lien, then Rule C can also be utilized to arrest a vessel.

• Rule B attachment: Allows a party to obtain quasi in rem jurisdiction over a defendant's property for any debt arising out of a maritime claim, when the defendant "cannot be found within the district."
  - The property attached may be unrelated to the events giving rise to the claim, and the Plaintiff need not have a maritime lien on the vessel.
  - Maritime claims include maritime torts and any claim arising from breach of a "maritime contract" such as a charter party or bill of lading. Under U.S. law, "maritime contracts" generally do not include shipbuilding contracts; vessel sale and purchase contracts; brokerage or other preliminary service contracts; or commodities sale and purchase contracts.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

Yes, except that you cannot arrest a vessel owned by a government or other foreign sovereign, as per the Foreign Sovereign Immunities Act.

8. What is the position as regards sister ships and ships in associated ownership?

Arrest of sister ships/associated ships is not possible, unless you can show an alter-ego relationship or other common ownership of assets.

9. What is the position as regards Bareboat and Time-Chartered vessels?

A Rule C arrest can only be made for an in rem claim, as an arrest is made against the ship, not its owner or charterer. However, a Rule B attachment can only be sustained where there is a valid prima facie claim against a party in personam (including the bareboat or time charterer).

10. Do your Courts require counter-security in order to arrest a ship?

U.S. Courts do not require counter-security in order to arrest or attach a ship. Some U.S. Courts have a local rule requiring a $500 security deposit be filed with the Clerk of the Court at the time the arrest is sought. In addition, Rule E(7) provides that when a Defendant who has posted security for damages in an action asserts a counterclaim arising from the same transaction or occurrence, a Plaintiff must post counter-security in the amount of damages demanded in the counterclaim (unless the Court, for good cause shown, directs otherwise). Additionally, Rule E(2)(b) allows the Court to require any party to post security, in an amount directed by the Court, to pay all costs and expenses that shall be awarded against the party by any interlocutory order, final judgment, or on appeal.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Under the applicable U.S. law, a vessel may either be arrested under Rule C (which requires a maritime lien) or attached under Rule B (which simply requires a maritime claim).

• Rule C: Procedural mechanism used to arrest property subject to maritime lien or where U.S. statute provides for maritime action in rem
  o The property arrested must be related to the Plaintiff's claim
  o The U.S. Marshal must be engaged to arrest the property

• Rule B: Allows a party to obtain quasi in rem jurisdiction over a defendant's property for any debt arising out of a maritime claim, when the defendant "cannot be found within the district."
  o Property attached may be unrelated to the events giving rise to the claim, and the Plaintiff need not have a maritime lien on the vessel

- o A special process server may be appointed by order of the Court) to attach the property, instead of a U.S. Marshal. However, if the property in question is a vessel, bunkers, or cargo, a U.S. Marshal will generally still be required.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Ordinarily, an attachment and/or arrest order can be obtained within a few hours, when filing an emergent motion. Rule C(3)(a)(ii) and Rule B(1)(c) require the Clerk to issue the summons and warrant for arrest of the vessel or process of attachment and garnishment, respectively, where the Claimant's attorney certifies that exigent circumstances exist that make court review impracticable. However, most Courts have done away with the practice, despite the availability under the Rules. Given the fact that all cases are filed electronically and the District Judges and Court Staff immediately have access to the pleadings, it would be difficult to prove that Court review is unavailable. is impractical." If the Judge assigned to the matter is unavailable (out of the office, engaged in trial, etc.), the preferred method for review is to request that the Court Clerk assign the motion seeking arrest or attachment to an U.S. Magistrate Judge or another District Judge for emergency review, so that the vessel (or other property) does not depart the jurisdiction.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA is not required to arrest or attach a vessel. The documents to be submitted to U.S. Courts vary depending on the type of proceeding commenced and the U.S. jurisdiction in which the arrest or attachment is sought.

1. For Both Rule C arrests and Rule B attachments:
   - Verified Complaint asserting that the Claimant's underlying claim is an admiralty/maritime claim within the meaning of Rule 9(H) of the Federal Rules of Civil Procedure, accompanied by supporting claim documentation
   - Summons
   - Agreement of Indemnity, agreeing to hold the Marshal harmless for damages if the arrest/attachment is later found to have been wrongful
   - Form USM-285/U.S. Marshal Service Process Receipt and Return
   - A bank or certified check (for an amount which varies by jurisdiction) as a deposit to cover insurance, guard services, and other costs related to arresting/maintaining the vessel
   - Motion for appointment of substitute custodian, with supporting declaration of proposed substitute custodian and proposed order (not mandatory in some U.S. jurisdictions) – may reduces the costs that must be deposited with the Marshal

2. For Rule C Arrests: To commence a Rule C proceeding, the following additional documents are required:
   - Affidavit containing the grounds for arrest
   - Motion for Issuance of Warrant for Arrest
   - Proposed Order for Issuance of Warrant Arrest – authorizing Clerk of the Court to issue a Warrant of Arrest providing the U.S. Marshal with authority to arrest the vessel
   - Motion to Permit Vessel to Continue Cargo Operations and to Shift Berths (not mandatory) – requests authorization for the vessel to continue cargo operations during the period of arrest and to move within the district
   - Proposed Order Allowing Vessel to Shift Between Berths – allows the Marshal or substitute custodian to move the vessel without petitioning the Court
   - Warrant of Arrest
   - Notice of Arrest – accompanies Complaint and Warrant of Arrest when the Marshal physically arrests the vessel

3. For Rule B Attachments: To commence a Rule B proceeding, the following additional documents are required:

- Affidavit certifying that the defendant cannot be found within the district
- Application for Order issuing writ of maritime attachment
- Proposed Order authorizing writ of maritime attachment
- Writ of maritime attachment, which is issued to the Marshal and provides authority to attach the defendant's property located in the district
- Notice of Attachment (to accompany writ of maritime attachment)

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The Complaint must be verified by the Claimant, but if the Claimant resides outside the district where the arrest application is filed, the Complaint may be verified by the Claimants' attorneys. In addition, most Courts now accept electronic verifications from a corporate representative of the Claimant, so long as the .pdf has a wet ink signature. The original documents required by each Court and the documents which may be electronically filed vary by jurisdiction. Most Courts require an original signature on all initiating documents, but require electronic filing of subsequent documents. Other Courts permit a claimant to commence an action by filing the Complaint and all related documents electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Once a vessel has been attached/arrested, U.S. courts will assume quasi in rem or in rem jurisdiction, respectively, up to the amount of the claim. Accordingly, the courts will have jurisdiction over the substantive claim, unless a forum selection clause requires that the claim be brought in a foreign jurisdiction.

17. What is the procedure to release a ship from arrest?

A ship may be released voluntarily by the Plaintiff, if a settlement is reached and/or if the vessel interests post substitute security in place of the vessel. In such cases, depending on the terms of the Order authorizing the arrest, the vessel may be released without a further Court Order upon the Plaintiff's counsel providing notice in writing to the U.S. Marshal, the substitute custodian (if one has been appointed), and the Court that the vessel may be released from arrest. Additionally, the Vessel may be released by Court Order if, after conducting a post-seizure hearing pursuant to Rule E(4)(f) of the Supplemental Admiralty Rules, the Court determines that the arrest was improper and should be vacated.

18. What type of security needs to be placed for the release?

Rule E(5) of the Supplemental Admiralty Rules permits the owner of a vessel to secure the release of the vessel by posting a bond or stipulating to another form of security, such as cash security or a Club Letter of Undertaking. In the event that the parties cannot reach an agreement as to the form or quantum of the substitute security, Rule E(5)(a) provides that the Court may order the posting of a bond and fix the principal sum of the bond. Although other forms of security can be agreed between the plaintiff and the vessel interests, the Court may only require the plaintiff to accept a bond a substitute security.

19. Does security need to cover interest and costs?

Yes. Rule E(5) allows a vessel to be released upon the posting of substitute security at an amount sufficient to cover the amount of the plaintiff's claim, fairly stated with accrued interest (at six (6) cents per annum) and costs; provided that the quantum of the bond does not exceed (i) twice the amount of the plaintiff's claim; or (ii) the value of the property on due appraisement, whichever is smaller. Rule E(5)(a) provides that interest should be set at that rate of six per cent (6%) per annum.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Although an arresting plaintiff may agree to accept a P&I LOU as substitute security to lift an arrest, the Court cannot require the plaintiff to accept this form of security in lieu of the arrest of the Vessel.

21.How long does it take to release the ship?

The vessel will typically be released from arrest and permitted to continue on her voyage within hours of Plaintiff's counsel providing notice to the U.S. Marshal and/or substitute custodian that the ship may be released.

22. Is there a procedure to contest the arrest?

Rule E(4)(f) of the Supplemental Admiralty Rules provides that any person claiming an interest in arrested or attached property is entitled to a prompt post-seizure hearing, where the plaintiff will be required to show cause why the arrest or attachment should not be vacated. While the time frame in which this hearing must be held varies pursuant to the Local Rules of the jurisdiction in which the vessel is arrested, most Courts will hold the "Rule E(4)(f)" hearing within seven (7) days following the arrest and the challenge to same.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Although there is no set period of time in which a Claimant that has caused a vessel to be attached/arrested must commence substantive proceedings, the answer to this question will depend largely on the judge assigned to the case. Many judges require that such proceedings be commenced as soon as possible.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes; however, an arrest will only be set aside as wrongful in exceptional circumstances (i.e. – if the Defendant shows that the claimant acted with bad faith, malice or gross negligence).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. In arresting a vessel under Rule C, a Plaintiff need not pierce the corporate veil because the action is in rem against the vessel. However, in a Rule B attachment action, the corporate veil may be pierced. Although there are no mandatory requirements, the U.S. Courts consider ten (10) factors in determining whether the corporate veil may be pierced, including:
disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors, and personnel; common office space, address & telephone numbers of corporate entities; the degree of discretion shown by the allegedly dominated corporation; whether the dealings between the entities are at arms length; whether the corporations are treated as independent profit centers; payment or guarantee of the corporation's debt by the dominating entity; and intermingling of property between entities.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Rule E(9) authorizes a Court to Order the marshal to conduct an interlocutory sale of a vessel if the property is perishable or subject to deterioration, decay, or injury by being detained in custody pending the action; the expense of keeping the property is excessive or disproportionate; or there is an unreasonable delay in securing the release of the property. The time frame for conducting the interlocutory sale of a vessel varies by jurisdiction/judge, but generally will not be entertained by the Court until at least three (3) months have elapsed since the time of arrest.

***George M. Chalos** is the founding member of Chalos & Co, P.C.-International Law Firm and is experienced in all facets of maritime civil and criminal litigation. Mr. Chalos regularly acts as lead counsel in high profile Federal and State court matters throughout the United States, and has assisted in presenting claims before the London High Court of Justice. Additionally, Mr. Chalos is recognized as a leading attorney with respect to Marpol and other environmental pollution matters, including and particularly the defense of criminal pollution cases, as well as the complex third-party litigation arising from a pollution incident. Mr. Chalos is a published author with respect to the United States' vessel initiative program targeting suspected Marpol violators for criminal prosecution, as well as the presentation of claims to the Oil Spill Liability Trust Fund. For more information about vessel arrests or other questions of U.S. law, please feel free to contact Mr. Chalos.*

SHIP ARREST IN *VENEZUELA*

*By Jose Alfredo Sabatino Pizzolante**
Sabatino Pizzolante Abogados Marítimos & Comerciales
jose.sabatino@sabatinop.com
www.sabatinop.com
Centro Comercial "Las Valentinas", Nivel 2
Oficinas 12/13, Puerto Cabello,
Puerto Cabello 2050, Estado Carabobo
Venezuela
Tel: +58 242 3618159
Fax: +58 242 3614453

1. Please give an overview of ship arrest practice in your country.

Rules related to the arrest of ships in Venezuela have significantly improved with the enactment of the Law on Maritime Commerce (LMC) published in the Official Gazette No.38, 351 dated 5th January 2006. To some extent, the notion of an action in rem has been included in the LMC, in the sense that actions can be exercised against the ship and her Master, without being necessary to make mention of the owners (art. 15 LMC), whereas the writ can be served by handing it over to anyone onboard the ship, and even by fixing one cartel in the ship in the presence of two (2) witnesses, if there is no anybody onboard (art.110 LMC). The arrest or the prohibition from sailing will be carried out by notification effected by the court to the Port Captaincy where the vessel is found. In urgent cases, the legislation allows to inform prohibition from sailing by electronic means, as prescribed by article 104 of the LMC.

2. Which International Convention applies to arrest of ships in your country?

Arrest of ships under Venezuelan law is governed by the provisions contained within the LMC, incorporating very much the 1999 International Convention of Arrest of Ships.

3. Is there any other way to arrest a ship in your jurisdiction?

Together with the exercise of the arrest of a ship in the terms allowed by law or "preventive embargo", art. 103 of the LMC includes another mechanism to guarantee a maritime claim according to which the holder of a maritime claim in respect of a ship may request from the competent court a "precautionary measure of prohibition from sailing", in order to guarantee the existing maritime claim. The court shall agree on the petition without mayor formality, provided evidence is submitted from which it can be inferred presumption of the right that is claimed. If this evidence is not sufficient, the court may request a guarantee to decree this precautionary measure.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

Following a ruling by the Supreme Court of Justice in 2004 it has been held that the arrest or preventive embargo does only proceed in the event of maritime claims as listed by the law. In case of credits different than those regarded as maritime claims then the prohibition from sailing is available pursuant the rules of the Civil Procedure Code.

5. For which types of claims can you arrest a ship?

Article 93 of the LMC contains the list of maritime claims giving rise to an arrest (embargo preventivo) of ship:

a. - Loss or damage caused by the operation of the ship;

b. - Loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

c. - Salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

d. - Damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs for reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature;
e. - Costs or expenses relating to the raising, removal, recovery, destruction or the rendering armless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
f. - Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
g. - Any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
h. - Loss of or damage to or in connection with goods (including luggage) carried on board the ship;
i. - General average;
j. - Towage;
k. - Boating (Lanchaje);
L.- Pilotage;
m. - Goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
n. - Construction, reconstruction, repair, converting or equipping of the ship;
o. - Port, canal, dock, harbor and other waterway dues and charges;
p. - Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
q. - Disbursements incurred on behalf of the ship or its owners;
r. - Insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
s. - Any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
t. - Any dispute as to ownership or possession of the ship;
u. - Any dispute between co-owners of the ship as to the employment or earnings of the ship; and,
v. - A mortgage or a "hypothèque" or a charge of the same nature on the ship.

6. Can you arrest a ship irrespective of her flag?

Yes. As per art. 13 of the LMC domestic maritime courts are competent to know of proceedings involving a foreign flag ship in cases where according to domestic legislation it can be arrested, unless there is an arbitration agreement or attributing competence to another jurisdiction, in which case the arrest will be granted for the purposes of obtaining a guarantee to execute the eventual arbitration award or judicial decision.

7. Can you arrest a ship irrespective of the debtor?

Yes, it is possible to arrest a ship irrespective of the debtor being national or foreign.

8. What is the position as regards sister ships and ships in associated ownership?

The provisions set by the LMC allows the arrest of the ship in respect of which the maritime claim arose, as well as the arrest of a sister ship, but not one in associated ownership.

9. What is the position as regards Bareboat and Time-Chartered vessels?

As per art. 95 of the LMC the arrest of the bareboat ship is possible if the bareboat charterer by the time the maritime claim arose is obliged by virtue of the relevant credit. Time-Chartered ships, however, may be subject to a preventive measure of prohibition from sailing.

10. Do your Courts require counter-security in order to arrest a ship?

Art. 97 of the LMC states that the court, as a condition to grant the arrest of the ship, may request to the claimant the submission of a guarantee in the amount and subject to the conditions determined by the former, for the claimant to answer for the damages that may cause as a consequence of the arrest. Usually, this guarantee may take the shape of a bond equivalent to 30% of the claim amount as a maximum legal costs, plus the double of the said claim amount.
As per art. 98 of the LMC the defendant may oppose the arrest or request the lifting of it, if in the opinion of the court sufficient security has been provided, except in cases in which a ship has been arrested in respect of any of the maritime claims related to ownership or co-owners disputes. In these cases, a bond or a Letter of Undertaking issued by a reputable P&I Club can be used if acceptable by claimants.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice there is no difference, other than for the purposes of the priorities in the concurrence of credits.

12. Does your country recognise maritime liens? Under which International Convention, if any?

The LMC has incorporated the main provisions of the 1993 Convention on Mortgages and Maritime Liens. Consequently, the country does recognize maritime privileges or liens on a ship.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Petition of arrest has to be filed before the First Instance Maritime Court, and formalities can be arranged preferably 96 hours in advance, provided needed documentation is available.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Power of Attorney will be needed to appear in court, together with any public or private document, accepted invoice, charter-party, bill of lading or similar document proving the existence of a maritime claim.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The Law on Maritime Procedures (published in the Official Gazette Extraordinary No.5, 554, dated 13th November 2001) allows the use of the electronic Power of Attorney; for the purposes of submittal and admission of a lawsuit or any other petition, representation of the plaintiff may be proved by written or electronic means, provided it is accompanied by a guarantee of 10,000 units of account; however, this must be later replaced by the formally granted POA. All supporting documentation must be submitted in original duly notarized with the Apostille formalities as per the 1961 Hague Convention and translated into Spanish by public translator.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

According to art. 100 of the LMC the Court granting the arrest or receiving the guarantee to allow the release of the ship will be competent to deal with the merits, unless the parties have validly agreed to submit the matter to arbitration or to a foreign jurisdiction.

17. What is the procedure to release a ship from arrest?

A writing of opposition to the arrest (embargo or prohibition from sailing) must be submitted, either before the serving of the writ or within the three days following it. An eight days period is then opened to promote evidence, at which time the court should take a decision on the second day. This decision is subject to appeal before the Superior Maritime Court.

18. What type of security needs to be placed for the release?

Security may take the shape of a bond issued by an insurance company or a bank of recognised solvency, as well as a cash deposit.

19. Does security need to cover interest and costs?

Procedural rules only prescribe that the security must be equivalent to 30% of the claim amount for legal costs (interest included), plus de double of the said claim amount.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

LOUs by reputable P&I Clubs can be used before the maritime courts, provided it is acceptable to the opponent party or claimant. Even so, it is a matter of discretion for the court.

21. How long does it take to release the ship?

Difficult to give a precise time frame, since this may depend upon the facts of the specific case. Bearing in mind that maritime courts work only by court days, so excluding the non working days and weekends, the release could take not less than 13 days.

22. Is there a procedure to contest the arrest?

The Law on Maritime Commerce refers to the opposition as the mechanism to contest the arrest; however, the governing provisions are prescribed by the Civil Procedural Code and some others of the maritime legislation.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Art. 14 of the LMC states that the court shall suspend any anticipated arrest granted prior to legal proceedings, if within the following ten (10) running days to be counted from the date of the arrest was effected, the lawsuit is not filed. This happens when the arrest is requested by way of petition for prohibition from sailing without filing the lawsuit with arrangement to art. 10 and 103 of the LMC. If granted the arrest or submitted the guarantee to release the ship, the Court is not competent to deal with the merits a period of time shall be given for the lawsuit to be brought either in the competent court or arbitration as per art. 101 of the LMC.

24. Do the Courts of your country acknowledge wrongful arrest?

Eventual damages for wrongful arrest are prescribed by article 99 of the LMC, according to which the court which grants the arrest of a ship, will be competent to determine the extent of liability of the claimant, for any loss which may be incurred by the defendant as a result of the arrest in consequence of:

a) the arrest having been wrongful or unjustified; or
b) excessive security having been demanded and provided.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Although it has been accepted in some employment cases, this has had little development and there are no precedents in the maritime field at the moment.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Art. 106 of the LMC states that after 30 continuous days following the arrest of the ship, without the shipowner not attending to proceedings, the court at the request of the claimant, may order the anticipated auction of the ship, subject to the claimant submitting sufficient guarantee, provided the claim exceeds the 20% of the value of the ship and it is exposed to ruin, obsolescence or deterioration.

***Mr. José Alfredo Sabatino Pizzolante** holds a Law Degree from the University of Carabobo (Venezuela). He studied at the University of Wales, College of Cardiff, where he obtained an MSc in Port and Shipping Administration as well as an LL.M in Maritime Law. Currently he is a Partner of Sabatino Pizzolante Abogados Marítimos & Comerciales, a law firm specializing in Maritime, Port and Customs Law, and a Professor at the Universidad Maritima del Caribe (Caracas). Mr. Sabatino Pizzolante has wide experience on P&I matters. He is also a Legal Advisor to the Venezuelan Shipping Association, President of the Venezuelan Association of Maritime Law, Executive Vice-President of the Venezuelan Association of Port Law, Titular Member of the Comité Maritime International and the Iberoamerican Institute of Maritime Law. He has extensively written on the Venezuelan maritime law subject, attending many international seminars and congress as speaker.*

SHIP ARREST IN *VIETNAM*

*Dinh Quang Thuan**
GLOBAL VIETNAM LAWYERS LLC
thuan.dinh@gvlawyers.com.vn
www.gvlawyers.com.vn
8th Floor Centec Tower
72-74 Nguyen Thi Minh Khai Street,
Xuan Hoa Ward, Ho Chi Minh City, Vietnam
Tel: +84 (0) 918 116 704

1. Please give an overview of ship arrest practice in your country.

Vietnam's extensive coastline has played a crucial role in bolstering the country's economic activities, particularly after its accession to the World Trade Organization in 2007. The maritime industry, operating within a highly competitive environment, has witnessed a continuous occurrence of maritime claims, including ship arrest claims. The initial instance of such a claim resulting in a ship arrest can be traced back to the early 1990s when a request was filed with the people's court of Da Nang city, Vietnam. Since then, there has been a progressive development in the legislation pertaining to ship arrest. Under the Ordinance on Ship Arrest of 2008 (as amended, supplemented by the Ordinance No. 08/2025/UBTVQH15 passed on 26 June 2025, hereinafter collectively referred to as "Ship Arrest Ordinance"), along with the Vietnam Maritime Code of 2015 (as amended, supplemented by the Law No. 81/2025/QH15 passed on 24 June 2025, hereinafter collectively referred to as "Maritime Code") and the Civil Procedure Code of 2015 (as amended, supplemented by the Law No. 85/2025/QH15 passed on 25 June 2025, hereinafter collectively referred to as "Civil Procedure Code"), provisions have been established to govern the process of ship arrest. Here is an overview of ship arrest practice in Vietnam:

Legal Framework: The primary legislations governing ship arrest in Vietnam are the Ship Arrest Ordinance, along with the Vietnam Maritime Code and the Civil Procedure Code.

Admiralty Jurisdiction: The regional-level people's courts in the regions where seaports or inland waterway ports are located have the authority to arrest seagoing ships operating at these ports. This jurisdiction applies to secure the settlement of maritime claims, enforce civil judgments, or exercise jurisdiction granted by foreign courts.
Courts that are currently handling civil cases, as well as regional-level people's courts in localities where arbitration councils accept disputes, have the power to decide on the arrest of seagoing ships as a provisional urgent measure.
If there is a disagreement among the regional-level people's courts within the same provinces regarding the jurisdiction to decide on the arrest of seagoing ships, the Chief Judge of the Provincial People's Court will consider and make a decision to assign the appropriate regional court with the jurisdiction. If such disagreement occurs among the regional-level people's courts across different provinces, centrally run cities, the Chief Judge of the Supreme People's Court will consider and make a decision to assign the appropriate court with the jurisdiction.

Maritime Claims: Ship arrest in Vietnam can be pursued for various maritime claims, such as unpaid crew wages, damage caused by a collision, salvage services, breach of contract, maritime liens, and mortgage enforcement.

Procedures for Ship Arrest: To initiate ship arrest in Vietnam, a claimant must file a formal application with the competent court, furnishing financial security, providing evidence of the claim and demonstrating a valid reason for the arrest. The court will review the application and supporting documents and documents evidencing the furnished financial security for their applications before deciding whether to issue an arrest warrant.

Arrest Warrant: Once the court grants an arrest warrant, it authorizes a court officer to deliver the decision to the port authority director within twelve hours. The port authority director executes the decision and coordinates with other state agencies for enforcement. Ship owners/operators are responsible for maintaining ship operations.

Release of Arrested Vessel: A seagoing ship arrested for a maritime claim will be promptly released under certain conditions, including the provision of substitute security or full payment of debts, guarantees or insurance from reputable organizations, applicant's request, cancellation of the arrest decision, or expiration of the court-ordered arrest period. If parties cannot agree on substitute security, the court will determine it, ensuring it does not exceed the ship's value or the property obligation that led to the arrest.

2. Which International Convention applies to arrest of ships in your country?

To the best of our knowledge, Vietnam has not ratified any International Convention on ship arrest even though Vietnam has been encouraged to accede to International Convention on the Arrest of Ship Geneva, March 12, 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

There are the following ways to arrest ship in Vietnam:

- Filing request with civil enforcement bodies for ship arrest for the enforcement of judgment/ decision of the court or arbitration;
- Filing request with the court for ship arrest during the settlement of a civil lawsuit, or during the dispute arbitration process; and
- Filing a request with a foreign court or foreign arbitration tribunal for ship arrest as a matter of international judicial assistance.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

These measures correspond to saisie conservatoire or freezing order.

5. For which types of claims can you arrest a ship?

The types of claim which can give rise to a ship arrest are stipulated in Article 11 of the Ship Arrest Ordinance including: Damages for the loss of life, personal injuries and other human health damage directly caused by the operation of seagoing ships; Freight, maritime security charge, pilotage, wharfage, and other seaport dues and charges; Seagoing ship salvage remunerations; Property losses and damage outside contract directly caused by the operation of seagoing ships; Loss of or damage to cargoes, including luggage carried on board seagoing ships; General average; Towage; Pilotage; Goods, materials, food, fuels and equipment (including containers) supplied or services provided to seagoing ships for their operation, management, preservation and maintenance; Building, transformation, reconstruction, repair or equipping of seagoing ships; Sums of money paid on behalf of ship owners; Insurance premiums paid by ship owners or other parties on behalf of ship owners or bareboat charterers; Commissions or charges for brokerage or agency for seagoing ships payable by ship owners, bareboat charterers or authorized parties; Disputes as to the title to or ownership of seagoing ships; Disputes between co-owners of seagoing ships over the use of these ships or earnings of these ships; Mortgage or hypothecation of seagoing ships; Disputes arising from contracts of seagoing ship purchase and sale….

6. Can you arrest a ship irrespective of her flag?

Yes, we can. Under Vietnamese law, a ship can be arrested regardless of its flag. The jurisdiction to arrest a ship in Vietnam is determined by the location of the ship within Vietnamese territorial waters or ports, rather than its flag or nationality. If a ship is operating in Vietnamese waters or ports and meets the criteria for arrest, it can be detained irrespective of its flag.

7. Can you arrest a ship irrespective of the debtor?

Yes, we can. Under Vietnamese law, a ship can be arrested irrespective of the debtor. Ship arrest is primarily focused on securing the settlement of maritime claims, or for settlement of a civil lawsuit, or for the enforcement of civil judgments, or for dispute arbitration process, or as a matter of international judicial assistance. The arrest is typically initiated based on the claim or obligation associated with the ship itself, rather than solely relying on the identity of the debtor. Therefore, a ship can be subject to arrest regardless of who the debtor is, as long as there are valid grounds for the arrest based on the applicable laws and regulations.

8. What is the position as regards sister ships and ships in associated ownership?

The Ship Arrest Ordinance allows the arrest of sister ships in the following instances:

- The owner of the sister ship is also the owner of the ship concerned with the arising of the maritime claim;
- The owner of the sister ship is also the bareboat charterer, time - charterer or voyage charterer of the ship concerned with a maritime claim.

On the other hand, ships in associated ownership, which refers to vessels owned or controlled by different entities are generally not automatically subject to arrest when one ship is arrested. The Ship Arrest Ordinance is silent on the arrest of ships in associated ownership. To our experience, arrest of ships in associated ownership is not possible.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Kindly refer to answer no. 8.

10. Do your Courts require counter-security in order to arrest a ship?

Article 5 of the Ship Arrest Ordinance requires the arresting party to provide a valid bond or guarantee fixed by the court which is equivalent to the possible losses or damages resulting from wrongful arrest (if any). It means that the provision of counter-security is required as a condition for ship arrest. The arresting party must provide counter-security to cover any potential damages or costs that may arise from the arrest if it is later found to be wrongful or invalid. The specific amount and form of counter-security may be determined by the court handling the case, ensuring it is sufficient to protect the interests of the ship owner, charterer, or operator. The requirement for counter-security aims to balance the rights of both the arresting party and the ship owner, charterer, or operator during the arrest process.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Arresting a ship for a maritime claim: The arrest of ship is sought against the ship owner/bareboat charterer of the ship related to the maritime claim. Other ships of the ship owner can be arrested if, at the time the maritime claim arose, such party was also (a) the owner of the ship related to the maritime claim, or (b) the bareboat charterer, time charterer or voyage charterer of the ship related to the maritime claim.
Maritime lien: Maritime lien is sought against the ship related to the maritime claims giving rise to the maritime lien. Maritime lien over a ship shall not be affected by a change of owner, charterer or operator.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Vietnam recognises maritime lien in accordance with the Maritime Code.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Usually, it may take us from 03 [three] to 05 [five] working days from receipt of supporting documents to arrest a ship.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, we do need to submit to the court a written request for the arrest of the ship and other documents in order to support the request for the arrest of the ship, including a POA for us to represent the claimant before the court and relevant authorities.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All documents to be submitted to Vietnamese court to apply for the arrest of a ship must be original documents or certified true copies. In the case of documents and evidence proving the request for the arrest of a vessel in a foreign language, they must be accompanied by a translation into Vietnamese and legally authenticated in accordance with Vietnamese laws. Documents and papers prepared, issued, or certified by competent foreign authorities in accordance with foreign laws, must undergo notarisation and/or apostille unless exempted under the provisions of international treaties to which the Socialist Republic of Vietnam is a member.
Claimant can also file documents electronically through courts' web portal, if any. Of note, not every provincial court in Vietnam has its web site/ web portal. Therefore, filing documents electronically through courts' web portal, is not recommended.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Vietnam Court accepts jurisdiction over the substantive claim in accordance with the provisions of the Civil Procedure Code of Vietnam, including the circumstance where the defendant has property in the territory of Vietnam. The law does not provide that the property must be real estate. Therefore, we assume that if a ship is arrested in Vietnam, Vietnam court may accept jurisdiction over the substantive claim if the defendant is the owner of the arrested ship.

17. What is the procedure to release a ship from arrest?

The release procedure includes the following steps:

- Submission to the court of a written request for the release of the arrested ship and supporting documents, in which the lawful reason for the release of the arrested ship must be presented;
- Within 24 hours as from the receipt of the written request the court issue either the release order or a letter presenting the reason for which the release is not granted;
- In case of a release order, the court immediately sends the order to the relevant port authority for implementation thereof;
- The director of the relevant port issues a notice for the implementation of the court's release order and assigns a port officer to release the ship.

18. What type of security needs to be placed for the release?

The determination of substitute security for the ship's release should be agreed upon by the parties involved. If no agreement can be reached regarding the amount and form of substitute security, the court will make a decision in this regard. The substitute security decided by the court should not exceed the value of the arrested seagoing ship or the property obligation that led to the ship's arrest, in case where the property obligation is lower than the value of the ship. Typically, acceptable forms of substitute security include a bank guarantee or a letter of undertaking (LOU) issued by reputable insurers listed by the competent authority in Vietnam. The Ministry of Finance has identified 27 such reputable insurers in accordance with their decision.

19. Does security need to cover interest and costs?

Yes, it does.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

According to Article 22 of the Ship Arrest Ordinance, one of the grounds for an arrested ship to be promptly released is that the property obligation of the ship owner, charterer, or operator is guaranteed by another party or insured by a reputable insurance organization.
Currently, the following insurance companies are named by the Ministry of Finance as reputable insurance organizations for the purpose of providing guarantee in accordance with Article 22 of the Ship Arrest Ordinance:

i. Bao Viet Insurance Corporation
ii. Bao Minh Insurance Corporation
iii. Petrolimex Insurance Corporation
iv. Post Insurance Corporation
v. AAA Insurance Joint Stock Company
vi. Agriculture Bank Insurance Joint Stock Company
vii. Xuan Thanh Insurance Corporation
viii. Bao Viet Tokio Marine Insurance Company Limited
ix. United Insurance Company Limited
x. Samsung Vina Insurance Company Limited
xi. QBE Vietnam Insurance Company Limited
xii. MSIG Vietnam Non-Life Insurance Limited
xiii. Cathay Vietnam Non-Life Insurance Limited
xiv. Fubon Insurance Company Limited (Vietnam)
xv. Bank for Investment and Development of Vietnam Insurance Corporation
xvi. Military Insurance Corporation
xvii. Bao Long Insurance Joint Stock Company
xviii. Aviation Insurance Joint Stock Company
xix. Hung Vuong Insurance Joint Stock Company
xx. PVI Insurance Corporation
xxi. Global Insurance Joint Stock Company
xxii. Groupama Vietnam Comprehensive Insurance Company Limited
xxiii. Vietnam Bank for Industry and Trade Insurance Company Limited
xxiv. Phu Hung Insurance Joint Stock Company
xxv. AIG Vietnam Insurance Company Limited
xxvi. Liberty Insurance Company Limited
xxvii. Saigon-Hanoi Insurance Corporation

21. How long does it take to release the ship?

The ship can be released within 36 hours from the court's receipt of a written request for its release (including 24 hours for the judge in charge to review the request and 12 hours for the court officer to deliver the release decision to the Chief of sea ports). For additional information regarding the timing of releasing the ship, please refer to question 22 below.

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest of a seagoing ship to secure the settlement of maritime claims. The relevant articles of the Ship Arrest Ordinance provide guidelines for lodging complaints or protests, as well as grounds for the release of the arrested ship and the process for requesting such release.

Shipmasters, ship owners, bareboat charterers, ship operators, and the procuracy of the same level have the right to submit written complaints or protests within forty-eight hours of receiving the court's decision to arrest a seagoing ship. The court's Chief Judge will then consider and settle these complaints or protests, making a decision to either uphold or cancel the arrest.

The grounds for releasing a seagoing ship from arrest, may include provision of substitute security, paying debts, having the ship owner's obligation guaranteed or insured, or upon request of the

applicant or cancellation of the arrest decision. The court is responsible for determining the amount and form of substitute security if the parties involved cannot reach an agreement.

Ship owners, charterers, operators, shipmasters, applicants for the ship's arrest, and other involved parties may request the release of a seagoing ship in writing, provided they meet the specified grounds. The written request must include certain details, such as the requester's information, the ship's details, the decision to arrest, and the reason for release.

The written requests for release, along with supporting documents and evidence, should be sent to the court that issued the arrest decision.

Once written requests for release are received, the court's Chief Judge will designate a judge to manage the case. The judge will carefully examine the requests and accompanying documents within twenty-four hours. If the requests are found to be valid, the judge will issue a decision to release the ship. However, if the requests lack merit and are deemed groundless, the judge will inform the requesters in writing of the non-acceptance.

The decision to release a seagoing ship from arrest is promptly executed and involves notifying the port authority director, sending copies to the relevant parties, and informing the Consular Department of the Ministry of Foreign Affairs if foreign elements are involved.

Based on these provisions, if a seagoing ship's arrest is contested, the concerned parties can follow the outlined procedure to present their complaints or protests, and the court will assess and make a final decision.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

- With regard to the loss of or damage to cargo, it is one year from the date on which the cargo was delivered or should have been delivered to the consignee.
- With regard to performance of voyage charter parties, it is two years from the date on which a complainant knows or should have known of the infringement of its interests.
- With regard to damages for the death, personal injury or damage to health of a passenger or for loss or damage to luggage, it is two years.
- With regard to charter parties, it is two years from the date of termination of the charter party.
- With regard to dispute over shipping agency contract, it is two years from the date on which the dispute arose.
- With regard to dispute over maritime brokerage contract, it is two years from the date on which the dispute arose.
- With regard to dispute over contracts for towage of seagoing ships, it is two years from the date on which the dispute arose.
- With regard to dispute over contracts for maritime salvage, it is two years from the termination of the rescue operations.
- With regard to recovery of compensatory amount in excess of its liability, it is one year from the date of payment of the compensatory amount.
- With regard to general average, it is two years from the date of the general average occurrence. The time taken for apportionment of general average shall not be included in this limitation period.
- With regard to marine insurance contract, it is two years from the date on which the dispute arose.

24. Do the Courts of your country acknowledge wrongful arrest?

Under Article 4 of the Ship Arrest Ordinance, in the event of wrongful arrest, applicants for the wrongful arrest shall be held responsible for the wrongful arrest. All losses or consequences of an application for the wrongful arrest shall be remedied under agreement between the involved parties. In case no agreement can be reached and a dispute arises, the involved parties may bring the case to a court or an arbitration center for settlement.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Vietnamese laws do acknowledge the concept of piercing and lifting the corporate veil. While the Law on Enterprises of 2020 (amended, supplemented by Law No. 76/2025/QH15 passed on 17 June 2025, hereinafter collectively referred to as "Enterprise Law") itself does not explicitly use these terms, it provides provisions that recognize the circumstances under which the corporate veil can be pierced or lifted.

For example, Articles 12.2, 13, 50.5, 72, 77.5, 119.2, 166, 181.2.(dd), etc., of the Enterprise Law establishes the responsibilities of the owner/shareholder, the at-law representatives or the manager/executive officer (e.g. members of the Board of Director or Board of Members, Chief Executive Officer) of enterprises and imposes personal liability on them for damage caused to the enterprise due to their breach of responsibilities. This can be seen as a recognition of the potential for personal liability to extend beyond the corporate entity, effectively piercing the corporate veil in certain situations.

Additionally, in specific circumstances, such as when a company is used as a vehicle for fraud, evasion of legal obligations, or to achieve unjust results, Vietnamese courts may disregard the separate legal personality of the company and hold the shareholders or directors personally liable.

While the concept of piercing and lifting the corporate veil is not explicitly codified, Vietnamese laws and court practices do provide the basis for applying these principles when necessary to achieve justice, protect creditors' rights, and prevent abuse of the corporate structure.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

An arrested ship can be put on auction in accordance with a court's decision. The timing for auctioning a ship is not specified by laws.

**Mr. Thuan* *brings over 13 years of experience, having worked for the People's Court of Ho Chi Minh City. During his tenure, he spent more than 8 years as the assistant to the Chief Judge of the Civil Division. In March 2003, Mr. Thuan embarked on his career as a professional lawyer, leaving the Court. He initially joined Vilaf - Hong Duc, where he served as a key litigator for over 5 years before transitioning to Phuoc & Partners in October 2008 and became a Partner 6 months afterward. In August 2019, Mr. Thuan, along with 7 other P&P Partners, established Global Vietnam Lawyers.*

With a broad range of expertise, Mr. Thuan is highly regarded for his skills in labor, commercial, maritime, insurance, construction, and criminal trial and appellate. Throughout his litigation practice, he has handled various notable cases, including defending a renowned soft drink manufacturer in labor disputes, managing a dispute among members of a 5-star hotel joint venture, representing a foreign contractor in resolving a construction dispute for a high-class housing project, handling maritime cases involving the arrest and release of seagoing vessels, representing a well-known foreign insurer in subrogation cases, enforcing foreign arbitral awards in Vietnam for top cotton and feed traders, and overseeing numerous debt collection cases for both local and overseas clients.

Mr. Thuan has also represented local and international clients in various arbitration cases, including high-value M&A disputes. In addition to his litigation work, he provides comprehensive legal advice in employment and labor, maritime and shipping, insurance, contracts, civil, family, criminal law, and other commercial matters.

SHIP ARREST IN *YEMEN*

*By Dr. Ghazi Alaghbari**
ALAGHBARI & PARTNERS
apl@aghbarilaw.com
www.aghbarilaw.com
Sabeha Building, Algiers St.
Sana'a, Republic of Yemen
Tel: +967 1 538 638
Fax: +967 1 538 639

1. Please give an overview of ship arrest practice in your country.

According to the provisions of the Yemeni Maritime Law, there are two types of arrests that can be imposed on a ship:

- Provisional attachment: It is meant to prohibit the ship from leaving the port by an order (writ) issued by the competent court in order to compel the person/entity indebted with a maritime debt to pay the claimed debt, or to present a guarantee of payment. This type of ship arrest ceases when the ship is released.
- Executive attachment: It means to arrest the ship based on an executory deed as a preliminary step to sell that ship in order to pay the creditors.

It's noted that the provisional attachment is more frequent in practice, while the executive attachment is less frequent as it is rare that ships are forcibly sold. This is due to the fact that debtors often tend to hastily pay off their debts.

2. Which International Convention applies to arrest of ships in your country?

The Yemeni legislator has included some provisions of the Brussels' Convention of 1952 in the Yemeni Maritime Law. This inclusion was made in articles (55 and onward) of the Yemeni Maritime Law.

3. Is there any other way to arrest a ship in your jurisdiction?

The arrest methods stipulated in the Yemeni Maritime Law are the provisional attachment and, then, the executive attachment. No other arrest methods are stipulated in the Yemeni Maritime Law (Articles 83 & 91).

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The arrest methods are exclusively limited to the provisional attachment and the executive attachment. However, freezing order is not stipulated in the Yemeni Maritime Law.

5. For which types of claims can you arrest a ship?

According to the general rules of the Yemeni law, the provisional attachment is imposed through a summary procedure in accordance with article (238 procedures) or pursuant to an independent request submitted to the president of the competent court (writ on petition) in accordance with article (246). However, it is understood by article (83/1 maritime) that the ship arrest procedure is done pursuant to a writ on petition; where the article states "a provisional attachment on a ship shall not be imposed except by an order (writ) issued from the competent court ...".

6. Can you arrest a ship irrespective of her flag?

Yes, an arrest can be imposed on any ship in the ports of the Republic of Yemen, provided that the purpose of such arrest is to settle a maritime debt in accordance with article (83 maritime) excluding warships and ships that are dedicated to public services.

7. Can you arrest a ship irrespective of the debtor?

Ship arrest cannot be imposed on any ship unless that ship is owned by the debtor or if the charterer of that ship is solely responsible for the maritime debt that is connected to that ship in accordance with articles (85 & 86 maritime).

8. What is the position as regards sister ships and ships in associated ownership?

Any ship owned by the debtor may be arrested, whether it is the same ship to which the debt is connected or it is another ship owned by the debtor before that debt had emerged. However, according to article (85 maritime), if the dispute is over ownership or over a maritime mortgage debt, the arrest shall not be imposed on any ship other than the one to which the debt is connected.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Yemeni law has permitted to impose an arrest on a chartered ship to which a maritime debt is connected or on any other ship owned by the charterer if that charterer is solely responsible for that debt, in accordance with article (86 maritime).

10. Do your Courts require counter-security in order to arrest a ship?

Yes, the Yemeni law requires a counter-security before the judgment becomes final in order to enforce the attachment validity judgment and the claimed right in accordance with article (339 procedures). A counter-security is also required by the debtor in case the debtor has submitted a request to the court to release the ship in accordance with article (87 maritime).

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference as both are considered as maritime debts, whether it is a normal debt or a lien. However, when debts are to be paid off, priority shall be given to liens.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Yemen do recognize maritime liens. This is stipulated for in articles (55 to 66) of the Yemeni Maritime Law and which were quoted from those of the Brussels Convention of 1976.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Once we get all support documents proving the maritime debt, the time required to impose the arrest on a ship is about 24 hours. However, having in mind the current situation in Yemen, this time frame may reach up to a maximum of ten days. Whereas, the enforcement of the arrest needs a longer period of time, since the enforcement can only take place after a judgment is issued on the validity of the attachment claim (a primary judgment). In some cases the arrest is not enforced until a judgment is issued by Appeal Court if the enforcement was suspended by Appeal Court itself. Thus, the litigation, including the enforcement procedures, may take more than one year.

14. Do you need to provide a POA or any other documents of the claim to the Court?

According to the general rules of the Yemeni Procedures Law, a claim shall be submitted along with sufficient evidences that prove the claimed right (i.e. the maritime debt), including evidences proving the legal capacity of the person submitting that claim (i.e. the power of attorney document), according to article (104 procedures).

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

- The original documents that should be submitted are:
  1. A Power of Attorney made by the person/entity requesting the arrest (the creditor). This document should be notarized by official entities.

2. Documents proving the debt and its relation with the ship and the ship owner or charterer.

- With regard to documents that can be submitted electronically, no copy shall have any legal power unless that copy is found to be authentic and identical with its original version, in accordance with article (101) of the Yemeni Evidence Law. This means that no document can be submitted electronically; i.e. the original hard copy of all documents should be presented to court to validate the copies of such documents. After these document are found to be authentic and valid, the court shall return the original documents.
- The documents that should be notarized is the Power of Attorney which is made by the person/entity requesting the arrest to be imposed.
- All these documents are required at the time on which the claim or the attachment request is being submitted to the court.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes, the courts of Yemen do recognize and accept the legal jurisdiction in the substantive claim in case the ship is in the ports of Yemen in accordance with article (80/2 procedures).

17. What is the procedure to release a ship from arrest?

The legally stipulated procedure to release an arrested ship is to submit a bank guarantee in accordance with article (87 maritime).

18. What type of security needs to be placed for the release?

A Bank Guarantee or a capable guarantor. The enforcement judge shall decide whether a guarantor is adequately capable or not.

19. Does security need to cover interest and costs?

Yes, the guarantee must cover the enforcement's costs and expenses only. The legislator obliged that the enforcement judge shall deduct these costs and expenses from the amounts risen as a result of such enforcement in accordance with article (475 procedures).

20. Are P&I LOUs accepted as sufficient to lift the arrest?

What is well known is that the arrest imposed on a ship can only be lifted by a bank guarantee which could be issued by the P&I LOUs.

21. How long does it take to release the ship?

The release of a ship does not require a long time. The law obliged that once the adequate guarantee is submitted, the judge shall instantly release the ship. The remaining procedures can be finalized within 10 ten days in accordance with article (87 maritime).

22. Is there a procedure to contest the arrest?

Yes, in accordance with article (251 procedures), the debtor has the right to submit a grievance against the writ of attachment within 10 days from the date on which he/she is notified with that writ of attachment. The debtor also has the right to submit an appeal against the validity of attachment judgment within 15 days from the date on which that judgment is passed.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

If (taking legal actions on the merits) means here the validity of attachment claim, then the timeframe to do so as stipulated for by the Yemeni Maritime Law is (15) days, starting from the date on which the ship Captain receives a copy of the arrest report.

24. Do the Courts of your country acknowledge wrongful arrest?

Yemen does not recognize foreign writs of attachment unless such writs have the requirements stipulated for in article (494 procedures).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

According to the Yemeni Corporate Law as well as all relevant laws, companies have an independent corporate veil. There is nothing in these laws that permit the piercing or lifting of the corporate veil.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

No, the ship on which the arrest is imposed cannot be sold during the litigation process. However, it can be sold only after a judgment is issued.

***Dr. Ghazi** holds a PhD in Commercial Law (1994); a Postgraduate Diploma in Private Law (1986); a Postgraduate Diploma in Islamic Law (1985); and a Bachelor Degree in Law (1982) from the Faculty of Law at Cairo University, Egypt. Dr. Ghazi is a well renowned and reputable Lawyer who has held highly ranked positions throughout his career. He began by working as a Lawyer and Legal Consultant from 1994 until 1998 and as Assistant Professor in the Department of Commercial and Maritime Law at Sana'a University, Yemen, from 1994 to 2006. He joined the judiciary in 1998; firstly as President of the Appellate Division in the Appeal Court in the Capital Sana'a and later in 2001 as member of the Commercial Division of the Supreme Court; until he was appointed as Minister of Justice in 2006. Following the end of his term as Minister, towards the end of 2011, Dr. Ghazi went on to re-establish a private law practice, which has since January 2014, expanded to create a leading multi-partner Law Firm, Alaghbari & Partners, Lawyers and Legal Consultants, which is considerably the largest Law Firm in Yemen. In addition, he is a certified Arbitrator from the Arab Union of International Arbitration, the Cairo Regional Centre for International Commercial Arbitration and the Yemeni Centre for Conciliation and Arbitration. As a result of the multiple roles he has held, Dr. Ghazi inevitably has a very developed understanding of the legal and administrative systems in Yemen this is reinforced through working extensively on the drafting/ amendment of numerous laws/regulations during his role as Minister of Justice.*

Appendix 1

INTERNATIONAL CONVENTION RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

ARTICLE 1:

In this Convention the following words shall have the meanings hereby assigned to them:

1. "Maritime Claim" means a claim arising out of one or more of the following:
   (a) damage caused by any ship either in collision or otherwise;
   (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
   (c) salvage;
   (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
   (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
   (f) loss of or damage to goods including baggage carried in any ship;
   (g) general average;
   (h) bottomry;
   (i) towage;
   (J) pilotage;
   (k) goods or materials wherever supplied to a ship for her operation or maintenance;
   (1) construction, repair or equipment of any ship or dock charges and dues;
   (m) wages of Masters, Officers, or crew;
   (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
   (o) disputes as to the title to or ownership of any ship;
   (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
   (q) the mortgage or hypothecation of any ship.

2. "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.

3. "Person" includes individuals, partnerships and bodies corporate, Governments, their Departments, and Public Authorities.

4. "Claimant" means a person who alleges that a maritime claim exists in his favour.

ARTICLE 2:

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any governments or their departments, public authorities, or dock or harbour authorities under their existing

domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

ARTICLE 3:

1. Subject to the provisions of paragraph. (4) of this article and of article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1, (o), (p) or (q).

2. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

3. A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

4. When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

ARTICLE 4:

A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the contracting State in which the arrest is made.

ARTICLE 5:

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, (o) and (p). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest. In default of agreement between the parties as to the sufficiency of the bail or

other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof. The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitations of liability of the owner of the ship.

ARTICLE 6:

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for. The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

ARTICLE 7:

1. The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

(a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;
(b) if the claim arose in the country in which the arrest was made;
(c) if the claim concerns the voyage of the ship during which the arrest was made;
(d) if the claim arose out of a collision or in circumstances covered by article 13 of the International Convention for the unification of certain rules of law with respect to collisions between vessels, signed at Brussels on 23rd September 1910;
(e) if the claim is for salvage;
(f) if the claim is upon a mortgage or hypothecation of the ship arrested.

2. If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgment which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the claimant shall bring an action before a Court having such jurisdiction.

3. If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

4. If, in any of the cases mentioned in the two preceding paragraphs, the action or proceeding is not brought within the time so fixed, the defendant may apply for the release of the ship or 335 of the bail or other security.

5. This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

ARTICLE 8:

1. The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

2. A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest.

3. Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this convention any government of a non-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

4. Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

5. When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or other-wise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

ARTICLE 9:

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which was seized of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on maritime mortgages and liens, if the latter is applicable.

ARTICLE 10:

The High Contracting Parties may at the time of signature, deposit or ratification or accession, reserve:

(a) the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs (o) and (p) of article 1, but to apply their domestic laws to such claims;
(b) the right not to apply the first paragraph of article 3 to the arrest of a ship within their jurisdiction for claims set out in article 1 paragraph (q).

ARTICLE 11:

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

ARTICLE 12:

This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

ARTICLE 13:

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

ARTICLE 14:

(a) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.
(b) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

ARTICLE 15:

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention. The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification. The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 14(a).

ARTICLE 16:

Any High Contracting Party may three years after coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to the Convention. Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

ARTICLE 17:

Any High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

ARTICLE 18:

(a) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(b) A High Contracting Party which has made a declaration under paragraph (a) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(c) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article. 337

Appendix 2

INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

ARTICLE 1:

Definitions
For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:
   a) loss or damage caused by the operation of the ship;
   b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
   c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
   d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
   e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
   f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
   g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
   h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
   i) general average;
   j) towage;
   k) pilotage;
   l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
   m) construction, reconstruction, repair, converting or equipping of the ship;
   n) port, canal, dock, harbour and other waterway dues and charges;
   o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
   p) disbursements incurred on behalf of the ship or its owners;
   q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
s) any dispute as to ownership or possession of the ship;
t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
v) any dispute arising out of a contract for the sale of the ship.

2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

4. "Claimant" means any person asserting a maritime claim.

5. "Court" means any competent judicial authority of a State.

ARTICLE 2:

Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.

2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.

3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

ARTICLE 3:

Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:
a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or
b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or
c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

d) the claim relates to the ownership or possession of the ship; or
e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:
a) owner of the ship in respect of which the maritime claim arose; or
b) demise charterer, time charterer or voyage charterer of that ship. This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

ARTICLE 4:

Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:
a) the claim for which the ship has been arrested, or
b) the value of the ship,
whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6. Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

ARTICLE 5:

Right of re-arrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be re-arrested or arrested in respect of the same maritime claim unless:

a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or
b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or
c) the ship arrested or the security previously provided was released either:
    i) upon the application or with the consent of the claimant acting on reasonable grounds, or
    ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

a) the nature or amount of the security already provided in respect of the same claim is inadequate; or
b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

ARTICLE 6:

Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

a) the arrest having been wrongful or unjustified; or
b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

a) the arrest having been wrongful or unjustified, or

b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.

4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

ARTICLE 7:

Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

a) does not have jurisdiction to determine the case upon its merits; or
b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and
b) such recognition is not against public policy (ordre public)

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

ARTICLE 8:

Application
1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.
4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

ARTICLE 9:

Non-creation of maritime liens
Nothing in this Convention shall be construed as creating a maritime lien.

ARTICLE 10:

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

a) ships which are not seagoing;
b) ships not flying the flag of a State Party;
c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

ARTICLE 11:

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

ARTICLE 12:

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

a) signature without reservation as to ratification, acceptance or approval; or
b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

ARTICLE 13:

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

ARTICLE 14:

Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

ARTICLE 15:

Revision and amendment
1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

ARTICLE 16:

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

ARTICLE 17:

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Appendix 3

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO MARITIME LIENS AND MORTGAGES, 1926

ARTICLE 1:

Mortgages, hypothecations, and other similar charges upon vessels, duly effected in accordance with the law of the Contracting State to which the vessel belongs, and registered in a public register either at the port of the vessel's registry or at a central office, shall be regarded as valid and respected in all the other contracting countries.

ARTICLE 2:

The following give rise to maritime liens on a vessel, on the freight for the voyage during which the claim giving rise to the lien arises, and on the accessories of the vessel and freight accrued since the commencement of the voyage;

1. Law costs due to the State, and expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale; tonnage dues, light or harbour dues, and other public taxes and charges of the same character; pilotage dues; the cost of watching and preservation from the time of the entry of the vessel into the last port;

2. Claims arising out of the contract of engagement of the master, crew and other persons hired on board;

3. Remuneration for assistance and salvage, and the contribution of the vessel in general average;

4. Indemnities for collision or other accident of navigation, as also for damage caused to works forming part of harbours, docks, and navigable ways; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;

5. Claims resulting from contracts entered into or acts done by the master, acting within the scope of his authority away from the vessel's home port, where such contracts or acts are necessary for the preservation of the vessel or the continuation of its voyage, whether the master is or is not at the same time owner of the vessel, and whether the claim is his own or that of ship-chandlers, repairers, lenders, or other contractual creditors.

ARTICLE 3:

The mortgages, hypothecations, and other charges on vessels referred to in Article 1 rank immediately after the secured claims referred to in the preceding Article. National laws may grant a lien in respect of claims other than those referred to in the said last-mentioned Article, so, however, as not to modify the ranking of claims secured by mortgages, hypothecations, and other similar charges, or by the liens taking precedence thereof.

ARTICLE 4:

The accessories of the vessel and the freight mentioned in Article 2 mean:

1. Compensation due to the owner for material damage sustained by the vessel and not repaired, or for loss of freight;

2. General average contributions due to the owner, in respect of material damage sustained by the vessel and not repaired, or in respect of loss of freight;

3. Remuneration due to the owner for assistance and salvage services rendered at any time before the end of the voyage, any sums allotted to the master or other persons in the service of the vessel being deducted. The provision as to freight apply also to passage money, and, in the last resort, to the sums due under Article 4 of the Convention on the limitation of shipowners' liability.
Payments made or due to the owner on policies of insurance, as well as bounties, subventions, and other national subsidies are not deemed to be accessories of the vessel or of the freight. Notwithstanding anything in the opening words of Article 2.(2), the lien in favour of persons in the service of the vessel extends, to the total amount of freight due for all voyages made during the subsistence of the same contract of engagement.

ARTICLE 5:

Claims secured by a lien and relating to the same voyage rank in the order in which they are set out in Article 2. Claims included under any one heading share concurrently and rateably in the event of the fund available being insufficient to pay the claims in full. The claims mentioned under Nos. 3 and 5 in that Article rank, in each of the two categories, in the inverse order of the dates on which they came into existence. Claims arising from one and the same occurrence are deemed to have come into existence at the same time.

ARTICLE 6:

Claims secured by a lien and attaching to the last voyage have priority over those attaching to previous voyage. Provided that claims, arising on one and the same contract of engagement extending over several voyages, all rank with claims attaching to the last voyage.

ARTICLE 7:

As regards the distribution of the sum resulting from the sale of the property subject to a lien, the creditors whose claims are secured by a lien have the right to put forward their claims in full, without any deduction on account of the rules relating to limitation of liability provided, however, that the sum apportioned to them may not exceed the sum due having regard to the said rules.

ARTICLE 8:

Claims secured by a lien follow the vessel into whatever hands it may pass.

ARTICLE 9:

The liens cease to exist, apart from other cases provided for by national laws, at the expiration of one year, and, in the case of liens for supplies mentioned in No.5 of Article 2, shall continue in force for not more than six months. The periods for which the lien remains in force in the case of liens securing claims in respect of assistance and salvage run from the day when the services terminated, in the case of liens securing claims in respect of collision and other accidents and in respect of bodily injuries from the day when the damage was caused; in the case of liens for the loss of or damage or cargo or baggage from the day of the delivery of the cargo or baggage or from the day when they should have been delivered; for repairs and supplies and other cases mentioned in No.5 of Article 2 from the day the claim originated. In all the other cases the period runs from the enforceability of the claim. The fact that any of the persons employed on board, mentioned in No. 2 of Article 2 has a right to any payment in advance or on account does not render his claim enforceable. As respects the cases provided for in the national laws in which a lien is extinguished, a sale shall extinguish a lien only if accompanied by formalities of publicity which shall be laid down by the national laws. These formalities shall include a notice given in such form and within such time as the national laws may prescribe to the authority charged with keeping the registers referred to in Article 1 of this Convention. The grounds upon which the above periods may be interrupted are determined by the law of the court where the case is tried. The High Contracting Parties reserve to themselves the right to provide by legislation in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the vessel to which a lien attaches in the territorial waters of the state in which the claimant has his domicile or his principal place of business, provided that the extended period shall not exceed three years from the time when the claim originated.

ARTICLE 10:

A lien on freight may be enforced so long as the freight is still due or the amount of the freight is still in the hands of the master or the agent of the owner. The same principle applies to a lien on accessories.

ARTICLE 11:

Subject to the provisions of this Convention, liens established by the preceding provisions are subject to no formality and to no special condition of proof. This provision does not affect the right of any State to maintain in the legislation provisions requiring the master of a vessel to fulfil special formalities in the case of certain loans raised on the security of the vessel, or in the case of the sale of its cargo.

ARTICLE 12:

National laws must prescribe the nature and the form of documents to be carried on board the vessel in which entry must be made of the mortgages. hypothecations, and other charges referred to in Article 1; so, however, that the mortgagees requiring such entry in the said form be not held responsible for any omission, mistake, or delay in inscribing the same on the said documents.

ARTICLE 13:

The foregoing provisions apply to vessels under the management of a person who operates them without owning them or to the principal charterer, except in cases where the owner has been dispossessed by an illegal act or where the claimant is not a bona fide claimant.

ARTICLE 14:

The provisions of this Convention shall be applied in each Contracting State in cases in which the vessel to which the claim relates belongs to a Contracting State as well as in any other cases provided for by the national laws. Nevertheless the principle formulated in the preceding paragraph does not affect the right of the Contracting States not to apply the provisions of this Convention in favour of the nationals of a non-contracting State.

ARTICLE 15:

This Convention does not apply to vessels of war, nor to government vessels appropriated exclusively to the public service.

ARTICLE 16:

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure or methods of execution authorized by the national law.

ARTICLE 17:

After an interval of not more than two years from the day on which the Convention is signed, the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratifications shall be recorded in a process-verbal signed by the representatives of the powers which take part therein and by the Belgian Minister for Foreign Affairs. The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Belgian Government, and accompanied by the instrument of ratification. A duly certified copy of the process-verbal relating to the first deposit of ratifications, of the notification referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the powers who have signed this Convention or who have acceded to it. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

ARTICLE 18:

Non-signatory States may accede to the present Convention whether or not they have been represented at the international Conference at Brussels. A State which desires to accede shall notify

its intention in writing to the Belgian Government, forwarding to it the document of accession which shall be deposited in the archives of the said Government.
The Belgian Government shall immediately forward to all the states which have signed or acceded to the Convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

ARTICLE 19:

The High Contracting Parties may at the time of signature, ratification, or accession declare that their acceptance of the present Convention does not include any or all of the self-governing dominions, or of the colonies, overseas possession, protectorates, or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate or territory excluded in their declaration. They may also denounce the Convention separately in accordance with its provision in respect of any self-governing dominion, or any colony, overseas possession, protectorate, or territory under their sovereignty or authority.

ARTICLE 20:

The present Convention shall take effect, in the case of the states which have taken part in the first deposit of ratifications, one year after the date of the process-verbal recording such deposit. As respects the states which ratify subsequently or which accede and also in cases in which the convention is subsequently put into effect in accordance with Article 19, it shall take effect six months after the notifications specified in Article 17, $ 2, and Article 18, $ 2, have been received by the Belgian Government.

ARTICLE 21:

In the event of one of the Contracting States wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other states informing them of the date on which it was received. The denunciation shall only operate in respect of the state which made the notification and on the expiration of one year after the notification has reached the Belgian Government.

ARTICLE 22:

Any one of the Contracting States shall have the right to call for a new conference with a view to considering possible amendments.
A state which would exercise this right should give one year advance notice of its intention to the other states through the Belgian Government which would make arrangements for convening the conference.
PROTOCOL OF SIGNATURE: In proceeding to the signature of the International Convention for the unification of Certain rules relating to maritime liens and mortgages, the undersigned plenipotentiaries have adopted the present Protocol, which will have the same force and the same value as if the provisions were inserted in the text of the Convention to which it relates:

I. It is understood that the legislation of each state remains free (1) to establish among the claims mentioned in No.1 of Article 2, a definite order of priority with a view to safeguarding the interests of the Treasury; (2) to confer on the authorities administering harbours, docks, lighthouses, and navigable ways, who have caused a wreck or other obstruction to navigation to be removed, or who are creditors in respect of harbour dues, or for damage caused by the fault of a vessel, the right, in case of non-payment, to detain the vessel, wreck, or other property, to sell the same, and to indemnify themselves out of the proceed in priority to other claimants, and (3) to determine the rank of the claimants for damages done to works otherwise than as stated in Article 5 and in Article 6.

II. There is no impairment of the provisions in the national laws of the Contracting States conferring a lien upon public insurance associations in respect of claims arising out of the insurance of the personnel of vessels.

Appendix 4

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO MARITIME LIENS AND MORTGAGES, 1967

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of determining by agreement certain rules relating to maritime liens and mortgages,

HAVE RESOLVED to conclude a convention for this purpose, and thereto agreed as follows:

ARTICLE 1:

Mortgages and "hypothèques" on sea-going vessels shall be enforceable in Contracting States provided that:

(a) such mortgages and "hypothèques" have been effected and registered in accordance with the law of the State where the vessel is registered;

(b) the register and any instruments required to be deposited with the registrar in accordance with the law of the State where the vessel is registered are open to public inspection, and that extracts of the register and copies of such instruments are obtainable from the registrar, and

(c) either the register or any instruments referred to in paragraph above specifies the name and address of the person in whose favour the mortgage or "hypothèque" has been effected or that it has been issued to bearer, the amount secured and the date and other particulars which, according to the law of the State of registration, determine the rank as respects other registered mortgages and "hypothèques".

ARTICLE 2:

The ranking of registered mortgages and "hypothèques" as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

ARTICLE 3:

1.Subject to the provisions of Article 11, no Contracting State shall permit the deregistration of a vessel without the written consent of all holders of registered mortgages and "hypothèques".

2. A vessel which is or has been registered in a Contracting State shall not be eligible for registration in another Contracting State, unless:

(a) a certificate has been issued by the former State to the effect that the vessel has been deregistered, or

(b) a certificate has been issued by the former State to the effect that the vessel will be deregistered on the day when such new registration is effected.

ARTICLE 4:

1. The following claims shall be secured by maritime liens on the vessel:

(i) wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel;

(ii) port, canal and other waterway dues and pilotage dues;

(iii) claims against the owner in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(iv) claims against the owner, based on tort and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the vessel;

(v) claims for salvage, wreck removal and contribution in general average. The word "owner" mentioned in this paragraph shall be deemed to include the demise or other charterer, manager or operator of the vessel.

2. No maritime lien shall attach to the vessel securing claims as set out in paragraph 1 (iii) and (iv) of this Article which arise out of or result from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive product or waste.

ARTICLE 5:

1. The maritime liens set out in Article 4 shall take priority over registered mortgages and "hypothèques", and no other claim shall take priority over such maritime liens or over mortgages and "hypothèques" which comply with the requirements of Article 1, except as provided in Article 6(2).

2. The maritime liens set out in Article 4 shall rank in the order listed, provided however that maritime liens securing claims for salvage, wreck removal and contribution in general average shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3. The maritime liens set out in each of sub-paragraphs (i), (ii), (iii) and (iv) of paragraph (1) of Article 4 shall rank pari passu as between themselves.

4. The maritime liens set out in sub-paragraph (v) of paragraph (1) of Article 4 shall rank in the inverse order of the time when the claims secured thereby accrued. Claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed; claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated.

ARTICLE 6:

1. Each Contracting State may grant liens or rights of retention to secure claims other than those referred to in Article 4. Such liens shall rank after all maritime liens set out in Article 4 and after all registered mortgages and "hypothèques" which comply with the provisions of Article 1; and such rights of retention shall not prejudice the enforcement of maritime liens set out in Article 4 or registered mortgages or "hypothèques" which comply with the provisions of Article 1, nor the delivery of the vessel to the purchaser in connection with such enforcement.

2. In the event that a lien or right of retention is granted in respect of a vessel in possession of: (a) a shipbuilder, to secure claims for the building of the vessel, or (b) a ship repairer, to secure claims for repair of the vessel effected during such possession, such lien or right of retention shall be postponed to all maritime liens set out in Article 4, but may be preferred to registered mortgages or "hypothèques". Such lien or right of retention may be exercisable against the vessel notwithstanding any registered mortgage or "hypothèque" on the vessel, but shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or ship repairer, as the case may be.

ARTICLE 7:

1. The maritime liens set out in Article 4 arise whether the claims secured by such liens are against the owner or against the demise or other charterer, manager or operator of the vessel.

2. Subject to the provisions of Article 11, the maritime liens securing the claims set out in Article 4 follow the vessel notwithstanding any change of ownership or of registration.

ARTICLE 8:

1. The maritime liens set out in Article 4 shall be extinguished after a period of one year from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested, such arrest leading to a forced sale.

2. The one year period referred to in the preceding paragraph shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the lienor is legally prevented from arresting the vessel.

ARTICLE 9:

The assignment of or subrogation to a claim secured by a maritime lien set out in Article 4 entails the simultaneous assignment of or subrogation to such maritime lien.

ARTICLE 10:

Prior to the forced sale of a vessel in a Contracting State, the competent authority of such State shall give, or cause to be given at least thirty days written notice of the time and place of such sale to:

(a) all holders of registered mortgages and "hypothèques" which have not been issued to bearer;

(b) such holders of registered mortgages and "hypothèques" issued to bearer and to such holders of maritime liens set out in Article 4 whose claims have been notified to the said authority;

(c) the registrar of the register in which the vessel is registered.

ARTICLE 11:

1. In the event of the forced sale of the vessel in a Contracting State all mortgages and "hypothèques", except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature shall cease to attach to the vessel, provided however that:

(a) at the time of the sale, the vessel is in the jurisdiction of such Contracting State, and

(b) the sale has been effected in accordance with the law of the said State and the provisions of this Convention.
No charter party or contract for the use of the vessel shall be deemed a lien or encumbrance for the purpose of this Article.

2. The cost awarded by the Court and arising out of the arrest and subsequent sale of the vessel and the distribution of the proceeds shall first be paid out of the proceeds of such sale. The balance shall be distributed among the holders of maritime liens, liens and rights of retention mentioned in paragraph 2 of Article 6 and registered mortgages and "hypothèques" in accordance with the provisions of this Convention to the extent necessary to satisfy their claims.
3. When a vessel registered in a Contracting State has been the object of a forced sale in a Contracting State, the Court or other competent authority having jurisdiction shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all mortgages and "hypothèques", except those assumed by the purchaser, and all liens and other encumbrances, provided that the requirements set out in paragraph 1, sub-paragraphs (a) and (b) have been complied with, and that the proceeds of such forced sale have been distributed in compliance with paragraph 2 of this Article or have been deposited with the authority that is competent under the law of the place of the sale. Upon production of such certificate the registrar shall be bound to delete all registered mortgages and "hypothèques", except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of re-registration, as the case may be.

ARTICLE 12:

1.Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a Contracting State or in a non-Contracting State.

2. Nothing in this Convention shall require any rights to be conferred in or against, or enable any rights to be enforced against any vessel owned, operated or chartered by a State and appropriated to public non-commercial services.

ARTICLE 13:

For the purposes of Articles 3, 10 and 11 of this Convention, the competent authorities of the Contracting States shall be authorized to correspond directly between themselves.

ARTICLE 14:

Any Contracting Party may at the time of signing, ratifying or acceding to this Convention make the following reservations:

1. to give effect to this Convention either by giving it the force of law or by including the provisions of this Convention in its national legislation in a form appropriate to that legislation;

2. to apply the International Convention relating to the limitation of the liability of owners of sea-going ships, signed at Brussels on 10 October 1957.

ARTICLE 15:

Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

ARTICLE 16:

1. Each Contracting Party may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by Article 15 of the Convention. The other Contracting Parties shall not be bound by this Article with respect to any Contracting Party having made such a reservation.

2. Any Contracting Party having made a reservation in accordance with paragraph 1 may at any time withdraw this reservation by notification to the Belgian Government.

ARTICLE 17:

This Convention shall be open for signature by the States represented at the twelfth session of the Diplomatic Conference on Maritime Law

ARTICLE 18:

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government.

ARTICLE 19:

1. This Convention shall come into force three months after the date of the deposit of the fifth instrument of ratification.

2. This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the fifth instrument of ratification, three months after the date of the deposit of the instrument of ratification.

ARTICLE 20:

1.States, Members of the United Nations or Members of the specialized agencies, not represented at the twelfth session of the Diplomatic Conference on Maritime Law, may accede to this Convention.

2.The instruments of accession shall be deposited with the Belgian Government.

3.The Convention shall come into force in respect of the acceding State three months after the date of deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 19(1).

ARTICLE 21:

Each Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof have been received by the Belgian Government.

ARTICLE 22:

1. Any Contracting Party may at the time of signature, ratification or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government which, among the territories under its sovereignty or for whose international relations it is responsible, are those to which the present Convention applies.

The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the territories named therein.

2. Any Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such territories.

This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

ARTICLE 23:

The Belgium Government shall notify the States represented at the twelfth session of the Diplomatic Conference on Maritime Law, and the acceding States to this Convention, of the following:

1.The signatures, ratifications and accessions received in accordance with Articles 17, 18 and 20.

2.The date on which the present Convention will come into force in accordance with Article 19.

3.The notifications with regard to Articles 14, 16 and 22.

4.The denunciations received in accordance with Article 21.

ARTICLE 24:

Any Contracting Party may three years after the coming into force of this Convention, in respect of such Contracting Party, or at any time thereafter request that a Conference be convened in order to consider amendments to this Convention. Any Contracting Party proposing to avail itself of this right shall notify the Belgian Government which, provided that one-third of the Contracting Parties are in agreement, shall convene the Conference within six months thereafter

ARTICLE 25:

In respect of the relations between States which ratify this Convention or accede to it, this Convention shall replace and abrogate the International Convention for the unification of certain rules relating to Maritime Liens and Mortgages and Protocol of signature, signed at Brussels on 10 April 1926.

IN WITNESS WHEREOF the undersigned plenipotentiaries, duly authorized, have signed this Convention.

DONE at Brussels, this 27th day of May 1967, in the French and English languages, both texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

Appendix 5

INTERNATIONAL CONVENTION ON MARITIME LIENS AND MORTGAGES, 1993

ARTICLE 1:

Recognition and enforcement of mortgages, "hypothèques" and charges

Mortgages, "hypothèques" and registrable charges of the same nature, which registrable charges of the same nature will be referred to hereinafter as "charges" effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

(a) such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;

(b) the register and any instruments required to be deposited with the registrar in accordance with the law of the State in which the vessel is registered are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar; and

(c) either the register or any instruments referred to in subparagraph (b) specifies at least the name and address of the person in whose favour the mortgage, "hypothèque" or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the law of the State of registration or if that amount is specified in the instrument creating the mortgage, "hypothèque" or charge, and the date and other particulars which, according to the law of the State of registration, determine the ranking in relation to other registered mortgages, "hypothèques" and charges.

ARTICLE 2:

Ranking and effects of mortgages, "hypothèques" and charges

The ranking of registered mortgages, "hypothèques" or charges as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

ARTICLE 3:

Change of ownership or registration

1. With the exception of the cases provided for in articles 11 and 12, in all other cases that entail the deregistration of the vessel from the register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all registered mortgages, "hypothèques" or charges are previously deleted or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained. However, where the deregistration of the vessel is obligatory in accordance with the law of a State Party, otherwise than as a result of a voluntary sale, the holders of registered mortgages, "hypotheques" or charges shall be notified of the pending deregistration in order to enable such

holders to take appropriate action to protect their interests; unless the holders consent, the deregistration shall not be implemented earlier than after a lapse of a reasonable period of time which shall be not less than three months after the relevant notification to such holders.

2. Without prejudice to article 12, paragraph 5, a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

(a) a certificate has been issued by the former State to the effect that the vessel has been deregistered; or

(b) a certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect, at such time as the new registration is effected. The date of deregistration shall be the date of the new registration of the vessel.

ARTICLE 4:

Maritime liens

1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for the salvage of the vessel;

(d) claims for port. canal. and other waterway dues and pilotage dues;

(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or

(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

ARTICLE 5:

Priority of maritime liens

1. The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypotheques" or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.

2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3. The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank pari passu as between themselves.

4. The maritime liens securing claims for reward for the salvage of the vessel shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

ARTICLE 6:

Other maritime liens
Each State Party may, under its law, grant other maritime liens on a vessel to secure claims other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

(a) shall be subject to the provisions of articles 8, 10 and 12;
(b) shall be extinguished
    (i) after a period of 6 months. from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or
    (ii) at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale; whichever period expires first; and
(c) shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.

ARTICLE 7:

Rights of retention

1. Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:

(a) a shipbuilder, to secure claims for the building of the vessel; or
(b) a ship repairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.

2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or ship repairer, otherwise than in consequence of an arrest or seizure

ARTICLE 8:

Characteristics of maritime liens
Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag.

ARTICLE 9:

Extinction of maritime liens because of time.

1. The maritime liens set out in article 4 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.

2. The one-year period referred to in paragraph 1 shall commence:

(a) with respect to the maritime lien set out in article 4, paragraph 1(a), upon the claimant's discharge from the vessel;
(b) with respect to the maritime liens set out in article 4, paragraph 1 (b) to (e), when the claims secured thereby arise; and shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the arrest or seizure of the vessel is not permitted by law.

ARTICLE 10:

Assignment and subrogation

1. The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.

2. Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.

ARTICLE 11:

Notice of forced sale

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

(a) the authority in charge of the register in the State of registration;
(b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;
(c) all holders of registered mortgages. "hypotheques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and
(d) the registered owner of the vessel.

2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:

(a) the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or,

(b) if the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.

3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

ARTICLE 12:

Effects of forced sale

1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel,provided that:

(a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; and

(b) the sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.

2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

3. A State Party may provide in its law that in the event of the forced, sale of a stranded or sunken vessel following its removal by a public authority in the interest of sate navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sales, before all other claims secured by a maritime lien on the vessel.

4. It at the time of the forced sale the vessel is in the possession of a shipbuilder or of a ship repairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such

shipbuilder or ship repairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.

5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

ARTICLE 13:

Scope of application

1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.

2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.

ARTICLE 14:

Communication between States Parties
For the purpose of articles 3, 11 and 12, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.
ARTICLE 15:

Conflict of conventions
Nothing in this Convention shall affect the application of any international convention providing for limitation of liability or of national legislation giving effect thereto.

ARTICLE 16:

Temporary change of flag
If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:

(a) For the purposes of this article, references in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and

references to “the authority in charge of the register” shall be deemed to be references to the authority in charge of the register in that State.

(b) The law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, “hypothèques” and charges.

(c) The State of registration shall require a cross-reference entry in its register specifying the State whose Rag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require that the authority in charge of the vessel’s record specifies by a cross-reference in the record the State of registration.

(d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, “hypothèques” or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, “hypothèques” or charges has been obtained.

(e) The notice referred to in article 11 shall be given also to the competent authority in charge of the vessel’s record in the State whose flag the vessel is permitted to fly temporarily.

(f) Upon production of the certificate of deregistration referred to in article 12 paragraph 5, the competent authority in charge of the vessel’s record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.

(g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

ARTICLE 17:

Depositary
This Convention shall be deposited with the Secretary-General of the United Nations.

ARTICLE 18:

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1993 to 31 August 1994 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification. acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

ARTICLE 19:

Entry into force

1. This Convention shall enter into force 6 months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect 3 months after the date of expression of such consent.

ARTICLE 20:

Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention. as amended

ARTICLE 21:

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

ARTICLE 22:

Languages
This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

With special thanks to the authors, members of Shiparrested.com, for their contributions to the 15th edition of *Ship Arrests in Practice*.

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